

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1385 Session of
1998

INTRODUCED BY HOLL, GREENLEAF, SLOCUM, COSTA AND MUSTO,
MARCH 24, 1998

REFERRED TO BANKING AND INSURANCE, MARCH 24, 1998

AN ACT

1 Amending the act of December 5, 1972 (P.L.1280, No.284),
2 entitled "An act relating to securities; prohibiting
3 fraudulent practices in relation thereto; requiring the
4 registration of broker-dealers, agents, investment advisers,
5 investment adviser representatives and securities; and making
6 uniform the law with reference thereto," further providing
7 for definitions; further providing, in the securities area,
8 for registration, for exemptions, for registration by
9 coordination, for registration in general, for registration
10 sanctions, for records and for retroactive registration;
11 providing for Federally covered securities; further
12 providing, in the area of broker-dealers, agents and
13 investment advisers, for registration, for exemptions, for
14 registration procedure, for postregistration procedure, for
15 registration sanctions; further providing for prohibitions,
16 for contract requirements and for misrepresentations;
17 providing for school district prohibitions; further providing
18 for civil liability, for enforcement, for investigations and
19 for criminal penalties; providing for barring activities and
20 for rescission; further providing for fees, for assessments,
21 for administrative files, for powers of the Pennsylvania
22 Securities Commission and for regulations and orders; and
23 canceling Federal preemption.

24 The General Assembly of the Commonwealth of Pennsylvania
25 hereby enacts as follows:

26 Section 1. Section 102(c), (c.1), (e), (j), (k) and (o) of
27 the act of December 5, 1972 (P.L.1280, No.284), known as the
28 Pennsylvania Securities Act of 1972, added December 18, 1990

1 (P.L.755, No.190), are amended and the section is amended by
2 adding subsections to read:

3 Section 102. Definitions.--When used in this act, the
4 following definitions shall be applicable, unless the context
5 otherwise requires:

6 * * *

7 (c) "Agent" means any individual, other than a broker-
8 dealer, who represents a broker-dealer or issuer in effecting or
9 attempting to effect purchases or sales of securities. "Agent"
10 does not include: (i) an individual who represents an issuer in
11 effecting transactions in securities exempted by section 202 [or
12 in effecting], transactions exempted by section 203[and does not
13 include] or transactions in a covered security described in
14 sections 18(b)(3) and (4)(D) of the Securities Act of 1933 (48
15 Stat. 74, 15 U.S.C. § 77r), if no compensation is paid or given
16 directly or indirectly for soliciting any person in this State
17 in connection with any of the foregoing transactions; (ii) an
18 individual who represents a broker-dealer in effecting
19 transactions in this State which transactions are limited to
20 those described in section 15(h)(2) of the Securities Exchange
21 Act of 1934 (48 Stat. 881, 15 U.S.C. § 78o(h)(2)); and (iii) an
22 individual who has no place of business in this State if he
23 effects transactions in this State exclusively with broker-
24 dealers. [An] Except where representing an issuer in effecting
25 transactions in securities registered under section 205 or 206,
26 a bona fide officer, director, or partner or employe of a
27 broker-dealer or issuer, or an individual occupying a similar
28 status or performing similar functions, is an agent only if he
29 otherwise comes within this definition and receives compensation
30 directly or indirectly related to purchases or sales of

1 securities.

2 [(c.1) "Associated person" means any partner, officer or
3 director of (or person occupying a similar status or performing
4 similar functions), or other individuals employed by or
5 associated with, an investment adviser, except clerical or
6 administrative personnel, who:

7 (i) Makes any recommendations or otherwise renders advice
8 regarding securities directly to advisory clients;

9 (ii) Manages accounts or portfolios of clients;

10 (iii) Determines which recommendation or advice regarding
11 securities should be given: (A) if that person is a member of
12 the investment adviser's investment committee that determines
13 general investment advice to be given to clients; or (B) if the
14 investment adviser has no investment committee, the person or
15 persons who determine general client investment advice providing
16 that, if there are more than five such persons who determine
17 general investment advice, only the supervisors of such persons
18 are deemed to be associated persons solely by virtue of this
19 paragraph; or

20 (iv) Immediately supervises employes in the performance of
21 any of the foregoing.]

22 * * *

23 (e) "Broker-dealer" means any person engaged in the business
24 of effecting transactions in securities for the account of
25 others or for his own account. "Broker-dealer" does not include:

26 (i) An agent;

27 (ii) An issuer;

28 (iii) A bank, when effecting transactions for its own
29 account or for the account of another under section 302(c);

30 (iv) An executor, administrator, guardian, conservator or

1 pledgee;

2 (v) A person who has no place of business in this State if
3 he effects transactions in this State exclusively with or
4 through (A) the issuers of the securities involved in the
5 transactions, (B) broker-dealers or institutional investors;

6 (vi) A person licensed as a real estate broker or agent
7 under the Real Estate Brokers License Act of one thousand nine
8 hundred and twenty-nine, act of May 1, 1929 (P.L.1216), as
9 amended, and whose transactions in securities are isolated
10 transactions incidental to that business; or

11 (vii) [A person whose dealings in securities are limited to
12 transactions exempt by section 203(j); or

13 (viii)] Other persons not within the intent of this
14 subsection whom the commission by regulation designates.

15 * * *

16 (f.1) "Federally covered adviser" means a person who is
17 registered under section 203 of the Investment Advisers Act of
18 1940 (54 Stat. 847, 15 U.S.C. § 80b-3).

19 (f.2) "Federally covered security" means any security that
20 is covered security under section 18(b) of the Securities Act of
21 1933 (15 U.S.C. § 77r(b)).

22 * * *

23 (j) "Investment adviser" means any person who, for
24 compensation, engages in the business of advising others, either
25 directly or through publications or writings, as to the value of
26 securities or as to the advisability of investing in, purchasing
27 or selling securities, or who, for compensation and as a part of
28 a regular business, issues or promulgates analyses or reports
29 concerning securities. "Investment adviser" does not include:

30 (i) A bank;

(ii) A lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of his profession;

(iii) A broker-dealer registered under this act without the imposition of the condition referred to in section 305(b)(v);

(iv) A publisher of any bona fide newspaper, news column, newsletter, news magazine or business or financial publication or service, whether communicated in hard copy form or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client and is of general, regular and paid circulation [which is not solely engaged in the rendering of investment advice]; and the agents and servants thereof in the performance of their regular duties on behalf of such publication or service;

(v) A person whose advice, analyses or reports relate only to securities exempted under section 202(a);

(vi) A person who has no place of business in this State if his only clients in this State are other investment advisers, federally covered advisers, broker-dealers or institutional investors;

(vii) [Any] A person who has a place of business in this State and, during the [course of the] preceding [twelve months] twelve-month period has had [fewer than] not more than five clients in or out of this State and [who] does not hold himself out generally to the public as an investment adviser[.];

(viii) A person that is an investment adviser representative;

(ix) A federally covered adviser;

(x) A person excluded from the definition of "investment

adviser" under section 202(a)(11) of the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80b-2(a)(11)); or

(xi) Other persons not within the intent of this subsection whom the commission by regulation designates.

(j.1) "Investment adviser representative" means:

(i) with respect to any investment adviser registered or required to be registered under this act, any partner, officer, director, or person occupying a similar status or performing similar functions, or other individuals employed by or associated with an investment adviser, except clerical or administrative personnel, who performs any of the following:

(A) Makes any recommendations or otherwise renders advice regarding securities;

(B) Manages accounts or portfolios of clients;

(C) Determines which recommendation or advice regarding securities should be given;

(D) Solicits, offers or negotiates for the sale of, or sells, investment advisory services; or

(E) Supervises employes who perform any of the foregoing;

(ii) with respect to any federally covered adviser, any individual employed by or associated with a federally covered adviser who is an "investment adviser representative" and who has a "place of business" in this State as those terms are defined in the rules and regulations of the Securities and Exchange Commission.

(k) "Institutional investor" means any bank, insurance company, pension or profit sharing plan or trust, investment company, as defined in the Investment Company Act of 1940, [other financial institution] or any person, other than an individual, which controls any of the foregoing, the Federal

1 Government, State or any agency or political subdivision
2 thereof, except public school districts of this State, or any
3 other person so designated by regulation of the commission.

4 * * *

5 (o) "Promoter" includes (i) any person who, acting alone or
6 in conjunction with one or more other persons, directly or
7 indirectly takes initiative in founding and organizing the
8 business or enterprise of an issuer; [and] (ii) any person who,
9 in connection with the founding and organizing of the business
10 or enterprise of an issuer, directly or indirectly receives in
11 consideration of services or property, or both services and
12 property, ten per cent or more of any class of securities of the
13 issuer or ten per cent or more of the proceeds from the sale of
14 any class of securities. [However, a person who receives such
15 securities or proceeds either solely as underwriting commissions
16 or solely in consideration of property shall not be deemed a
17 promoter within the meaning of this clause if such person does
18 not otherwise take part in founding and organizing the
19 enterprise.] For purposes of sections 207 and 208, a "promoter"
20 includes (iii) any person who is described in clauses (i) and
21 (ii); (iv) any person who is an officer or director of the
22 issuer; (v) any person who legally or beneficially owns,
23 directly or indirectly, five per cent or more of any class of
24 the issuer's equity securities; or (vi) any person who is an
25 affiliate of a person described in clauses (i), (ii), (iii),
26 (iv) or (v). "Promoter" does not include a person who receives
27 securities or proceeds solely as underwriting compensation if
28 that person does not otherwise come within the definition of
29 "promoter."

30 * * *

1 1994 (P.L.235, No.52) and December 7, 1994 (P.L.869, No.126),
2 are amended and the section is amended by adding subsections to
3 read:

4 Section 203. Exempt Transactions.--The following
5 transactions are exempted from [section] sections 201 and 211:

6 * * *

7 (e) Any offer to not more than fifty persons in this State
8 during a period of twelve consecutive months if no sales result
9 from such offer or if sales resulting from such offer are exempt
10 by reason of subsection (d) hereof. This subsection shall not be
11 applicable to offers made pursuant to any other subsection of
12 this section [203], except subsections (d) and (f).

13 * * *

14 (h) Any offer, [(]but not a sale[)], of a security for which
15 a registration statement has been filed under the Securities Act
16 of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.) or a notification
17 of exemption from registration pursuant to Regulation A
18 promulgated under section 3(b) of such act (15 U.S.C. § 77c(b))
19 if (i) no stop order or refusal order is in effect and no public
20 proceeding or examination looking toward such an order is
21 pending under the Securities Act of 1933 or this act; and (ii)
22 no such offer is made until after such registration statement,
23 [(]including a prospectus[)], has been filed with [or mailed to]
24 the commission.

25 (i.1) Any sale of an equity security, [(]except securities
26 of an open-end or closed-end investment company, face amount
27 certificate company or unit investment trust, as such persons
28 are classified in the Investment Company Act of 1940 (54 Stat.
29 789, 15 U.S.C. § 80a-1 et seq.) if: (i) the securities are
30 proposed to be registered under section 5 of the Securities Act

1 of 1933 (15 U.S.C. § 77e) or exempted under Regulation A
2 promulgated under section 3(b) thereof (15 U.S.C. § 77c(b)) and,
3 in fact, become registered under section 5 of the Securities Act
4 of 1933 (15 U.S.C. § 77e) or exempted from registration pursuant
5 to Regulation A promulgated under section 3(b) of such act; (ii)
6 a copy of any final prospectus or final offering circular
7 utilized or proposed to be utilized in connection therewith is
8 [mailed to] filed with the commission [within two business days
9 after such prospectus or offering circular is filed with the
10 Securities and Exchange Commission] at the time the notice
11 required by clause (viii) is filed; (iii) the applicable filing
12 fee specified in section 602(b.1) is paid with respect to such
13 offering; (iv) the issuer of the security is a reporting company
14 as defined in section 102(q); (v) no stop order or refusal order
15 is in effect and no public proceeding or investigation looking
16 toward such an order is pending under the Securities Act of 1933
17 or this act; (vi) the equity security is listed on a national
18 securities exchange registered under the Securities Exchange Act
19 of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.) or quoted on the
20 National Association of Securities Dealers Automated Quotation
21 System; (vii) the issuer, at the time it files the notice
22 required in clause (viii) with the commission, has not received
23 an auditor's report for the immediately preceding fiscal year
24 expressing substantial doubt about the issuer's ability to
25 continue as a going concern unless the securities being sold in
26 reliance upon this subsection are the subject of an offering
27 that is being underwritten on a firm commitment basis by a
28 broker-dealer registered under section 301; and (viii) the
29 issuer has filed a notice with the commission in the form and
30 manner which the commission, by regulation, may prescribe. As a

1 condition of the continuing effectiveness of this exemption,
2 copies of any post-effective amendment or sticker to such
3 prospectus or offering circular must be [mailed to] filed with
4 the commission within two business days after the same is filed
5 with the Securities and Exchange Commission. An exemption under
6 this section shall terminate upon the termination of the
7 registration statement under section 5 (15 U.S.C. § 77e) or the
8 exemption from registration pursuant to Regulation A promulgated
9 under section 3(b) (15 U.S.C. § 77c(b)) of the Securities Act of
10 1933. For purposes of this subsection, the commission, by
11 regulation, may define the term "equity security." [Any
12 exemption in effect under this section as of the effective date
13 of this subsection for the sale of securities of an open-end or
14 closed-end investment company, face amount certificate company
15 or unit investment trust, as such persons are classified in the
16 Investment Company Act of 1940, shall terminate twelve months
17 from the date the prospectus described in clause (ii) or
18 exemption renewal was filed with the commission under this
19 section. For all other issuers that have an exemption in effect
20 under this subsection as of the effective date of this
21 subsection, the exemption for the sale of securities by those
22 issuers shall terminate twenty-four months after the effective
23 date of this subsection.]

24 (j) Any transaction in a bond or other evidence of
25 indebtedness secured by a real or chattel mortgage or deed of
26 trust, or by an agreement for the sale of real estate or
27 chattels if[,]: (i) the entire mortgage, deed of trust, or
28 agreement, together with all the bonds or other evidences of
29 indebtedness secured thereby, is offered and sold as a unit[.];
30 (ii) no public media advertisement is used, mass mailing made or

1 other form of general solicitation is utilized in connection
2 with soliciting the transaction; and (iii) no compensation is
3 paid or given directly or indirectly for soliciting any person
4 in this State in connection with the transaction.

5 * * *

6 (n) Any transaction pursuant to an offer of securities to
7 existing equity security holders of (i) the issuer; (ii) a
8 corporation which prior to the commencement of the offer owned
9 substantially all of the voting stock of the issuer; or (iii) a
10 corporation which organized the issuer for the purpose of the
11 offer, if no [commission or other remuneration] compensation,
12 other than a standby commission, is paid or given directly or
13 indirectly for soliciting any equity security holder in this
14 State[, if the issuer first files a notice specifying the terms
15 of the offer and all other information which the commission by
16 regulation requires, and if the filing fee specified in section
17 602(b.1) is paid and the commission does not by order disallow
18 the exemption within five days]. "Equity security holders"
19 include persons who at the time of the transaction are holders
20 of convertible securities, nontransferable warrants, or
21 transferable warrants exercisable within not more than ninety
22 days of their issuance.

23 (o) Any transaction incident to a vote by security holders,
24 [(or written consent of some or all security holders in lieu of
25 such vote)], pursuant to the articles of incorporation or the
26 applicable corporation statute or other statute governing such
27 person, or pursuant to a partnership agreement, a declaration of
28 trust, trust indenture or any agreement among security holders
29 on a merger, consolidation, sale of assets in consideration, in
30 whole or in part, of the issuance of securities of another

1 person, reclassification of securities, or reorganization
2 involving the exchange of securities, in whole or in part, for
3 the securities of any other person if, [but only if: (i) one
4 party to such transaction is required or permitted to file proxy
5 materials pursuant to section 14(a) of the Securities Exchange
6 Act of 1934 (15 U.S.C. § 78m(a)) or section 20 of the Investment
7 Company Act of 1940 15 U.S.C. § 80a-20) and does file such
8 materials with the commission at least ten days prior to a
9 meeting of security holders called for the purpose of approving
10 such transaction; and such proxy materials are distributed to
11 the security holders of each party to such transaction; or (ii)
12 such materials as may be specified by regulation of the
13 commission are prepared in connection with the proposed
14 transaction and, after review by the commission, distributed to
15 the security holders of each party to the transaction; provided,
16 however, that clause (i) and (ii) of this subsection and section
17 602(b.1) shall not be applicable to any party to a transaction
18 where not more than twenty-five per cent of the security holders
19 of such party are residents of this State.] in the case of any
20 proposed transaction where no proxy materials are required or
21 permitted to be filed with the Securities and Exchange
22 Commission by either party to the transaction and where more
23 than twenty-five per cent of the security holders of either
24 party to the transaction are residents of this State, materials
25 specified by regulation of the commission are prepared in
26 connection with the proposed transaction and, after filing with,
27 and review by, the commission, distributed to the security
28 holders of each party to the transaction prior to the vote or
29 solicitation of written consent and the filing fee specified in
30 section 602(b.1) is paid.

1 * * *

2 (q) Any bona fide distribution in partial or total
3 liquidation of a person, whether or not the assets being
4 distributed include securities of any other person and whether
5 or not wholly or partially in exchange for the securities of the
6 person making the distribution, and any stock split and any
7 stock dividend, where the corporation distributing the dividend
8 is not the issuer, if nothing of value is given by stockholders
9 for the dividend other than the surrender of a right to a cash
10 or property dividend in lieu of the stock and if the dividend is
11 issued pro rata by class[; provided, however, in the case of a
12 distribution or dividend by a corporation not the issuer, such
13 corporation shall file with the commission, ten days prior to
14 the intended date of the distribution or dividend, a statement
15 containing the facts and circumstances surrounding the
16 distribution or dividend].

17 * * *

18 (s) Any offer or sale of a security which is exempt from
19 registration under section 5 of the Securities Act of 1933 (48
20 Stat. 74, 15 U.S.C. § 77e) pursuant to Rule 505 of Regulation D
21 promulgated under section 3(b) of the Securities Act of 1933 (15
22 U.S.C. § 77c(b)) if:

23 (i) The issuer files a notice in the form prescribed by rule
24 of the commission, together with a copy of any offering document
25 or literature proposed to be used in connection with such offer
26 and sale, with the commission not later than the day on which
27 the issuer receives from any person an executed subscription
28 agreement or other contract to purchase the securities being
29 offered or the issuer receives consideration from any person,
30 therefor, whichever is earlier;

1 (ii) The issuer pays the filing fee specified in section
2 602(b.1);

3 (iii) No mass mailing is used, public media advertising made
4 or other form of general solicitation is utilized in connection
5 with offers and sales under this subsection;

6 (iv) No compensation is given or paid, directly or
7 indirectly, to any person in connection with a sale under this
8 subsection unless the compensation is given or paid in
9 connection with a sale made by a broker-dealer who is registered
10 under section 301 of the act; and

11 (v) Neither the issuer nor a predecessor of the issuer;
12 affiliated issuer; officer, director, or general partner of the
13 issuer; promoter of the issuer presently connected with the
14 issuer in any capacity; beneficial owner of ten per cent or more
15 of any class of equity securities of the issuer; underwriter of
16 the securities to be offered under this subsection or any
17 partner, director or officer of such underwriter has, within
18 five years of filing a notice pursuant to subparagraph (i):

19 (A) Filed a registration statement which is the subject of a
20 currently effective registration stop order entered by any state
21 securities administrator or the Securities and Exchange
22 Commission;

23 (B) Been convicted of any criminal offense in connection
24 with the offer, purchase or sale of a security, or involving
25 fraud or deceit;

26 (C) Been subject to a state administrative enforcement order
27 or judgment finding fraud or deceit in connection with the
28 purchase, offer or sale of any security;

29 (D) Been subject to a state administrative enforcement order
30 or judgment which prohibits, denies or revokes the use of an

exemption from registration in connection with the purchase,
offer or sale of a security; or

(E) Been subject to an order, judgment or decree of any
court of competent jurisdiction temporarily, preliminarily or
permanently restraining or enjoining such party from engaging in
or continuing to engage in any conduct or practice involving
fraud or deceit in connection with the purchase, offer or sale
of any security.

The provisions of this subparagraph shall not apply if the party
subject to a disqualification described in clauses (A), (B),
(C), (D) or (E) is licensed or registered to conduct securities-
related business in the state in which the order, judgment or
decree creating the disqualification was entered against such
party; the state securities administrator or the court or
regulatory authority that entered the order judgment or decree
waives the disqualification prior to the first offer being made
in this State under this subsection; or the issuer establishes
that it did not know and, in the exercise of reasonable care,
based on a factual inquiry, could not have known that a
disqualification existed under this subparagraph.

(t) Any offer and any sale resulting from such offer where
the securities being offered, whether in or outside of this
State, will be sold only to accredited investors, as that term
is defined in the rules and regulations of the Securities and
Exchange Commission if:

(i) The securities are sold in good faith reliance that the
offering would qualify for an exemption from registration under
section 5 of the Securities Act of 1933 (15 U.S.C. § 77e),
pursuant to section 3(a)(11) of the Securities Act of 1933 (15
U.S.C. § 77c(a)(11)), or the regulations adopted by the

Securities and Exchange Commission under section 3(b) of the Securities Act of 1933 (15 U.S.C. § 77c(b)), except an offering under Rule 505 of Regulation D promulgated by the Securities and Exchange Commission under section 3(b) of the Securities Act of 1933 (15 U.S.C. § 77c(b));

(ii) The issuer files a notice in the form prescribed by rule of the commission, together with a copy of any offering document or literature proposed to be used in connection with such offer and sale, with the commission not later than the day on which the issuer receives from any person an executed subscription agreement or other contract to purchase the securities being offered or the issuer receives consideration from any person, therefor, whichever is earlier;

(iii) The issuer pays the filing fee specified in section 602(b.1);

(iv) No compensation is given or paid, directly or indirectly, to any person in connection with a sale under this subsection unless the compensation is given or paid in connection with a sale made by a broker-dealer who is registered under section 301;

(v) Neither the issuer nor a predecessor of the issuer, affiliated issuer; officer, director or general partner of the issuer; promoter of the issuer presently connected with the issuer in any capacity; beneficial owner of ten per cent or more of any class of equity securities of the issuer; underwriter of the securities to be offered under this subsection or any partner, director or officer of such underwriter has, within five years of filing a notice pursuant to subparagraph (i);

(A) Filed a registration statement which is the subject of a currently effective registration stop order entered by any state

1 securities administrator or the Securities and Exchange
2 Commission;

3 (B) Been convicted of any criminal offense in connection
4 with the offer, purchase or sale of a security, or involving
5 fraud or deceit;

6 (C) Been subject to a state administrative enforcement order
7 or judgment finding fraud or deceit in connection with the
8 purchase, offer or sale of any security;

9 (D) Been subject to a state administrative enforcement order
10 or judgment which prohibits, denies or revokes the use of an
11 exemption from registration in connection with the purchase,
12 offer or sale of a security; or

13 (E) Been subject to an order, judgment or decree of any
14 court of competent jurisdiction temporarily, preliminarily or
15 permanently restraining or enjoining such party from engaging in
16 or continuing to engage in any conduct or practice involving
17 fraud or deceit in connection with the purchase, offer or sale
18 of any security;

19 The provisions of this subparagraph shall not apply if the party
20 subject to a disqualification described in clauses (A), (B),
21 (C), (D) or (E) is licensed or registered to conduct securities-
22 related business in the state in which the order, judgment or
23 decree creating the disqualification was entered against such
24 party; the state securities administrator or the court of
25 regulatory authority that entered the order judgment or decree
26 waives the disqualification prior to the first offer being made
27 in this State under this subsection; or the issuer establishes
28 that it did not know and, in the exercise of reasonable care,
29 based on a factual inquiry, could not have known that a
30 disqualification existed under this subparagraph;

1 (vi) The issuer specifies in any advertisement,
2 communication, sales literature or other information which is
3 publicly disseminated in connection with the offering of
4 securities, including by means of electronic transmission or
5 broadcast media, that the securities will be sold only to
6 accredited investors. For purposes of this paragraph, "publicly
7 disseminated" means communicated to 100 or more persons or
8 otherwise communicated, used or circulated in a public manner;

9 (vii) The issuer does not engage in any solicitation of
10 prospective purchasers by telephone until the issuer has
11 reasonable grounds to believe that the person to be solicited is
12 an accredited investor;

13 (viii) The issuer places a legend on the cover page of any
14 disclosure document proposed to be used in connection with the
15 offering or on the cover page of the subscription agreement
16 advising that the securities described in the disclosure
17 document or the subscription agreement will be sold only to
18 accredited investors;

19 (ix) The issuer is not an investment company as defined in
20 the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. §
21 80a-1 et seq.); and

22 (x) The issuer is not a development stage company with no
23 specific business plan or purpose or a development stage company
24 that has indicated that its business plan is to engage in a
25 merger or acquisition with an unidentified company or companies;
26 or other entity or person.

27 Section 6. Section 205 of the act, amended March 25, 1981
28 (P.L.1, No.1), May 9, 1984 (P.L.235, No.52), and December 18,
29 1990 (P.L.755, No.190), is amended to read:

30 Section 205. Registration by Coordination.--(a)

1 Registration by coordination may be used for any offering for
2 which a registration statement has been filed under the
3 Securities Act of 1933 (48 Stat. 74, 15 U.S.C. 77a et seq.) or
4 for any proposed sale pursuant to Regulation A promulgated under
5 the exemption contained in section 3(b) of such act (15 U.S.C. §
6 77c(b)) provided, except in the case of open-end or closed-end
7 investment company, face amount certificate company or unit
8 investment trust, as such persons are classified in the
9 Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1
10 et seq.), such registration statement or notification of
11 proposed sale has not become effective.

12 (b) A registration statement under this section shall
13 contain the following information and be accompanied by the
14 following documents in addition to the information specified in
15 section 207(b):

16 (i) Two copies of the preliminary prospectus or offering
17 circular filed under the Securities Act of 1933;

18 (ii) If the commission by regulation requires, a copy of the
19 articles of incorporation and bylaws or their substantial
20 equivalents currently in effect, a copy of any agreements with
21 or among underwriters, a copy of any indenture or other
22 instrument governing the issuance of the security to be
23 registered, and a specimen or copy of the security;

24 (iii) If the commission by regulation or order requires, any
25 other information, or copies of any documents, filed under the
26 Securities Act of 1933; and

27 (iv) An undertaking to forward to the commission all future
28 amendments to the Federal prospectus or offering circular, other
29 than an amendment which merely delays the effective date of the
30 registration statement, not later than the first business day

1 after they are forwarded to or filed with the Securities and
2 Exchange Commission, or such longer period as the commission
3 permits.

4 (c) (1) A registration statement filed under this section
5 for the offering of securities by an open-end or closed-end
6 investment company, face amount certificate company or unit
7 investment trust, as such persons are classified in the
8 Investment Company Act of 1940, automatically becomes effective
9 if (i) the Federal registration statement or notification is
10 effective with the Securities and Exchange Commission; (ii) no
11 stop order is in effect in this State and no proceeding is
12 pending under section 208; (iii) the registration statement or a
13 predecessor registration statement has been on file with the
14 commission for at least five days; and (iv) the fee specified in
15 section 602(b.1) has been paid.

16 (2) All other registration statements filed under this
17 section automatically become effective at the moment the Federal
18 registration statement or notification becomes effective if (i)
19 no stop order is in effect in this State and no proceeding is
20 pending under section 208; (ii) [and] the registration statement
21 has been on file with the commission for at least ten days;
22 [(iii) a statement of the maximum and minimum proposed offering
23 prices and the maximum underwriting discounts and commissions
24 has been on file for two full business days, or such shorter
25 period as the commission permits;] and (iv) the offering is made
26 within these limitations.

27 (d) The registrant shall notify the commission promptly by
28 telephone or telegram of the date and time when the Federal
29 registration statement became effective and the content of the
30 price amendment, if any, and shall file a post-effective

1 amendment promptly containing the information and documents in
2 the price amendment. "Price amendment" means the final Federal
3 amendment which includes a statement of the offering price,
4 underwriting and selling discounts or commissions, amount of
5 proceeds, conversion rates, call prices and other matters
6 dependent upon the offering price. Upon failure to receive the
7 required notification and post-effective amendment with respect
8 to the price amendment, the commission may enter a stop order,
9 without notice or hearing, retroactively denying effectiveness
10 to the registration statement or suspending its effectiveness
11 until compliance with this subsection is effected, if it
12 promptly notifies the registrant by telephone or telegram of the
13 issuance of such order. If the registrant proves compliance with
14 the requirements of this subsection as to notice and post-
15 effective amendment, the stop order shall be vacated as of the
16 time of its entry. The commission may by regulation or order
17 waive any of the conditions specified in subsection (b) or (c).

18 (e) If the Federal registration statement becomes effective
19 before all the conditions in this section are satisfied and they
20 are not waived, the registration statement automatically becomes
21 effective as soon as all the conditions are satisfied. If the
22 registrant advises the commission of the date when the Federal
23 registration statement is expected to become effective, the
24 commission shall promptly advise the registrant by telephone or
25 telegram, at the registrant's expense, whether all the
26 conditions are satisfied and whether it then contemplates the
27 institution of a proceeding under section 208; but this advice
28 by the commission does not preclude the institution of such a
29 proceeding at any time.

30 Section 7. Section 207(g), (j.1) and (n) of the act, amended

1 December 7, 1994 (P.L.869, No.126), are amended to read:

2 Section 207. General Registration Provisions.--* * *

3 (g) The commission may by regulation or order require as a
4 condition of registration that any security issued within the
5 past [two] five years or to be issued to a promoter for a
6 consideration substantially different from the public offering
7 price, or to any person for a consideration other than cash, be
8 deposited in escrow; or that the proceeds from the sale of the
9 registered security in this State be escrowed until the issuer
10 receives a specified amount from the sale of the security either
11 in this State or elsewhere; or that the proceeds from the sale
12 of the registered security in this State be escrowed for a
13 specific use as set forth in the prospectus; or it may impose
14 [both such] any or all of these requirements.[: Provided,
15 however, That this subsection (g) shall not apply to any
16 security registered by coordination if the issuer has been in
17 existence for more than three years: And provided further, That
18 with] With respect to securities registered by coordination, no
19 escrow of promotional shares hereunder shall be required to
20 extend beyond [three] four years. The commission may by
21 regulation or order determine the conditions of any escrow
22 required hereunder, but may not reject a depository solely
23 because of location in another state.

24 * * *

25 (j.1) Except for a registration by coordination for an open-
26 end or closed-end investment company, face amount certificate
27 company or unit investment trust, as such persons are classified
28 in the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. §
29 80a-1 et seq.), a registration by coordination is effective for
30 one year from its effective date[, or any longer period during

1 which]. The effectiveness of a registration by coordination may
2 be extended beyond the initial one year effectiveness period in
3 increments of one year periods up to a maximum of three years
4 from the initial effectiveness date, provided that the security
5 is being offered or distributed in a nonexempted transaction by
6 or for the account of the issuer or other person on whose behalf
7 the offering is being made, or by any underwriter or broker-
8 dealer who is still offering part of an unsold allotment or
9 subscription taken by him as a participant in the distribution[,,
10 provided that] and the commission has been notified of such
11 continued offering and the period thereof. A registration by
12 coordination for an open-end or closed-end investment company[,]
13 or face amount certificate company [or unit investment trust],
14 as such persons are classified in the Investment Company Act of
15 1940, is effective for the period beginning with its effective
16 date and ending sixty days after the registrant's fiscal year
17 end for the year in which the filing under section 205 became
18 effective. A registration by coordination for a unit investment
19 trust, as such a person is classified in the Investment Company
20 Act of 1940, is effective for the period beginning with its
21 effective date in this State and ending one year after the date
22 the registration statement for the same securities became
23 effective with the Securities and Exchange Commission. A
24 registration by qualification is effective for one year from its
25 effective date. The fact that a registration statement has been
26 effective in this State with respect to any security does not
27 permit sales of securities of the same class by the issuer or an
28 affiliate of the issuer if such person did not file the
29 registration statement, unless a separate registration statement
30 is filed and declared effective with respect thereto, or an

1 exemption from registration is available. A registration
2 statement may not be withdrawn after its effective date if any
3 of the securities registered have been sold in this State,
4 unless permitted by regulation or order of the commission. No
5 registration statement is effective during the time a stop order
6 is in effect under section 208. The effectiveness of a
7 registration statement filed by an open-end or closed-end
8 investment company, face amount certificate company or unit
9 investment trust, as such [terms] persons are [defined]
10 classified in the Investment Company Act of 1940, shall not be
11 terminated as a result of a post-effective amendment seeking to
12 register an additional amount of securities which becomes
13 effective under the Securities Act of 1933 (48 Stat. 74, 15
14 U.S.C. § 77a et seq.). [A registration statement for the sale of
15 securities in this State by an open-end or closed-end investment
16 company, face amount certificate company or unit investment
17 trust that is effective under section 205 or 206 as of the
18 effective date of this subsection shall terminate twelve months
19 from the date the registration statement became effective.]

20 * * *

21 (n) For purposes of coordinating the provisions of this act
22 with uniform procedures to facilitate electronic filings of
23 registration statements and notice filings, including without
24 limitation, by [means of] a securities registration depository,
25 the commission, by regulation, may adopt appropriate procedures
26 or forms or waive or modify any provision of section 205 or 206
27 or this section. The commission, by regulation, also may
28 prescribe methods for accepting electronic or digital signatures
29 on forms to be filed electronically with the commission.

30 Section 8. Section 208 of the act is amended to read:

1 Section 208. Denial, Suspension, and Revocation of

2 Registrations.--(a) The commission may issue a stop order
3 denying effectiveness to, or suspending or revoking the
4 effectiveness of, any registration statement if it finds that
5 the order is in the public interest and that:

6 (i) The registration statement as of its effective date or
7 as of any earlier date in the case of an order denying
8 effectiveness, or any amendment filed under section 207(l) as of
9 its effective date, or any report under section 207(k) is
10 incomplete in any material respect or contains any statement
11 which was, in the light of the circumstances under which it was
12 made, false or misleading with respect to any material fact, or
13 omitted to state a material fact necessary in order to make the
14 statements made, in the light of the circumstances under which
15 they are made, not misleading;

16 (ii) Any provision of this act or any regulation, order or
17 condition lawfully imposed under this act has been wilfully
18 violated, in connection with the offering by: (A) the person
19 filing the registration statement, (B) the issuer, (C) any
20 partner, officer or director of the issuer, (D) any person
21 occupying a similar status or performing similar functions, (E)
22 any affiliate of the issuer, but only if the person filing the
23 registration statement is an affiliate of the issuer, or (F) any
24 broker-dealer;

25 (iii) The securities are the subject of an administrative
26 stop order or similar order or a permanent or temporary
27 injunction of any court of competent jurisdiction entered under
28 any other Federal or State act applicable to the offering, but
29 the commission may not institute a proceeding against an
30 effective registration statement under this section more than

1 one year from the date of the order or injunction relied on, and
2 it may not enter an order under this section on the basis of an
3 order or injunction entered under any other state act unless
4 that order or injunction was based on facts which would
5 currently constitute a ground for a stop order under this act;

6 (iv) The issuer's enterprise or method of business includes
7 or would include activities which are illegal where performed;

8 (v) The offering has been or would be made with unreasonable
9 amounts of underwriters' and sellers' discounts, commissions or
10 other compensation, or promoters' profits or participation, or
11 unreasonable amounts or kinds of options, or has worked or
12 tended to work a fraud upon purchasers or would so operate,
13 provided that any underwriting compensation approved by a
14 national securities association registered under the Securities
15 Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.)
16 with respect to the underwriting activities of its members shall
17 not be deemed unreasonable under this section;

18 (vi) The applicant or registrant has failed to pay the
19 proper filing fee[;] but the commission [may only enter a denial
20 order under this subsection, and it] shall vacate any such order
21 when the deficiency has been corrected; [or]

22 (vii) Advertising prohibited by section 606 has been used in
23 connection with the sale or offering of the securities[.];

24 (viii) In the case of an offering of debt securities, the
25 offering involves an excessive debt to equity ratio or the
26 issuer, at the time it filed an application under section 205 or
27 206, had received an auditor's report for the immediately
28 preceding fiscal year expressing substantial doubt about the
29 issuer's ability to continue as a going concern; or

30 (ix) The offering is being made by a development stage

1 company which has no specific business plan or purpose or has
2 indicated that its business plan is to engage in a merger or
3 acquisition with an unidentified company or companies or other
4 entity or person.

5 (b) The commission may not institute a stop order proceeding
6 against an effective registration statement on the basis of a
7 fact or transaction known to it when the registration statement
8 became effective unless the proceeding is instituted within
9 thirty days after effectiveness.

10 (c) The commission may [issue a summary order denying,
11 postponing, suspending or revoking], by order, deny, postpone,
12 suspend or revoke the effectiveness of a registration statement
13 [pending final determination of any proceeding under this
14 section]. No order may be entered without prior notice to the
15 applicant or registrant, opportunity for hearing and written
16 findings of fact and conclusions of law, except that the
17 commission may by order summarily deny, postpone, suspend or
18 revoke the effectiveness of a registration statement pending
19 final determination of any proceeding under this subsection.
20 Upon the entry of the order, the commission shall promptly
21 notify [each person specified in subsection (d)] the applicant
22 or registrant that it has been entered and the reasons therefor
23 and that, within fifteen days after the receipt of a written
24 request, the matter will be set down for hearing. If no hearing
25 is requested [or] and none is ordered[,] by the commission,
26 [after notice of and opportunity for hearing to each person
27 specified in subsection (d); may modify or vacate the order or
28 extend it until final determination.] the order will remain in
29 effect until it is modified or vacated by the commission. If a
30 hearing is requested or ordered, the commission, after notice of

1 and opportunity for hearing to the applicant or registrant, may
2 modify or vacate the order or make it permanent. No person may
3 be considered to have violated section 201 solely by reason of
4 an order entered under this section for any offer or sale
5 effected after the entry of an order under this section if the
6 person sustains the burden of proof that the person did not
7 know, and in the exercise of reasonable care, could not have
8 known of the order.

9 [(d) No stop order may be entered under this section except
10 under subsection (c) without appropriate prior notice to the
11 applicant or registrant, the issuer and the person on whose
12 behalf the securities are to be or have been offered;
13 opportunity for hearing; and written findings of fact and
14 conclusions of law.

15 (e) The commission may vacate or modify a stop order if it
16 finds that the conditions which prompted its entry have changed
17 or that it is otherwise in the public interest to do so.]

18 Section 9. Section 209 of the act, amended May 9, 1984
19 (P.L.235, No.52) and December 7, 1994 (P.L.869, No.126), is
20 amended to read:

21 Section 209. Books, Records and Accounts.--(a) Every issuer
22 registering securities for sale in this State or who has sold
23 securities in this State pursuant to an exemption contained in
24 section 202(e), 203(d), 203(p) or 203(r) shall at all times keep
25 and maintain a complete set of books, records, and accounts of
26 such sales and the disposition of the proceeds thereof for a
27 period of three years following the last sale of securities in
28 this State or one year after the disposition of all proceeds,
29 whichever is longer, and shall thereafter, at such times as are
30 required by the commission, make and file in the office of the

1 commission, a report, setting forth the securities sold by it
2 under such registration or exemption, the proceeds derived
3 therefrom and the disposition thereof.

4 (b) [Every] Subject to the limitations of section 18 of the
5 Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77r), every
6 open-end or closed-end investment company, face amount
7 certificate company or unit investment trust, as such persons
8 are classified in the Investment Company Act of 1940 (54 Stat.
9 789, 15 U.S.C. § 80a-1 et seq.), making a filing under section
10 205 [or 206], 206 or 211 shall file reports with the commission
11 at such times and in such manner as the commission, by rule, may
12 prescribe which, at a minimum, set forth the total amount of
13 securities offered and sold in this State during the effective
14 period of the registration statement or notice filing.

15 (c) Except open-end and closed-end investment companies,
16 face amount certificate companies and unit investment trusts, as
17 such persons are classified in the Investment Company Act of
18 1940, every issuer registering securities for sale in this State
19 under section 206 shall file an annual report with the
20 commission, no earlier than three hundred sixty-five days and no
21 later than four hundred twenty days from the effective date of
22 the registration, setting forth the total amount of securities
23 sold in this State during the effective period of the
24 registration statement.

25 Section 10. Section 210 of the act, December 7, 1994
26 (P.L.869, No.126), is amended to read:

27 Section 210. Retroactive Registration [of] or Amendment of
28 Notice of Filing for Certain Securities.--The commission, by
29 regulation, may establish procedures whereby an open-end or
30 closed-end investment company, face amount certificate company

1 or unit investment trust, as such persons are classified in the
2 Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. 80a-1 et
3 seq.), which, during the effective period of registration under
4 section 205 or 206 or the effective period of a notice filing,
5 sold securities in this State in excess of the aggregate amount
6 of securities registered for sale in this State under section
7 205 or 206 or covered by the notice filing may apply to the
8 commission to register such securities retroactive to the date
9 of the initial registration or to amend the notice filing
10 retroactive to the date of the initial notice filing. An
11 application for retroactive registration [of] or amendment of a
12 notice filing for such securities shall not be granted if, at
13 the time the application is filed, a civil, criminal or
14 administrative proceeding is pending alleging violations of
15 section 201 for the sale of such securities in this State, or
16 such securities were sold more than twenty-four months prior to
17 the date the application was filed with the commission. An
18 application under this section shall not be granted unless the
19 applicable oversale assessment prescribed by section 602.1(d)
20 has been paid.

21 Section 11. The act is amended by adding a section to read:

22 Section 211. Federally Covered Securities.--(a) With
23 respect to any security that is a covered security under section
24 18(b)(2) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. §
25 77r(b)(2)), the following shall apply:

26 (1) An open-end or closed-end investment company, unit
27 investment trust or face amount certificate company, as such
28 persons are classified in the Investment Company Act of 1940 (54
29 Stat. 789, 15 U.S.C. § 80a-1 et seq.), annually shall notify the
30 commission of its intent to offer such federally covered

securities for sale in this State, by paying the filing fee specified in section 602(b.1) and, if applicable, the assessment specified in section 602.1(a)(5), and filing any or all of the following documents which the commission, by rule or order, may require:

(i) Prior to the initial offer of such federally covered security in this State, all documents that are part of a Federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.), or as an alternative thereto, a notice form adopted by the commission.

(ii) After the initial offer of such federally covered security in this State, all documents that are part of an amendment to a Federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 or as an alternative thereto, a notice form adopted by the commission, which shall be filed concurrently with the commission.

(iii) Any other documents that are part of a Federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, which shall be filed concurrently with the commission.

(2) An initial notice filing by a unit investment trust shall be effective for the period beginning with its effective date in this State and ending one year after the date the registration statement for the same securities became effective with the Securities and Exchange Commission. A renewal notice filing by a unit investment trust shall be effective for a period of one year. An initial or renewal notice filing by a unit investment trust becomes effective upon receipt by the

1 commission of a properly completed filing, including documents
2 required by paragraph (1), and a correct fee and, if applicable
3 the correct assessment, unless another date is requested in
4 writing by the issuer in the notice filing made with the
5 commission.

6 (3) A notice filing by an open-end or closed-end investment
7 company or face amount certificate company, as such terms are
8 classified in the Investment Company Act of 1940, shall be
9 effective for the period beginning with its effective date in
10 this State and ending sixty days after the filer's fiscal year
11 end for the year in which the notice filing was made. A notice
12 filing by an open-end or closed-end investment company or face
13 amount certificate company becomes effective upon receipt by the
14 commission of a properly completed filing, including documents
15 required by paragraph (1), and a correct fee and, if applicable,
16 the correct assessment, unless another date is requested in
17 writing by the issuer in the notice filing made with the
18 commission.

19 (b) With respect to any security that is covered security
20 under section 18(b)(4)(D) of the Securities Act of 1933 (15
21 U.S.C. § 77r(b)(4)(D)), an issuer shall file a notice with the
22 commission, on Form D promulgated by the Securities and Exchange
23 Commission and effective as of September 1, 1996, not later than
24 fifteen calendar days after the first sale of such federally
25 covered security occurs in this State, together with the filing
26 fee specified in section 602(b.1).

27 (c) The commission may issue a stop order suspending the
28 offer or sale of a security described in subsection (a) or (b)
29 upon finding that:

30 (1) The order is necessary or appropriate in the public

1 interest for protection of investors; and

2 (2) There is a failure to comply with any condition
3 established under this section.

4 (d) Notwithstanding the provisions of subsections (a) and
5 (b), for the period ending October 10, 1999, the commission may
6 require the registration of a security described in subsection
7 (a) or (b) pursuant to section 201 if the issuer has not paid
8 the correct fee and, if applicable, the correct assessment, and
9 the nonpayment or underpayment of the fee or assessment has not
10 been remedied by the commission receiving the amount due from
11 the issuer within ten calendar days following receipt by the
12 issuer of a written notice from the commission concerning the
13 nonpayment or underpayment of the fee or assessment required by
14 this section, section 602(b.1) or section 602.1(a)(5).

15 Section 12. The heading of Part III of the act is amended to
16 read:

17 PART III

18 REGISTRATION OF BROKER-DEALERS, AGENTS [AND],

19 INVESTMENT ADVISERS, INVESTMENT ADVISER

20 REPRESENTATIVES AND NOTICE FILINGS

21 BY FEDERALLY COVERED ADVISERS

22 Section 13. Section 301 of the act, amended December 18,
23 1990 (P.L.755, No.190) and May 4, 1993 (P.L.4, No.4), is amended
24 to read:

25 Section 301. Registration Requirement.--Unless exempted
26 under section 302 hereof:

27 (a) It is unlawful for any person to transact business in
28 this State as a broker-dealer or agent unless he is registered
29 under this act.

30 (b) It is unlawful for any broker-dealer or issuer to employ

1 an agent to represent him in this State unless the agent is
2 registered under this act. The registration of an agent is not
3 effective during any period when he is not associated with a
4 specified broker-dealer registered under this act or a specified
5 issuer. No agent shall at any time represent more than one
6 broker-dealer or issuer, except that where affiliated
7 organizations are registered broker-dealers, an agent may
8 represent one or more of such organizations. When an agent
9 begins or terminates a connection with a broker-dealer or
10 issuer, or begins or terminates those activities which make him
11 an agent, the agent as well as the broker-dealer or issuer shall
12 promptly notify the commission. The commission may adopt a
13 temporary registration procedure to permit agents to change
14 employers without suspension of their registrations hereunder.

15 (c) It is unlawful for any person to transact business in
16 this State as an investment adviser unless he is so registered
17 or registered as a broker-dealer under this act or unless he is
18 exempted [under section 302(d)] from registration. It is
19 unlawful for any person to transact business in this State as an
20 [associated person] investment adviser representative unless he
21 is so registered or exempted from registration [under section
22 302(d.1)].

23 (c.1) The following apply:

24 (1) It is unlawful for any [investment adviser]:

25 (i) person required to be registered as an investment
26 adviser under this act to employ an [associated person to
27 represent him in this Commonwealth unless the associated person
28 is registered under this act. The registration of an associated
29 person is not effective during any period when he is not
30 associated with a specified investment adviser registered under

1 this act. When an associated person begins or terminates
2 association with an investment adviser, or begins or terminates
3 those activities which make him an associated person, the
4 investment adviser shall promptly notify the commission.]

5 investment adviser representative unless the investment adviser
6 representative is registered under this act or exempted from
7 registration, provided that the registration of an investment
8 adviser representative is not effective during any period when
9 he is not employed by an investment adviser registered under
10 this act; or

11 (ii) federally covered adviser to employ, supervise or
12 associate with an investment adviser representative having a
13 place of business in this Commonwealth, unless such investment
14 adviser representative is registered under this act or exempted
15 from registration.

16 (2) If a registered investment adviser representative begins
17 or terminates employment with an investment adviser or a
18 federally covered adviser, the investment adviser in the case
19 under paragraph (1)(i), or the investment adviser representative
20 in the case of paragraph (1)(ii), shall promptly notify the
21 commission.

22 (3) The commission may adopt a temporary registration
23 procedure to permit [associated persons] investment adviser
24 representatives to change employers without suspension of their
25 registrations under this act.

26 (d) It is unlawful for any licensed broker-dealer, agent or
27 investment adviser to effect a transaction in securities,
28 directly or indirectly, in this State if the registrant is in
29 violation of this act, or any regulation or order promulgated
30 under this act of which he has notice, if such violation (i) is

1 a material violation; (ii) relates to transactions effected in
2 this State; and (iii) has been committed by such registrant, or
3 if the information contained in his application for
4 registration, as of the date of such transaction, is incomplete
5 in any material respect or is false or misleading with respect
6 to any material fact.

7 (e) Every registration or notice filing expires on December
8 31 of each year unless renewed. No registration or notice filing
9 is effective after its expiration, unless a renewal application
10 has been timely filed, and expiration of a registration for
11 which no renewal application has been filed is deemed an
12 application for withdrawal under section 305(f).

13 (f) It is unlawful for any federally covered adviser to
14 conduct advisory business in this State, unless such person
15 complies with the provisions of section 303(a)(iii).

16 Section 14. Section 302 of the act, amended May 4, 1993
17 (P.L.4, No.4), is amended to read:

18 Section 302. Exemptions.--The following persons shall be
19 exempted from the registration provisions of section 301:

20 (a) A broker-dealer registered under the Securities Exchange
21 Act of 1934, who has not previously had any certificate denied
22 or revoked under this act or any predecessor statute, if he has
23 no place of business in this State and, during any period of
24 twelve consecutive months, he does not direct offers to sell or
25 buy into this State in any manner to persons other than broker-
26 dealers, institutional investors or governmental agencies and
27 other instrumentalities designated by regulation of the
28 commission, or to more than five other customers in this State,
29 whether or not the offeror or any of the offerees is then
30 present in this State.

1 (b) An agent in so far as he effects transactions on behalf
2 of a broker-dealer who is exempted by the provisions of
3 subsection (a).

4 (c) A bank not registered as a broker-dealer under this act
5 executing orders for the purchase or sale of securities for the
6 account of the purchaser or seller thereof.

7 (d) [A person registered under the Investment Advisers Act
8 of 1940, who has not previously had any certificate denied or
9 revoked under this act or any predecessor statute, if (i) his
10 only clients in this State are other investment advisers,
11 broker-dealers, institutional investors or governmental agencies
12 and other instrumentalities designated by regulation of the
13 commission, or (ii) during any period of twelve consecutive
14 months he does not direct business communications into this
15 State in any manner to more than five clients other than those
16 specified in clause (i) above, whether or not he or any of the
17 persons to whom the communications are directed is then present
18 in this State.] An investment adviser who does not have a place
19 of business in this State and during the preceding twelve-month
20 period has had not more than five clients who are residents of
21 this State exclusive of other investment advisers, federally
22 covered advisers, broker-dealers or institutional investors.

23 (d.1) An [associated person] investment adviser
24 representative who is employed by or associated with an
25 investment adviser insofar as he transacts business in this
26 State on behalf of an investment adviser who is exempted by the
27 provisions of subsection (d).

28 (d.2) An investment adviser representative who has a place
29 of business in this State and is employed by or associated with
30 a federally covered adviser and the federally covered adviser

1 meets any of the criteria described in section 303(a)(iii)(A),
2 (B) or (C).

3 (e) [Any bona fide officer, director, partner or employe of
4 an issuer, or an individual occupying similar status or
5 performing similar functions, if such person does not receive
6 any compensation, directly or indirectly, for his activities on
7 behalf of an issuer in connection with any security or
8 transaction except those exempted under section 202 or 203.] Any
9 person who represents an issuer in effecting transactions in:

10 (1) securities that are exempted by section 202(e), (f) or
11 (g);

12 (2) securities involved in a transaction exempted by section
13 203(c), (g), (k), (l) or (m); or

14 (3) securities which are covered securities under section
15 18(b)(1) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C.
16 77r(b)(1)).

17 (e.1) Any person who represents an issuer in effecting
18 transactions in securities registered under section 205 or 206
19 who:

20 (1) is a bona fide officer, director, partner or employe of
21 the issuer or an individual occupying similar status or
22 performing similar functions; and

23 (2) does not receive any compensation, directly or
24 indirectly, for effecting the transactions.

25 (f) The commission may by such regulations as it deems
26 necessary or appropriate in the public interest or for the
27 protection of investors, either unconditionally or upon
28 specified terms and conditions or for specified periods, exempt
29 from the provisions of section 301 any class of persons
30 specified in such regulations.

1 Section 15. Section 303 of the act, amended December 18,
2 1990 (P.L.755, No.190), is amended to read:

3 Section 303. Registration and Notice Filing Procedure.--(a)

4 (i) [A] except as provided by clause (iii), any broker-dealer,
5 agent, investment adviser or [associated person] investment
6 adviser representative may obtain an initial or renewal license
7 by filing an application with the commission. The application
8 shall contain such information, and in such detail, as the
9 commission by rule requires concerning the applicant's form and
10 place of organization, proposed method of doing business, and
11 financial condition, the qualifications and experience of the
12 applicant, including, in the case of a broker-dealer or
13 investment adviser, the qualifications and experience of any
14 partner, officer, director, or affiliate, or a person occupying
15 a similar status or performing similar functions any injunction
16 or administrative order or conviction referred to in section
17 305(a)(ii), information about affiliates or predecessors of the
18 applicant, and any other matters which the commission determines
19 are relevant to the application. If a broker-dealer, agent,
20 investment adviser or investment adviser representative seeks to
21 obtain an initial or renewal license and, in connection
22 therewith, requests a waiver of any requirement imposed under
23 this section or section 304 or any regulation promulgated
24 thereunder, the commission, in granting the waiver, may impose
25 conditions on, or limit the scope of, the initial or renewal
26 license.

27 (ii) If no denial order is in effect and no proceeding is
28 pending under section 305, the registration becomes effective on
29 the [thirtieth] forty-fifth day after the filing of the
30 application therefor or any material amendment thereto, or on

1 such earlier date as the commission may order. The commission is
2 directed to cooperate with other securities administrators and
3 regulatory authorities to simplify and coordinate registration,
4 application and renewal procedures.

5 (iii) A federally covered adviser shall file with the
6 commission, prior to acting as a federally covered adviser in
7 this State, a copy of such documents as have been filed with the
8 Securities and Exchange Commission which the commission, by
9 regulation, may require, together with the fee specified in
10 section 602(d.1). This requirement shall not apply to a
11 federally covered adviser that:

12 (A) Has its principal place of business in this State and
13 whose only clients in this State are investment advisers,
14 federally covered advisers, broker-dealers or institutional
15 investors;

16 (B) Does not have a place of business in this State and
17 during the preceding twelve-month period has had not more than
18 five clients who are residents of this State, exclusive of other
19 investment advisers, federally covered advisers, broker-dealers
20 or institutional investors; or

21 (C) Meets the definition of any person described in section
22 102(j)(i) through (viii) or (x) and (xi).

23 (iv) Notwithstanding the provisions of clause (iii), until
24 October 10, 1999, the commission may require the registration of
25 a federally covered adviser under section 301 if the federally
26 covered adviser has not paid the correct fee and the nonpayment
27 or underpayment of the fee has not been remedied by the
28 commission receiving the amount due within ten calendar days
29 following receipt by the federally covered adviser of written
30 notice from the commission concerning the nonpayment or

1 underpayment of the fee required by this section and section
2 602(d.1).

3 (b) A registered broker-dealer or investment adviser may
4 file an application for registration of a successor, whether or
5 not the successor is then in existence, for the unexpired
6 portion of the registrant's term. A federally covered adviser
7 may file a notice filing for a successor, whether or not the
8 successor is then in existence, for the unexpired portion of the
9 notice period. There shall be no filing fee.

10 (c) The commission may by regulation prescribe standards of
11 qualification with respect to training, experience and knowledge
12 of the securities business and provide for an examination, which
13 may be written or oral or both, to be taken by any class of or
14 all applicants, as well as persons who represent or will
15 represent an investment adviser, and the commission may by order
16 require an examination of a licensed broker-dealer, agent or
17 investment adviser for due cause.

18 (d) The commission may by regulation require a minimum
19 capital for registered broker-dealers, subject to the
20 limitations of section 15 of the Securities Exchange Act of
21 1934, (48 Stat. 881, 15 U.S.C. § 78o) and [investment advisers
22 and establish limitations on aggregate indebtedness of broker-
23 dealers in relation to net capital and] establish minimum
24 financial requirements for investment advisers, subject to the
25 limitations of section 222 of the Investment Advisers Act of
26 1940 (54 Stat. 847, 15 U.S.C. § 80b-18a). The commission may
27 classify broker-dealers [and investment advisers for purposes of
28 such requirements. The commission may not, however, with respect
29 to any broker-dealer who is a member of the National Association
30 of Securities Dealers, Inc. or who is registered with the

1 Securities and Exchange Commission require a higher minimum
2 capital or lower ratio of aggregate indebtedness to net capital
3 than is contained in the rules or regulations adopted by such
4 association or commission.] for purposes of such requirements
5 and may establish different requirements for those investment
6 advisers who maintain custody of clients' funds or securities or
7 who have discretionary authority over same and those investment
8 advisers who do not.

9 (e) The commission may by regulation require surety bonds to
10 be posted by any broker-dealer, investment adviser, and any
11 issuer who employs agents subject to registration under section
12 301 in connection with [any security or transaction] effecting
13 transactions in any security not exempted by section [202 or
14 203] 202(e), (f) or (g) or effecting securities transactions not
15 exempted by section 203(c), (g), (k), (l) or (m) in [an] any
16 amount [not exceeding ten thousand dollars (\$10,000), and all]
17 the commission may prescribe, subject to the limitations of
18 section 15 of the Securities Exchange Act of 1934 (48 Stat. 881,
19 15 U.S.C. § 78o) for broker-dealers and section 222 of the
20 Investment Advisers Act of 1940 for investment advisers and may
21 determine their conditions. All bonds required shall provide for
22 suit thereon by injured customers, clients or purchasers, but no
23 bond may be required of any registered broker-dealer or
24 investment adviser whose net capital or minimum financial
25 requirements exceeds the amount prescribed [in this section 303
26 or] by regulation for this purpose. Such bond, unless cancelled
27 as provided herein, shall be in effect during the entire period
28 that a registration is in effect. Every bond shall contain a
29 provision that such bond is not cancellable, except on thirty-
30 days prior written notice to the person by whom the bond was

1 posted and the commission, provided that such cancellation shall
2 not affect any liability incurred or accrued prior to the
3 effective date of such cancellation.

4 Section 16. Section 304 of the act is amended to read:

5 Section 304. Post-registration Provisions.--(a) Every
6 registered broker-dealer and investment adviser shall make and
7 keep all accounts, correspondence, memoranda, papers, books and
8 other records which the commission by regulation prescribes[.
9 All], except as provided by section 15 of the Securities
10 Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78o) in the case
11 of a broker-dealer and section 222 of the Investment Advisers
12 Act of 1940 (54 Stat. 847, 15 U.S.C. § 80b-18a) in the case of
13 an investment adviser. All records so required, with respect to
14 an investment adviser, shall be preserved for such period as the
15 commission prescribes by regulation. Subject to the limitations
16 of section 15 of the Securities Exchange Act of 1934 in the case
17 of a broker-dealer and section 222 of the Investment Advisers
18 Act of 1940 in the case of an investment adviser, all records
19 required shall be preserved for three years unless the
20 commission by regulation prescribes otherwise for particular
21 types of records[. All] and all required records shall be kept
22 within this State or shall, at the request of the commission, be
23 made available at any time for examination by it either in the
24 principal office of the registrant or by production of exact
25 copies thereof in this State.

26 (b) Every registered broker-dealer and investment adviser
27 shall file such financial reports as the commission by
28 regulation prescribes[.], except as provided by section 15 of
29 the Securities Exchange Act of 1934 in the case of a broker-
30 dealer and section 222 of the Investment Advisers Act of 1940 in

1 the case of an investment adviser.

2 (c) If the information contained in any document filed with
3 the commission is or becomes inaccurate or incomplete in any
4 material respect, the registrant or federally covered adviser
5 shall promptly file a correcting amendment[.] if the document is
6 filed with respect to a registrant, or when such amendment is
7 required to be filed with the Securities and Exchange Commission
8 if the document is filed with respect to a federally covered
9 adviser.

10 (d) The commission shall make periodic examinations, within
11 or without this State, of each broker-dealer and investment
12 adviser at reasonable times and in reasonable scope. These
13 examinations may be made without prior notice to the broker-
14 dealer or investment adviser. For the purpose of avoiding
15 unnecessary duplication of examinations, the commission, in so
16 far as it deems it practicable in administering this subsection,
17 shall cooperate with securities administrators of other states,
18 the Securities and Exchange Commission, and any national
19 securities exchange or national securities association
20 registered under the Securities Exchange Act of 1934 or any
21 other department or agency of this State.

22 (e) The commission may by regulation prohibit unreasonable
23 charges, commissions or other compensation of broker-dealers and
24 investment advisers, provided that any charges, commissions, or
25 other compensation consistent with rates set by a national
26 securities exchange, when applied to transactions on that
27 exchange, or by the Securities and Exchange Commission or
28 national securities association registered under the Securities
29 Exchange Act of 1934 15 U.S.C. § 78a et seq.), shall not be
30 deemed unreasonable under this section. Any underwriting

1 compensation permitted by a national securities association
2 registered under the Securities Exchange Act of 1934 with
3 respect to the underwriting activities of its members shall not
4 be deemed unreasonable under this section.

5 (f) The commission may prescribe rules which it finds
6 appropriate in the public interest and for the protection of
7 investors for the conduct of business by broker-dealers and
8 investment advisers who are not members of the National
9 Association of Securities Dealers, Inc. or any other national
10 securities association registered under the Securities Exchange
11 Act of 1934, which association has adopted rules of conduct.

12 (g) All broker-dealers and investment advisers registered
13 hereunder shall display copies of their currently effective
14 licenses, bearing the seal of the commission, prominently in
15 each place of business within this State. Each such certificate
16 shall contain the names of such persons as the commission shall
17 by rule provide.

18 Section 17. Section 305 heading, (a)(ii), (iv), (v), (vi)
19 and (vii), (b)(ii), (c) and (f) of the act, amended June 25,
20 1986 (P.L.256, No.68) and December 18, 1990 (P.L.755, No.190),
21 are amended to read:

22 Section 305. Denial, Suspension [and], Revocation and
23 Conditioning of Registration.--(a) The commission may, by
24 order, deny, suspend, [or] revoke, or condition any registration
25 or may censure any registrant if it finds that such order is in
26 the public interest and that such registrant or applicant, or in
27 the case of any broker-dealer or investment adviser, any
28 affiliate thereof, whether prior or subsequent to becoming
29 associated with such person:

30 * * *

1 (ii) Has[, within ten years of the date of the commission's
2 action, been either (A) convicted of a felony or misdemeanor, or
3 (B) held liable in a civil action by final judgment of a court
4 based upon conduct showing moral turpitude, and the commission
5 finds that any such felony, misdemeanor or civil action (I)
6 involved the purchase or sale of any security or commodity
7 futures contract, or any other aspect of the securities or
8 commodity futures contract business, (II) arose out of the
9 conduct of the business of a broker-dealer, investment adviser
10 or issuer with respect to a security or transaction not exempt
11 under section 202 or 203, (III) involved embezzlement,
12 fraudulent conversion or misappropriation of property, funds or
13 securities, or (IV) involved the violation of section 1341, 1342
14 or 1343 of Title 18 of the United States Code; or] been: (A)
15 convicted within ten years of the date of the commission's
16 action, of any felony or misdemeanor, or of any substantially
17 equivalent crime by a foreign court of competent jurisdiction,
18 or held liable in a civil action by final judgment of a court
19 and the commission finds that such felony, misdemeanor or civil
20 action: (I) involved the purchase or sale of any security, the
21 taking of a false oath, the making of a false report, bribery,
22 perjury, burglary and any substantially equivalent activity
23 however denominated by the laws of a relevant foreign government
24 or conspiracy to commit any such offense; (II) arose out of the
25 conduct of the business of an issuer, broker-dealer, municipal
26 securities dealer, government securities broker, government
27 securities dealer, investment adviser, bank, insurance company,
28 fiduciary, transfer agent, foreign person performing a function
29 substantially equivalent to any of the foregoing or any entity
30 or person required to be registered under the Commodity Exchange

1 Act (42 Stat. 988, 7 U.S.C. § 1 et seq.) or any substantially
2 equivalent foreign statute or regulation; (III) involved the
3 larceny, theft, robbery, extortion, forgery, counterfeiting,
4 fraudulent concealment, embezzlement, fraudulent conversion or
5 misappropriation of funds or securities, or any substantially
6 equivalent activity however denominated by the laws of a
7 relevant foreign government; or (IV) involved the violation of
8 18 U.S.C. §§ 152 (relating to concealment of assets; false oaths
9 and claims, bribery), 1341 (relating to frauds and swindles),
10 1342 (relating to fictitious name or address), 1343 (relating to
11 fraud by wire, radio or television), Chs. 25 (relating to
12 counterfeiting and forgery) or 47 (relating to fraud and false
13 statements) or a violation of any substantially equivalent
14 foreign statute; or (B) convicted of any other felony; or

15 * * *

16 (iv) Is subject to (A) any currently effective order or
17 order entered within the past five years of the Securities and
18 Exchange Commission, the Commodity Futures Trading Commission or
19 the securities administrator of any other state denying
20 registration to or revoking or suspending the registration of
21 such person as a broker-dealer, agent, investment adviser,
22 [associated person] investment adviser representative, futures
23 commission merchant, commodity pool operator , commodity trading
24 advisor or a person associated with a futures commission
25 merchant, commodity pool operator or commodity trading adviser,
26 or [is subject to] (B) any currently effective order of any
27 national securities association, national securities exchange
28 (as defined in the Securities Exchange Act of 1934 (48 Stat.
29 881, 15 U.S.C. 78a et seq.)) or self-regulatory organization
30 operating under the authority of the Commodity Futures Trading

1 Commission suspending or expelling such person from membership
2 in such association, exchange or self-regulatory organization,
3 or (C) any currently effective cease and desist order or a cease
4 and desist order entered within the past five years by the
5 Securities and Exchange Commission, the Commodity Futures
6 Trading Commission or by the securities administrator of any
7 other state and where, in the case of a cease and desist order
8 entered by a state, the cease and desist order contained a
9 finding of a willful violation of that state's securities law,
10 or [is the subject of] (D) a currently effective United States
11 Postal Service fraud order; but the commission may not institute
12 a revocation or suspension proceeding under this subsection on
13 the basis of an order under another state law more than one year
14 after termination of the effectiveness of the order relied on
15 and unless the order was based on facts which would currently
16 constitute grounds for an order under this section; or

17 (v) Has wilfully violated any provision of the Securities
18 Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.), the
19 Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a
20 et seq.), the Trust Indenture Act of 1939 (53 Stat. 1149, 15
21 U.S.C. § 77 aaa et seq.), the Investment Advisers Act of 1940
22 (54 Stat. 847, 15 U.S.C. § 80b-1 et seq.), the Investment
23 Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.),
24 the Commodity Exchange Act [of 1974] (42 Stat. 988, 7 U.S.C. § 1
25 et seq.), any law of a foreign country governing or regulating
26 any aspect of the business of securities, commodities futures or
27 banking or this act, [or any predecessor law,] or of any rule
28 [or], regulation or order under any of such statutes; or

29 (vi) Has wilfully aided, abetted, counseled, commanded,
30 induced, or procured the violation by any other person of any of

1 the statutes [or], rules [or], regulations or orders referred to
2 in subsection (v); or

3 (vii) Has failed reasonably to supervise his agents or
4 employes, if he is a broker-dealer, or his [associated persons]
5 investment adviser representatives or employes, if he is an
6 investment adviser[, but no person shall be deemed to have
7 failed in such supervision if there have been established
8 procedures, and a system for applying such procedures, which
9 would reasonably be expected to prevent and detect, in so far as
10 practicable, any violation of statutes, rules or orders
11 described in subsection (v) and if such person has reasonably
12 discharged the duties and obligations incumbent upon him by
13 reason of such procedures and system without reasonable cause to
14 believe that such procedures and system were not being complied
15 with]; or

16 * * *

17 (b) The following provisions govern the application of
18 section 305(a)(xi):

19 * * *

20 (ii) The commission may not enter an order against an
21 investment adviser on the basis of the lack of qualification of
22 any person other than (A) the investment adviser himself if he
23 is an individual, (B) any other person who represents the
24 investment adviser in doing any of the acts which make him an
25 investment adviser or (C) an [associated person] investment
26 adviser representative.

27 * * *

28 (c) The commission may not institute a suspension or
29 revocation proceeding solely on the basis of a [fact or
30 transaction known to it when the registration became effective

1 unless the proceeding is instituted within thirty days after
2 such effective date.] final judicial or administrative order
3 made known to it by the applicant prior to the effective date of
4 the registration unless the proceeding is instituted within the
5 next ninety days following registration. This provision shall
6 not apply to renewals of registrations.

7 * * *

8 (f) Withdrawal from the status of a registered broker-
9 dealer, agent, investment adviser or [associated person]
10 investment adviser representative becomes effective on the
11 thirtieth day after receipt of an application to withdraw, or
12 within such shorter period as the commission determines, unless
13 a revocation or suspension proceeding is pending before the
14 commission when the application is filed or a proceeding to
15 revoke or suspend or to impose conditions upon the withdrawal is
16 instituted before the commission within thirty days after the
17 withdrawal application is filed. If a proceeding is so pending
18 or instituted, withdrawal becomes effective at such time and
19 upon such conditions as the commission by order determines. If
20 no proceeding is so pending or instituted and withdrawal
21 automatically becomes effective, the commission may institute a
22 revocation or suspension proceeding under [subsection (a)(ii)]
23 subsections (a)(i), (v), (vi), (vii), (viii), (ix), (xii) and
24 (xiii) within one year after withdrawal became effective and
25 enter a revocation or suspension order as of the last date on
26 which the registration was in effect.

27 * * *

28 Section 18. Sections 404, 405 and 407 of the act are amended
29 to read:

30 Section 404. Prohibited [Activities; Investment Advisers]

1 Advisory Activities.--(a) It is unlawful for any [investment
2 adviser, directly or indirectly,] person who receives, directly
3 or indirectly, any consideration from another person for
4 advising the other person as to the value of securities or their
5 purchase or sale, whether through the issuance of analyses or
6 reports or otherwise, in this State:

7 [(a)] (1) To employ any device, scheme, or artifice to
8 defraud [any client or prospective client] the other person.

9 [(b)] (2) To engage in any transaction, act, practice, or
10 course of business which operates as a fraud or deceit upon any
11 [client or prospective client] other person.

12 [(c)] (3) Acting as principal for his own account, knowingly
13 to sell any security to or purchase any security from a client
14 [for whom he is acting as investment adviser], or, acting as
15 broker for a person other than such client, knowingly to effect
16 any sale or purchase of any security for the account of such
17 client, without disclosing to such client in writing before the
18 completion of the transaction the capacity in which he is acting
19 and obtaining the [written] consent of the client to such
20 transaction. The prohibitions of this paragraph shall not apply
21 to any transaction with a customer of a broker-dealer if such
22 broker-dealer is not acting as an investment adviser in relation
23 to such transaction.

24 [(d)] (4) To engage in any act, practice, or course of
25 business which is fraudulent, deceptive, or manipulative.

26 [(e)] (5) To represent that he is an investment counsel or
27 to use the name "investment counsel" as descriptive of his
28 business unless [his principal business consists of acting as
29 investment adviser and] a substantial part of his business
30 consists of rendering investment advisory services on the basis

1 of the individual needs of his clients.

2 [(f)] (6) Unless [an adviser] the person is registered as a
3 broker-dealer under this act, to take and have custody of any
4 securities or funds of any client if he fails to meet such
5 requirements therefor as may be prescribed by the commission by
6 regulation.

7 (b) In the solicitation of advisory clients, it is unlawful
8 for any person to make any untrue statement of material fact, or
9 omit to state a material fact necessary in order to make the
10 statements made, in light of the circumstances under which they
11 are made, not misleading.

12 (c) The prohibitions of this section shall apply to
13 federally covered advisers and other persons excluded from the
14 definition of investment adviser under section 102(j)(i) through
15 (viii), (x) and (xi) only to the extent that the prohibited
16 conduct involves fraud or deceit.

17 Section 405. Contract Requirements.--It is unlawful for any
18 investment adviser to enter into, extend, or renew any
19 investment advisory contract [unless it provides in writing] if
20 such contract:

21 [(1) that the investment adviser shall not be compensated on
22 the basis of a share of capital gains upon or capital
23 appreciation of the funds or any portion of the funds of the
24 client;

25 (2) that no assignment of the contract may be made by the
26 investment adviser without the consent of the other party to the
27 contract; and

28 (3) that the investment adviser, if a partnership, shall
29 notify the other party to the contract of any change in the
30 membership of the partnership within a reasonable time after the

1 change.]

2 (1) provides for compensation to the investment adviser on
3 the basis of a share of capital gains upon, or capital
4 appreciation of, the funds or any portion of the funds of the
5 client;

6 (2) fails to provide in writing that no assignment of such
7 contract shall be made by the investment adviser without the
8 consent of the other party to the contract; or

9 (3) fails to provide in writing that the investment adviser,
10 if a partnership, will notify the other party to the contract of
11 any change in the membership of such partnership within a
12 reasonable time after such change.

13 Clause (1) does not prohibit an investment advisory contract
14 which provides for compensation based upon the total value of a
15 fund averaged over a definite period, or as of definite dates or
16 taken as of a definite date, or in any other manner permitted by
17 the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. §
18 80b-1 et seq.), and the rules and regulations promulgated
19 thereunder or any contract for the rendering of investment
20 advisory services to an institutional investor. "Assignment," as
21 used in clause (2), includes any direct or indirect transfer or
22 hypothecation of an investment advisory contract by the assignor
23 or of a controlling block of the assignor's outstanding voting
24 securities by a security holder of the assignor; but, if the
25 investment adviser is a partnership, no assignment of an
26 investment advisory contract is considered to result from the
27 death or withdrawal of a minority of the members of the
28 investment adviser having only a minority interest in the
29 business of the investment adviser, or from the admission to the
30 investment adviser of one or more members who, after admission,

1 will be only a minority of the members and will have only a
2 minority interest in the business.

3 Section 407. Misleading Filings; Misrepresentations of
4 Commission Approval.--(a) It is unlawful for any person to make
5 or cause to be made, in any document filed with the commission
6 or in any proceeding under this act, any statement which is, at
7 the time and in the light of the circumstances under which it is
8 made, false or misleading in any material respect or, in
9 connection with such statement, to omit to state a material fact
10 necessary in order to make the statements made, in the light of
11 the circumstances under which they are made, not misleading.
12 Where any person has failed to make reasonable inquiry as to the
13 accuracy of the information being filed with the commission,
14 such person may not rely upon that failure as a defense to a
15 violation of this section.

16 (b) It is unlawful for any person registered as a broker-
17 dealer, agent or investment adviser under this act to represent
18 or imply in any manner whatsoever that such person has been
19 sponsored, recommended, or approved or that his abilities or
20 qualifications have in any respect been passed upon by the
21 commission. Nothing in this section prohibits a statement (other
22 than in a paid advertisement) that a person is registered under
23 this act, if such statement is true in fact and if the effect of
24 such registration is not misrepresented.

25 (c) (i) Neither the fact that an application for
26 registration of securities or a notice filing under this act has
27 been filed nor the fact that such application or notice filing
28 becomes effective constitutes a finding by the commission that
29 any document filed under this act is true, complete or not
30 misleading. Neither any such fact nor the fact that an exemption

1 is available for a security or a transaction means that the
2 commission has passed upon the merits or qualifications of, or
3 recommended or given approval to any person, security or
4 transaction.

5 (ii) It is unlawful to make, or cause to be made, to any
6 prospective purchaser or any other person, any representation
7 inconsistent with clause (i) of this subsection.

8 Section 19. The act is amended by adding a section to read:

9 Section 409. Prohibited Transactions Involving Public School
10 Districts of this State.--It shall be unlawful for any person to
11 purchase or sell, or induce or attempt to induce the purchase or
12 sale of, any security in this State by means of any
13 manipulative, deceptive or other fraudulent scheme, device or
14 contrivance, or in violation of this act or regulation or order
15 issued under this act, in a transaction involving a public
16 school district in this State.

17 Section 20. Section 501(f) and (g) of the act, added
18 December 18, 1990 (P.L.755, No.190), are amended to read:

19 Section 501. Civil Liabilities.--* * *

20 (f) Any investment adviser who violates section 301 shall be
21 liable to the client for all fees paid, directly or indirectly,
22 to the investment adviser for investment advisory services
23 during the period of such violation.

24 (g) Any [investment adviser] person who violates section
25 [404(a) through (d) or any material provision of section
26 404(f),] 404(a)(1) through (4), any material provision of
27 section 404(a)(6), or otherwise makes any untrue statement of a
28 material fact or omits stating a material fact necessary in
29 order to make statements made, in the light of the circumstances
30 under which they are made, not misleading (the [client] person

1 not knowing of the untruth or omission) and who does not sustain
2 the burden of proof that he did not know and, in the exercise of
3 reasonable care, could not have known of the untruth or
4 omission, shall be liable to the [client] person purchasing the
5 security. The [client] person purchasing the security may sue
6 either at law or in equity to recover the consideration paid for
7 the security, together with interest at the legal rate from the
8 date of payment, less the amount of income or distribution, in
9 cash or in kind, received on the security, upon the tender of
10 the security or for damages if the [client] person no longer
11 owns the security. Damages are the amount that would be
12 recoverable upon a tender, less the value of the security when
13 the [client] person disposed of it, plus interest at the legal
14 rate from the date of disposition. Tender shall require only
15 notice of willingness to exchange the security for the amount
16 specified. Any notice may be given by service as in civil
17 actions specified in the Pennsylvania Rules of Civil Procedure.
18 [An investment adviser] A person who is liable under this
19 section and any offeror or seller of the security liable under
20 subsection (a) are jointly and severally liable to the [client
21 of the investment adviser] the person purchasing the security.

22 Section 21. Sections 509 and 510 of the act are amended to
23 read:

24 Section 509. Right of Commission to Bring [Action; Class
25 Actions] Actions for Injunction and Equitable Relief; Class
26 Actions; Contempt of Commission Orders.--(a) Whenever it
27 appears to the commission that any person has engaged or is
28 about to engage in any act or practice constituting a violation
29 of any provision of this act or any rule or order hereunder, it
30 may in its discretion bring an action in the name of the people

1 of the Commonwealth of Pennsylvania in the Commonwealth Court or
2 in any of the several courts of common pleas [of Pennsylvania]
3 to enjoin, through a preliminary or permanent injunction,
4 temporary restraining order or writ of mandamus, the acts or
5 practices or to enforce compliance with this act or any rule or
6 order hereunder. [Upon a proper showing, a permanent or
7 preliminary injunction, restraining order, or writ of mandamus
8 shall be granted, and a receiver or conservator may be appointed
9 for the defendant or the defendant's assets.] The commission
10 also may seek, and the court, upon proper showing, shall grant
11 such other ancillary and equitable relief as the facts warrant
12 including, without limitation, appointment of a receiver,
13 temporary receiver or conservator of the defendant's assets, a
14 freeze of the defendant's assets, obtaining of an accounting,
15 orders of rescission, orders of restitution, orders of
16 disgorgement or other relief as may be appropriate in the public
17 interest. The court shall not require the commission to meet the
18 criteria for an equitable injunction in order for the court to
19 grant an injunction, restraining order or writ of mandamus. The
20 court [may] shall not require the commission to post a bond.

21 (b) The commission may, with the approval of the Attorney
22 General, include in any action authorized by subsection (a) a
23 claim for [restitution or] damages under section 501, 502 or 503
24 on behalf of the persons injured by the act or practice
25 constituting the subject matter of the action, and the court
26 shall have jurisdiction to award appropriate relief to such
27 persons, if the court finds that enforcement of the rights of
28 such persons by private civil action, whether by class action or
29 otherwise, would be so burdensome or expensive as to be
30 impractical.

1 (c) Any person violating any (i) stop order issued under
2 section 208, (ii) cease advertising order issued under section
3 606(c), (iii) cease and desist order issued under section
4 606(c.1), (iv) order of the commission requiring a rescission
5 pursuant to section 513, or (v) order of the commission imposing
6 any bar described in section 512 from which no appeal of such an
7 order has been taken pursuant to section 607(d) of the act or
8 which has been sustained on appeal, or which has been appealed
9 but where no supersedeas has been granted for the period in
10 which the order has been violated, shall be deemed to be in
11 contempt of such order. Upon petition and certification of such
12 order by the commission, the Commonwealth Court or any of the
13 courts of common pleas, if it finds after hearing or otherwise
14 that the person is not in compliance with the order, shall
15 adjudge the person in contempt of the order and shall assess
16 such civil penalties of an amount not less than three thousand
17 dollars (\$3,000) nor greater than ten thousand dollars (\$10,000)
18 per violation and issue such further orders as it may deem
19 appropriate.

20 Section 510. Investigations and Subpoenas.--(a) The
21 commission in its discretion:

22 (i) May make such public or private investigations within or
23 without this State as it deems necessary to determine whether
24 any person has violated or is about to violate this act or any
25 rule or order hereunder, or to aid in the enforcement of this
26 act or in the prescribing of rules and forms hereunder;

27 (ii) May, for a reasonable time not exceeding thirty days,
28 take possession of the books, [records] papers, accounts and
29 other [papers] records, however created, produced or stored,
30 pertaining to the business of any broker-dealer or investment

1 adviser or pertaining to the activities of any issuer in
2 connection with any transaction in a security, whether or not
3 exempted under section 202 or 203 and the use of any proceeds
4 obtained therefrom, and place a keeper in exclusive charge of
5 them in the place where they are usually kept. During such
6 possession no person shall remove or attempt to remove any of
7 the books, records, accounts, or other papers except pursuant to
8 a court order or with the consent of the commission; but the
9 directors, officers, partners, and employees of the broker-
10 dealer, investment adviser or issuer may examine them, and
11 employees shall be permitted to make entries therein reflecting
12 current transactions;

13 (iii) May require or permit any person to file a statement
14 in writing, under oath or otherwise as the commission
15 determines, as to all the facts and circumstances concerning the
16 matter being investigated;

17 (iv) May publish information concerning any violation of
18 this act or any rule or order hereunder or concerning
19 securities, or practices in the sale thereof, which appear or
20 tend to be unfair, inequitable or fraudulent, but only where it
21 deems such publication to be in the public interest and for the
22 protection of investors; and

23 (v) May hold hearings, upon reasonable notice, in respect of
24 any matters arising out of the administration of this act.

25 (vi) May record presentations made at meetings, seminars or
26 other assemblies conducted in a public forum which may involve
27 the offer or sale of securities in this State in any manner that
28 the commission determines appropriate.

29 (b) For the purpose of any investigation, hearing or
30 proceeding under this act, the commission or any officer

1 designated by it may administer oaths and affirmations, subpoena
2 witnesses, compel their attendance, take evidence and require
3 the production of any books, papers, correspondence, memoranda,
4 agreements or other documents or records which the commission
5 deems relevant or material to the inquiry.

6 (c) In case of contumacy by, or refusal to obey a subpoena
7 issued to, any person, the Commonwealth Court or any of the
8 several courts of common pleas of Pennsylvania, upon application
9 by the commission, may issue to the person an order requiring
10 him to appear before the commission, or the officer designated
11 by it, there to produce documentary evidence, if so ordered, or
12 to give evidence touching the matter under investigation or in
13 question. Failure to obey the order of the court may be punished
14 by the court as a contempt.

15 (d) (i) If, in a proceeding before the commission, any
16 person shall refuse to testify or to produce evidence of any
17 other kind on the ground that his testimony or evidence may tend
18 to incriminate him, that person may be ordered to give such
19 testimony. The order to testify shall not be given except upon
20 an order of court after a hearing in which the Attorney General
21 has established a need for the grant of immunity, as hereinafter
22 provided;

23 (ii) The Attorney General may petition the Commonwealth
24 Court or the court of common pleas of the county in which such
25 person resides (if he is a resident of this State) for an order
26 requiring any person to testify or produce evidence, which
27 petition may be joined in by the district attorney of such
28 county. Such petition shall set forth the nature of the
29 investigation and the need for the immunization of the witness;

30 (iii) No such witness shall be prosecuted or subjected to

1 any penalty or forfeiture, nor shall there be any liability on
2 the part of and no cause of action of any nature shall arise
3 against, any such witness for or on account of any transaction,
4 matter or thing concerning which he is compelled, after having
5 claimed his privilege against self-incrimination, to testify or
6 produce evidence, nor shall testimony so compelled be used as
7 evidence in any criminal proceeding against him in any court;

8 (iv) No person so ordered to testify or to produce evidence,
9 shall be exempt from any punishment or forfeiture for perjury
10 committed by him while so testifying. Such testimony shall be
11 admissible against him in any criminal action or other
12 proceeding concerning such perjury;

13 (v) Any person who shall refuse or decline to testify or
14 produce evidence of any other kind after being granted immunity
15 and ordered by the court shall be guilty of criminal contempt
16 and, upon conviction thereof, shall be sentenced to pay a fine
17 of not exceeding one thousand dollars (\$1,000), or to undergo
18 imprisonment for a period not exceeding one year, or both.

19 Section 22. Section 511 of the act, amended June 19, 1996
20 (P.L.340, No.54), is amended to read:

21 Section 511. Criminal Penalties.--(a) Except as provided in
22 subsection (b), a person who wilfully violates any material
23 provision of this act, except section 407(a), or any rule under
24 this act, or any order of which he has notice, or who violates
25 section 407(a) knowing that the statement made was false or
26 misleading in any material respect, commits a misdemeanor of the
27 first degree and may be fined not more than five thousand
28 dollars (\$5,000) or imprisoned not more than five years, or
29 both. In addition to fine or imprisonment, or both, a person may
30 be sentenced to make restitution.

1 (b) A person who wilfully violates section 401(a), 401(c)
2 [or], 408 or 409 commits a felony of the third degree and may be
3 fined not more than ten thousand dollars (\$10,000) if none of
4 the victims of the person's violative conduct were individuals
5 aged 65 or more and not more than fifty thousand (\$50,000) if
6 any of the victims of the person's violative conduct were
7 individuals aged 65 or more or imprisoned for not more than
8 seven years, or both. In addition to fine or imprisonment, or
9 both, the person may be sentenced to make restitution.

10 (c) Each of the acts specified in subsections (a) and (b)
11 shall constitute a separate offense and a prosecution or
12 conviction for any one of such offenses shall not bar
13 prosecution or conviction for any other offense. No indictment
14 or information may be returned under this act more than five
15 years after the alleged violation.

16 Section 23. The act is amended by adding sections to read:

17 Section 512. Statutory Bars.--(a) After giving notice and
18 opportunity for a hearing, the commission, where it has
19 determined that a person willfully violated the act or any rule
20 or order thereunder or knowingly aided in the act or transaction
21 constituting such violation, may issue an order accompanied by
22 written findings of fact and conclusions of law which bars,
23 conditionally or unconditionally, and either permanently or for
24 such period of time as the commission shall determine, such
25 person from:

26 (1) Representing an issuer offering or selling securities in
27 this State;

28 (2) Acting as promoter, officer, director, or partner of an
29 issuer (or an individual occupying a similar status or
30 performing similar functions) offering or selling securities in

this State or of a person who controls or is controlled by such issuer;

(3) Being registered as a broker-dealer, agent, investment adviser or investment adviser representative under section 301;

(4) Being an affiliate of any person registered under section 301; or

(5) Relying upon an exemption from registration contained in section 202, 203, or 302 of the act.

(b) The commission shall not issue an order under this section with respect to any public proceeding which was instituted prior to the date of enactment.

Section 513. Commission Orders of Rescission.--After giving notice and opportunity for a hearing, the commission, where it has determined that an issuer willfully violated section 201 or 401 of the act, may issue an order accompanied by written findings of fact and conclusions of law which requires the issuer or any control person of the issuer who knowingly aided in the act or transaction constituting such violation to effect a rescission offer in a manner which the commission, by rule or order may prescribe, to persons who purchased securities of the issuer in this State involved in the violation. The commission shall not issue an order under this section with respect to any public proceeding which was instituted prior to the date of enactment.

Section 24. Section 602(b.1), (iv), (vi), (vii), (viii) and (ix) and (d.1) of the act, amended or added December 12, 1990 (P.L.755, No.(90) and December 7, 1994 (P.L.869, No.126), are amended and the section is amended by adding a subsection to read:

Section 602. Fees.--* * *

1 (b.1) Filing fees for sales of securities:

2 * * *

3 (iv) In the case of registration statement
4 filings under section 205 or 206 or notice filings
5 under section 211 by an open-end or closed-end
6 investment company, face amount certificate
7 company or unit investment trust, as such persons
8 are classified in the Investment Company Act of
9 1940.

10 Based upon the
11 maximum aggregate
12 offering price at which
13 such securities are to be
14 offered in this State
15 during the effective
16 period of the
17 registration, or notice
18 filing, the fee for (A)
19 \$4,000,000 or less, 1/20
20 of 1% with a minimum fee
21 of \$350; (B) more than
22 \$4,000,000 but less than
23 \$100,000,000, \$3,000; (C)
24 \$100,000,000 or more,
25 \$3,500; or (D) for an
26 indefinite amount of
27 securities to be offered
28 in this State during the
29 effective period of the
30 registration or notice

1 filing. The amount
2 specified in (C) plus a
3 \$500 assessment specified
4 in section 602.1(a)(5).
5 [; except that, in the
6 case of a registration
7 statement in which the
8 issuer, pursuant to its
9 articles of incorporation
10 or other governing
11 instruments, is
12 restricted to holding
13 exclusively debt
14 securities of other
15 persons having fixed
16 final maturity dates
17 occurring within 200 days
18 from the initial
19 effective date of the
20 registration statement
21 for the issuer's
22 securities filed under
23 the Securities Act of
24 1933, the maximum fee
25 payable under the above
26 schedule shall not exceed
27 \$1,500.

28 If an open-end or closed-end investment company, face amount
29 certificate company or unit investment trust, as such persons
30 are classified in the Investment Company Act of 1940, which has

1 an effective registration under section 205 or 206 elects to
 2 convert to an exemption under section 203(i) without extending
 3 the effective period of the exemption under section 203(i)
 4 beyond the date upon which the registration under section 205 or
 5 206 would have otherwise terminated, there shall be no
 6 additional filing fee required.]

7 * * *

8 (vi) When a registration statement or notice
 9 filing made under section 211(a) is withdrawn
 10 before the effective date or a pre-effective stop
 11 order is entered under section 208, the amount
 12 that the commission shall retain from the filing
 13 fee and, if applicable, an assessment imposed
 14 under section 602.1(a)(5), shall be:

15 (A) Under section 205 <u>or a notice filing under</u>	
16 <u>section 211(a)</u>	300

17 (B) Under section 206.....	175
-------------------------------	-----

18 (vii) [Filing an application for exemption	
19 from registration under section 202(g).....	50]

20 <u>Filing a notice on SEC Form D under section</u>	
21 <u>211(b)</u>	<u>500</u>

22 (viii) Filing an application for exemption
 23 from registration [for an offering of securities
 24 to be sold] under section 203(d) or (s):

25 (A) Where the maximum aggregate offering price	
26 at which such securities are offered in this State	
27 is less than [\$100,000] <u>\$1,000,000</u>	[50] <u>150</u>

28 (B) Where the maximum aggregate offering price	
29 at which such securities are offered in this State	
30 is [\$100,000 or more but less than] \$1,000,000 <u>or</u>	

1 more..... [150] 400

2 [(C) Where the maximum aggregate offering
3 price at which such securities are being offered
4 in this State is \$1,000,000 or more..... 400]

5 (ix) Filing an application for exemption from
6 registration under section 203[(n)] (t)..... [50] 500

7 * * *

8 (b.2) There shall be no refund of any filing fee specified
9 in subsection (b.1)(vii)-(x)).

10 * * *

11 (d.1) Every applicant for an initial or renewal license
12 under section 301 shall pay a filing fee of two hundred fifty
13 dollars (\$250) in the case of a broker-dealer, fifty dollars
14 (\$50) in the case of an agent, two hundred dollars (\$200) in the
15 case of an investment adviser and fifty dollars (\$50) in the
16 case of an [associated person] investment adviser
17 representative. The term of an agent's or associated person's
18 registration hereunder shall be concurrent with that of his
19 employer, if a broker-dealer or an investment adviser. When an
20 agent changes employers, a fifty-dollar (\$50) fee shall be paid.
21 When an [associated person] investment adviser representative
22 changes employers, a fifty-dollar (\$50) fee shall be paid. When
23 an application is denied or withdrawn or a registration revoked,
24 the filing fee shall be retained. A federally covered adviser
25 shall pay an annual notice filing fee of three hundred dollars
26 (\$300).

27 * * *

28 Section 25. Section 602.1(a), (c)(1) and (4) and (d) of the
29 act, amended or added May 4, 1993 (P.L.4, No.4) and December 7,
30 1994 (P.L.869, No.126) are amended to read:

1 Section 602.1. Assessments.--(a) (1) Each agent and
2 [associated person] investment adviser representative, when
3 applying for an initial license under section 301 or changing
4 employers, shall pay a compliance assessment in accordance with
5 the following schedule: [twenty-five dollars (\$25) for the
6 period beginning with the date of enactment of this section
7 through June 30, 1995,] twenty-seven dollars (\$27) for the
8 period July 1, 1995, through June 30, 1998, [and] thirty dollars
9 (\$30) for the period July 1, 1998 through June 30, 2001, thirty-
10 two dollars (\$32) for the period July 1, 2001 through June 30,
11 2004 and thirty-five dollars (\$35) thereafter.

12 (2) Each agent and [associated person] investment adviser
13 representative, when applying for a renewal license under
14 section 301, shall pay a compliance assessment in accordance
15 with the following schedule: [ten dollars (\$10) for the period
16 beginning with the date of enactment of this section through
17 June 30, 1995,] twelve dollars (\$12) for the period July 1,
18 1995, through June 30, 1998, [and] fifteen dollars (\$15) for the
19 period July 1, 1998 through June 30, 2001, seventeen dollars
20 (\$17) for the period July 1, 2001 through June 30, 2004 and
21 twenty (\$20) thereafter.

22 (3) Each broker-dealer, when applying for an initial or
23 renewal license under section 301 shall pay a compliance
24 assessment in accordance with the following schedule: one
25 hundred dollars (\$100) for the period beginning with the date of
26 enactment of this paragraph through June 30, 2001 and one
27 hundred fifty dollars (\$150) thereafter.

28 (4) Each investment adviser when applying for an initial or
29 renewal license under section 301 shall pay a compliance
30 assessment in accordance with the following schedule: fifty

1 dollars (\$50) for the period beginning with the date of
2 enactment of this paragraph through June 30, 2001 and seventy-
3 five dollars (\$75) thereafter.

4 (5) The assessment for a notice filing by an open-end or
5 closed-end investment company, face amount certificate company
6 or unit investment trust, as such persons are classified in the
7 Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1
8 et seq.), for an indefinite amount of securities to be offered
9 in this State during the effective period of the notice filing
10 shall be five hundred dollars (\$500) beginning with the date of
11 enactment of this paragraph.

12 * * *

13 (c) After giving notice and opportunity for a hearing, the
14 commission may issue an order accompanied by written findings of
15 fact and conclusions of law which imposes an administrative
16 assessment in [an amount] in the amounts provided in paragraph
17 (1) against a broker-dealer, agent, investment [advisor] adviser
18 or [associated person] investment adviser representative
19 registered under section 301 or an affiliate of [the] any
20 broker-dealer or investment [advisor] adviser where the
21 commission [finds] determines that the person [either] willfully
22 has violated this act or a rule or order of the commission under
23 this act or has engaged in dishonest or unethical practices in
24 the securities business; [or] has taken unfair advantage of a
25 customer[.] ; or has failed reasonably to supervise its agents
26 or employees or against any other person if the commission
27 determines that the person willfully violated sections 401(a) or
28 (c), 406, 408 or 409 of the act; section 401(b) or 407 of the
29 act; or a cease and desist order issued by the commission under
30 section 606(c.1) of this act.

1 (1) The commission, in issuing an order under this
2 subsection, may impose [an] the administrative [assessment]
3 assessments set forth below. [of up to ten thousand dollars
4 (\$10,000) for a single violation or of up to fifty thousand
5 dollars (\$50,000) for multiple violations in a single proceeding
6 or a series of related proceedings.] Each act or omission that
7 provides a basis for issuing an order under this subsection
8 shall constitute a separate violation.

9 (i) In issuing an order against any broker-dealer, agent,
10 investment adviser, or investment adviser representative
11 registered under section 301 or an affiliate of any broker-
12 dealer or investment adviser, the commission may impose an
13 administrative assessment of up to twenty-five thousand dollars
14 (\$25,000) for a single violation or up to two hundred fifty
15 thousand dollars (\$250,000) for multiple violations in a single
16 proceeding or a series of related proceedings. If any of the
17 victims of the person's violative conduct were individuals aged
18 65 or more, the commission also may impose a special
19 administrative assessment in addition to the foregoing amounts
20 of up to twenty-five thousand dollars (\$25,000).

21 (ii) In issuing an order against a person for willful
22 violation of section 401(a) or (c), 406, 408 or 409 or for
23 willful violation of a cease and desist order issued under
24 section 606(c.1), the commission may impose an administrative
25 assessment of up to twenty-five thousand dollars (\$25,000) for a
26 single violation or up to one hundred fifty thousand dollars
27 (\$150,000) for multiple violations in a single proceeding or a
28 series of related proceedings. In addition to the foregoing
29 assessment, the commission also may impose a special
30 administrative assessment of up to twenty-five thousand dollars

(\$25,000) for each of the provisions described as follows, that the commission determines are applicable:

(A) The person, within seven years of the commission taking action under this subsection, has been the subject of a criminal felony conviction, an injunction issued by any court of competent jurisdiction or an order of the Securities and Exchange Commission, the Commodity Futures Trading Commission, the securities administrator of another state or the securities regulatory authority of another country which found that the person willfully had violated any provision of the Federal or State securities or commodities laws or the securities, commodities or banking laws of another country, provided that the foregoing convictions occurred, or the injunctions or orders were entered, prior to the violation for which this special administrative assessment is being imposed.

(B) The person's violative conduct involved individuals aged 65 or more.

(C) The person's violative conduct involved boiler room tactics which included, without limitation, use of any high-pressure sales tactics designed to create an artificially short time period for which the person being solicited is pressured to make an investment decision or overcome the person's reluctance to commit to the investment being offered, use of scripts designed to allay any objections or concerns expressed by the person being solicited, or making repeated telephone calls to the same person pressuring the person to make an immediate investment decision.

(iii) In issuing an order against persons for willful violation of section 401(b) or 407, the commission may impose an administrative assessment of up to twenty-five thousand dollars

1 (\$25,000) for each of the criteria described in subparagraphs
2 (ii)(A) and (C) that the commission determines are applicable.
3 No assessment shall be imposed under this subclause if the
4 person is subject to an administrative assessment imposed under
5 any other provision of this subsection.

6 * * *

7 (4) The commission shall not impose an administrative
8 assessment with respect to any public proceeding which was
9 instituted prior to the date of its enactment [of this section].

10 (d) Each application filed with the commission under section
11 210 by an open-end or closed-end investment company, face amount
12 certificate company or unit investment trust, as those persons
13 are classified in the Investment Company Act of 1940, (54 Stat.
14 789, 15 U.S.C. § 80a-1 et seq.) to register securities sold in
15 this State in excess of the aggregate amount of securities
16 registered under section 205 or 206, and each amendment to a
17 notice filing submitted relating to securities sold in the State
18 in excess of those included on an earlier notice filing, shall
19 include the payment of an oversale assessment which shall be
20 three times an amount which equals the difference between the
21 registration or notice filing fee that would have been payable
22 under section 602(b.1) based upon the total amount of securities
23 sold in this State and the total registration or notice filing
24 fees previously paid to the commission with respect to such
25 registration or notice filing, but in no case shall the oversale
26 assessment be less than three hundred fifty dollars (\$350) or be
27 more than three thousand dollars (\$3,000).

28 * * *

29 Section 26. Section 603 of this act, amended March 25, 1982
30 (P.L.1, No.1), is amended to read:

1 Section 603. Administrative Files.--(a) A document is filed
2 when it is received by the commission or by any other person
3 which the commission by regulation may designate.

4 (b) The commission shall keep a register of all registrants,
5 [and] registration statements and notice filings which are or
6 have ever been effective under this act and predecessor laws and
7 all denial, suspension or revocation orders which have been
8 entered under this act and predecessor laws. The register shall
9 be open for public inspection except with respect to summary
10 suspensions under sections 208(c) and 305(d).

11 (c) The information contained in or filed with any
12 registration statement, application, notice filing or report
13 shall be made available to the public in accordance with
14 regulations prescribed by the commission; provided that, upon
15 proper showing of the registrant or issuer, the commission shall
16 treat certain filings as confidential.

17 (d) The commission upon request shall furnish to any person,
18 at a reasonable charge, photostatic or other copies, certified
19 under seal of the commission if certification is requested, of
20 any entry in the register or any order or other document made
21 available to the public under subsection (c) above.

22 Section 27. Section 606 of the act, amended June 25, 1986
23 (P.L.256, No.68) is amended to read:

24 Section 606. Miscellaneous Powers of Commission.--(a) The
25 commission may, by regulation, require any issuer of securities
26 registered under this act or exempted from registration under
27 section 203(d)[, (o), or (q)], which issuer [is not a reporting
28 company] has not filed reports with the Securities and Exchange
29 Commission pursuant to sections 13 or 15(d) of the Securities
30 Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. §§ 78m or 78o(d),

1 to distribute financial information to its [shareholders]
2 security holders at least annually.

3 (b) If in its opinion the public interest and the protection
4 of investors, so require, the commission may apply to a court of
5 competent jurisdiction for an order, suspending all trading in
6 this State by broker-dealers and agents in any security for any
7 period.

8 (c) No person shall publish in this State any advertisement
9 concerning any security (other than advertisements relating to
10 federally covered securities, tombstone advertisements permitted
11 under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a
12 et seq.) and the Investment Company Act of 1940 (54 Stat. 789,
13 15 U.S.C. § 80a-1 et seq.) and the rules and regulations
14 promulgated thereunder) except in accordance with such rules as
15 the commission may promulgate from time to time. No person shall
16 publish any advertisement concerning any security in this State
17 after the commission finds that the advertisement contains any
18 statement that is false or misleading in any material respect or
19 omits to make any material statement necessary in order to make
20 the statements made, in the light of the circumstances under
21 which they are made, not misleading and so notifies the person
22 in writing. Such notification may be given summarily without
23 notice or hearing. Within thirty days after the receipt of a
24 notification under this section, the person desiring to use the
25 advertisement may request in writing that the order be
26 rescinded. Upon the receipt of such a written request, the
27 matter shall be set down for hearing to commence within thirty
28 days after such receipt unless the person making the request
29 consents to a later date. After such hearing, the commission
30 shall determine whether to affirm and continue or to rescind

1 such order.

2 (c.1) Whenever the commission finds that any person has
3 engaged or is about to engage in any act or practice
4 constituting a violation of any provision of this act or any
5 rule or order thereunder, the commission may order such person
6 to cease and desist from such act or practice and shall notify
7 the person in writing. Notification may be given summarily
8 without notice or hearing. Within thirty days after receipt of a
9 notification under this section, the person desiring to engage
10 in such act or practice may file a written request that the
11 order be rescinded. Upon receipt of the written request, the
12 matter will be set down for a hearing to commence within thirty
13 days after such receipt unless the person making the request
14 consents to a later date. After such hearing, the commission
15 shall determine whether to affirm and continue, modify or
16 rescind such order.

17 (d) The commission may, by regulation, delegate any powers
18 specified in this act to be exercised by the commission to
19 members of the commission's staff, except for powers related to
20 hearings.

21 Section 28. Section 609 of the act is amended to read:

22 Section 609. Regulations, Forms and Orders.--(a) The
23 commission may make, amend and rescind any regulations, forms
24 and orders that are necessary to carry out this act, including
25 regulations and forms governing registration statements, notice
26 filings, applications and reports, and defining any terms,
27 whether or not used in this act, insofar as the definitions are
28 not inconsistent with this act. All regulations of the
29 commission (other than those relating solely to its internal
30 administration) shall be of general application and future

1 effect and shall be made, amended or rescinded in accordance
2 with the act of June 4, 1945 (P.L.1388, No.442), known as the
3 "Administrative Agency Law," and the act of July 31, 1968
4 (P.L.769, No.240), known as the "Commonwealth Documents Law[,]."
5 [and no regulation shall be effective until a public hearing is
6 held thereon or until thirty days after the regulation is
7 published pursuant to such "Commonwealth Documents Law."] For
8 the purpose of rules and forms, the commission may classify
9 securities, persons and matters within its jurisdiction, and
10 prescribe different requirements for different classes. The
11 commission may, in its discretion, waive any requirement of any
12 regulation or form in situations where, in its opinion, such
13 requirement is not necessary in the public interest or for the
14 protection of investors.

15 (b) No regulation, form or order may be made, amended or
16 rescinded unless the commission finds that the action is
17 necessary or appropriate in the public interest and for the
18 protection of investors and consistent with the purposes fairly
19 intended by the policy and provisions of this act.

20 (c) [The] Subject to the limitations of the Securities Act
21 of 1933, (48 Stat. 74, 15 U.S.C. § 77a et seq.), the Securities
22 Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.) and
23 the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. §
24 80a-1 et seq.), the commission may by regulation or order
25 prescribe the kind, form and content of financial statements
26 required under this act, the fiscal or other periods and dates
27 for such statements, the circumstances under which consolidated
28 or other combining financial statements shall be filed, or other
29 requirements it deems necessary for financial statement
30 presentation purposes, and whether any required financial

1 statements shall be certified by independent [public or]
2 certified accountants in good standing with this State. All
3 financial statements shall be prepared reflecting conformity
4 with generally accepted accounting principles in the United
5 States consistently applied, unless variance therefrom is
6 disclosed in an acceptable manner, and shall reflect pertinent
7 disclosures by financial notes or other form, where required for
8 that data in compliance with pronouncements by recognized
9 authoritative accounting bodies or if applicable, by
10 governmental agencies, and [unless] if otherwise permitted by
11 regulation or order of the commission.

12 (d) No provision of this act imposing any liability applies
13 to any act done or omitted in good faith in conformity with any
14 regulation, form or order of the commission, notwithstanding
15 that the regulation form or order may later be amended or
16 rescinded or be determined to be invalid for any reason.

17 (e) The commission may propose and adopt regulations under
18 this act prior to its effective date, provided that such
19 regulations do not take effect until on or after the effective
20 date of this act.

21 (f) An application for registration of securities or
22 registration of a broker-dealer, agent, investment adviser or
23 investment adviser representative shall be deemed abandoned if
24 the application has been on file with the commission for a
25 minimum of twelve consecutive months and the applicant has
26 failed to respond to the commission's notice of warning of
27 abandonment within sixty calendar days of the date of the
28 warning. There shall be no refund of any fees or assessments
29 paid by the applicant.

30 Section 29. The act is amended by adding a section to read:

1 Section 611. Cancellation of Federal Preemption.--Under the
2 authority of section 6(c) of the Philanthropy Protection Act of
3 1995 (Public Law 104-62, 15 U.S.C. § 80a-3a(c)), on and after
4 the effective date of this section, section 6 of the
5 Philanthropy Protection Act of 1995 (15 U.S.C. § 80a-(a) shall
6 not preempt the laws of this Commonwealth referred to in section
7 6 of the Philanthropy Protection Act of 1995. This preemption
8 shall apply to all administrative and judicial actions commenced
9 on or after the effective date of this section.

10 Section 30. This act shall take effect as follows:

11 (1) The following provisions shall take effect
12 immediately:

13 (i) The addition of section 611 of the act.

14 (ii) This section.

15 (2) The remainder of this act shall take effect in 60
16 days.