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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**  
**No. 1970** Session of  
1972

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INTRODUCED BY GOODMAN, FRANK, DOMBROWSKI, ARTHURS, KOWALYSHYN,  
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F. M. ALLEN, MANBECK and R. O. DAVIS, FEBRUARY 28, 1972

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REFERRED TO CONSUMER PROTECTION, FEBRUARY 28, 1972

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AN ACT

1 Relating to securities; prohibiting fraudulent practices in  
2 violation thereto; requiring the registration of broker-  
3 dealers, agents, investment advisers, and securities; and  
4 making uniform the law with reference thereto.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 PART I

8 SHORT TITLE; DEFINITIONS

9 Section 101. Short Title.--This act shall be known and may  
10 be cited as the "Pennsylvania Securities Act of 1972."

11 Section 102. Definitions.--When used in this act, the  
12 following definitions shall be applicable, unless the context  
13 otherwise requires:

14 (a) "Advertisement" means any publicly disseminated, written  
15 or printed communication, including without limitation,  
16 communication by radio, television, or other public media, used  
17 in connection with a sale or purchase or an offer to sell or  
18 purchase a security.

1 (b) "Affiliate" means any person controlled by controlling  
2 or under common control with, whether directly or indirectly.

3 (c) "Agent" means any person, other than a broker-dealer,  
4 who represents a broker-dealer or issuer in effecting or  
5 attempting to effect purchases or sales of securities. "Agent"  
6 does not include a person who represents an issuer in effecting  
7 transactions in securities exempted by section 202 or in  
8 effecting transactions exempted by section 203 and does not  
9 include a person who has no place of business in this State if  
10 he effects transactions in this State exclusively with broker-  
11 dealers. An officer, director or partner of a broker-dealer or  
12 issuer, or a person occupying a similar status or performing  
13 similar functions, is an agent only if he otherwise comes within  
14 this definition and receives compensation directly or indirectly  
15 related to purchases or sales of securities.

16 (d) "Bank" means any bank, banking and trust company, savings  
17 bank, trust company or private bank, as defined in the Banking  
18 Code of 1965, act of November 30, 1965 (P.L.847), or any savings  
19 and loan association, as defined in the Savings Association Code  
20 of 1967, act of December 14, 1967 (P.L.746), or any successor  
21 statutes thereto, or any banking institution, trust company or  
22 savings and loan institution organized under the laws of the  
23 United States, or a receiver, conservator or other liquidating  
24 agent of any of the foregoing.

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

28 (i) An agent;

29 (ii) An issuer;

30 (iii) A bank, when effecting transactions for its own

1 account or as agent under section 302 (c);

2 (iv) An executor, administrator, guardian, conservator or  
3 pledgee;

4 (v) A person who has no place of business in this State if  
5 he effects transactions in this State exclusively with or  
6 through (A) the issuers of the securities involved in the  
7 transactions, (B) other broker-dealers, or (C) persons exempt by  
8 section 203 (c);

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

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

16 (viii) Other persons not within the intent of this  
17 subsection whom the commission by rule or order designates.

18 (f) "Commission" means the Pennsylvania Securities  
19 Commission.

20 (g) "Control" (including the terms "controlling,"  
21 "controlled by" and "under common control with") means the  
22 possession, directly or indirectly, of the power to direct or  
23 cause the direction of the management and policies of a person,  
24 whether through the ownership of voting securities, by contract,  
25 or otherwise.

26 (h) "Fraud," "deceit" and "defraud" are not limited to  
27 common law fraud or deceit.

28 (i) "Guaranteed" means guaranteed as to payment of  
29 principal, interest, purchase price, dividend or call premium or  
30 as to the identity of any security to be delivered upon the

1 exercise of an option.

2 (j) "Investment adviser" means any person who, for  
3 compensation, engages in the business of advising others, either  
4 directly or through publications or writings, as to the value of  
5 securities or as to the advisability of investing in, purchasing  
6 or selling securities, or who, for compensation and as a part of  
7 a regular business, issues or promulgates analyses or reports  
8 concerning securities. "Investment adviser" does not include:

9 (i) A bank;

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

13 (iii) A broker-dealer whose performance of these services is  
14 solely incidental to the conduct of his business as a broker-  
15 dealer and who receives no special compensation for them;

16 (iv) A publisher of any bona fide newspaper, news magazine  
17 or business or financial publication of general, regular and  
18 paid circulation; and the agents and servants thereof;

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

21 (vi) A person who has no place of business in this State if  
22 his only clients in this State are other investment advisers or  
23 persons exempt under section 203 (c);

24 (vii) Other persons not within the intent of this subsection  
25 whom the commission by rule or order designates.

26 (k) "Institutional investor" means any bank, insurance  
27 company, pension or profit sharing plan or trust, investment  
28 company, as defined in the Investment Company Act of 1940, other  
29 financial institution or any person which is the sole owner of  
30 any of the foregoing, the State or any agency or political

1 subdivision thereof or any other person so designated by rule or  
2 order of the commission.

3 (1) "Issuer" means any person who issues or proposes to  
4 issue any security, and any promoter who acts for an issuer  
5 proposed to be formed. With respect to certificates of deposit,  
6 voting trust certificates or collateral-trust certificates, or  
7 with respect to certificates of interest or shares in an  
8 unincorporated investment trust not having a board of directors  
9 or persons performing similar functions or of the fixed,  
10 restricted management or unit type, the term "issuer" means the  
11 person or persons performing the acts and assuming the duties of  
12 depositor or manager pursuant to the provisions of the trust or  
13 other agreement or instrument under which the security is  
14 issued; except that with respect to equipment-trust certificates  
15 or like securities, the term "issuer" means the person by whom  
16 the equipment or property is or is to be used. With respect to  
17 certificates of interest or participation in oil, gas or mining  
18 titles or leases or in payments out of production under such  
19 titles or leases, the term "issuer" means the person or persons  
20 in active control of the exploration or development of the  
21 property who sell such interests or participations or payments  
22 or any person or persons who subdivide and sell such interests  
23 or participations or payments. The determination of the person  
24 or persons in active control of the exploration or development  
25 of the property shall be made on the basis of the actual  
26 relationship of the parties and not on the basis of the legal  
27 designation of a person's interest. In the case of an  
28 unincorporated association which is permitted by statute, rule  
29 or order or which provides by its articles or governing  
30 instruments or by resolution for limited liability of any or all

1 of its members, or in the case of a trust, committee, or other  
2 legal entity, the trustees or members thereof shall not be  
3 individually liable as issuers of any security issued by the  
4 association, trust, committee, or other legal entity.

5 (m) "Nonissuer transaction" means any transaction not  
6 directly or indirectly for the benefit of the issuer. A  
7 transaction is indirectly for the benefit of the issuer if any  
8 portion of the purchase price of any securities involved in the  
9 transaction will be received indirectly by the issuer.

10 (n) "Person" means an individual, corporation, partnership,  
11 association, joint stock company, syndicate, trust where the  
12 interests of the beneficiaries are evidenced by a security, an  
13 unincorporated organization, government, political subdivision  
14 of a government, or any other entity.

15 (o) "Publish" means publicly to issue or circulate by  
16 newspaper, mail, radio or television, or otherwise to  
17 disseminate to the public.

18 (p) "Reporting company" means any person which is required  
19 to file, and has for at least ninety days prior to the time of  
20 application of this definition filed, all periodic reports plus  
21 the most recent annual report with the Securities and Exchange  
22 Commission pursuant to the requirements of section 13 or 15 (d)  
23 of the Securities Exchange Act of 1934 or of section 8 of the  
24 Investment Company Act of 1940, and the regulations adopted  
25 thereunder, or for whom there is publicly available the  
26 information concerning such person which is specified in  
27 paragraph (a) (4) of Rule 15 c2-11 adopted under the Securities  
28 Exchange Act of 1934, or if the issuer is an insurance company  
29 the information specified in section 12 (g) (2)(G) (i) of that  
30 act. Information shall be deemed "publicly available" under this

1 section if it has been filed in such places or with such persons  
2 as the commission may specify by rule or order.

3 (q) (i) "Sale" or "sell" includes every sale, disposition  
4 or exchange, and every contract of sale of, or contract to sell,  
5 a security or interest in a security for value or any issuance  
6 of securities pursuant to any merger, consolidation, sale of  
7 assets or other corporate reorganization.

8 (ii) "Offer" or "offer to sell" includes every direct or  
9 indirect attempt or offer to sell or dispose of, or solicitation  
10 of an offer to purchase, a security or interest in a security  
11 for value.

12 (iii) Any security given or delivered with, or as a bonus on  
13 account of, any purchase of securities or any other thing is  
14 considered to constitute part of the subject of the purchase and  
15 to have been offered and sold for value.

16 (iv) Every sale or offer of a warrant or right to purchase  
17 or subscribe to another security of the same or another issuer,  
18 as well as every sale or offer of a security which gives the  
19 holder a present or future right or privilege to convert into  
20 another security of the same or another issuer, is considered to  
21 include an offer of the other security.

22 (v) A purported gift of assessable stock (for which the  
23 statutory consideration has not been paid) involves an offer and  
24 sale.

25 (vi) An offer rescission made pursuant to section 504  
26 involves an offer and sale.

27 (vii) The terms defined in this subsection do not include:  
28 (A) any bona fide secured transaction in, or loan of,  
29 outstanding securities; or (B) any dividend payable with respect  
30 to the securities of a corporation in the same or any other

1 class of securities of such corporation so long as the security  
2 distributed as a dividend does not constitute an offer to  
3 purchase a security of the corporation or any other person.

4 (viii) A dividend or distribution by any person to all or  
5 any class of its security holders of the securities of any other  
6 person, whether or not such dividend or distribution is for  
7 value, involves a sale.

8 (r) "Securities Act of 1933," "Securities Exchange Act of  
9 1934," "Public Utility Holding Company Act of 1935," "Trust  
10 Indenture Act of 1939," "Investment Advisers Act of 1940,"  
11 "Investment Company Act of 1940" and "Internal Revenue Code of  
12 1954" mean the Federal statutes of those names as amended before  
13 or after the effective date of this act, or any successor  
14 statutes thereto. Section numbers of such statutes or  
15 regulations adopted thereunder and referred to herein include  
16 such amendments thereto as may be adopted before or after the  
17 effective date of this act. "Securities and Exchange Commission"  
18 means the "United States Securities and Exchange Commission."

19 (s) "Security" means any note; stock; treasury stock; bond;  
20 debenture; evidence of indebtedness, share of beneficial  
21 interest in a business trust; certificate of interest or  
22 participation in any profit-sharing agreement; collateral trust  
23 certificate; preorganization certificate or subscription;  
24 transferable share; investment contract; voting trust  
25 certificate; certificate of deposit for a security; limited  
26 partnership interest; certificate of interest or participation  
27 in an oil, gas or mining title or lease or in payments out of  
28 production under such a title or lease; any beneficial interest  
29 or other security issued in connection with a funded employes'  
30 pension, profit-sharing, stock bonus, or similar benefit plan;



1 or, in general, any interest or instrument commonly known as or  
2 having the incidents of a "security"; any ownership interest in  
3 a condominium or cooperative apartment project, as such terms  
4 are commonly used; or any certificate of interest or  
5 participation in, temporary or interim certificate for, receipt  
6 for, guarantee of, or warrant or right to subscribe to or  
7 purchase, any of the foregoing. All of the foregoing are  
8 securities whether or not evidenced by written document.

9 "Security" does not include: (i) any beneficial interest in any  
10 voluntary inter vivos trust which is not created for the purpose  
11 of carrying on any business, or (ii) any beneficial interest in  
12 any testamentary trust, or (iii) any insurance or endowment  
13 policy or annuity contract under which an insurance company  
14 admitted in this State promises to pay a sum of money (whether  
15 or not based upon the investment performance of a segregated  
16 fund) either in a lump sum or periodically for life or some  
17 other specified period, or (iv) any certificate issued under  
18 section 809 of The Insurance Company Law of 1921, act of May 17,  
19 1921 (P.L.682), as amended.

20 (t) "State" means any state, territory or possession of the  
21 United States, the District of Columbia and Puerto Rico.

22 (u) "Underwriter" means a person who has purchased from an  
23 issuer or an affiliate of an issuer with a view to, or offers or  
24 sells for an issuer or an affiliate of an issuer in connection  
25 with, the distribution of any security, or participates or has a  
26 direct or indirect participation in any such undertaking, or  
27 participates or has a participation in the direct or indirect  
28 underwriting of any such undertaking; but such term shall not  
29 include a person whose interest is limited to a commission from  
30 an underwriter not in excess of the usual and customary

1 distributors' or sellers' commission.

2 PART II

3 REGISTRATION OF SECURITIES

4 Section 201. Registration Requirement.--It is unlawful for  
5 any person to offer or sell any security in this State unless  
6 the security is registered under this act or the security or  
7 transaction is exempted under section 202 or 203 hereof.

8 Section 202. Exempt Securities.--The following securities  
9 are exempted from section 201:

10 (a) Any security issued or guaranteed by the United States,  
11 any state, any political subdivision of a state, foreign  
12 government with which the United States currently maintains  
13 diplomatic relations, or any agency or corporate or other  
14 instrumentality of any of the foregoing, or any certificate of  
15 deposit for any of the foregoing, provided that (i) such  
16 security or certificate of deposit therefor is recognized as a  
17 valid obligation by the issuer or guarantor thereof or its or  
18 their successors; and (ii) if an industrial revenue obligation,  
19 such obligation is exempt from registration under the Securities  
20 Act of 1933.

21 (b) Any security, the offer, sale, issuance or guarantee of  
22 which is (i) subject to regulation by the Interstate Commerce  
23 Commission, the Comptroller of the Currency, the Federal Deposit  
24 Insurance Corporation or, with respect to banks, by the  
25 Pennsylvania Department of Banking; (ii) registered under the  
26 Public Utility Holding Company Act of 1935; or (iii) the issuer  
27 of which is regulated as to the issuance or guarantee of the  
28 security by a governmental authority of the United States.

29 (c) Any commercial paper which arises out of a current  
30 transaction or the proceeds of which have been or are to be used

1 for current transactions, and which evidences an obligation to  
2 pay cash within nine months of the date of issuance, exclusive  
3 of days of grace, or any renewal of such paper which is likewise  
4 limited, or any guarantee of such paper or of any such renewal,  
5 except where such paper is proposed to be sold or offered to the  
6 public in units of less than ten thousand dollars (\$10,000) to  
7 any single person.

8 (d) Any security issued or guaranteed by any Federal credit  
9 union or any credit union, industrial loan association or other  
10 similar association organized and supervised under the laws of  
11 this State.

12 (e) Any security (except evidences of indebtedness, whether  
13 interest bearing or not) of an issuer (i) organized exclusively  
14 for educational, benevolent, fraternal, religious, charitable,  
15 social, athletic or reformatory purposes and not for pecuniary  
16 profit, if no part of the net earnings of the issuer inures to  
17 the benefit of any private shareholder or individual, or (ii)  
18 organized as a chamber of commerce or trade or professional  
19 association. The fact that amounts received from memberships, or  
20 dues, or both will or may be used to construct or otherwise  
21 acquire facilities for use by members of the nonprofit  
22 organization does not disqualify the organization from this  
23 exemption. This exemption shall not apply to the securities of  
24 any nonprofit organization if any promoter thereof expects or  
25 intends to make a profit directly or indirectly from any  
26 business or activity associated with the organization or  
27 operation of such nonprofit organization.

28 (f) Any security listed, or approved for listing upon notice  
29 of issuance, on a securities exchange or national securities  
30 quotation service designated by rule of the commission, or any

1 other security or class of securities which the commission may  
2 specify by rule or order; any other security of the same issuer  
3 which is of senior or substantially equal rank; any security  
4 called for by subscription rights or warrants so listed or  
5 approved; and any warrant or right to purchase or subscribe to  
6 any of the foregoing.

7 (g) Any investment contract issued in connection with an  
8 employe's stock option, purchase, savings, pension, profit  
9 sharing or similar benefit plan, provided, in the case of plans  
10 adopted after the effective date hereof which are not qualified  
11 under section 401 of the Internal Revenue Code of 1954 and which  
12 provide for contribution by employes, the commission is notified  
13 in writing thirty days before the commencement of the offering  
14 in this State.

15 (h) Any security of a licensed broker-dealer issued to its  
16 officers, partners or employes, subject to such rules as the  
17 commission may establish.

18 Section 203. Exempt Transactions.--The following  
19 transactions are exempted from section 201:

20 (a) Any transaction not directly or indirectly for the  
21 benefit of the issuer or an affiliate of the issuer.

22 (b) Any transaction directly or indirectly for the benefit  
23 of an affiliate of the issuer (but not directly or indirectly  
24 for the benefit of the issuer) which is exempted from section 5  
25 of the Securities Act of 1933, excepting only the transactions  
26 exempted in or pursuant to section 3 (a) (11) or 3 (b) of the  
27 Securities Act of 1933 and the rules and regulations now or  
28 hereafter adopted thereunder.

29 (c) Any offer or sale to an institutional investor or to a  
30 broker-dealer, whether the buyer is acting for itself or in some

1 fiduciary capacity.

2 (d) Any sales by an issuer to not more than fifteen persons  
3 (excluding those designated in subsection (c)) in this State  
4 during a period of twelve consecutive months if (i) the issuer  
5 reasonably believes that each buyer in this State is purchasing  
6 for his own account and without a present view to making a  
7 public distribution of such securities in this State within  
8 eighteen months after the payment of the full purchase price by  
9 the buyer for all of the securities purchased by him pursuant to  
10 this subsection; (ii) no public advertisement is used or public  
11 solicitation made in connection with soliciting such sales;  
12 (iii) no commissions, selling expenses (other than legal and  
13 accounting fees and printing costs) or promotional  
14 considerations are given, paid or incurred in connection  
15 therewith; and (iv) such sales are not part of a public offering  
16 of the securities of the issuer being made concurrently in this  
17 State and elsewhere. "Promotional consideration" means  
18 consideration paid in the form of cash or securities or both to  
19 any person for services in connection with founding and  
20 organizing the business or enterprise of the issuer. Promotional  
21 consideration shall not include any fee paid to any person in  
22 connection with any sale under section 203 (c). A notice in the  
23 form prescribed by the commission, signed by the officers and/or  
24 directors of the issuer under oath and stating the name,  
25 principal business address of the issuer and such facts as are  
26 necessary to establish this exemption shall be filed, together  
27 with a copy of all offering literature used in connection with  
28 such offer or sale, with the commission not later than the day  
29 on which the securities are issued or the issuer receives  
30 consideration from any person therefor, whichever is earlier.

1 (e) Any offer to not more than fifty persons during a period  
2 of twelve consecutive months if no sales result from such offer  
3 or if sales resulting from such offer are exempt by reason of  
4 subsection (d) hereof.

5 (f) Any offer or sale of a preorganization subscription to  
6 not more than fifteen persons, if no commission or other  
7 remuneration is paid or given directly or indirectly for  
8 soliciting any subscriber in this State, and no payment is made  
9 by any subscriber until the securities subscribed for may be  
10 sold under this act.

11 (g) Any transaction between the issuer or other person on  
12 whose behalf the offering is made and an underwriter, or among  
13 underwriters.

14 (h) Any offer (but not a sale) of a security for which a  
15 registration statement has been filed under the Securities Act  
16 of 1933 if (i) no stop order or refusal order is in effect and  
17 no public proceeding or examination looking toward such an order  
18 is pending under the Securities Act of 1933 or this act; and  
19 (ii) no such offer is made until after such registration  
20 statement (including a prospectus) has been filed with or mailed  
21 to the commission.

22 (i) Any sale of a security registered under section 5 of the  
23 Securities Act of 1933 or exempt from registration under section  
24 3 (b) if: (i) a copy of any prospectus or offering circular  
25 utilized or proposed to be utilized in connection therewith is  
26 filed with the commission within two days after such prospectus  
27 or offering circular is filed with the Securities and Exchange  
28 Commission; (ii) the filing fee specified in section 602 (b) is  
29 paid with respect to such offering; (iii) the issuer of the  
30 security is a reporting company; and (iv) no stop order or

1 refusal order is in effect and no public proceeding or  
2 investigation looking toward such an order is pending under the  
3 Securities Act of 1933 or this act.

4 (j) Any transaction in a bond or other evidence of  
5 indebtedness secured by a real or chattel mortgage or deed of  
6 trust, or by an agreement for the sale of real estate or  
7 chattels, if the entire mortgage, deed of trust, or agreement,  
8 together with all the bonds or other evidences of indebtedness  
9 secured thereby, is offered and sold as a unit.

10 (k) Any judicial sale or any transaction by an executor,  
11 administrator, sheriff, marshal, receiver, trustee in  
12 bankruptcy, guardian or conservator.

13 (l) Any transaction now or hereafter exempted from section 5  
14 of the Securities Act of 1933 by virtue of sections 3 (a) (9) or  
15 3 (a) (10) thereof.

16 (m) Any transaction incident to a judicially approved  
17 reorganization in which a security is issued in exchange for one  
18 or more outstanding securities, claims or property interests, or  
19 partly in such exchange and partly for cash; provided, however,  
20 that the commission be given notice of and the right to appear  
21 at and intervene in any hearing on the terms of such  
22 reorganization.

23 (n) Any transaction executed by a bona fide pledgee without  
24 any purpose of evading this act.

25 (o) Any transaction pursuant to an offer to existing  
26 security holders of the issuer or of a corporation which, prior  
27 to the commencement of the offer, owned substantially all of the  
28 voting stock of the issuer or was organized for the purpose of  
29 the offer by persons in control of the issuer, if no commission  
30 or other remuneration other than a standby commission is paid or

1 given directly or indirectly for soliciting any security holder  
2 in this State, and if the issuer first files a notice specifying  
3 the terms of the offer and all other information which the  
4 commission by rule requires, and the commission does not by  
5 order disallow the exemption within five days. "Security  
6 holders" include persons who at the time of the transaction are  
7 holders of convertible securities, nontransferable warrants, or  
8 transferable warrants exercisable within not more than ninety  
9 days of their issuance.

10 (p) Any transaction incident to a vote by security holders  
11 (or written consent of some or all security holders in lieu of  
12 such vote) pursuant to the articles of incorporation or the  
13 applicable corporation statute or other statute governing such  
14 person, or pursuant to a partnership agreement, a declaration of  
15 trust, trust indenture or any agreement among security holders  
16 on a merger, consolidation, sale of assets in consideration, in  
17 whole or part, of the issuance of securities of another person,  
18 or reorganization involving the exchange of securities, in whole  
19 or in part, for the securities of any other person if, but only  
20 if: (i) in the case of a merger, consolidation, or sale of  
21 assets, one party to the reorganization is required or permitted  
22 to file proxy materials pursuant to section 14 (a) of the  
23 Securities Exchange Act of 1934 and does file such materials  
24 with the commission at least ten days prior to a meeting of  
25 security holders called for the purpose of approving such  
26 transaction; and such proxy materials, with such additions or  
27 modifications as the commission may direct, are distributed to  
28 the security holders of the person to be acquired; or (ii) such  
29 materials as may be specified by rule or order of the commission  
30 are prepared in connection with the proposed transaction and,



1 after review by the commission, distributed to the security  
2 holders of the person to be acquired; provided, however, that  
3 clause (i) and (ii) of this subsection and section 602 (c) shall  
4 not be applicable to any transaction where not more than twenty-  
5 five per cent of the security holders of the person to be  
6 acquired are residents of this State.

7 (q) Any offer or sale of an evidence of indebtedness of an  
8 issuer either: organized exclusively for educational,  
9 benevolent, fraternal, religious, charitable, social, athletic  
10 or reformatory purposes and not for pecuniary profit, if no part  
11 of the net earnings of the issuer inures to the benefit of any  
12 private shareholder or individual; or organized as a chamber of  
13 commerce or trade or professional association if there has been  
14 filed with the commission a notice identifying the security and  
15 the basis of its qualification under this exemption together  
16 with such further information as the commission may by rule or  
17 order require, and if the commission does not by order disallow  
18 the exemption within ten days or such shorter period as it may  
19 permit. The security qualifies under this exemption: (i) if the  
20 issuer and any predecessor have not defaulted within the current  
21 fiscal year or the three preceding fiscal years in any fixed  
22 interest or principal obligation; and (ii) the issuer complies  
23 with rules of the commission with respect to trust indentures  
24 and the use of a prospectus; and (iii) the security qualifies  
25 under either of the following:

26 (A) The securities proposed to be sold are secured by a  
27 mortgage or deed of trust upon land and buildings, which  
28 mortgage or deed of trust is or will become a first lien at or  
29 prior to the issuance of such evidences of indebtedness, or  
30 provision satisfactory to the commission is made for escrowing

1 the proceeds from their sale until such first lien is  
2 established, and the total amount of such securities does not  
3 exceed fifty per cent of the then fair market value of the land  
4 and buildings included in such mortgage or deed of trust, less  
5 the amount of any unpaid special assessment taxes; or

6 (B) The issuer or its predecessors have had net revenues for  
7 each of the two fiscal years next preceding such offer or sale,  
8 or average net revenues for the last three fiscal years next  
9 preceding such offer or sale, of not less than one and one-half  
10 times the aggregate annual interest requirements on the issue of  
11 securities to be sold under this subsection and all securities  
12 of equal or prior rank to be outstanding immediately after such  
13 sale. "Net revenues" means the excess of revenues over all  
14 expenses of operation and maintenance, excluding from expenses  
15 provision for depreciation and excluding extraordinary,  
16 nonrecurring items of revenue and expense. This exemption shall  
17 not apply to the securities of any nonprofit organization if any  
18 promotor thereof expects or intends to make a profit directly or  
19 indirectly from any business or activity associated with the  
20 organization or operation of such nonprofit organization.

21 (r) Any stock split and any stock dividend, whether the  
22 corporation distributing the dividend is the issuer or not, if  
23 nothing of value is given by stockholders for the dividend other  
24 than the surrender of a right to a cash or property dividend in  
25 lieu of the stock and if the dividend is issued pro rata by  
26 class. In the case of a stock dividend by a corporation not the  
27 issuer, such corporation may be required to file with the  
28 commission, ten days prior to the intended date of distribution  
29 of the dividend, a statement containing the facts and  
30 circumstances surrounding the dividend to indicate whether the

1 dividend is for the purpose of avoiding the registration  
2 provisions of this act.

3 (s) Any transaction or class of transactions as to which the  
4 commission by rule or order finds that registration is not  
5 necessary or appropriate for the protection of investors.

6 Section 204. Exemption Proceedings.--(a) The commission may  
7 by rule or order in a particular case, as to any security or  
8 transaction or any type of security or transaction, withdraw or  
9 further condition exemptions under this section, or increase or  
10 decrease the number of purchasers or offerees permitted, or  
11 waive the conditions in either of section 202 or 203 and may  
12 require reports of sales under any such exemption.

13 (b) The commission may by order deny or revoke any exemption  
14 specified in section 202 or 203 with respect to a specific  
15 security or transaction. No such order may be entered without  
16 appropriate prior notice to all interested parties, opportunity  
17 for hearing, and written findings of fact and conclusions of  
18 law, except that the commission may by order summarily deny or  
19 revoke any of the specified exemptions pending final  
20 determination of any proceeding under this section. Upon the  
21 entry of a summary order, the commission shall promptly notify  
22 all interested parties that it has been entered and reasons  
23 therefor and that within fifteen days of the receipt of a  
24 written request the matter will be set down for hearing. If no  
25 hearing is requested and none is ordered by the commission, the  
26 order will remain in effect until it is modified or vacated by  
27 the commission. If a hearing is requested or ordered, the  
28 commission, after notice of and opportunity for hearing to all  
29 interested persons, may modify or vacate the order or extend it  
30 until final determination. No order under this section may

1 operate retroactively. No person may be considered to have  
2 violated section 201 by reason of any offer or sale effected  
3 after the entry of an order under this section if he sustains  
4 the burden of proof that he did not know, and in the exercise of  
5 reasonable care could not have known, of the order.

6 (c) In any proceeding under this act, the burden of proving  
7 an exemption or an exception from a definition is upon the  
8 person claiming it.

9 Section 205. Registration by Coordination.--(a) Registration  
10 by coordination may be used for any offering for which a  
11 registration statement has been filed under the Securities Act  
12 of 1933 or for any proposed sale pursuant to the exemption  
13 contained in section 3 (b) of such act where such registration  
14 statement or notification of proposed sale has not become  
15 effective.

16 (b) A registration statement under this section shall  
17 contain the following information and be accompanied by the  
18 following documents in addition to the information specified in  
19 section 207 (b) and the consent to service of process required  
20 by section 701:

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

23 (ii) If the commission by rule or order requires, a copy of  
24 the articles of incorporation and bylaws or their substantial  
25 equivalents currently in effect, a copy of any agreements with  
26 or among underwriters, a copy of any indenture or other  
27 instrument governing the issuance of the security to be  
28 registered, and a specimen or copy of the security;

29 (iii) If the commission requires, any other information, or  
30 copies of any documents, filed under the Securities Act of 1933;

1 and

2 (iv) An undertaking to forward all future amendments to the  
3 Federal prospectus or offering circular, other than an amendment  
4 which merely delays the effective date of the registration  
5 statement, not later than the first business day after they are  
6 forwarded to or filed with the Securities and Exchange  
7 Commission, or such longer period as the commission permits.

8 (c) A registration statement under this section  
9 automatically becomes effective at the moment the Federal  
10 registration statement becomes effective if (i) no stop order is  
11 in effect in this State and no proceeding is pending under  
12 section 208; (ii) and the registration statement has been on  
13 file with the commission for at least ten days; (iii) a  
14 statement of the maximum and minimum proposed offering prices  
15 and the maximum underwriting discounts and commissions has been  
16 on file for two full business days, or such shorter period as  
17 the commission permits; and (iv) the offering is made within  
18 these limitations.

19 (d) The registrant shall notify the commission promptly by  
20 telephone or telegram of the date and time when the Federal  
21 registration statement became effective and the content of the  
22 price amendment, if any, and shall file a post-effective  
23 amendment promptly containing the information and documents in  
24 the price amendment. "Price amendment" means the final Federal  
25 amendment which includes a statement of the offering price,  
26 underwriting and selling discounts or commissions, amount of  
27 proceeds, conversion rates, call prices and other matters  
28 dependent upon the offering price. Upon failure to receive the  
29 required notification and post-effective amendment with respect  
30 to the price amendment, the commission may enter a stop order,

1 without notice or hearing, retroactively denying effectiveness  
2 to the registration statement or suspending its effectiveness  
3 until compliance with this subsection is effected, if it  
4 promptly notifies the registrant by telephone or telegram of the  
5 issuance of such order. If the registrant proves compliance with  
6 the requirements of this subsection as to notice and post-  
7 effective amendment, the stop order shall be vacated as of the  
8 time of its entry. The commission may by rule or order waive any  
9 of the conditions specified in subsection (b) or (c).

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

22 Section 206. Registration by Qualification.--(a) Any  
23 security may be registered by qualification.

24 (b) A registration statement under this section shall  
25 contain the information specified in section 207 (b), shall be  
26 accompanied by the consent to service of process required by  
27 section 701 and shall contain such further information and be  
28 accompanied by such further documents as the commission by rule  
29 or otherwise requires. For this purpose the commission may  
30 classify issuers and types of securities.

1 (c) Registration under this section becomes effective when  
2 the commission so orders. If a registration statement has been  
3 on file for at least thirty days and all information required by  
4 the commission has been furnished, the person filing the  
5 statement may at any time file a written request that the  
6 commission take action within ten days following the filing of  
7 such request. If a request is filed and the commission takes no  
8 action within the period, the registration becomes effective at  
9 the end of the ten-day period.

10 (d) The commission may by rule or order require as a  
11 condition of registration under this section that a prospectus  
12 containing any designated part of the information contained in  
13 the registration statement or filed with it be sent or given to  
14 each person to whom an offer is made before or concurrently  
15 with: the first written offer made to him, otherwise than by  
16 means of a public advertisement, by or for the account of the  
17 issuer or any other person on whose behalf the offering is made,  
18 or by any underwriter or broker-dealer who is offering part of  
19 an unsold allotment or subscription taken by him as a  
20 participant in the distribution; or the confirmation of any sale  
21 made by or for the account of any person; or the payment  
22 pursuant to any sale; or the delivery of the security pursuant  
23 to any sale; whichever first occurs.

24 Section 207. General Registration Provisions.--(a) A  
25 registration statement may be filed by the issuer, any other  
26 person on whose behalf the offering is to be made or a licensed  
27 broker-dealer, but the commission may in specific cases require  
28 that it be executed by the issuer.

29 (b) Every registration statement shall specify: (i) the  
30 amount of securities to be offered in this State; (ii) the

1 states in which a registration statement or application in  
2 connection with the offering has been or is to be filed; (iii)  
3 any adverse order, judgment or decree entered in connection with  
4 the offering by the regulatory authorities in any state or by  
5 any court or the Securities and Exchange Commission, or any  
6 withdrawal with prejudice of a registration statement or  
7 application relating to the offering; (iv) the names of all  
8 underwriters and broker-dealers selling or offering the  
9 securities in this State; and (v) such other information as may  
10 be required by the form therefor adopted by the commission  
11 pursuant to section 609.

12 (c) Any document filed under this act or a predecessor law  
13 within five years preceding the filing of a registration  
14 statement may be incorporated by reference in the registration  
15 statement.

16 (d) The commission may by rule or otherwise permit the  
17 omission of any item of information or document from any  
18 registration statement.

19 (e) The commission may by rule or order require as a  
20 condition of registration that a report by an accountant,  
21 engineer, appraiser or other professional person be filed. The  
22 commission may also designate one of its employes to make an  
23 examination of the business and records of an issuer of  
24 securities for which a registration statement has been filed by  
25 qualification.

26 (f) In the case of a nonissuer distribution, information may  
27 not be required under section 206 (b) or section 207 (k) unless  
28 it is known to the person filing the registration statement or  
29 to the persons on whose behalf the distribution is to be made,  
30 or can be furnished by them without unreasonable effort or



1 expense.

2 (g) The commission may by rule or order require as a  
3 condition of registration that any security issued within the  
4 past two years or to be issued to a promoter for a consideration  
5 substantially different from the public offering price, or to  
6 any person for a consideration other than cash, be deposited in  
7 escrow; or that the proceeds from the sale of the registered  
8 security in this State be escrowed until the issuer receives a  
9 specified amount from the sale of the security either in this  
10 State or elsewhere; or it may impose both such requirements. The  
11 commission may by rule or order determine the conditions of any  
12 escrow required hereunder, but may not reject a depository  
13 solely because of location in another state.

14 (h) The commission may by rule require that securities of  
15 designated classes shall be issued under a trust indenture  
16 containing such provisions as it determines.

17 (i) The commission may by rule or order require as a  
18 condition of registration that any security registered be sold  
19 only on a specified form of subscription or sale contract, and  
20 that a signed or conformed copy of each contract be filed with  
21 the commission or preserved for any period up to three years.

22 (j) A registration statement is effective for one year from  
23 its effective date, or any longer period during which the  
24 security is being offered or distributed in a nonexempted  
25 transaction by or for the account of the issuer or other person  
26 on whose behalf the offering is being made, or by any  
27 underwriter or broker-dealer who is still offering part of an  
28 unsold allotment or subscription taken by him as a participant  
29 in the distribution, provided that the commission has been  
30 notified of such continued offering and the period thereof. Any

1 extension of the offering period shall be subject to rules  
2 established by the commission. The fact that a registration  
3 statement has been effective in this State with respect to any  
4 security does not permit sales of securities of the same class  
5 by the issuer or an affiliate of the issuer if such person did  
6 not file the registration statement, unless a separate  
7 registration statement is filed and declared effective with  
8 respect thereto, or absent an applicable exemption. A  
9 registration statement may not be withdrawn after its effective  
10 date if any of the securities registered have been sold in this  
11 State, unless permitted by rule or order of the commission. No  
12 registration statement is effective during the time a stop order  
13 is in effect under section 208.

14 (k) During the effective period of a registration statement,  
15 the commission may by rule or order require the person who filed  
16 the registration statement to file reports with the commission,  
17 not more often than quarterly, to keep reasonably current the  
18 information contained in the registration statement and to  
19 disclose the progress of the offering; provided, however, that  
20 any person may file with the commission copies of reports filed  
21 with the Securities and Exchange Commission including form SR in  
22 lieu of the foregoing. If any of the securities registered have  
23 been sold in the State, the commission may by rule or order  
24 extend the period for filing the reports for an additional term  
25 not exceeding two years from the date the registration became  
26 effective or the date of its last amendment or extension.

27 (l) A registration statement relating to redeemable  
28 securities issued by an open-end management company or unit  
29 investment trust, as defined in the Investment Company Act of  
30 1940, or to securities issued by any class of financial

1 institutions which the commission by rule determines, may be  
2 amended after its effective date so as to increase the specified  
3 amount of securities proposed to be offered. The amendment  
4 becomes effective when the commission so orders.

5 (m) No warrant or right to purchase or subscribe to another  
6 security and no security convertible into another security shall  
7 be registered unless it appears to the commission that both the  
8 warrant or right or convertible security and the securities  
9 deliverable on the exercise of the warrant or right or  
10 conversion privilege comply with the provisions of this act.

11 (n) Each person who accepts an offer to purchase securities  
12 registered by qualification directly from an issuer or an  
13 affiliate of an issuer shall have the right to withdraw his  
14 acceptance without incurring any liability to the seller,  
15 underwriter (if any) or any other person, within two business  
16 days after he receives a final prospectus with respect to the  
17 offering and a notice explaining the provisions of this  
18 subsection. As used herein, the term "final prospectus" shall  
19 mean the document prepared in accordance with such rules as the  
20 commission may provide, to be used by the seller in connection  
21 with an offering of securities in this State after the  
22 registration of such securities has become effective under this  
23 act. Each person who accepts an offer to purchase securities  
24 exempted from registration by section 203 (d), (f), (q) or (s),  
25 directly from an issuer or affiliate of an issuer shall have the  
26 right to withdraw his acceptance without incurring any liability  
27 to the seller, underwriter (if any) or any other person, within  
28 two business days after he enters into a binding contract of  
29 purchase, or makes any payment for the securities being offered  
30 or the exemption becomes effective, whichever is later.

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  
9 of 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 omits 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 rule, 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 or other person involved directly or indirectly in  
25 the offering;

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

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

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

9 (v) The offering has been or would be made with unreasonable  
10 amounts of underwriters' and sellers' discounts, commissions or  
11 other compensation, or promoters' profits or participation, or  
12 unreasonable amounts or kinds of options, or has worked or  
13 tended to work a fraud upon purchasers or would so operate, or  
14 involves an unreasonable distribution of voting rights;

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

19 (vii) Advertising prohibited by section 606 (e) has been  
20 used in connection with the sale or offering of the securities;  
21 or

22 (viii) In the case of unsecured debt or preferred equity  
23 securities with a fixed dividend rate, the financial condition  
24 of the issuer affects or would affect the soundness of the  
25 securities.

26 (b) The commission may not institute a stop order proceeding  
27 against an effective registration statement on the basis of a  
28 fact or transaction known to it when the registration statement  
29 became effective unless the proceeding is instituted within  
30 thirty days after effectiveness.

1 (c) In a proceeding for registration by qualification, the  
2 registrant has the burden of satisfying the requirements of  
3 subsection (a). In a proceeding for registration by  
4 coordination, the commission has the burden of establishing the  
5 existence of one of the grounds enumerated in subsection (a).

6 (d) The commission may issue a summary order denying,  
7 postponing, suspending or revoking the effectiveness of a  
8 registration statement pending final determination of any  
9 proceeding under this section. Upon the entry of the order, the  
10 commission shall promptly notify each person specified in  
11 subsection (e) that it has been entered and the reasons therefor  
12 and that within fifteen days after the receipt of a written  
13 request the matter will be set down for hearing. If no hearing  
14 is requested or ordered, the commission, after notice of and  
15 opportunity for hearing to each person specified in subsection  
16 (e); may modify or vacate the order or extend it until final  
17 determination.

18 (e) No stop order may be entered under this section except  
19 under subsection (d) without appropriate prior notice to the  
20 applicant or registrant, the issuer and the person on whose  
21 behalf the securities are to be or have been offered;  
22 opportunity for hearing; and written findings of fact and  
23 conclusions of law.

24 (f) The commission may vacate or modify a stop order if it  
25 finds that the conditions which prompted its entry have changed  
26 or that it is otherwise in the public interest to do so.

27 Section 209. Books, Records and Accounts.--Every issuer  
28 qualifying securities for sale in this State or who has sold  
29 securities in this State pursuant to an exemption contained in  
30 section 202 (e), 203 (d), 203 (q) or 203 (s) shall at all times

1 keep and maintain a complete set of books, records, and accounts  
2 of such sales and the disposition of the proceeds thereof, and  
3 shall thereafter, at such times as are required by the  
4 commission, make and file in the office of the commission, a  
5 report, setting forth the securities sold by it under such  
6 qualification or exemption, the proceeds derived therefrom and  
7 the disposition thereof.

8 PART III

9 REGISTRATION OF BROKER-DEALERS, AGENTS

10 AND INVESTMENT ADVISERS

11 Section 301. Registration Requirement.--Unless exempted  
12 under section 302 hereof:

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

16 (b) It is unlawful for any broker-dealer or issuer to employ  
17 an agent to represent him in this State unless the agent is  
18 registered under this act. The registration of an agent is not  
19 effective during any period when he is not associated with a  
20 specified broker-dealer registered under this act or a specified  
21 issuer. No agent shall at any time represent more than one  
22 broker-dealer or issuer, except that where affiliated  
23 organizations operating at the same location are registered  
24 broker-dealers, an agent may represent any such organization.  
25 When an agent begins or terminates a connection with a broker-  
26 dealer or issuer, or begins or terminates those activities which  
27 make him an agent, the agent as well as the broker-dealer or  
28 issuer shall promptly notify the commission. The commission may  
29 adopt a temporary registration procedure to permit agents to  
30 change employers without suspension of their registrations

1 hereunder.

2 (c) It is unlawful for any person to transact business in  
3 this State as an investment adviser unless he is so registered  
4 or registered as a broker-dealer under this act or unless he is  
5 exempted under section 302 (d).

6 (d) It is unlawful for any licensed broker-dealer, agent or  
7 investment adviser, or any affiliate of such a broker-dealer or  
8 investment adviser, to transact business in this State if the  
9 registrant is in violation of this act, or any rule or order  
10 promulgated under this act of which he has notice, or if the  
11 information contained in his application for registration, as of  
12 the date of such transaction, is incomplete in any material  
13 respect or is false or misleading with respect to any material  
14 fact.

15 (e) Every registration expires two years from its effective  
16 date unless renewed. The commission by rule or order may prepare  
17 an initial schedule for registration renewals so that subsequent  
18 renewals of registrations effective April 1, 1972 may be  
19 staggered. For this purpose the commission may adjust the  
20 registration fee proportionately. No registration is effective  
21 after its expiration, and expiration of a registration for which  
22 no renewal application has been filed is deemed an application  
23 for withdrawal under section 306 (f).

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

26 (a) A broker-dealer registered under the Securities Exchange  
27 Act of 1934, who has not previously had any certificate denied  
28 or revoked under this act or any predecessor statute, if he has  
29 no place of business in this State and, during any period of  
30 twelve consecutive months, he does not direct offers to sell or



1 buy into this State in any manner to persons other than broker-  
2 dealers, institutional investors or governmental agencies or  
3 instrumentalities designated by rule of the commission, or to  
4 more than five other customers having an existing account with  
5 such broker-dealer prior to any offer made to them in this  
6 State, whether or not the offeror or any of the offerees is then  
7 present in this State.

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

11 (c) A bank not licensed as a broker-dealer executing orders  
12 for the purchase or sale of securities as agent for the  
13 purchaser or seller thereof in accordance with rules which the  
14 commission establishes.

15 (d) A person registered under the Investment Advisers Act of  
16 1940, who has not previously had any certificate denied or  
17 revoked under this act or any predecessor statute, if he has no  
18 place of business in this State and (i) his only clients in this  
19 State are other investment advisers, broker-dealers,  
20 institutional investors or governmental agencies or  
21 instrumentalities designated by rule of the commission, or (ii)  
22 during any period of twelve consecutive months he does not  
23 direct business communications into this State in any manner to  
24 more than five clients other than those specified in clause (i)  
25 above, whether or not he or any of the persons to whom the  
26 communications are directed is then present in this State.

27 (e) Any bona fide officer or director of an issuer, if such  
28 person does not receive any compensation, directly or  
29 indirectly, for his activities on behalf of an issuer in  
30 connection with any security or transaction not exempted under

1 section 202 or 203.

2 (f) The commission may by such rules as it deems necessary  
3 or appropriate in the public interest or for the protection of  
4 investors, either unconditionally or upon specified terms and  
5 conditions or for specified periods, exempt from the provisions  
6 of section 301 any class of persons specified in such rules.

7 Section 303. Registration Procedure.--(a) (i) A broker-  
8 dealer, agent, or investment adviser may obtain an initial or  
9 renewal license by filing with the commission an application  
10 together with a consent to service of process pursuant to  
11 section 701. The application shall contain such information, and  
12 in such detail, as the commission by rule requires concerning  
13 the applicant's form and place of organization, proposed method  
14 of doing business, and financial condition, the qualifications  
15 and experience of the applicant, including, in the case of a  
16 broker-dealer or investment adviser, the qualifications and  
17 experience of any partner, officer, director, or affiliate, any  
18 injunction or administrative order or conviction referred to in  
19 section 305 (a) (ii), information about affiliates or  
20 predecessors of the applicant, and any other matters which the  
21 commission determines are relevant to the application. The  
22 commission may by rule or order require an applicant for an  
23 initial license to publish an announcement of the application in  
24 one or more specified newspapers published in this State.

25 (ii) If no denial order is in effect and no proceeding is  
26 pending under section 305, the registration becomes effective  
27 thirty days after the filing of any amendment. The commission is  
28 directed to cooperate with other securities administrators and  
29 regulatory authorities to simplify and coordinate registration,  
30 application and renewal procedures.

1 (b) Before action on an application, the commission may  
2 designate an employe to make an examination of the books,  
3 records and affairs of the applicant.

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

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

16 (e) The commission may by rule require a minimum capital for  
17 broker-dealers and investment advisers and establish limitations  
18 on aggregate indebtedness of broker-dealers in relation to net  
19 capital and may classify broker-dealers and investment advisers  
20 for purposes of such requirements. The commission may not,  
21 however, with respect to any broker-dealer who is a member of  
22 the National Association of Securities Dealers, Inc. or who is  
23 registered with the Securities and Exchange Commission require a  
24 higher minimum capital or lower ratio of aggregate indebtedness  
25 to net capital than is contained in the rules or regulations  
26 adopted by such association or commission.

27 (f) The commission may by rule require surety bonds by any  
28 broker-dealer, investment adviser, and any issuer who employs  
29 agents in connection with any security or transaction not  
30 exempted by section 202 or 203 in an amount not exceeding ten

1 thousand dollars (\$10,000), and all bonds required shall provide  
2 for suit thereon by injured customers, clients or purchasers,  
3 but no bond may be required of any registered broker-dealer or  
4 investment adviser whose net capital exceeds the amount  
5 prescribed by rule for this purpose. Such bond, unless cancelled  
6 as provided herein, shall be in effect during the entire period  
7 that a registration is in effect. Every bond shall contain a  
8 provision that such bond is not cancellable, except on thirty-  
9 days prior written notice to the person for whom the bond was  
10 issued and the commission, provided that such cancellation shall  
11 not affect any liability incurred or accrued prior to the  
12 effective date of such cancellation.

13 (g) The commission may by rule or order impose other  
14 conditions in connection with the issuance of licenses under  
15 this act as it deems appropriate in the public interest and for  
16 the protection of investors.

17 Section 304. Post-Registration Provisions.--(a) Every  
18 registered broker-dealer and investment adviser shall make and  
19 keep all accounts, correspondence, memoranda, papers, books and  
20 other records which the commission by rule prescribes. All  
21 records required shall be preserved for three years unless the  
22 commission by rule prescribes otherwise for particular types of  
23 records. All required records shall be kept within this State or  
24 shall, at the request of the commission, be made available at  
25 any time for examination by it either in the principal office of  
26 the registrant or by production of exact copies thereof in this  
27 State.

28 (b) Every registered broker-dealer and investment adviser  
29 shall file such reports as the commission by rule prescribes.

30 (c) If the information contained in any document filed with

1 the commission is or becomes inaccurate or incomplete in any  
2 material respect, the registrant shall promptly file a  
3 correcting amendment.

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

16 (e) The commission may by rule prohibit unreasonable  
17 charges, commissions or other compensation of broker-dealers and  
18 investment advisers, provided that any commission rate set by a  
19 national securities exchange, when applied to transactions on  
20 that exchange, and any commission rate set by the Securities and  
21 Exchange Commission shall not be deemed unreasonable under this  
22 section. Any underwriting compensation approved by a national  
23 securities association registered under the Securities Exchange  
24 Act of 1934 with respect to the underwriting activities of its  
25 members shall not be deemed unreasonable under this section.

26 (f) The commission may prescribe rules for the conduct of  
27 business by broker-dealers and investment advisers which it  
28 finds appropriate in the public interest and for the protection  
29 of investors.

30 (g) All broker-dealers and investment advisers registered

1 hereunder shall display copies of their currently effective  
2 registration certificates, bearing the seal of the commission,  
3 prominently in each place of business within this State. Each  
4 such certificate shall contain the names of such persons as the  
5 commission shall by rule provide.

6 Section 305. Denial, Suspension and Revocation of  
7 Registration.--(a) The commission may, by order, deny, suspend,  
8 or revoke any registration or may censure any registrant if it  
9 finds that such order is in the public interest and that such  
10 registrant or applicant, or in the case of any broker-dealer or  
11 investment adviser, any affiliate thereof, whether prior or  
12 subsequent to becoming associated with such person:

13 (i) Has, in any application for registration or in any  
14 report required to be filed with the commission under this act,  
15 or in any proceeding before the commission, wilfully made or  
16 caused to be made any statement which was at the time and in the  
17 light of the circumstances under which it was made false or  
18 misleading with respect to any material fact, or has wilfully  
19 omitted to state in any such application, report or proceeding,  
20 any material fact which is required to be stated therein or  
21 necessary in order to make the statements made, in the light of  
22 the circumstances under which they are made, not misleading, or  
23 has wilfully failed to amend or supplement such an application,  
24 report or statement in a timely manner in accordance with rules  
25 which may be adopted by the commission; or

26 (ii) Has, within ten years of the date of the commission's  
27 action, been either (A) convicted of a felony or misdemeanor, or  
28 (B) held liable in a civil action by final judgment of a court  
29 based upon conduct showing moral turpitude, and the commission  
30 finds that any such felony, misdemeanor or civil action (I)

1 involved the purchase or sale of any security, or any other  
2 aspect of the securities business, (II) arose out of the conduct  
3 of the business of a broker-dealer, investment adviser or issuer  
4 with respect to a security or transaction not exempt under  
5 section 202 or 203, (III) involved embezzlement, fraudulent  
6 conversion or misappropriation of property, funds or securities,  
7 or (IV) involved the violation of section 1341, 1342 or 1343 of  
8 Title 18 of the United States Code; or

9 (iii) Is permanently or temporarily enjoined by any court of  
10 competent jurisdiction from engaging in or continuing any  
11 conduct or practice involving any aspect of the securities,  
12 banking or insurance business; or

13 (iv) Is subject to any currently effective order or order  
14 entered within the past five years of the Securities and  
15 Exchange Commission or the securities administrator of any other  
16 state denying registration to or revoking or suspending the  
17 registration of such person as a broker-dealer, agent or  
18 investment adviser or is subject to any currently effective  
19 order of any national securities association or national  
20 securities exchange (as defined in the Securities Exchange Act  
21 of 1934) suspending or expelling such person from membership in  
22 such association or exchange, or is the subject of a currently  
23 effective United States Postal Service fraud order; but the  
24 commission may not institute a revocation or suspension  
25 proceeding under this subsection on the basis of an order under  
26 another state law unless the order was based on facts which  
27 would currently constitute grounds for an order under this  
28 section; or

29 (v) Has wilfully violated any provision of the Securities  
30 Act of 1933, the Securities Exchange Act of 1934, the Trust

1 Indenture Act of 1939, the Investment Advisers Act of 1940, the  
2 Investment Company Act of 1940 or this act, or any predecessor  
3 law, or of any rule or regulation under any of such statutes; or

4 (vi) Has wilfully aided, abetted, counseled, commanded,  
5 induced, or procured the violation by any other person of any of  
6 the statutes or rules or regulations referred to in subsection  
7 (v); or

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

19 (viii) Is the subject of a currently effective order of the  
20 commission denying, suspending or revoking his registration in  
21 any other capacity under this act; or

22 (ix) Has engaged in dishonest or unethical practices in the  
23 securities business or has taken unfair advantage of a customer;  
24 or

25 (x) Is insolvent, either in the sense that his liabilities  
26 exceed his assets or in the sense that he cannot meet his  
27 obligations as they mature, or is in such financial condition  
28 that he cannot continue in business with safety to his  
29 customers, or has not sufficient financial responsibility to  
30 carry out the obligations incident to his operations; or



1 (xi) Is not qualified on the basis of such factors as  
2 training, experience and knowledge of the securities business;  
3 or

4 (xii) Is selling or has sold, or is offering or has offered  
5 for sale, in this State securities through any unlicensed agent  
6 or for any broker-dealer or issuer with knowledge that such  
7 broker-dealer or issuer had not or has not complied with this  
8 act; or

9 (xiii) Has made any material misrepresentation to or  
10 withheld or concealed from or omitted to state to the commission  
11 or any of its representatives any material fact necessary in  
12 order to make the statements made, in the light of the  
13 circumstances under which they are made, not misleading, or has  
14 refused to furnish information reasonably requested by the  
15 commission.

16 (b) The enumeration of the causes stated in subsection (a)  
17 shall not be exclusive, and the commission may deny, suspend or  
18 revoke any registration or censure any registrant or applicant  
19 for any cause, whether similar to or different from these  
20 causes, when necessary or appropriate in the public interest or  
21 for the protection of investors.

22 (c) The commission may not institute a suspension or  
23 revocation proceeding on the basis of a fact or transaction  
24 known to it when the registration became effective unless the  
25 proceeding is instituted within thirty days after such effective  
26 date.

27 (d) The commission may by order summarily deny, postpone or  
28 suspend an application for registration pending final  
29 determination of any proceeding under this section. Upon the  
30 entry of the order, the commission shall promptly notify the

1 applicant or registrant, as well as the employer or prospective  
2 employer if the applicant or registrant is an agent, that it has  
3 been entered and of the reasons therefor and that within fifteen  
4 days after the receipt of a written request the matter will be  
5 set down for hearing. If no hearing is requested and none is  
6 ordered by the commission, the order will remain in effect until  
7 it is modified or vacated by the commission. If a hearing is  
8 requested or ordered, the commission, after notice of and  
9 opportunity for hearing, may modify or vacate the order or  
10 extend it until final determination.

11 (e) If the commission finds that any registrant or applicant  
12 is no longer in existence or has ceased to do business as a  
13 broker-dealer, agent or investment adviser, or is subject to an  
14 adjudication of mental incompetence or to the control of a  
15 committee, conservator or guardian, or cannot be located after  
16 reasonable search, the commission may by order revoke the  
17 registration or deny the application.

18 (f) Withdrawal from the status of a registered broker-  
19 dealer, agent or investment adviser becomes effective thirty  
20 days after receipt of an application to withdraw, or within such  
21 shorter period as the commission determines, unless a revocation  
22 or suspension proceeding is pending before the commission when  
23 the application is filed or a proceeding to revoke or suspend or  
24 to impose conditions upon the withdrawal is instituted before  
25 the commission within thirty days after the application is  
26 filed. If a proceeding is pending or instituted, withdrawal  
27 becomes effective at such time and upon such conditions as the  
28 commission by order determines. If no proceeding is pending or  
29 instituted and withdrawal automatically becomes effective, the  
30 commission may institute a revocation or suspension proceeding

1 under subsection (a) (ii) within one year after withdrawal  
2 became effective and enter a revocation or suspension order as  
3 of the last date on which the registration was in effect.

4 (g) No order may be entered under this section except under  
5 subsection (d) without appropriate prior notice to the applicant  
6 or registrant as well as the employer or prospective employer if  
7 the applicant or registrant is an agent, opportunity for hearing  
8 and written findings of fact and conclusions of law. In cases of  
9 denial orders, such findings and conclusions shall be provided  
10 only if requested by the applicant.

11 Section 306. Prohibited Employment.--(a) It is unlawful for  
12 any person, as to whom an order suspending or revoking his  
13 registration is in effect, willfully to become or to be employed  
14 in any capacity by any broker-dealer or investment adviser or in  
15 the position of agent for an issuer without the consent of the  
16 commission; and it is unlawful for any broker-dealer, investment  
17 adviser or issuer (when such employment is in connection with a  
18 security or transaction not exempted under section 202 or 203)  
19 to permit such a person to become or to remain a person employed  
20 by him without the consent of the commission if such broker-  
21 dealer, investment adviser or issuer knew, or in the exercise of  
22 reasonable care should have known, of such order.

23 (b) No issuer (except for a broker-dealer registered  
24 hereunder) shall employ any person as an agent hereunder if such  
25 person has at any time within the twelve previous months  
26 participated in this State as an agent, officer or director of  
27 an issuer in the sale of securities of that issuer, which  
28 securities were registered under section 205 or 206.

29 PART IV

30 FRAUDULENT AND PROHIBITED PRACTICES

1 Section 401. Sales and Purchases.--It is unlawful for any  
2 person, in connection with the offer, sale or purchase of any  
3 security in this State, directly or indirectly:

4 (a) To employ any device, scheme or artifice to defraud;

5 (b) To make any untrue statement of a material fact or to  
6 omit to state a material fact necessary in order to make the  
7 statements made, in the light of the circumstances under which  
8 they are made, not misleading; or

9 (c) To engage in any act, practice or course of business  
10 which operates or would operate as a fraud or deceit upon any  
11 person.

12 Section 402. Market Manipulation.--It is unlawful for any  
13 person, directly or indirectly, in this State:

14 (a) For the purpose of creating a false or misleading  
15 appearance of active trading in a security or a false or  
16 misleading appearance with respect to the market for a security:

17 (i) to effect any transaction in the security which involves  
18 no change in the beneficial ownership thereof; or

19 (ii) to enter any order or orders for the purchase or sale  
20 of the security with the knowledge that an order or orders of  
21 substantially the same size, at substantially the same time, and  
22 at substantially the same price for the sale or purchase of the  
23 security, have been or will be entered by or for the same or  
24 affiliated persons;

25 (b) To effect, alone or with one or more other persons, a  
26 series of transactions in any security creating actual or  
27 apparent active trading in the security or raising or depressing  
28 the price of the security for the purpose of inducing the  
29 purchase or sale of the security by others; or

30 (c) To induce the purchase or sale of any security by the

1 circulation or dissemination of information to the effect that  
2 the price of the security will or is likely to rise or fall  
3 because of market operations of any one or more persons  
4 conducted for the purpose of raising or depressing the price of  
5 the security, if he is selling or offering to sell or purchasing  
6 or offering to purchase the security or is receiving a  
7 consideration, directly or indirectly, from any such person.

8 Section 403. Prohibited Transactions; Broker-dealers and  
9 Agents.--(a) No broker-dealer or agent shall effect any  
10 transaction in, or induce or attempt to induce the purchase or  
11 sale of, any security in this State by means of any  
12 manipulative, deceptive or other fraudulent scheme, device, or  
13 contrivance. The commission may, by rule, define such schemes,  
14 devices or contrivances as are manipulative, deceptive, or  
15 otherwise fraudulent.

16 (b) No broker-dealer or agent shall effect any transaction  
17 in, or induce or attempt to induce the purchase or sale of any  
18 security in this State in connection with which such broker-  
19 dealer or agent engages in any fraudulent, deceptive or  
20 manipulative act or practice or makes any fictitious quotation.  
21 The commission may, by rule, define and prescribe means  
22 reasonably designed to prevent such acts and practices as are  
23 fraudulent, deceptive, or manipulative and such quotations as  
24 are fictitious.

25 (c) No broker-dealer or agent shall effect any transaction  
26 in, or induce or attempt to induce the purchase or sale of, any  
27 security in this State in contravention of such rules as the  
28 commission may prescribe as necessary or appropriate in the  
29 public interest or for the protection of investors to provide  
30 safeguards with respect to the financial responsibility of

1 broker-dealers.

2 (d) No broker-dealer or agent shall effect or attempt to  
3 effect in this State, in contravention of such rules as the  
4 commission may prescribe as necessary or appropriate in the  
5 public interest or for the protection of investors, (i) any  
6 transaction in connection with any security whereby any party to  
7 such transaction acquires any put, call, straddle, or other  
8 option or privilege of buying or selling the security, or (ii)  
9 any transaction in connection with any security with relation to  
10 which he has, directly or indirectly, any interest in any such  
11 put, call, straddle, option, or privilege, or (iii) any  
12 transaction in any security for the account of any person who he  
13 has reason to believe has, and who actually has, directly or  
14 indirectly, any interest in any such put, call, straddle,  
15 option, or privilege with relation to such security.

16 (e) No broker-dealer registered under this act shall effect  
17 any transaction in or induce or attempt to induce the purchase  
18 or sale of any security in this State in contravention of such  
19 rules as the commission may prescribe designed to promote just  
20 and equitable principles of trade, to provide safeguards against  
21 unreasonable profits or unreasonable rates of commissions or  
22 other charges, and in general to protect investors and the  
23 public interest, and to remove impediments to and protect the  
24 mechanism of a free and open market.

25 Section 404. Prohibited Activities; Investment Advisers.--It  
26 is unlawful for any investment adviser, directly or indirectly,  
27 in this State:

28 (a) To employ any device, scheme, or artifice to defraud any  
29 client or prospective client.

30 (b) To engage in any transaction, practice, or course of

1 business which operates or would operate as a fraud or deceit  
2 upon any client or prospective client.

3 (c) Acting as principal for his own account, knowingly to  
4 sell any security to or purchase any security from a client for  
5 whom he is acting as investment adviser, or, acting as broker  
6 for a person other than such client, knowingly to effect any  
7 sale or purchase of any security for the account of such client,  
8 without disclosing to such client in writing before the  
9 completion of the transaction the capacity in which he is acting  
10 and obtaining the written consent of the client to such  
11 transaction.

12 (d) To engage in any act, practice, or course of business  
13 which is fraudulent, deceptive, or manipulative. The commission  
14 may, by rule, define and prescribe means reasonably designed to  
15 prevent such acts, practices, and courses of business as are  
16 fraudulent, deceptive, or manipulative.

17 (e) To represent that he is an investment counsel or to use  
18 the name "investment counsel" as descriptive of his business  
19 unless his principal business consists of acting as investment  
20 adviser and a substantial part of his business consists of  
21 rendering investment advisory services on the basis of the  
22 individual needs of his clients.

23 (f) To take and have custody of any securities or funds of  
24 any client if he fails to meet such requirements therefor as may  
25 be prescribed by the commission by rule.

26 Section 405. Contract Requirements.--(a) No investment  
27 adviser shall in this State enter into, extend or renew any  
28 investment advisory contract entered into, extended or renewed  
29 on or after the effective date of this act, if such contract:

30 (i) Provides for compensation to the investment adviser on

1 the basis of a share of capital gains upon or capital  
2 appreciation of the funds or any portion of the funds of the  
3 client, except (A) where the investment adviser has not  
4 registered and is not required to register under this act, (B)  
5 where such contract is for the rendering of investment advisory  
6 services to an institutional investor, and (C) as may be  
7 otherwise permitted by rule of the commission;

8 (ii) Fails to provide, in writing, that no assignment of  
9 such contract shall be made by the investment adviser without  
10 the consent of the other party to the contract; or

11 (iii) Fails to provide, in writing, that the investment  
12 adviser, if a partnership, will notify the other party to the  
13 contract of any change in the membership of such partnership  
14 within a reasonable time after such change.

15 (b) As used in this section, "investment advisory contract"  
16 means any contract or agreement whereby a person agrees to act  
17 as investment adviser or to manage any investment or trading  
18 account for a person other than an investment company. Clause  
19 (i) of subsection (a) does not prohibit an investment advisory  
20 contract which provides for compensation based upon the total  
21 value of a fund averaged over a definite period, or as of  
22 definite dates, or taken as of a definite date. "Assignment," as  
23 used in clause (ii) of subsection (a), includes any direct or  
24 indirect transfer or hypothecation of an investment advisory  
25 contract by the assignor or of a controlling block of the  
26 assignor's outstanding voting securities by a security holder of  
27 the assignor; but if the investment adviser is a partnership, no  
28 assignment of an investment advisory contract is considered to  
29 result from the death or withdrawal of a minority of the members  
30 of the investment adviser having only a minority interest in the



1 business of the investment adviser, or from the admission to the  
2 investment adviser of one or more members who, after admission,  
3 will be only a minority of the members and will have only a  
4 minority interest in the business.

5 Section 406. Inside Information.--It is unlawful for an  
6 issuer or any person who is an officer, director, or affiliate  
7 of an issuer or any other person whose relationship to the  
8 issuer gives him access, directly or indirectly, to material  
9 information about the issuer not generally available to the  
10 public, to purchase or sell any security of the issuer in this  
11 State at a time when he knows material information about the  
12 issuer gained from such relationship, which information (a)  
13 would significantly affect the market price of that security;  
14 (b) is not generally available to the public; and (c) he knows  
15 is not intended to be so available, unless he has reason to  
16 believe that the person selling to or buying from him is also in  
17 possession of the information.

18 Section 407. Misleading Filings; Misrepresentations of  
19 Commission Approval.--(a) It is unlawful for any person to make  
20 or cause to be made, in any document filed with the commission  
21 or in any proceeding under this act, any statement which is, at  
22 the time and in the light of the circumstances under which it is  
23 made, false or misleading in any material respect or, in  
24 connection with such statement, to omit to state a material fact  
25 necessary in order to make the statements made, in the light of  
26 the circumstances under which they are made, not misleading.

27 (b) It is unlawful for any person registered as a broker-  
28 dealer, agent or investment adviser under this act to represent  
29 or imply in any manner whatsoever that such person has been  
30 sponsored, recommended, or approved or that his abilities or

1 qualifications have in any respect been passed upon by the  
2 commission. Nothing in this section prohibits a statement (other  
3 than in a paid advertisement) that a person is registered under  
4 this act, if such statement is true in fact and if the effect of  
5 such registration is not misrepresented.

6 (c) (i) Neither the fact that an application for  
7 registration of securities under this act has been filed nor the  
8 fact that such application becomes effective constitutes a  
9 finding by the commission that any document filed under this act  
10 is true, complete or not misleading. Neither any such fact nor  
11 the fact that an exemption is available for a security or a  
12 transaction means that the commission has passed upon the merits  
13 or qualifications of, or recommended or given approval to any  
14 person, security or transaction.

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

18 PART V

19 ENFORCEMENT

20 Section 501. Civil Liabilities.--(a) Any person who: (i)  
21 offers or sells a security in violation of section 301 or 407  
22 (c) or any rule relating thereto, or any order under this act of  
23 which he has notice; or (ii) offers or sells a security in  
24 violation of sections 401, 403, 404 or otherwise by means of any  
25 untrue statement of a material fact or any omission to state a  
26 material fact necessary in order to make the statements made, in  
27 the light of the circumstances under which they are made, not  
28 misleading, the purchaser not knowing of the untruth or  
29 omission, and who does not sustain the burden of proof that he  
30 did not know and in the exercise of reasonable care could not

1 have known of the untruth or omission, shall be liable to the  
2 person purchasing the security from him, who may sue either at  
3 law or in equity to recover the consideration paid for the  
4 security, together with interest at the legal rate from the date  
5 of payment, less the amount of any income received on the  
6 security, upon the tender of the security, or for damages if he  
7 no longer owns the security. Damages are the amount that would  
8 be recoverable upon a tender less the value of the security when  
9 the purchaser disposed of it, plus interest at the legal rate  
10 from the date of disposition. Tender shall require only notice  
11 of willingness to exchange the security for the amount  
12 specified. Any notice may be given by service as in civil  
13 actions or by certified mail addressed to the last known address  
14 of the person liable.

15 (b) Any person who purchases a security in violation of  
16 sections 401, 403, 404 or otherwise by means of any untrue  
17 statement of a material fact or any omission to state a material  
18 fact necessary in order to make the statements made, in light of  
19 the circumstances under which they are made, not misleading,  
20 shall be liable to the person selling the security to him, who  
21 may sue either at law or in equity to recover the security, plus  
22 any income received by the purchaser thereon, upon tender of the  
23 consideration received, or for damages if the purchaser no  
24 longer owns the security. Damages are the excess of the value of  
25 the security when the purchaser disposed of it, plus interest at  
26 the legal rate from the date of disposition, over the  
27 consideration paid for the security. Tender requires only notice  
28 of willingness to pay the amount specified in exchange for the  
29 security. Any notice may be given by service as in civil actions  
30 or by certified mail to the last known address of the person

1 liable.

2 (c) Any person who wilfully participates in any act or  
3 transaction in violation of section 402 shall be liable to any  
4 other person who purchases or sells any security at a price  
5 which was affected by the act or transaction for the damages  
6 sustained as a result of such act or transaction. Damages shall  
7 be the difference between the price at which the other person  
8 purchased or sold securities and the market value which the  
9 securities would have had at the time of his purchase or sale in  
10 the absence of the act or transaction, plus interest at the  
11 legal rate.

12 (d) Any investment adviser who violates section 405 shall be  
13 liable to the other party to the investment advisory contract  
14 for all fees paid under such contract to the investment adviser,  
15 less any profits earned by such party through transactions  
16 effected as a result of advice given under the contract, plus  
17 interest at the legal rate. In addition, either party may, at  
18 any time, avoid the terms of the contract.

19 (e) Any person who violates section 406 shall be liable to  
20 the person who purchases a security from him or sells a security  
21 to him, for damages equal to the difference between the price at  
22 which such security was purchased or sold and the market value  
23 which such security would have had at the time of the purchase  
24 or sale if the information known to the defendant had been  
25 publicly disseminated prior to that time and a reasonable time  
26 had elapsed for the market to absorb the information, plus  
27 interest at the legal rate, unless the defendant proves that the  
28 plaintiff knew the information or that the plaintiff would have  
29 purchased or sold at the same price even if the information had  
30 been revealed to him.

1 Section 502. Violation of Registration Requirements.--Any  
2 person who violates section 201 or any condition imposed under  
3 section 206 or 207 shall be liable to the person purchasing the  
4 security from him who may sue either at law or in equity to  
5 recover the consideration paid for the security, together with  
6 interest at the legal rate from the date of payment, less the  
7 amount of any income received on the security, upon the tender  
8 of the security, or for damages if he no longer owns the  
9 security. Damages shall be the amount that would be recoverable  
10 upon a tender less the value of the security when the purchaser  
11 disposed of it and interest at the legal rate from the date of  
12 disposition. Any person on whose behalf an offering is made and  
13 any underwriter of the offering, whether on a best efforts or a  
14 firm commitment basis, shall be jointly and severally liable  
15 under this section, but in no event shall any underwriter  
16 (unless such underwriter shall have knowingly received from the  
17 issuer for acting as an underwriter some benefit, directly or  
18 indirectly, in which all other underwriters similarly situated  
19 did not share in proportion to their respective interest in the  
20 underwriting) be liable in any suit or suits authorized under  
21 this section for damages in excess of the total price at which  
22 the securities underwritten by him and distributed to the public  
23 were offered to the public. Tender requires only notice of  
24 willingness to exchange the security for the amount specified.  
25 Any notice may be given by service as in civil actions or by  
26 certified mail addressed to the last known address of the person  
27 liable. No person shall be liable under this section if the sale  
28 of the security is registered prior to the payment or receipt of  
29 any part of the consideration for the security sold, even though  
30 an offer to sell or a contract of sale may have been made or

1 entered into without registration.

2 Section 503. Joint and Several Liability; Contribution;  
3 Corporation's Right of Indemnification.--(a) Every affiliate of  
4 a person liable under section 501 or 502, every partner,  
5 principal executive officer or director of such person, every  
6 person occupying a similar status or performing similar  
7 functions, every employe of such person who materially aids in  
8 the act or transaction constituting the violation, and every  
9 broker-dealer or agent who materially aids in the act or  
10 transaction constituting the violation, are also liable jointly  
11 and severally with and to the same extent as such person, unless  
12 the person liable hereunder proves that he did not know, and in  
13 the exercise of reasonable care could not have known, of the  
14 existence of the facts by reason of which the liability is  
15 alleged to exist. There is contribution as in cases of contract  
16 among the several persons so liable.

17 (b) A corporation which is liable under this act shall have  
18 a right of indemnification against any of its affiliates whose  
19 wilful violation of any provision of this act gave rise to such  
20 liability. All persons liable under this act shall have a right  
21 of contribution against all other persons similarly liable,  
22 based upon each person's proportionate share of the total  
23 liability, except that no person whose wilful violation of any  
24 provision of this act has given rise to any liability shall have  
25 any right of contribution against any other person guilty merely  
26 of a negligent violation, and except that no affiliate whose  
27 wilful violation has given rise to any liability shall have any  
28 right of contribution against the corporation to which he  
29 sustains that relationship.

30 Section 504. Time Limitations on Rights of Action.--(a) No

1 action shall be maintained to enforce any liability created  
2 under section 501 (or section 503 in so far as it relates to  
3 that section) unless brought before the expiration of six years  
4 after the act or transaction constituting the violation or the  
5 expiration of one year after the plaintiff receives actual  
6 notice or upon the exercise of reasonable diligence should have  
7 known of the facts constituting the violation and of the  
8 remedies provided for herein, whichever shall first expire.

9 (b) No action shall be maintained to enforce any liability  
10 created under section 502 (or section 503 in so far as it  
11 relates to that section) unless brought before the expiration of  
12 two years after the violation upon which it is based or the  
13 expiration of one year after the plaintiff receives actual  
14 notice or upon the exercise of reasonable diligence should have  
15 known of the facts constituting such violation and of the  
16 remedies provided for herein, whichever shall first expire.

17 (c) No action shall be maintained to enforce any right of  
18 indemnification or contribution created by section 504 unless  
19 brought before the expiration of one year after final judgment  
20 based upon the liability for which the right of indemnification  
21 or contribution exists.

22 (d) No purchaser may commence an action under section 501,  
23 502 or 503 if, before suit is commenced, the purchaser has  
24 received a written offer: (i) stating the respect in which  
25 liability under such section may have arisen and fairly advising  
26 the purchaser of his rights; offering to repurchase the security  
27 for cash, payable on delivery of the security, equal to the  
28 consideration paid, together with interest at the legal rate  
29 from the date of payment, less the amount of any income received  
30 thereon or, if the purchaser no longer owns the security,

1 offering to pay the purchaser upon acceptance of the offer an  
2 amount in cash equal to the damages computed in accordance with  
3 section 501 (a); and (ii) stating that the offer may be accepted  
4 by the purchaser at any time within a specified period of not  
5 less than thirty days after the date of receipt thereof, or such  
6 shorter period as the commission may by rule prescribe; and the  
7 purchaser has failed to accept such offer in writing within the  
8 specified period.

9 (e) No seller may commence an action under section 501, 502  
10 or 503 if, before suit is commenced, the seller has received a  
11 written offer: (i) stating the respect in which liability under  
12 such section may have arisen and fairly advising the seller of  
13 his rights; (ii) offering to return the security plus the amount  
14 of any income received thereon upon payment of the consideration  
15 received, or, if the purchaser no longer owns the security,  
16 offering to pay the seller upon acceptance of the offer an  
17 amount in cash equal to the damages computed in accordance with  
18 section 501 (b); and (iii) providing that the offer may be  
19 accepted by the seller at any time within a specified period of  
20 not less than thirty days after the date of receipt thereof; and  
21 the seller has failed to accept the offer in writing within the  
22 specified period.

23 (f) Offers shall be in the form and contain the information  
24 the commission by rule prescribes. Every offer under this  
25 subsection shall be delivered to the offeree personally or sent  
26 by certified mail addressed to him at his last known address. If  
27 an offer is not performed in accordance with its terms, suit by  
28 the offeree under section 501, 502 or 503, shall be permitted  
29 without regard to this section 504.

30 Section 505. Death of Plaintiff or Defendant.--Every cause



1 of action under this act survives the death of any person who  
2 might have been a plaintiff or defendant.

3 Section 506. Limitation of Liability.--Except as explicitly  
4 provided in this act, no civil liability in favor of any private  
5 party shall arise against any person by implication from or as a  
6 result of the violation of any provision of this act or any rule  
7 or order hereunder. Nothing in this act shall limit any  
8 liability which might exist by virtue of any other statute or  
9 under common law if this act were not in effect.

10 Section 507. No Waiver of Right of Action.--Any condition,  
11 stipulation or provision binding any person acquiring any  
12 security to waive compliance with any provision of this act or  
13 any rule or order hereunder is void.

14 Section 508. Limitation on Plaintiffs.--No person may base  
15 any suit on any contract in violation of this act or any rule or  
16 order hereunder if he has made or engaged in the performance of  
17 such contract or has acquired any purported right under any such  
18 contract with knowledge of the facts by reason of which its  
19 making or performance was in violation.

20 Section 509. Right of Commission to Bring Action; Class  
21 Actions.--(a) Whenever it appears to the commission that any  
22 person has engaged or is about to engage in any act or practice  
23 constituting a violation of any provision of this act or any  
24 rule or order hereunder, it may in its discretion bring an  
25 action in the name of the people of the Commonwealth of  
26 Pennsylvania in the Commonwealth Court or in any of the several  
27 courts of common pleas of Pennsylvania to enjoin the acts or  
28 practices or to enforce compliance with this act or any rule or  
29 order hereunder. Upon a proper showing, a permanent or  
30 preliminary injunction, restraining order, or writ of mandate

1 shall be granted, and a receiver or conservator may be appointed  
2 for the defendant or the defendant's assets. The court may not  
3 require the commission to post a bond.

4 (b) The commission may, with the approval of the Attorney  
5 General, include in any action authorized by subsection (a) a  
6 claim for restitution or damages under section 501, 502 or 503  
7 on behalf of the persons injured by the act or practice  
8 constituting the subject matter of the action, and the court  
9 shall have jurisdiction to award appropriate relief to such  
10 persons, if the court finds that enforcement of the rights of  
11 such persons by private civil action, whether by class action or  
12 otherwise, would be so burdensome or expensive as to be  
13 impractical.

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

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

21 (ii) May, for a reasonable time not exceeding thirty days,  
22 take possession of the books, records, accounts and other papers  
23 pertaining to the business of any broker-dealer or investment  
24 adviser or pertaining to the activities of any issuer in  
25 connection with any security or transaction, whether or not  
26 exempted under section 202 or 203 and the use of any proceeds  
27 obtained therefrom, and place a keeper in exclusive charge of  
28 them in the place where they are usually kept. During such  
29 possession no person shall remove or attempt to remove any of  
30 the books, records, accounts, or other papers except pursuant to

1 a court order or with the consent of the commission; but the  
2 directors, officers, partners, and employes of the broker-  
3 dealer, investment adviser or issuer may examine them, and  
4 employes shall be permitted to make entries therein reflecting  
5 current transactions.

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

10 (iv) May publish information concerning any violation of  
11 this act or any rule or order hereunder or concerning  
12 securities, or practices in the sale thereof, which appear or  
13 tend to be unfair, inequitable or fraudulent, but only where it  
14 deems such publication to be in the public interest and for the  
15 protection of investors; and

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

18 (b) For the purpose of any investigation, hearing or  
19 proceeding under this act, the commission or any officer  
20 designated by it may administer oaths and affirmations, subpoena  
21 witnesses, compel their attendance, take evidence and require  
22 the production of any books, papers, correspondence, memoranda,  
23 agreements or other documents or records which the commission  
24 deems relevant or material to the inquiry.

25 (c) In case of contumacy by, or refusal to obey a subpoena  
26 issued to, any person, the Commonwealth Court or any of the  
27 several courts of common pleas of Pennsylvania, upon application  
28 by the commission, may issue to the person an order requiring  
29 him to appear before the commission, or the officer designated  
30 by it, there to produce documentary evidence, if so ordered, or

1 to give evidence touching the matter under investigation or in  
2 question. Failure to obey the order of the court may be punished  
3 by the court as a contempt.

4 (d) (i) If, in a proceeding before the commission, any  
5 person shall refuse to testify or to produce evidence of any  
6 other kind on the ground that his testimony or evidence may tend  
7 to incriminate him, that person may be ordered to give such  
8 testimony. The order to testify shall not be given except upon  
9 an order of court after a hearing in which the Attorney General  
10 has established a need for the grant of immunity, as hereinafter  
11 provided;

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

19 (iii) No such witness shall be prosecuted or subjected to  
20 any penalty or forfeiture, nor shall there be any liability on  
21 the part of and no cause of action of any nature shall arise  
22 against, any such witness for or on account of any transaction,  
23 matter or thing concerning which he is compelled, after having  
24 claimed his privilege against self-incrimination, to testify or  
25 produce evidence, nor shall testimony so compelled be used as  
26 evidence in any criminal proceeding against him in any court;

27 (iv) No person so ordered to testify or to produce evidence,  
28 shall be exempt from any punishment or forfeiture for perjury  
29 committed by him while so testifying. Such testimony shall be  
30 admissible against him in any criminal action or other

1 proceeding concerning such perjury;

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

8 Section 511. Criminal Penalties.--(a) Any person who  
9 wilfully violates any provision of this act, except section 407  
10 (a), or any rule under this act, or any order of which he has  
11 notice, or who violates section 407 (a) knowing or having  
12 reasonable cause to believe that the statement made was false or  
13 misleading in any material respect, may be fined not more than  
14 five thousand dollars (\$5,000) or imprisoned not more than five  
15 years, or both. Each of the acts specified shall constitute a  
16 separate offense and a prosecution or conviction for any one of  
17 such offenses shall not bar prosecution or conviction for any  
18 other offense. No indictment or information may be returned  
19 under this act more than six years after the alleged violation.

20 (b) Any person who wilfully employs, directly or indirectly,  
21 any device, scheme, or artifice to defraud in connection with  
22 the offer, purchase, or sale of any security or wilfully  
23 engages, directly or indirectly, in any act, practice, or course  
24 of business which operates or would operate as a fraud or deceit  
25 upon any person in connection with the offer, purchase, or sale  
26 of any security shall upon conviction be fined not more than  
27 five thousand dollars (\$5,000), or imprisoned for not more than  
28 five years, or both.

29 PART VI

30 ADMINISTRATION

1 Section 601. Administration.--(a) This act shall be  
2 administered by the commission, which shall consist of three  
3 commissioners appointed by the Governor with the advice and  
4 consent of the Senate. The commissioners shall hold office at  
5 the pleasure of the Governor and until their successors are duly  
6 appointed and qualified. A quorum of the commission shall be a  
7 majority of the commissioners then serving. Any action taken at  
8 a meeting at which a quorum of the commission is present shall  
9 be the lawful act of the commission for all purposes.

10 (b) The commission shall also employ a secretary, who shall  
11 certify to all actions of the commission and shall make and keep  
12 all files and records of proceedings before it.

13 (c) It is unlawful for the commission or any of its officers  
14 or employes to use for personal benefit any information which is  
15 filed with or obtained by the commission and which is not  
16 generally available to the public. Nothing in this act  
17 authorizes the commission or any of its officers or employes to  
18 disclose any confidential information except among themselves or  
19 to other securities administrators, regulatory authorities or  
20 governmental agencies, or when necessary or appropriate in a  
21 proceeding or investigation under this act or any other law of  
22 this State. No provision of this act either creates or derogates  
23 from any privilege which exists at common law or otherwise when  
24 documentary or other evidence is sought under a subpoena  
25 directed to the commission or any of its officers or employes.

26 (d) The principal office of the commission shall be in  
27 Harrisburg. It shall establish and maintain offices in such  
28 other towns or cities throughout the State as it may, from time  
29 to time, determine.

30 (e) The commission shall adopt a seal bearing the

1 inscription: "Pennsylvania Securities Commission." The seal  
2 shall be affixed to or imprinted on all orders or certificates  
3 issued by it and such other instruments as the commission  
4 directs. All courts shall take judicial notice of the seal.

5 Section 602. Fees.--(a) The commission shall charge and  
6 collect the fees fixed in this section and remit them to the  
7 General Fund.

8 (b) There shall be a minimum filing fee of one hundred  
9 dollars (\$100) for every registration statement filed under  
10 section 205 or 206 and for every exemption under section 203  
11 (i). There shall be an additional fee of one-tenth of one per  
12 cent of the maximum aggregate offering price at which such  
13 securities are to be offered in this State, and the maximum  
14 filing fee shall in no case be more than one thousand dollars  
15 (\$1,000). A fee of fifty dollars (\$50) shall be charged for  
16 filing a post-effective amendment other than a price amendment  
17 under section 205 (d) to an application to register securities  
18 or to an application for exemption under section 203 (i). In  
19 addition, there shall be paid any fee which would have been  
20 required to be paid with the original application if the matters  
21 stated in the amendment had been contained in the original  
22 application. If the registration statement or exemption under  
23 section 203 (i) relates to securities issued by an open-end or  
24 closed-end investment company, face-amount certificate company  
25 or unit investment trust, as such terms are defined in the  
26 Investment Company Act of 1940, the additional fee shall be one-  
27 twentieth of one per cent of the maximum aggregate offering  
28 price at which the securities are to be offered in this State,  
29 and there shall be no maximum fee. When a registration statement  
30 is withdrawn before the effective date or a pre-effective stop

1 order is entered under section 208, the minimum fee shall be  
2 retained.

3 (c) The fee for filing an application for exemption from  
4 registration under section 203 (n) (ii) shall be fifty dollars  
5 (\$50). There shall be no filing fee for an application under  
6 section 203 (n) (i).

7 (d) Every applicant for an initial or renewal license under  
8 section 301 shall pay a filing fee of two hundred fifty dollars  
9 (\$250) in the case of a broker-dealer, fifty dollars (\$50) in  
10 the case of an agent and two hundred dollars (\$200) in the case  
11 of an investment adviser. The term of an agent's registration  
12 hereunder shall be concurrent with that of his employer, if a  
13 broker-dealer. When an agent changes employers, there shall be a  
14 ten dollar (\$10) fee; no additional registration fee shall be  
15 paid unless the term of registration of his new employer (if a  
16 broker-dealer) expires after the term of his present  
17 registration, in which case an additional fee, prorated to allow  
18 for the time of expiration of his new employer's registration,  
19 shall be paid. A broker-dealer maintaining any office within  
20 this State shall pay an additional filing fee of eighty dollars  
21 (\$80) for each office. When an application is denied or  
22 withdrawn or a registration revoked, the filing fee shall be  
23 retained.

24 (e) The fee for the commission's acting as an escrow holder  
25 for securities under section 207 is fifty dollars (\$50). In  
26 addition, a fee of two dollars fifty cents (\$2.50) shall be paid  
27 for the deposit with the commission of each new certificate or  
28 other document resulting from a transfer in escrow.

29 (f) For the purpose of determining the fees fixed in  
30 subsection (b):



1 (i) The value of the securities shall be the price at which  
2 the issuer or seller proposes to sell the securities, or the  
3 value, as alleged in the application, or the actual value, as  
4 determined by the commission, of the consideration (if other  
5 than money) to be received in exchange therefor, or of the  
6 securities when sold, whichever is greater.

7 (ii) Interim or voting trust certificates shall have a value  
8 equal to the aggregate value of the securities to be represented  
9 by the interim or voting trust certificates.

10 (iii) The value of a warrant or right to purchase or  
11 subscribe to another security of the same or another issuer  
12 shall be an amount equal to the consideration to be paid for  
13 such warrant or right plus an amount equal to the consideration  
14 to be paid upon purchase of the additional securities, provided  
15 that if such latter amount is not determinable at the time of  
16 qualification, such amount shall be the then value of such  
17 additional securities as determined by the commission.

18 (iv) The maximum aggregate offering price for securities of  
19 companies registered under the Investment Company Act of 1940  
20 shall be determined by multiplying the number of shares or  
21 interests offered by the average between the high and low  
22 "market price" for such securities on the fifteenth business day  
23 prior to the effective date of registration (or the applicable  
24 exemption) hereunder. The market prices shall be the amounts  
25 quoted on the securities exchange or quotation service on which  
26 such securities are listed. If the market prices for such  
27 securities cannot be determined in accordance with the  
28 foregoing, then the market price shall be the average of the  
29 high "Bid" and low "Asked" prices for such securities on such  
30 date, as quoted by any three market makers therefor or such

1 other persons as the commission may, by order, specify. If there  
2 is no market for such securities, then the fee provided herein  
3 shall be based on the initial offering price for such  
4 securities.

5 (g) The fee for any examination, audit, or investigation is  
6 the actual amount of all salary costs and other compensation  
7 paid to the persons making the examination, audit, or  
8 investigation, plus the actual amount of expenses reasonably  
9 incurred in the performance of the work. Such fee shall only be  
10 payable by a registrant, applicant for registration, issuer or  
11 other person in connection with an investigation by the  
12 commission where it has reason to believe that such person has  
13 violated, or is about to violate, the provisions of this act.

14 (h) The commission may fix by rule a reasonable charge for  
15 any publication issued under its authority.

16 (i) The commission may fix by rule reasonable charges for  
17 administering examinations required for registration under this  
18 act by section 301.

19 Section 603. Administrative Files.--(a) A document is filed  
20 when it is received by the commission.

21 (b) The commission shall keep a register of all registrants  
22 and registration statements which are or have ever been  
23 effective under this act and predecessor laws and all denial,  
24 suspension or revocation orders which have been entered under  
25 this act and predecessor laws. The register shall be open for  
26 public inspection except with respect to summary suspensions  
27 under sections 208 (d) and 305 (d).

28 (c) The information contained in or filed with any  
29 registration statement, application or report shall be made  
30 available to the public in accordance with rules prescribed by

1 the commission; provided that, upon proper showing of the  
2 registrant or issuer, the commission may treat certain filings  
3 as confidential. The commission may publish any information  
4 filed with or obtained by it if, in the judgment of the  
5 commission, such action is in the public interest.

6 (d) The commission upon request shall furnish to any person,  
7 at a reasonable charge, photostatic or other copies, certified  
8 under seal of the commission if certification is requested, of  
9 any entry in the register or any order or other document on file  
10 in its office.

11 Section 604. Interpretive Opinions of Commission.--The  
12 commission in its discretion may honor requests from interested  
13 persons for interpretive opinions.

14 Section 605. Commissioners and Commission Employees;  
15 Relationship with Licensed Persons or Qualified Organizations.--

16 (a) Neither the commissioners nor any employe, clerk or servant  
17 of the commission, during their respective terms of employment,  
18 shall be interested as a director, officer, shareholder, member,  
19 partner, agent, or employe of any person who, during the period  
20 of such official's or employe's association with the commission,  
21 (i) was licensed or applied for license as a broker-dealer,  
22 agent or investment adviser under this act, or (ii) applied for  
23 or secured the registration of securities under this act.

24 (b) Nothing contained in subsection (a) shall prohibit the  
25 holding or purchasing of any securities by any employe, clerk,  
26 or servant in accordance with such rules as the commission shall  
27 adopt for the purpose of protecting the public interest and  
28 avoiding conflicts of interest with respect to such employes,  
29 clerks and servant.

30 (c) Nothing contained in subsection (a) shall prohibit the

1 holding or purchasing of any securities by any commissioner if;  
2 either (i) the commissioner, together with his spouse, minor  
3 children and parents or other relatives who are members of his  
4 household, owns less than one-tenth of one per cent of any class  
5 of outstanding securities of any issuer described in subsection  
6 (a) (ii); or (ii) such security is held or purchased through a  
7 management account or trust administered by a bank or trust  
8 company authorized to do business in this State which has sole  
9 investment discretion regarding the holding, purchase and sale  
10 of securities, and (A) the commissioner did not, directly or  
11 indirectly, advise, counsel, command or suggest the holding,  
12 purchase or sale of any such security or furnish any information  
13 relating to any such security to such bank or trust company, and  
14 (B) such account or trust does not at any time have more than  
15 ten per cent of its total assets invested in the securities of  
16 any one issuer or hold more than five per cent of the  
17 outstanding shares or units of any class of securities of any  
18 one issuer. Each commissioner shall report to the Governor not  
19 less often than quarterly all holdings, purchases, and sales of  
20 securities by him as authorized in this subsection, which  
21 reports shall be retained by the Governor's office as public  
22 documents.

23 Section 606. Miscellaneous Powers of Commission.--(a) The  
24 commission may, by rule or order, require any issuer of  
25 securities registered under this act or exempted from  
26 registration under section 203 (d), (q), or (s) to distribute  
27 specified financial information to its shareholders at least  
28 annually.

29 (b) If the commission has reason to believe that any sale of  
30 an unregistered security is unfair, inequitable or fraudulent,

1 it may, by order, prohibit further sales of such security in  
2 this State until it is registered under this act.

3 (c) If in its opinion the public interest and the protection  
4 of investors, so require, the commission may, by order,  
5 summarily suspend all trading in this State by broker-dealers  
6 and agents in any security for any period which it specifies. No  
7 broker-dealer or agent shall effect any transaction in, or  
8 induce or attempt to induce the purchase or sale of, any  
9 security in this State in which trading is so suspended, except  
10 in performance of a contract previously entered into. At any  
11 time after the issuance of an order under this subsection, any  
12 interested person may, in writing, request that the suspension  
13 of trading be vacated. Upon the receipt of a written request,  
14 the matter shall be set down for hearing with fifteen days after  
15 such receipt. After the hearing, the commission may order the  
16 suspension to be continued until modified or vacated by further  
17 order if it finds that trading in the security will be unfair or  
18 inequitable or will tend to work a fraud upon the purchasers or  
19 sellers of the security. Otherwise, it shall vacate the  
20 suspension of trading and no further order may be entered under  
21 this subsection with respect to the same security in the absence  
22 of changed circumstances justifying an order.

23 (d) Every domestic corporation, business, trust, limited  
24 partnership or other similar entity, and every such foreign  
25 company licensed to do business in this State, shall, within  
26 twenty days after receipt of written request from the  
27 commission, furnish it with a list of all or part of its  
28 stockholders, partners or other holders of ownership interests  
29 as the commission may request, showing the amount of stock or  
30 other ownership interest held by each, which list shall be duly

1 verified by the president or secretary of the corporation, or  
2 officer or managing agent of such entity, if not a corporation.

3 (e) No person shall publish in this State any advertisement  
4 concerning any security except in accordance with such rules as  
5 the commission may promulgate from time to time. No person shall  
6 publish any advertisement concerning any security in this State  
7 after the commission finds that the advertisement contains any  
8 statement that is false or misleading or omits to make any  
9 statement necessary in order to make the statements made, in the  
10 light of the circumstances under which they are made, not  
11 misleading and so notifies the person in writing. Such  
12 notification may be given summarily without notice of hearing.  
13 At any time after the issuance of a notification under this  
14 section, the person desiring to use the advertisement may  
15 request in writing that the order be rescinded. Upon the receipt  
16 of such a written request, the matter shall be set down for  
17 hearing to commence within thirty days after such receipt unless  
18 the person making the request consents to a later date. After  
19 such hearing, the commission shall determine whether to affirm  
20 and continue or to rescind such order.

21 (f) The commission may, by rule, delegate any powers  
22 specified herein to be exercised by the commission to members of  
23 the commission's staff, except for powers related to hearings.

24 Section 607. Hearings and Judicial Review.--(a) Within  
25 thirty days after any order has become effective without a  
26 hearing, any interested party may apply to the commission for a  
27 hearing in respect to any matters determined by the order, and a  
28 hearing shall be held within thirty days after the application  
29 is filed. After the hearing the commission may modify the order  
30 as it deems appropriate.

1 (b) Within thirty days after any order has become effective  
2 after a hearing, any interested party may apply to the  
3 commission for a rehearing. The commission may grant and hold a  
4 rehearing if in its judgment sufficient reasons therefor appear.  
5 After rehearing, the commission may vacate or modify the order,  
6 and any order vacating the original order shall have the same  
7 effect as an original order. Failure to grant an application for  
8 rehearing within thirty days from the date of the filing shall  
9 constitute a denial; and failure, within fifteen days after the  
10 conclusion of a rehearing, to issue an order affirming, vacating  
11 or modifying the original order shall constitute an affirmation  
12 of the original order.

13 (c) Disciplinary hearings and rehearings shall be public  
14 unless the commission grants a request joined in by all parties  
15 that the hearing be conducted privately. Investigatory hearings  
16 shall not be open to members of the general public unless all  
17 parties to the hearing agree otherwise.

18 (d) Orders of the commission shall be subject to judicial  
19 review in accordance with law, but orders originally entered  
20 without a hearing may be reviewed only if the party seeking  
21 review has requested a hearing within the time provided by  
22 subsection (a).

23 Section 608. Injunction Procedure.--(a) No injunction shall  
24 issue in any proceeding under this act suspending or staying any  
25 order of the commission, except upon application to the  
26 Commonwealth Court of Pennsylvania or the presiding judge  
27 thereof, notice of which shall be given to the commission and  
28 other parties to the proceeding, and except after an opportunity  
29 for a hearing thereon. No injunction shall issue in any other  
30 proceeding or action, in any court, which shall have the effect

1 of delaying or preventing any such order from becoming  
2 effective, unless the parties to the proceeding before the  
3 commission are also parties to the court proceeding or action  
4 and except after notice and opportunity for a hearing.

5 (b) No injunction shall issue in any proceeding under  
6 section 607 or in any other proceeding or action suspending or  
7 staying any order of the commission or having the effect of  
8 delaying or preventing any such order from becoming effective  
9 unless an undertaking is entered into on the part of the  
10 petitioner or plaintiff, with a surety and in the sum the court  
11 or the presiding judge thereof directs or approves, to the  
12 effect that the petitioner or plaintiff will pay all damages  
13 which any party sustains by the suspension or stay of the order  
14 or the delay or prevention of the order's becoming effective,  
15 and to such other effect as the court or judge directs, and no  
16 order or judgment in any proceeding or action shall be stayed on  
17 appeal therefrom unless a like undertaking is entered into by  
18 the petitioner or plaintiff.

19 Section 609. Rules, Forms and Orders.--(a) The commission  
20 may make, amend and rescind any rules, forms and orders that are  
21 necessary to carry out this act, including rules and forms  
22 governing registration statements, applications and reports, and  
23 defining any terms, whether or not used in this act, insofar as  
24 the definitions are not inconsistent with this act. All rules of  
25 the commission (other than those relating solely to its internal  
26 administration) shall be made, amended or rescinded in  
27 accordance with the act of June 4, 1945 (P.L.1388), known as the  
28 "Administrative Agency Law." For the purpose of rules and forms,  
29 the commission may classify securities, persons and matters  
30 within its jurisdiction, and prescribe different requirements



1 for different classes. The commission may, in its discretion,  
2 waive any requirement of any rule or form in situations where,  
3 in its opinion, such requirement is not necessary in the public  
4 interest or for the protection of investors.

5 (b) No rule, form or order may be made, amended or rescinded  
6 unless the commission finds that the action is necessary or  
7 appropriate in the public interest and for the protection of  
8 investors.

9 (c) The commission may by rule or order prescribe the form  
10 and content of financial statements required under this act, the  
11 circumstances under which consolidated financial statements  
12 shall be filed, and whether any required financial statements  
13 shall be certified by independent or certified public  
14 accountants. All financial statements shall be prepared in  
15 accordance with generally accepted accounting principles  
16 consistently applied, unless otherwise permitted by rule or  
17 order.

18 (d) No provision of this act imposing any liability applies  
19 to any act done or omitted in good faith in conformity with any  
20 rule, form or order of the commission, notwithstanding that the  
21 rule, form or order may later be amended or rescinded or be  
22 determined to be invalid for any reason.

23 Section 610. Destruction of Documents and Records.--The  
24 commission may make such regulations with respect to record  
25 retention as it may deem appropriate and desirable, consistent  
26 with law.

1 PART VII

2 GENERAL PROVISIONS

3 Section 701. Service of Process.--(a) Every applicant for  
4 registration under this act, and every issuer which proposes to  
5 offer a security in this State through any person acting as  
6 agent, shall file with the commission, in such form as it by  
7 rule prescribes, an irrevocable consent appointing the secretary  
8 of the commission, or his successor in office, to be his  
9 attorney to receive service of any lawful process in any  
10 noncriminal suit, action or proceeding against him or his  
11 successor, executor or administrator which arises under this act  
12 or any rule or order hereunder after the consent has been filed,  
13 with the same validity as if served personally on the person  
14 filing the consent. The consent need not be filed by a person  
15 who has filed a consent in connection with a previous  
16 registration or license which is then in effect. Service may be  
17 made by leaving a copy of the process in the office of the  
18 commission, but it is not effective unless the plaintiff  
19 promptly sends notice of the service and a copy of the process  
20 by registered or certified mail to the defendant or respondent  
21 at his last address on file with the commission, and the  
22 plaintiff's affidavit of compliance with this subsection is  
23 filed in the case on or before the return day of the process, or  
24 within such time as the court allows.

25 (b) When any person, including any nonresident of this  
26 State, engages in conduct prohibited or made actionable by this  
27 act or any rule or order hereunder, and he has not filed a  
28 consent to service of process under subsection (a) and personal  
29 jurisdiction over him cannot otherwise be obtained in this  
30 State, that conduct shall be considered equivalent to his

1 appointment of the secretary of the commission to be his  
2 attorney to receive service of any lawful process in any  
3 noncriminal suit, action or proceeding against him or his  
4 successor, executor or administrator which arises out of that  
5 conduct and which is brought under this act or any rule or order  
6 hereunder, with the same validity as if served on him  
7 personally. Service may be made by leaving a copy of the process  
8 in the office of the commission, but it is not effective unless  
9 the plaintiff, who may be the commission in a suit, action or  
10 proceeding instituted by it, promptly sends notice of the  
11 service and a copy of the process by registered or certified  
12 mail to the defendant or respondent at his last known address or  
13 takes other steps which are reasonably calculated to give actual  
14 notice; and the plaintiff's affidavit of compliance with this  
15 subsection is filed in the case on or before the return day of  
16 the process or within such time as the court allows.

17 (c) When process is served under this section the court, or  
18 the commission in a proceeding before it, shall order such  
19 continuance as is necessary to afford the defendant or  
20 respondent reasonable opportunity to defend.

21 Section 702. Scope of Act.--(a) The provisions of this act  
22 concerning sales and offers to sell apply when a sale or offer  
23 to sell is made in this State or when an offer to purchase is  
24 made and accepted in this State. The provisions concerning  
25 purchases and offers to purchase apply when a purchase or offer  
26 to purchase is made in this State or an offer to sell is made  
27 and accepted in this State.

28 (b) For the purpose of this section, an offer to sell or to  
29 purchase is made in this State, whether or not either party is  
30 then present in this State, when the offer originates from this

1 State or is directed by the offeror to this State and received  
2 by the offeree in this State, but for the purpose of section 201  
3 an offer to sell which is not directed to or received by the  
4 offeree in this State is not made in this State.

5 (c) For the purpose of this section, an offer to purchase or  
6 to sell is accepted in this State when acceptance is  
7 communicated to the offeror in this State, and has not  
8 previously been communicated to the offeror, orally or in  
9 writing, outside this State; and acceptance is communicated to  
10 the offeror in this State, whether or not either party is then  
11 present in this State, when the offeree directs it to the  
12 offeror in this State reasonably believing the offeror to be in  
13 this State, and it is received by the offeror in this State.

14 (d) An offer to sell or to purchase is not made in this  
15 State when the publisher circulates, or there is circulated on  
16 his behalf in this State, any bona fide newspaper or other  
17 publication of general, regular and paid circulation which is  
18 not published in this State, or a radio or television program  
19 originating outside this State is received in this State.

20 Section 703. Statutory Policy.--(a) This act shall be so  
21 construed as to effectuate its general purpose to make uniform  
22 the law of those states which enact the "Uniform Securities Act"  
23 and to coordinate the interpretation and administration of this  
24 act with related Federal regulation.

25 (b) If any provision of this act or the application thereof  
26 to any person or circumstance is held invalid, the invalidity  
27 shall not affect other provisions or applications of this act  
28 which can be given effect without the invalid provision or  
29 application, and to this end the provisions of this law are  
30 declared to be severable.

1 Section 704. Prior Law.--(a) Except as expressly provided in  
2 this section, prior law exclusively governs all suits, actions,  
3 prosecutions or proceedings which are pending or may be  
4 initiated on the basis of facts or circumstances occurring  
5 before the effective date of this act.

6 (b) No civil suit or action may be maintained to enforce any  
7 liability or to establish that any securities are void under  
8 prior law unless brought within any period of limitation which  
9 applied when the cause of action accrued.

10 (c) All effective certificates, orders, consents, and  
11 registrations under prior law, all administrative orders  
12 relating to the same and all conditions imposed upon the same  
13 remain in effect so long as they would have remained in effect  
14 if this act had not been enacted. They are considered to have  
15 been filed, entered, or imposed under this act, but are governed  
16 by prior law.

17 (d) Judicial review of all administrative orders as to which  
18 review proceedings have not been instituted by the effective  
19 date of this act are governed by section 607, except that no  
20 review proceeding may be instituted unless the petition is filed  
21 within any period of limitation which applied to a review  
22 proceeding when the order was entered.

23 Section 705. Effective Date.--This act shall take effect  
24 January 1, 1973.