

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1970 Session of 1972

INTRODUCED BY MESSRS. GOODMAN, FRANK, DOMBROWSKI, ARTHURS, KOWALYSHYN, FINEMAN, SCANLON, CROWLEY, HETRICK, J. J. JOHNSON, BIXLER, ENGLEHART, HOPKINS, WARGO, PRENDERGAST, IRVIS, O'BRIEN, F. M. ALLEN, MANBECK AND R. O. DAVIS, FEBRUARY 28, 1972

AS REPORTED FROM COMMITTEE ON BUSINESS AND COMMERCE, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 16, 1972

AN ACT

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

<—

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

PART I

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

1 purchase a security.

2 (b) ~~"Affiliate" means any person controlled by controlling~~ <—  
3 "AFFILIATE OF," OR A PERSON "AFFILIATED WITH," A SPECIFIED <—  
4 PERSON, MEANS A PERSON THAT DIRECTLY, OR INDIRECTLY THROUGH ONE  
5 OR MORE INTERMEDIARIES, CONTROLS, IS CONTROLLED BY, or IS under <—  
6 common control with, ~~whether directly or indirectly~~ THE PERSON <—  
7 SPECIFIED.

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

22 (d) "Bank" means any bank, ~~banking~~ BANKING and trust company, <—  
23 savings bank, trust company or private bank, as defined in the  
24 Banking Code of 1965, act of November 30, 1965 (P.L.847), or any  
25 savings and loan association, as defined in the Savings  
26 Association Code of 1967, act of December 14, 1967 (P.L.746), or  
27 any successor statutes thereto, or any banking institution,  
28 trust company or savings and loan institution organized under  
29 the laws of the United States, or a receiver, conservator or  
30 other liquidating agent of any of the foregoing.

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

4 (i) An agent;

5 (ii) An issuer;

6 (iii) A bank, when effecting transactions for its own  
7 account or ~~as agent~~ FOR THE ACCOUNT OF ANOTHER under section 302 <—  
8 (c);

9 (iv) An executor, administrator, guardian, conservator or  
10 pledgee;

11 (v) A person who has no place of business in this State if  
12 he effects transactions in this State exclusively with or  
13 through (A) the issuers of the securities involved in the  
14 transactions, ~~(B) other broker-dealers, or (C)~~ OR (B) persons <—  
15 ENGAGING IN TRANSACTIONS exempt by section 203 (c); <—

16 (vi) A person licensed as a real estate broker OR AGENT <—  
17 under the Real Estate Brokers License Act of one thousand nine  
18 hundred and twenty-nine, act of May 1, 1929 (P.L.1216), as  
19 amended, and whose transactions in securities are isolated  
20 transactions incidental to that business;

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

23 (viii) Other persons not within the intent of this  
24 subsection whom the commission by ~~rule or order~~ REGULATION <—  
25 designates.

26 (f) "Commission" means the Pennsylvania Securities  
27 Commission.

28 (g) "Control" (including the terms "controlling,"  
29 "controlled by" and "under common control with") means the  
30 possession, directly or indirectly, of the power to direct or

1 cause the direction of the management and policies of a person,  
2 whether through the ownership of voting securities, by contract,  
3 or otherwise.

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

6 (i) "Guaranteed" means guaranteed as to payment of  
7 principal, interest, purchase price, dividend or call premium.  
8 ~~or as to the identity of any security to be delivered upon the~~ <—  
9 ~~exercise of an option.~~

10 (j) "Investment adviser" means any person who, for  
11 compensation, engages in the business of advising others, either  
12 directly or through publications or writings, as to the value of  
13 securities or as to the advisability of investing in, purchasing  
14 or selling securities, or who, for compensation and as a part of  
15 a regular business, issues or promulgates analyses or reports  
16 concerning securities. "Investment adviser" does not include:

17 (i) A bank;

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

21 (iii) A broker-dealer ~~whose performance of these services is~~ <—  
22 ~~solely incidental to the conduct of his business as a broker-~~  
23 ~~dealer and who receives no special compensation for them;~~

24 REGISTERED UNDER THIS ACT WITHOUT THE IMPOSITION OF THE <—  
25 CONDITION REFERRED TO IN SECTION 305 (B) (V);

26 (iv) A publisher of any bona fide newspaper, news magazine  
27 or business or financial publication of general, regular and  
28 paid circulation WHICH IS NOT SOLELY ENGAGED IN THE RENDERING OF <—  
29 INVESTMENT ADVICE; and the agents and servants thereof IN THE <—  
30 PERFORMANCE OF THEIR REGULAR DUTIES ON BEHALF OF SUCH

1 PUBLICATION;

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

4 (vi) A person who has no place of business in this State if  
5 his only clients in this State are other investment advisers or  
6 persons ENGAGING IN TRANSACTIONS exempt under section 203 (c); ←

7 (vii) Other persons not within the intent of this subsection  
8 whom the commission by ~~rule or order~~ REGULATION designates. ←

9 (k) "Institutional investor" means any bank, insurance  
10 company, pension or profit sharing plan or trust, investment  
11 company, as defined in the Investment Company Act of 1940, other  
12 financial institution or any person, OTHER THAN AN INDIVIDUAL, ←  
13 which ~~is the sole owner of~~ CONTROLS any of the foregoing, the ←  
14 FEDERAL GOVERNMENT, State or any agency or political subdivision ←  
15 thereof or any other person so designated by ~~rule or order~~ ←  
16 REGULATION of the commission. ←

17 (l) "Issuer" means any person who issues or proposes to  
18 issue any security, and any promoter who acts for an issuer  
19 proposed to be formed. With respect to certificates of deposit,  
20 voting trust certificates or collateral-trust certificates, or  
21 with respect to certificates of interest or shares in an  
22 unincorporated investment trust not having a board of directors  
23 or persons performing similar functions or of the fixed,  
24 restricted management or unit type, the term "issuer" means the  
25 person or persons performing the acts and assuming the duties of  
26 depositor or manager pursuant to the provisions of the trust or  
27 other agreement or instrument under which the security is  
28 issued; except that with respect to equipment-trust certificates  
29 or like securities, the term "issuer" means the person by whom  
30 the equipment or property is or is to be used. With respect to

1 certificates of interest or participation in oil, gas or mining  
2 titles or leases or in payments out of production under such  
3 titles or leases, the term "issuer" means the person or persons  
4 ~~in active control of~~ ACTIVELY MANAGING the exploration or <—  
5 development of the property who sell such interests or  
6 participations or payments or any person or persons who  
7 subdivide and sell such interests or participations or payments.  
8 The determination of the person or persons ~~in active control of~~ <—  
9 ACTIVELY MANAGING the exploration or development of the property <—  
10 shall be made on the basis of the actual relationship of the  
11 parties and not on the basis of the legal designation of a  
12 person's interest. ~~In the case of an unincorporated association~~ <—  
13 ~~which is permitted by statute, rule or order or which provides~~  
14 ~~by its articles or governing instruments or by resolution for~~  
15 ~~limited liability of any or all of its members, or in the case~~  
16 ~~of a trust, committee, or other legal entity, the trustees or~~  
17 ~~members thereof shall not be individually liable as issuers of~~  
18 ~~any security issued by the association, trust, committee, or~~  
19 ~~other legal entity.~~ MEMBERS OF UNINCORPORATED ASSOCIATIONS, <—  
20 WHICH MEMBERS HAVE LIMITED LIABILITY, AND ANY TRUSTEE OR MEMBER  
21 OF A TRUST, COMMITTEE OR OTHER LEGAL ENTITY SHALL NOT BE DEEMED  
22 TO BE AN "ISSUER" FOR THE PURPOSES OF THIS ACT.

23 (m) ~~Nonissuer~~ "NON-ISSUER transaction" means any <—  
24 transaction not directly or indirectly for the benefit of the  
25 issuer. ~~A transaction is indirectly for the benefit of the~~ <—  
26 ~~issuer if any portion of the purchase price of any securities~~  
27 ~~involved in the transaction will be received indirectly by the~~  
28 ~~issuer.~~

29 (n) "Person" means an individual, corporation, partnership,  
30 association, joint stock company, syndicate, trust where the

1 interests of the beneficiaries are evidenced by a security, an  
2 unincorporated organization, government, political subdivision  
3 of a government, or any other entity.

4 (O) "PROMOTER" INCLUDES (I) ANY PERSON WHO, ACTING ALONE OR <—  
5 IN CONJUNCTION WITH ONE OR MORE OTHER PERSONS, DIRECTLY OR  
6 INDIRECTLY TAKES INITIATIVE IN FOUNDING AND ORGANIZING THE  
7 BUSINESS OR ENTERPRISE OF AN ISSUER; AND (II) ANY PERSON WHO, IN  
8 CONNECTION WITH THE FOUNDING AND ORGANIZING OF THE BUSINESS OR  
9 ENTERPRISE OF AN ISSUER, DIRECTLY OR INDIRECTLY RECEIVES IN  
10 CONSIDERATION OF SERVICES OR PROPERTY, OR BOTH SERVICES AND  
11 PROPERTY, TEN PER CENT OR MORE OF ANY CLASS OF SECURITIES OF THE  
12 ISSUER OR TEN PER CENT OR MORE OF THE PROCEEDS FROM THE SALE OF  
13 ANY CLASS OF SECURITIES. HOWEVER, A PERSON WHO RECEIVES SUCH  
14 SECURITIES OR PROCEEDS EITHER SOLELY AS UNDERWRITING COMMISSIONS  
15 OR SOLELY IN CONSIDERATION OF PROPERTY SHALL NOT BE DEEMED A  
16 PROMOTER WITHIN THE MEANING OF THIS CLAUSE IF SUCH PERSON DOES  
17 NOT OTHERWISE TAKE PART IN FOUNDING AND ORGANIZING THE  
18 ENTERPRISE.

19 ~~(O)~~ (P) "Publish" means publicly to issue or circulate by <—  
20 newspaper, mail, radio or television, or otherwise to  
21 disseminate to the public.

22 ~~(P)~~ (Q) "Reporting company" means any person which is <—  
23 required to file, and has for at least ninety days prior to the  
24 time of application of this definition filed, all periodic  
25 reports plus the most recent annual report with the Securities  
26 and Exchange Commission pursuant to the requirements of section  
27 13 or 15 (d) of the Securities Exchange Act of 1934 or of  
28 section 8 of the Investment Company Act of 1940, and the  
29 regulations adopted thereunder, or for whom there is publicly  
30 available the information concerning such person which is

1 specified in CLAUSES (1) THROUGH (14) INCLUSIVE, AND CLAUSE (16) <—  
2 OF paragraph (a) (4) of Rule 15 c2-11 adopted under the  
3 Securities Exchange Act of 1934, or if the ~~issuer~~ PERSON is an <—  
4 insurance company the information specified in section 12 (g)  
5 (2)(G) (i) of that act. Information shall ALSO be deemed <—  
6 "publicly available" under this section if it has been filed in  
7 such places or with such persons as the commission may specify  
8 by ~~rule or order~~ REGULATION. <—

9 ~~(g)~~ (R) (i) "Sale" or "sell" includes every sale, <—  
10 disposition or exchange, and every contract of sale of, or  
11 contract to sell, a security or interest in a security for value  
12 or any issuance of securities pursuant to any merger,  
13 consolidation, sale of assets or other corporate reorganization,  
14 INVOLVING THE EXCHANGE OF SECURITIES, IN WHOLE OR IN PART, FOR <—  
15 THE SECURITIES OF ANY OTHER PERSON.

16 (ii) "Offer" or "offer to sell" includes every direct or  
17 indirect attempt or offer to sell or dispose of, or solicitation  
18 of an offer to purchase, a security or interest in a security  
19 for value.

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

24 (iv) Every sale or offer of a warrant or right to purchase  
25 or subscribe to another security of the same or another issuer,  
26 as well as every sale or offer of a security which gives the  
27 holder a present or future right or privilege to convert into  
28 another security of the same or another issuer, is considered to  
29 include an offer of the other security.

30 (v) A purported gift of assessable stock (for which the



1 statutory consideration has not been paid) involves an offer and  
2 sale.

3 (vi) An offer OF rescission made pursuant to section 504 (E) <—  
4 involves an offer and sale.

5 (vii) The terms ~~defined in this subsection~~ "SALE," "SELL," <—  
6 "OFFER" AND "OFFER TO SELL" do not include: (A) any bona fide  
7 secured transaction in, or loan of, outstanding securities; or  
8 (B) any dividend payable with respect to the securities of a  
9 corporation in the same or any other class of securities of such  
10 corporation. ~~so long as the security distributed as a dividend~~ <—  
11 ~~does not constitute an offer to purchase a security of the~~  
12 ~~corporation or any other person.~~

13 (viii) A dividend or distribution by any person to all or  
14 any class of its security holders of the securities of any other  
15 person, whether or not such dividend or distribution is for  
16 value, involves a sale.

17 ~~(r)~~ (S) "Securities Act of 1933," "Securities Exchange Act <—  
18 of 1934," "Public Utility Holding Company Act of 1935," "Trust  
19 Indenture Act of 1939," "Investment Advisers Act of 1940,"  
20 "Investment Company Act of 1940" and "Internal Revenue Code of  
21 1954" mean the Federal statutes of those names as amended before  
22 or after the effective date of this act, or any successor  
23 statutes thereto. Section numbers of such statutes or  
24 regulations adopted thereunder and referred to herein include  
25 such amendments thereto as may be adopted before or after the  
26 effective date of this act. "Securities and Exchange Commission"  
27 means the "United States Securities and Exchange Commission."

28 ~~(s)~~ (T) "Security" means any note; stock; treasury stock; <—  
29 bond; debenture; evidence of indebtedness; share of beneficial  
30 interest in a business trust; certificate of interest or

1 participation in any profit-sharing agreement; collateral trust  
2 certificate; preorganization certificate or subscription;  
3 transferable share; investment contract; voting trust  
4 certificate; certificate of deposit for a security; limited  
5 partnership interest; certificate of interest or participation  
6 in an oil, gas or mining title or lease or in payments out of  
7 production under such a title or lease; ~~any beneficial interest~~ ←  
8 ~~or other security issued in connection with a funded employes'~~  
9 ~~pension, profit sharing, stock bonus, or similar benefit plan;~~  
10 or, in general, any interest or instrument commonly known as or  
11 having the incidents of a "security"; ~~any ownership interest in~~ ←  
12 ~~a condominium or cooperative apartment project, as such terms~~  
13 ~~are commonly used;~~ or any certificate of interest or  
14 participation in, temporary or interim certificate for, receipt  
15 for, guarantee of, or warrant or right to subscribe to or  
16 purchase, any of the foregoing. All of the foregoing are  
17 securities whether or not evidenced by written document.  
18 "Security" does not include: (i) any beneficial interest in any  
19 voluntary inter vivos trust which is not created for the purpose  
20 of carrying on any business, or (ii) any beneficial interest in  
21 any testamentary trust, or (iii) any insurance or endowment  
22 policy or annuity contract under which an insurance company  
23 admitted in this State promises to pay a sum of money (whether  
24 or not based upon the investment performance of a segregated  
25 fund) either in a lump sum or periodically for life or some  
26 other specified period, or (iv) any certificate issued under  
27 section 809 of The Insurance Company Law of 1921, act of May 17,  
28 1921 (P.L.682), as amended.

29 ~~(t)~~ (U) "State" means any state, territory or possession of ←  
30 the United States, the District of Columbia and Puerto Rico.



1 foregoing, provided that ~~(i)~~ IF THE ISSUER OR GUARANTOR IS A <—  
2 FOREIGN GOVERNMENT OTHER THAN CANADA OR AN INSTRUMENTALITY OF A  
3 FOREIGN GOVERNMENT OTHER THAN CANADA, such security or  
4 certificate of deposit therefor is recognized as a valid  
5 obligation by the issuer or guarantor thereof or its or their  
6 successors; ~~and (ii) if an industrial revenue obligation,~~ AND <—  
7 PROVIDED, THAT such obligation is exempt from registration under  
8 the Securities Act of 1933.

9 (b) Any security, the offer, sale, issuance or guarantee of  
10 which ~~is~~ (i) IS subject to regulation by the Interstate Commerce <—  
11 Commission, the Comptroller of the Currency, the Federal Deposit  
12 Insurance Corporation or, with respect to banks, by the  
13 Pennsylvania Department of Banking; ~~(ii) registered under the~~ <—  
14 ~~Public Utility Holding Company Act of 1935;~~ OR (II) IS <—  
15 REGISTERED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935,  
16 OR THE ACT OF MAY 28, 1937 (P.L.1053), KNOWN AS THE "PUBLIC  
17 UTILITY LAW"; or (iii) the issuer of which is regulated as to  
18 the issuance or guarantee of ~~the~~ SUCH security by a governmental <—  
19 authority of the United States.

20 (c) Any commercial paper which arises out of a current  
21 transaction or the proceeds of which have been or are to be used  
22 for current transactions, and which evidences an obligation to  
23 pay cash within nine months of the date ~~of~~ AFTER issuance, <—  
24 exclusive of days of grace, or any renewal of such paper which  
25 is likewise limited, or any guarantee of such paper or of any  
26 such renewal, except where such paper is proposed to be sold or  
27 offered to the public in units of less than ~~ten thousand dollars~~ <—  
28 ~~(\$10,000)~~ FIVE THOUSAND DOLLARS (\$5,000) to any single person. <—

29 (d) Any security issued or guaranteed by any Federal credit  
30 union or any credit union, industrial loan association or other

1 similar association organized and supervised under the laws of  
2 this State.

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

19 (f) Any security listed, or approved for listing upon notice  
20 of issuance, on a ~~securities exchange or national securities~~ <—  
21 ~~quotation service~~ THE NEW YORK, AMERICAN, OR PHILADELPHIA- <—  
22 BALTIMORE-WASHINGTON STOCK EXCHANGE OR ANY OTHER SECURITIES  
23 EXCHANGE OR QUOTED ON ANY NATIONAL QUOTATION SERVICE designated  
24 by ~~rule~~ REGULATION of the commission; ~~or any other security or~~ <—  
25 ~~class of securities which the commission may specify by rule or~~  
26 ~~order~~; any other security of the same issuer which is of senior  
27 or substantially equal rank; any security called for by  
28 subscription rights or warrants so listed, ~~or~~ approved OR <—  
29 QUOTED; and any warrant or right to purchase or subscribe to any  
30 of the foregoing.

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

9 (h) Any security of a ~~licensed~~ REGISTERED broker-dealer <—  
10 issued to its officers, partners or employes, subject to such  
11 ~~rules~~ REGULATIONS as the commission may establish. <—

12 (I) ANY SECURITY AS TO WHICH THE COMMISSION BY REGULATION OR <—  
13 ORDER FINDS THAT REGISTRATION IS NOT NECESSARY OR APPROPRIATE  
14 FOR THE PROTECTION OF INVESTORS.

15 Section 203. Exempt Transactions.--The following  
16 transactions are exempted from section 201:

17 (a) Any ~~transaction not~~ NON-ISSUER TRANSACTION EXCEPT WHERE <—  
18 directly or indirectly for the benefit of the issuer or an  
19 affiliate of the issuer.

20 (b) Any NON-ISSUER transaction directly or indirectly for <—  
21 the benefit of an affiliate of the issuer (~~but not directly or~~ <—  
22 ~~indirectly for the benefit of the issuer~~) which is exempted from  
23 section 5 of the Securities Act of 1933, ~~excepting only the~~ <—  
24 OTHER THAN THOSE transactions exempted ~~in or~~ pursuant to section <—  
25 3 (a) (11) or 3 (b) of the Securities Act of 1933, and the rules <—  
26 and regulations now or hereafter adopted thereunder.

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

30 (d) Any sales by an issuer to not more than ~~fifteen~~ TWENTY- <—

1 FIVE persons (excluding those designated in subsection (c)) in  
2 this State during a period of twelve consecutive months if (i)  
3 ~~the issuer reasonably believes that each buyer in this State is~~ <—  
4 ~~purchasing for his own account and without a present view to~~  
5 ~~making a public distribution of such securities in this State~~  
6 ~~within eighteen months after the payment of the full purchase~~  
7 ~~price by the buyer for all of the securities purchased by him~~  
8 ~~pursuant to this subsection;~~ SHALL OBTAIN THE WRITTEN AGREEMENT <—  
9 OF EACH SUCH PERSON NOT TO SELL THE SECURITY WITHIN TWELVE  
10 MONTHS AFTER THE DATE OF PURCHASE; (ii) no public MEDIA <—  
11 advertisement is used or ~~public solicitation~~ MASS MAILING made <—  
12 in connection with soliciting such sales; ~~(iii) no commissions,~~ <—  
13 ~~selling expenses (other than legal and accounting fees and~~  
14 ~~printing costs) or promotional considerations are given, paid or~~  
15 ~~incurred in connection therewith; and (iv) such sales are not~~  
16 ~~part of a public offering of the securities of the issuer being~~  
17 ~~made concurrently in this State and elsewhere. "Promotional~~  
18 ~~consideration" means consideration paid in the form of cash or~~  
19 ~~securities or both to any person for services in connection with~~  
20 ~~founding and organizing the business or enterprise of the~~  
21 ~~issuer. Promotional consideration shall not include any fee paid~~  
22 ~~to any person in connection with any sale under section 203 (c).~~  
23 AND (III) NO CASH OR SECURITIES IS GIVEN OR PAID, DIRECTLY OR <—  
24 INDIRECTLY, TO ANY PROMOTER IN CONNECTION THEREWITH. PURCHASERS  
25 OF SECURITIES REGISTERED UNDER THIS ACT OR SOLD IN RELIANCE UPON  
26 AN EXEMPTION UNDER THIS ACT OTHER THAN THIS SUBSECTION (D) OR  
27 SUBSECTION (F) SHALL NOT BE INCLUDED IN COMPUTING THE TWENTY-  
28 FIVE PERSONS FOR PURPOSES OF THIS EXEMPTION. A notice in the  
29 form prescribed by the commission, signed by the officers ~~and/or~~ <—  
30 OR directors of the issuer under oath and stating the name, <—

1 principal business address of the issuer, PROPOSED USE OF THE <—  
2 PROCEEDS FROM THE SALE and such facts as are necessary to  
3 establish this exemption shall be filed, together with a copy of  
4 ~~all~~ ANY offering literature used in connection with such offer <—  
5 or sale, with the commission not later than the day on which the  
6 securities are FIRST issued or the issuer FIRST receives <—  
7 consideration from any person therefor, whichever is earlier.

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

12 (f) Any offer or sale of a preorganization subscription ~~to~~ <—  
13 ~~not more than fifteen persons, if no commission or other~~  
14 ~~remuneration is paid or given directly or indirectly for~~  
15 ~~soliciting any subscriber in this State, and no payment is made~~  
16 ~~by any subscriber until the securities subscribed for may be~~  
17 ~~sold under this act.~~ OR SECURITIES OF A NEWLY-FORMED PERSON AS <—  
18 PART OF ITS INITIAL CAPITALIZATION TO NOT MORE THAN FIVE  
19 PERSONS.

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

23 (h) Any offer (but not a sale) of a security for which a  
24 registration statement has been filed under the Securities Act  
25 of 1933 if (i) no stop order or refusal order is in effect and  
26 no public proceeding or examination looking toward such an order  
27 is pending under the Securities Act of 1933 or this act; and  
28 (ii) no such offer is made until after such registration  
29 statement (including a prospectus) has been filed with or mailed  
30 to the commission.



1 (i) Any sale of a security registered under section 5 of the  
2 Securities Act of 1933 or exempt from registration under section  
3 3 (b) if: (i) a copy of any prospectus or offering circular  
4 utilized or proposed to be utilized in connection therewith is  
5 ~~filed with~~ MAILED TO the commission within two BUSINESS days <—  
6 after such prospectus or offering circular is filed with the  
7 Securities and Exchange Commission; (ii) the filing fee  
8 specified in section 602 (b) is paid with respect to such  
9 offering; (iii) the issuer of the security is a reporting  
10 company; and (iv) no stop order or refusal order is in effect  
11 and no public proceeding or investigation looking toward such an  
12 order is pending under the Securities Act of 1933 or this act.

13 (j) Any transaction in a bond or other evidence of  
14 indebtedness secured by a real or chattel mortgage or deed of  
15 trust, or by an agreement for the sale of real estate or  
16 chattels, if the entire mortgage, deed of trust, or agreement,  
17 together with all the bonds or other evidences of indebtedness  
18 secured thereby, is offered and sold as a unit.

19 (k) Any judicial sale or any transaction by an executor,  
20 administrator, sheriff, marshal, receiver, trustee in  
21 bankruptcy, guardian or conservator.

22 (l) Any transaction now or hereafter exempted from section 5  
23 of the Securities Act of 1933 by virtue of sections 3 (a) (9) or  
24 3 (a) (10) thereof;

25 ~~(m) Any transaction incident to a judicially approved <—~~  
26 ~~reorganization in which a security is issued in exchange for one~~  
27 ~~or more outstanding securities, claims or property interests, or~~  
28 ~~partly in such exchange and partly for cash; provided, however,~~  
29 ~~that the commission be given notice of and the right to appear~~  
30 ~~at and intervene in any hearing on the terms of such~~

1 ~~reorganization.~~ PROVIDED, HOWEVER, THAT THE COMMISSION BE GIVEN <—  
2 NOTICE OF ANY HEARING REFERRED TO IN SECTION 3 (A) (10).

3 ~~(n)~~ (M) Any transaction executed by a bona fide pledgee <—  
4 without any purpose of evading this act.

5 ~~(o)~~ (N) Any transaction pursuant to an offer to existing <—  
6 security holders of the issuer or of a corporation which, prior  
7 to the commencement of the offer, owned substantially all of the  
8 voting stock of the issuer or was organized for the purpose of  
9 the offer by persons in control of the issuer, if no commission  
10 or other remuneration other than a standby commission is paid or  
11 given directly or indirectly for soliciting any security holder  
12 in this State, and if the issuer first files a notice specifying  
13 the terms of the offer and all other information which the  
14 commission by ~~rule~~ REGULATION requires, and the commission does <—  
15 not by order disallow the exemption within five days. "Security  
16 holders" include persons who at the time of the transaction are  
17 holders of convertible securities, nontransferable warrants, or  
18 transferable warrants exercisable within not more than ninety  
19 days of their issuance.

20 ~~(p)~~ (O) Any transaction incident to a vote by security <—  
21 holders (or written consent of some or all security holders in  
22 lieu of such vote) pursuant to the articles of incorporation or  
23 the applicable corporation statute or other statute governing  
24 such person, or pursuant to a partnership agreement, a  
25 declaration of trust, trust indenture or any agreement among  
26 security holders on a merger, consolidation, sale of assets in  
27 consideration, in whole or part, of the issuance of securities  
28 of another person, RECLASSIFICATION OF SECURITIES, or <—  
29 reorganization involving the exchange of securities, in whole or  
30 in part, for the securities of any other person if, but only if:

1 ~~(i) in the case of a merger, consolidation, or sale of assets,~~ <—  
2 one party to ~~the reorganization~~ SUCH TRANSACTION is required or <—  
3 permitted to file proxy materials pursuant to section 14 (a) of  
4 the Securities Exchange Act of 1934 OR SECTION 20 OF THE <—  
5 INVESTMENT COMPANY ACT OF 1940 and does file such materials with  
6 the commission at least ten days prior to a meeting of security  
7 holders called for the purpose of approving such transaction;  
8 and such proxy materials ~~with such additions or modifications as~~ <—  
9 ~~the commission may direct,~~ are distributed to the security  
10 holders of ~~the person to be acquired;~~ EACH PARTY TO SUCH <—  
11 TRANSACTION; or (ii) such materials as may be specified by rule <—  
12 ~~or order~~ REGULATION of the commission are prepared in connection <—  
13 with the proposed transaction and, after review by the  
14 commission, distributed to the security holders of ~~the person to~~ <—  
15 ~~be acquired;~~ EACH PARTY TO THE TRANSACTION; provided, however, <—  
16 that clause (i) and (ii) of this subsection and section 602 (c)  
17 shall not be applicable to any PARTY TO A transaction where not <—  
18 more than twenty-five per cent of the security holders of ~~the~~ <—  
19 ~~person to be acquired~~ SUCH PARTY are residents of this State. <—  
20 ~~(g)~~ (P) Any offer or sale of an evidence of indebtedness of <—  
21 an issuer either: organized exclusively for educational,  
22 benevolent, fraternal, religious, charitable, social, athletic  
23 or reformatory purposes and not for pecuniary profit, if no part  
24 of the net earnings of the issuer inures to the benefit of any  
25 private shareholder or individual; or organized as a chamber of  
26 commerce or trade or professional association if there has been  
27 filed with the commission a notice identifying the security and  
28 the basis of its qualification under this exemption together  
29 with such further information as the commission may by ~~rule or~~ <—  
30 ~~order~~ REGULATION require, and if the commission does not by <—

1 order disallow the exemption within ten days or such shorter  
2 period as it may permit. The security qualifies under this  
3 exemption: ~~(i) if~~ IF (I) the issuer and any predecessor have not ~~←~~  
4 defaulted within the current fiscal year ~~or~~ AND the three ~~←~~  
5 preceding fiscal years in any fixed interest or principal  
6 obligation; and (ii) the issuer complies with ~~rules~~ REGULATIONS ~~←~~  
7 of the commission with respect to trust indentures and the use  
8 of a prospectus; and (iii) the ~~security qualifies under either~~ ~~←~~  
9 ~~of the following:~~

10 ~~(A) The securities proposed to be sold are secured by a~~  
11 mortgage or deed of trust upon land and buildings, which  
12 mortgage or deed of trust is or will become a first lien at or  
13 prior to the issuance of such evidences of indebtedness, or  
14 provision satisfactory to the commission is made for escrowing  
15 the proceeds from their sale until such first lien is  
16 established, and the total amount of such securities does not  
17 exceed ~~fifty~~ SEVENTY-FIVE per cent of the then fair market value ~~←~~  
18 of the land and buildings included in such mortgage or deed of  
19 trust, less the amount of any unpaid special assessment taxes. ~~+~~ ~~←~~  
20 ~~or~~

21 ~~(B) The issuer or its predecessors have had net revenues for~~  
22 ~~each of the two fiscal years next preceding such offer or sale,~~  
23 ~~or average net revenues for the last three fiscal years next~~  
24 ~~preceding such offer or sale, of not less than one and one half~~  
25 ~~times the aggregate annual interest requirements on the issue of~~  
26 ~~securities to be sold under this subsection and all securities~~  
27 ~~of equal or prior rank to be outstanding immediately after such~~  
28 ~~sale. "Net revenues" means the excess of revenues over all~~  
29 ~~expenses of operation and maintenance, excluding from expenses~~  
30 ~~provision for depreciation and excluding extraordinary,~~

1 ~~nonrecurring items of revenue and expense.~~ This exemption shall  
2 not apply to the securities of any nonprofit organization if any  
3 promoter thereof expects or intends to make a profit directly or  
4 indirectly from any business or activity associated with the  
5 organization or operation of such nonprofit organization.

6 ~~(r) Any stock split and any stock dividend, whether the~~ <—  
7 ~~corporation distributing the dividend is the issuer or not, if~~  
8 ~~nothing of value is given by stockholders for the dividend other~~  
9 ~~than the surrender of a right to a cash or property dividend in~~  
10 ~~lieu of the stock and if the dividend is issued pro rata by~~  
11 ~~class. In the case of a stock~~

12 (Q) ANY BONA FIDE DISTRIBUTION IN PARTIAL OR TOTAL <—  
13 LIQUIDATION OF A PERSON, WHETHER OR NOT THE ASSETS BEING  
14 DISTRIBUTED INCLUDE SECURITIES OF ANY OTHER PERSON AND WHETHER  
15 OR NOT WHOLLY OR PARTIALLY IN EXCHANGE FOR THE SECURITIES OF THE  
16 PERSON MAKING THE DISTRIBUTION, AND ANY STOCK SPLIT AND ANY  
17 STOCK DIVIDEND, WHERE THE CORPORATION DISTRIBUTING THE DIVIDEND  
18 IS NOT THE ISSUER, IF NOTHING OF VALUE IS GIVEN BY STOCKHOLDERS  
19 FOR THE DIVIDEND OTHER THAN THE SURRENDER OF A RIGHT TO A CASH  
20 OR PROPERTY DIVIDEND IN LIEU OF THE STOCK AND IF THE DIVIDEND IS  
21 ISSUED PRO RATA BY CLASS; PROVIDED, HOWEVER, IN THE CASE OF A  
22 DISTRIBUTION OR dividend by a corporation not the issuer, such  
23 corporation ~~may be required to~~ SHALL file with the commission, <—  
24 ten days prior to the intended date of THE distribution ~~of the~~ <—  
25 OR dividend, a statement containing the facts and circumstances <—  
26 surrounding the DISTRIBUTION OR dividend. ~~to indicate whether~~ <—  
27 ~~the dividend is for the purpose of avoiding the registration~~  
28 ~~provisions of this act.~~

29 ~~(s)~~ (R) Any transaction or class of transactions as to which <—  
30 the commission by ~~rule~~ REGULATION or order finds that <—

1 registration is not necessary or appropriate for the protection  
2 of investors.

3 Section 204. Exemption Proceedings.--(a) The commission may  
4 by ~~rule or~~ REGULATION AS TO ANY TYPE OF SECURITY OR TRANSACTION, <—  
5 OR BY order in a particular case, as to any security or  
6 transaction ~~or any type of security or transaction, withdraw or~~ <—  
7 ~~further condition exemptions under this section, or increase or~~  
8 ~~decrease~~ INCREASE the number of purchasers or offerees <—  
9 permitted, or waive the conditions in either of ~~section~~ SECTIONS <—  
10 202 or 203. ~~and may require reports of sales under any such~~ <—  
11 ~~exemption.~~

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

1 violated section 201 by reason of any offer or sale effected  
2 after the entry of an order under this section if he sustains  
3 the burden of proof that he did not know, and in the exercise of  
4 reasonable care could not have known, of the order.

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

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

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

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

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

28 (iii) If the commission BY REGULATION OR ORDER requires, any ←  
29 other information, or copies of any documents, filed under the  
30 Securities Act of 1933; and

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

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

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

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

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

1 ~~classify issuers and types of securities.~~ AND SHALL CONTAIN THE <—  
2 FOLLOWING INFORMATION AND BE ACCOMPANIED BY THE FOLLOWING  
3 DOCUMENTS:

4 (1) WITH RESPECT TO THE ISSUER AND ANY SIGNIFICANT  
5 SUBSIDIARY: ITS NAME, ADDRESS, AND FORM OF ORGANIZATION; THE  
6 STATE OR FOREIGN JURISDICTION AND DATE OF ITS ORGANIZATION; THE  
7 GENERAL CHARACTER AND LOCATION OF ITS BUSINESS; A DESCRIPTION OF  
8 ITS PHYSICAL PROPERTIES AND EQUIPMENT; AND A STATEMENT OF THE  
9 GENERAL COMPETITIVE CONDITIONS IN THE INDUSTRY OR BUSINESS IN  
10 WHICH IT IS OR WILL BE ENGAGED;

11 (2) WITH RESPECT TO EVERY DIRECTOR AND OFFICER OF THE  
12 ISSUER, OR PERSON OCCUPYING A SIMILAR STATUS OR PERFORMING  
13 SIMILAR FUNCTIONS: HIS NAME, ADDRESS, AND PRINCIPAL OCCUPATION  
14 FOR THE PAST FIVE YEARS; THE AMOUNT OF SECURITIES OF THE ISSUER  
15 HELD BY HIM AS OF A SPECIFIED DATE WITHIN THIRTY DAYS OF THE  
16 FILING OF THE REGISTRATION STATEMENT; THE AMOUNT OF THE  
17 SECURITIES COVERED BY THE REGISTRATION STATEMENT TO WHICH HE HAS  
18 INDICATED HIS INTENTION TO SUBSCRIBE; AND A DESCRIPTION OF ANY  
19 MATERIAL INTEREST IN ANY MATERIAL TRANSACTION WITH THE ISSUER OR  
20 ANY SIGNIFICANT SUBSIDIARY EFFECTED WITHIN THE PAST THREE YEARS  
21 OR PROPOSED TO BE EFFECTED;

22 (3) WITH RESPECT TO PERSONS COVERED BY CLAUSE (2): THE  
23 REMUNERATION PAID DURING THE PAST TWELVE MONTHS AND ESTIMATED TO  
24 BE PAID DURING THE NEXT TWELVE MONTHS, DIRECTLY OR INDIRECTLY,  
25 BY THE ISSUER (TOGETHER WITH ALL PREDECESSORS, PARENTS,  
26 SUBSIDIARIES, AND AFFILIATES) TO ALL THOSE PERSONS IN THE  
27 AGGREGATE;

28 (4) WITH RESPECT TO ANY PERSON OWNING OF RECORD, OR  
29 BENEFICIALLY IF KNOWN, TEN PER CENT OR MORE OF THE OUTSTANDING  
30 SHARES OF ANY CLASS OF EQUITY SECURITY OF THE ISSUER: THE

1 INFORMATION SPECIFIED IN CLAUSE (2) OTHER THAN HIS OCCUPATION;  
2 (5) WITH RESPECT TO EVERY PROMOTER IF THE ISSUER WAS  
3 ORGANIZED WITHIN THE PAST THREE YEARS: THE INFORMATION SPECIFIED  
4 IN CLAUSE (2), ANY AMOUNT PAID TO HIM WITHIN THAT PERIOD OR  
5 INTENDED TO BE PAID TO HIM, AND THE CONSIDERATION FOR ANY SUCH  
6 PAYMENT;

7 (6) WITH RESPECT TO ANY PERSON ON WHOSE BEHALF ANY PART OF  
8 THE OFFERING IS TO BE MADE IN A NON-ISSUER DISTRIBUTION: HIS  
9 NAME AND ADDRESS; THE AMOUNT OF SECURITIES OF THE ISSUER HELD BY  
10 HIM AS OF THE DATE OF THE FILING OF THE REGISTRATION STATEMENT;  
11 A DESCRIPTION OF ANY MATERIAL INTEREST IN ANY MATERIAL  
12 TRANSACTION WITH THE ISSUER OR ANY SIGNIFICANT SUBSIDIARY  
13 EFFECTED WITHIN THE PAST THREE YEARS OR PROPOSED TO BE EFFECTED;  
14 AND A STATEMENT OF HIS REASONS FOR MAKING THE OFFERING;

15 (7) THE CAPITALIZATION AND LONG-TERM DEBT (ON BOTH A CURRENT  
16 AND PRO FORMA BASIS) OF THE ISSUER AND ANY SIGNIFICANT  
17 SUBSIDIARY, INCLUDING A DESCRIPTION OF EACH SECURITY OUTSTANDING  
18 OR BEING REGISTERED OR OTHERWISE OFFERED, AND A STATEMENT OF THE  
19 AMOUNT AND KIND OF CONSIDERATION (WHETHER IN THE FORM OF CASH,  
20 PHYSICAL ASSETS, SERVICES, PATENTS, GOODWILL, OR ANYTHING ELSE)  
21 FOR WHICH THE ISSUER OR ANY SUBSIDIARY HAS ISSUED ANY OF ITS  
22 SECURITIES WITHIN THE PAST TWO YEARS OR IS OBLIGATED TO ISSUE  
23 ANY OF ITS SECURITIES;

24 (8) THE KIND AND AMOUNT OF SECURITIES TO BE OFFERED; THE  
25 PROPOSED OFFERING PRICE OR THE METHOD BY WHICH IT IS TO BE  
26 COMPUTED; ANY VARIATION THEREFROM AT WHICH ANY PROPORTION OF THE  
27 OFFERING IS TO BE MADE TO ANY PERSON OR CLASS OF PERSONS OTHER  
28 THAN THE UNDERWRITERS, WITH A SPECIFICATION OF ANY SUCH PERSON  
29 OR CLASS; THE BASIS UPON WHICH THE OFFERING IS TO BE MADE IF  
30 OTHERWISE THAN FOR CASH; THE ESTIMATED AGGREGATE UNDERWRITING

1 AND SELLING DISCOUNTS OR COMMISSIONS AND FINDERS' FEES  
2 (INCLUDING SEPARATELY CASH, SECURITIES, CONTRACTS, OR ANYTHING  
3 ELSE OF VALUE TO ACCRUE TO THE UNDERWRITERS OR FINDERS IN  
4 CONNECTION WITH THE OFFERING) OR, IF THE SELLING DISCOUNTS OR  
5 COMMISSIONS ARE VARIABLE; THE BASIS OF DETERMINING THEM AND  
6 THEIR MAXIMUM AND MINIMUM AMOUNTS; THE ESTIMATED AMOUNTS OF  
7 OTHER SELLING EXPENSES, INCLUDING LEGAL, ENGINEERING, AND  
8 ACCOUNTING CHARGES; THE NAME AND ADDRESS OF EVERY UNDERWRITER  
9 AND EVERY RECIPIENT OF A FINDER'S FEE; A COPY OF ANY  
10 UNDERWRITING OR SELLING-GROUP AGREEMENT PURSUANT TO WHICH THE  
11 DISTRIBUTION IS TO BE MADE, OR THE PROPOSED FORM OF ANY SUCH  
12 AGREEMENT WHOSE TERMS HAVE NOT YET BEEN DETERMINED; AND A  
13 DESCRIPTION OF THE PLAN OF DISTRIBUTION OF ANY SECURITIES WHICH  
14 ARE TO BE OFFERED OTHERWISE THAN THROUGH AN UNDERWRITER;

15 (9) THE ESTIMATED CASH PROCEEDS TO BE RECEIVED BY THE ISSUER  
16 FROM THE OFFERING; THE PURPOSES FOR WHICH THE PROCEEDS ARE TO BE  
17 USED BY THE ISSUER; THE AMOUNT TO BE USED FOR EACH PURPOSE; THE  
18 ORDER OR PRIORITY IN WHICH THE PROCEEDS WILL BE USED FOR THE  
19 PURPOSES STATED; THE AMOUNTS OF ANY FUNDS TO BE RAISED FROM  
20 OTHER SOURCES TO ACHIEVE THE PURPOSES STATED; THE SOURCES OF ANY  
21 SUCH FUNDS; AND, IF ANY PART OF THE PROCEEDS IS TO BE USED TO  
22 ACQUIRE ANY PROPERTY (INCLUDING GOODWILL) OTHERWISE THAN IN THE  
23 ORDINARY COURSE OF BUSINESS, THE NAMES AND ADDRESSES OF THE  
24 VENDORS, THE PURCHASE PRICE, THE NAMES OF ANY PERSONS WHO HAVE  
25 RECEIVED COMMISSIONS IN CONNECTION WITH THE ACQUISITION, AND THE  
26 AMOUNTS OF ANY SUCH COMMISSIONS AND ANY OTHER EXPENSE IN  
27 CONNECTION WITH THE ACQUISITION (INCLUDING THE COST OF BORROWING  
28 MONEY TO FINANCE THE ACQUISITION);

29 (10) A DESCRIPTION OF ANY STOCK OPTIONS OR OTHER SECURITY  
30 OPTIONS OUTSTANDING, OR TO BE CREATED IN CONNECTION WITH THE

1 OFFERING, TOGETHER WITH THE AMOUNT OF ANY SUCH OPTIONS HELD OR  
2 TO BE HELD BY EVERY PERSON REQUIRED TO BE NAMED IN CLAUSE (2),  
3 (4), (5), (6), OR (8) AND BY ANY PERSON WHO HOLDS OR WILL HOLD  
4 TEN PER CENT OR MORE IN THE AGGREGATE OF ANY SUCH OPTIONS;

5 (11) THE DATES OF, PARTIES TO, AND GENERAL EFFECT CONCISELY  
6 STATED OF, EVERY MANAGEMENT OR OTHER MATERIAL CONTRACT MADE OR  
7 TO BE MADE OTHERWISE THAN IN THE ORDINARY COURSE OF BUSINESS IF  
8 IT IS TO BE PERFORMED IN WHOLE OR IN PART AT OR AFTER THE FILING  
9 OF THE REGISTRATION STATEMENT OR WAS MADE WITHIN THE PAST TWO  
10 YEARS, TOGETHER WITH A COPY OF EVERY SUCH CONTRACT; AND A  
11 DESCRIPTION OF ANY PENDING LITIGATION OR PROCEEDING TO WHICH THE  
12 ISSUER IS A PARTY AND WHICH MATERIALLY AFFECTS ITS BUSINESS OR  
13 ASSETS (INCLUDING ANY SUCH LITIGATION OR PROCEEDING KNOWN TO BE  
14 CONTEMPLATED BY GOVERNMENTAL AUTHORITIES);

15 (12) A COPY OF ANY PROSPECTUS, PAMPHLET, CIRCULAR, FORM  
16 LETTER, ADVERTISEMENT, OR OTHER SALES LITERATURE INTENDED AS OF  
17 THE EFFECTIVE DATE TO BE USED IN CONNECTION WITH THE OFFERING;

18 (13) A SPECIMEN OR COPY OF THE SECURITY BEING REGISTERED; A  
19 COPY OF THE ISSUER'S ARTICLES OF INCORPORATION AND BYLAWS, OR  
20 THEIR SUBSTANTIAL EQUIVALENTS, AS CURRENTLY IN EFFECT; AND A  
21 COPY OF ANY INDENTURE OR OTHER INSTRUMENT COVERING THE SECURITY  
22 TO BE REGISTERED;

23 (14) A SIGNED OR CONFORMED COPY OF AN OPINION OF COUNSEL AS  
24 TO THE LEGALITY OF THE SECURITY BEING REGISTERED (WITH AN  
25 ENGLISH TRANSLATION IF IT IS IN A FOREIGN LANGUAGE), WHICH SHALL  
26 STATE WHETHER THE SECURITY WHEN SOLD WILL BE LEGALLY ISSUED,  
27 FULLY PAID, AND NONASSESSABLE, AND, IF A DEBT SECURITY, A  
28 BINDING OBLIGATION OF THE ISSUER;

29 (15) THE WRITTEN CONSENT OF ANY ACCOUNTANT, ENGINEER,  
30 APPRAISER, OR OTHER PERSON WHOSE PROFESSION GIVES AUTHORITY TO A

1 STATEMENT MADE BY HIM, IF ANY SUCH PERSON IS NAMED AS HAVING  
2 PREPARED OR CERTIFIED A REPORT OR VALUATION (OTHER THAN A PUBLIC  
3 AND OFFICIAL DOCUMENT OR STATEMENT) WHICH IS USED IN CONNECTION  
4 WITH THE REGISTRATION STATEMENT;

5 (16) A BALANCE SHEET OF THE ISSUER AS OF A DATE WITHIN FOUR  
6 MONTHS PRIOR TO THE FILING OF THE REGISTRATION STATEMENT; A  
7 PROFIT AND LOSS STATEMENT AND ANALYSIS OF SURPLUS FOR EACH OF  
8 THE THREE FISCAL YEARS PRECEDING THE DATE OF THE BALANCE SHEET  
9 AND FOR ANY PERIOD BETWEEN THE CLOSE OF THE LAST FISCAL YEAR AND  
10 THE DATE OF THE BALANCE SHEET, OR FOR THE PERIOD OF THE ISSUER'S  
11 AND ANY PREDECESSORS' EXISTENCE IF LESS THAN THREE YEARS; AND,  
12 IF ANY PART OF THE PROCEEDS OF THE OFFERING IS TO BE APPLIED TO  
13 THE PURCHASE OF ANY BUSINESS, THE SAME FINANCIAL STATEMENTS  
14 WHICH WOULD BE REQUIRED IF THAT BUSINESS WERE THE REGISTRANT, OR  
15 SUCH OTHER FINANCIAL STATEMENTS AS MAY BE REQUIRED PURSUANT TO  
16 SECTION 609 (C); AND

17 (17) SUCH ADDITIONAL INFORMATION AS THE COMMISSION REQUIRES  
18 BY REGULATION OR ORDER.

19 FOR PURPOSES OF THIS SECTION 206 (B) THE COMMISSION MAY  
20 CLASSIFY ISSUERS AND TYPES OF SECURITIES.

21 (c) Registration under this section becomes effective when  
22 the commission so orders. If a registration statement has been  
23 on file for at least thirty days and all information required by  
24 the commission has been furnished, the person filing the  
25 statement may at any time file a written request that the  
26 commission take action within ten days following the filing of  
27 such request. If a request is filed and the commission takes no  
28 action within the period, the registration becomes effective at  
29 the end of the ten-day period.

30 (d) The commission may by ~~rule~~ REGULATION or order require

←

1 as a condition of registration under this section that a  
2 prospectus containing any designated part of the information  
3 contained in the registration statement or filed with it be sent  
4 or given to each person to whom an offer is made before or  
5 concurrently with: the first written offer made to him,  
6 otherwise than by means of a public advertisement, by or for the  
7 account of the issuer or any other person on whose behalf the  
8 offering is made, or by any underwriter or broker-dealer who is  
9 offering part of an unsold allotment or subscription taken by  
10 him as a participant in the distribution; or the confirmation of  
11 any sale made by or for the account of any person; or the  
12 payment pursuant to any sale; or the delivery of the security  
13 pursuant to any sale; whichever first occurs.

14 Section 207. General Registration Provisions.--(a) A  
15 registration statement may be filed by the issuer, any other  
16 person on whose behalf the offering is to be made or a licensed  
17 broker-dealer. ~~but the commission may in specific cases require~~ <—  
18 ~~that it be executed by the issuer.~~

19 (b) Every registration statement shall specify: (i) the  
20 amount of securities to be offered in this State; (ii) the  
21 states in which a registration statement or application in  
22 connection with the offering has been or is to be filed; (iii)  
23 any adverse order, judgment or decree entered in connection with  
24 the offering by the regulatory authorities in any state or by  
25 any court or the Securities and Exchange Commission, or any  
26 withdrawal with prejudice of a registration statement or  
27 application relating to the offering; AND (iv) the names of all <—  
28 underwriters and broker-dealers selling or offering the  
29 securities in this State. ~~and (v) such other information as may~~ <—  
30 ~~be required by the form therefor adopted by the commission~~

1 ~~pursuant to section 609.~~

2 (c) Any document filed under this act or a predecessor law  
3 within five years preceding the filing of a registration  
4 statement may be incorporated by reference in the registration  
5 statement.

6 (d) The commission may by ~~rule~~ REGULATION or otherwise <—  
7 permit the omission of any item of information or document from  
8 any registration statement.

9 (e) The commission may by ~~rule~~ REGULATION or order require <—  
10 as a condition of registration BY QUALIFICATION OR AS A <—  
11 CONDITION OF REGISTRATION BY COORDINATION (IF MORE THAN SIXTY-  
12 SIX AND TWO-THIRDS PER CENT OF THE ISSUE OF SECURITIES PART OR  
13 ALL OF WHICH IS TO BE REGISTERED BY COORDINATION IS TO BE SOLD  
14 IN PENNSYLVANIA) that a report by an accountant, engineer,  
15 appraiser or other professional person be filed. The commission  
16 may also designate one of its employes to make an examination of  
17 the business and records of an issuer of securities for which a  
18 registration statement has been filed by qualification.

19 (f) In the case of a nonissuer distribution, information may  
20 not be required under section 206 (b) or section 207 (k) unless  
21 it is known to the person filing the registration statement or  
22 to the persons on whose behalf the distribution is to be made,  
23 or can be furnished by them without unreasonable effort or  
24 expense.

25 (g) The commission may by ~~rule~~ REGULATION or order require <—  
26 as a condition of registration that any security issued within  
27 the past two years or to be issued to a promoter for a  
28 consideration substantially different from the public offering  
29 price, or to any person for a consideration other than cash, be  
30 deposited in escrow; or that the proceeds from the sale of the



1 registered security in this State be escrowed until the issuer  
2 receives a specified amount from the sale of the security either  
3 in this State or elsewhere; or it may impose both such  
4 requirements. The commission may by ~~rule~~ REGULATION or order <—  
5 determine the conditions of any escrow required hereunder, but  
6 may not reject a depository solely because of location in  
7 another state.

8 (h) The commission may by ~~rule~~ REGULATION require that DEBT <—  
9 securities of designated classes TO BE REGISTERED BY <—  
10 QUALIFICATION shall be issued under a trust indenture containing  
11 such provisions as it determines, BUT SUCH PROVISIONS SHALL NOT <—  
12 BE IN ADDITION TO OR INCONSISTENT WITH THE TERMS REQUIRED OR  
13 PERMITTED BY THE TRUST INDENTURE ACT OF 1929.

14 (i) The commission may by ~~rule or order~~ REGULATION require <—  
15 (I) WITH RESPECT TO REGISTRATION BY COORDINATION THAT A COPY OF <—  
16 EACH FORM OF SUBSCRIPTION OR SALE CONTRACT USED OR PROPOSED TO  
17 BE USED IN THIS STATE BE FILED WITH THE COMMISSION PRIOR TO ITS  
18 USE IN THIS STATE; AND (II) WITH RESPECT TO REGISTRATION BY  
19 QUALIFICATION THAT, as a condition of registration, ~~that~~ any <—  
20 security registered be sold only on a specified form of  
21 subscription or sale contract; and (III) that a signed or <—  
22 conformed copy of each SUCH contract be ~~filed with the~~ <—  
23 ~~commission or~~ preserved for any period up to three years.

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

1 in the distribution, provided that the commission has been  
2 notified of such continued offering and the period thereof. Any  
3 SUCH extension of the offering period FOR SECURITIES REGISTERED <—  
4 BY QUALIFICATION shall be subject to ~~rules~~ REGULATIONS <—  
5 established by the commission. The fact that a registration  
6 statement has been effective in this State with respect to any  
7 security does not permit sales of securities of the same class  
8 by the issuer or an affiliate of the issuer if such person did  
9 not file the registration statement, unless a separate  
10 registration statement is filed and declared effective with  
11 respect thereto, or ~~absent an applicable exemption~~. AN EXEMPTION <—  
12 FROM REGISTRATION IS AVAILABLE. A registration statement may not  
13 be withdrawn after its effective date if any of the securities  
14 registered have been sold in this State, unless permitted by  
15 ~~rule~~ REGULATION or order of the commission. No registration <—  
16 statement is effective during the time a stop order is in effect  
17 under section 208.

18 (k) During the effective period of a registration statement,  
19 the commission may by ~~rule or order~~ REGULATION require the <—  
20 person who filed the registration statement to file reports with  
21 the commission, not more often than quarterly, to keep  
22 reasonably current the information contained in the registration  
23 statement and to disclose the progress of the offering;  
24 provided, however, that ~~any person may file with the commission~~ <—  
25 ~~copies of reports filed~~ NO PERSON NEED COMPLY WITH ANY SUCH <—  
26 REGULATION OF THE COMMISSION IF SUCH PERSON FILES WITH THE  
27 COMMISSION COPIES OF ALL REPORTS SUCH PERSON IS REQUIRED TO FILE  
28 with the Securities and Exchange Commission ~~including form SR in~~ <—  
29 ~~lieu of the foregoing~~. AND IF SUCH REPORTS ARE FILED IN A TIMELY <—  
30 MANNER. If any of the securities registered have been sold in

1 the State, the commission may by ~~rule or order~~ REGULATION extend <—  
2 the period for filing the reports for an additional term not  
3 exceeding two years from the date the registration became  
4 effective or the date of its last amendment or extension.

5 (l) A registration statement relating to redeemable  
6 securities issued by an open-end management company or unit  
7 investment trust, as defined in the Investment Company Act of  
8 1940, or to securities issued by any class of financial  
9 institutions which the commission by rule determines, may be  
10 amended after its effective date so as to increase the specified  
11 amount of securities proposed to be offered. The amendment  
12 becomes effective when the commission so orders.

13 ~~(m) No warrant or right to purchase or subscribe to another <—  
14 security and no security convertible into another security shall  
15 be registered unless it appears to the commission that both the  
16 warrant or right or convertible security and the securities  
17 deliverable on the exercise of the warrant or right or  
18 conversion privilege comply with the provisions of this act.~~

19 ~~(n)~~ (M) Each person who accepts an offer to purchase <—  
20 securities registered by qualification directly from an issuer  
21 or an affiliate of an issuer shall have the right to withdraw  
22 his acceptance without incurring any liability to the seller,  
23 underwriter (if any) or any other person, within two business  
24 days after he receives a ~~final prospectus with respect <—  
25 PROSPECTUS RELATING to the offering (WHICH IS NOT MATERIALLY <—  
26 DIFFERENT FROM THE FINAL PROSPECTUS RELATING TO SUCH OFFERING)  
27 and a notice explaining the provisions of this subsection. As  
28 used herein, the term "final prospectus" shall mean the document  
29 prepared in accordance with such ~~rules~~ REGULATIONS as the <—  
30 commission may provide, to be used by the seller in connection~~

1 with an offering of securities in this State after the  
2 registration of such securities has become effective under this  
3 act. Each person who accepts an offer to purchase securities  
4 exempted from registration by section 203 (d), (f), ~~(g) or (s)~~, <—  
5 (P) OR (R), directly from an issuer or affiliate of an issuer <—  
6 shall have the right to withdraw his acceptance without  
7 incurring any liability to the seller, underwriter (if any) or  
8 any other person, within two business days after he enters into  
9 a binding contract of purchase, or makes any payment for the  
10 securities being offered or the exemption becomes effective,  
11 whichever is later.

12 Section 208. Denial, Suspension, and Revocation of  
13 Registrations.--(a) The commission may issue a stop order  
14 denying effectiveness to, or suspending or revoking the  
15 effectiveness of, any registration statement if it finds that  
16 the order is in the public interest and that:

17 (i) The registration statement as of its effective date or  
18 as of any earlier date in the case of an order denying  
19 effectiveness, or any amendment filed under section 207 (l) as  
20 of its effective date, or any report under section 207 (k) is  
21 incomplete in any material respect or contains any statement  
22 which was, in the light of the circumstances under which it was  
23 made, false or misleading with respect to any material fact, or  
24 ~~omits~~ OMITTED to state a material fact necessary in order to <—  
25 make the statements made, in the light of the circumstances  
26 under which they are made, not misleading;

27 (ii) Any provision of this act or any ~~rule~~, REGULATION, <—  
28 order or condition lawfully imposed under this act has been  
29 wilfully violated, in connection with the offering by: (A) the  
30 person filing the registration statement, (B) the issuer, (C)

1 any partner, officer or director of the issuer, (D) any person  
2 occupying a similar status or performing similar functions, (E)  
3 any affiliate of the issuer, but only if the person filing the  
4 registration statement is an affiliate of the issuer, or (F) any  
5 broker-dealer; ~~or other person involved directly or indirectly~~ ←  
6 ~~in the offering;~~

7 (iii) The securities are the subject of an administrative  
8 stop order or similar order or a permanent or temporary  
9 injunction of any court of competent jurisdiction entered under  
10 any other Federal or State act applicable to the offering, but  
11 the commission may not institute a proceeding against an  
12 effective registration statement under this section more than  
13 one year from the date of the order or injunction relied on, and  
14 it may not enter an order under this section on the basis of an  
15 order or injunction entered under any other state act unless  
16 that order or injunction was based on facts which would  
17 currently constitute a ground for a stop order under this act;

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

20 (v) The offering has been or would be made with unreasonable  
21 amounts of underwriters' and sellers' discounts, commissions or  
22 other compensation, or promoters' profits or participation, or  
23 unreasonable amounts or kinds of options, or has worked or  
24 tended to work a fraud upon purchasers or would so operate, ~~or~~ ←  
25 ~~involves an unreasonable distribution of voting rights;~~ PROVIDED ←

26 THAT ANY UNDERWRITING COMPENSATION APPROVED BY A NATIONAL  
27 SECURITIES ASSOCIATION REGISTERED UNDER THE SECURITIES EXCHANGE  
28 ACT OF 1934 WITH RESPECT TO THE UNDERWRITING ACTIVITIES OF ITS  
29 MEMBERS SHALL NOT BE DEEMED UNREASONABLE UNDER THIS SECTION;

30 (vi) The applicant or registrant has failed to pay the

1 proper filing fee; but the commission may only enter a denial  
2 order under this subsection, and it shall vacate any such order  
3 when the deficiency has been corrected; OR

<—

4 (vii) Advertising prohibited by section 606 (e) has been  
5 used in connection with the sale or offering of the securities.

6 ~~or~~

<—

7 ~~(viii) In the case of unsecured debt or preferred equity~~  
8 ~~securities with a fixed dividend rate, the financial condition~~  
9 ~~of the issuer affects or would affect the soundness of the~~  
10 ~~securities.~~

11 (b) The commission may not institute a stop order proceeding  
12 against an effective registration statement on the basis of a  
13 fact or transaction known to it when the registration statement  
14 became effective unless the proceeding is instituted within  
15 thirty days after effectiveness.

16 ~~(c) In a proceeding for registration by qualification, the~~  
17 ~~registrant has the burden of satisfying the requirements of~~  
18 ~~subsection (a). In a proceeding for registration by~~  
19 ~~coordination, the commission has the burden of establishing the~~  
20 ~~existence of one of the grounds enumerated in subsection (a).~~

<—

21 ~~(d)~~ (C) The commission may issue a summary order denying,  
22 postponing, suspending or revoking the effectiveness of a  
23 registration statement pending final determination of any  
24 proceeding under this section. Upon the entry of the order, the  
25 commission shall promptly notify each person specified in  
26 subsection ~~(e)~~ (D) that it has been entered and the reasons  
27 therefor and that within fifteen days after the receipt of a  
28 written request the matter will be set down for hearing. If no  
29 hearing is requested or ordered, the commission, after notice of  
30 and opportunity for hearing to each person specified in

<—

<—

1 subsection ~~(e)~~ (D); may modify or vacate the order or extend it <—  
2 until final determination.

3 ~~(e)~~ (D) No stop order may be entered under this section <—  
4 except under subsection ~~(d)~~ (C) without appropriate prior notice <—  
5 to the applicant or registrant, the issuer and the person on  
6 whose behalf the securities are to be or have been offered;  
7 opportunity for hearing; and written findings of fact and  
8 conclusions of law.

9 ~~(f)~~ (E) The commission may vacate or modify a stop order if <—  
10 it finds that the conditions which prompted its entry have  
11 changed or that it is otherwise in the public interest to do so.

12 Section 209. Books, Records and Accounts.--Every issuer  
13 ~~qualifying~~ REGISTERING securities for sale in this State or who <—  
14 has sold securities in this State pursuant to an exemption  
15 contained in section 202 (e), 203 (d), 203 ~~(q)~~ (P) or 203 ~~(s)~~ <—  
16 (R) shall at all times keep and maintain a complete set of <—  
17 books, records, and accounts of such sales and the disposition  
18 of the proceeds thereof FOR A PERIOD OF THREE YEARS FOLLOWING <—  
19 THE LAST SALE OF SECURITIES IN THIS STATE OR ONE YEAR AFTER THE  
20 DISPOSITION OF ALL PROCEEDS, WHICHEVER IS LONGER, and shall  
21 thereafter, at such times as are required by the commission,  
22 make and file in the office of the commission, a report, setting  
23 forth the securities sold by it under such ~~qualification~~ <—  
24 REGISTRATION or exemption, the proceeds derived therefrom and <—  
25 the disposition thereof.

26 PART III

27 REGISTRATION OF BROKER-DEALERS, AGENTS

28 AND INVESTMENT ADVISERS

29 Section 301. Registration Requirement.--Unless exempted  
30 under section 302 hereof:

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

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

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

24 (d) It is unlawful for any licensed broker-dealer, agent or  
25 investment adviser, or any affiliate of such a broker-dealer or  
26 investment adviser, to ~~transact business~~ EFFECT A TRANSACTION IN ←  
27 SECURITIES in this State if the registrant is in violation of  
28 this act, or any ~~rule or~~ REGULATION OR order promulgated under ←  
29 this act of which he has notice, ~~or~~ IF SUCH VIOLATION (I) IS A ←  
30 MATERIAL VIOLATION; (II) RELATES TO TRANSACTIONS EFFECTED IN



1 THIS STATE; AND (III) HAS BEEN COMMITTED BY SUCH REGISTRANT, OR  
2 if the information contained in his application for  
3 registration, as of the date of such transaction, is incomplete  
4 in any material respect or is false or misleading with respect  
5 to any material fact.

6 (e) Every registration expires two years from its effective  
7 date unless renewed. The commission by ~~rule or order~~ REGULATION <—  
8 may prepare an initial schedule for registration renewals so  
9 that subsequent renewals of registrations effective April 1,  
10 1972 may be staggered. For this purpose the commission may  
11 adjust the registration fee proportionately. No registration is  
12 effective after its expiration, UNLESS A REGISTRATION <—  
13 APPLICATION HAS BEEN FILED WITHIN THE TIME PERIOD SPECIFIED IN  
14 SECTION 305 and expiration of a registration for which no  
15 renewal application has been filed is deemed an application for  
16 withdrawal under section ~~306~~ 305 (f). <—

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

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

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

4 (c) A bank not ~~licensed~~ REGISTERED as a broker-dealer UNDER <—  
5 THIS ACT executing orders for the purchase or sale of securities  
6 ~~as agent~~ for the ACCOUNT OF THE purchaser or seller thereof. ~~in~~ <—  
7 ~~accordance with rules which the commission establishes.~~

8 (d) A person registered under the Investment Advisers Act of  
9 1940, who has not previously had any certificate denied or  
10 revoked under this act or any predecessor statute, if ~~he has no~~ <—  
11 ~~place of business in this State and~~ (i) his only clients in this  
12 State are other investment advisers, broker-dealers,  
13 institutional investors or governmental agencies ~~or~~ AND OTHER <—  
14 instrumentalities designated by ~~rule~~ REGULATION of the <—  
15 commission, or (ii) during any period of twelve consecutive  
16 months he does not direct business communications into this  
17 State in any manner to more than five clients other than those  
18 specified in clause (i) above, whether or not he or any of the  
19 persons to whom the communications are directed is then present  
20 in this State.

21 (e) Any bona fide officer ~~or director of an issuer,~~ <—  
22 DIRECTOR, PARTNER OR EMPLOYE OF AN ISSUER, OR AN INDIVIDUAL <—  
23 OCCUPYING SIMILAR STATUS OR PERFORMING SIMILAR FUNCTIONS, if  
24 such person does not receive any compensation, directly or  
25 indirectly, for his activities on behalf of an issuer in  
26 connection with any security or transaction ~~not~~ EXCEPT THOSE <—  
27 exempted under section 202 or 203.

28 (f) The commission may by such ~~rules~~ REGULATIONS as it deems <—  
29 necessary or appropriate in the public interest or for the  
30 protection of investors, either unconditionally or upon

1 specified terms and conditions or for specified periods, exempt  
2 from the provisions of section 301 any class of persons  
3 specified in such ~~rules~~. REGULATIONS. <—

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

24 (ii) If no denial order is in effect and no proceeding is  
25 pending under section 305, the registration becomes effective  
26 ~~thirty days~~ ON THE THIRTIETH DAY after the filing of ~~any~~ <—  
27 ~~amendment~~. THE APPLICATION THEREFOR OR ANY MATERIAL AMENDMENT <—  
28 THERETO, OR ON SUCH EARLIER DATE AS THE COMMISSION MAY ORDER.  
29 The commission is directed to cooperate with other securities  
30 administrators and regulatory authorities to simplify and

1 coordinate registration, application and renewal procedures.

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

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

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

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

29 ~~(f)~~ (E) The commission may by ~~rule~~ REGULATION require surety ←  
30 bonds TO BE POSTED by any broker-dealer, investment adviser, and ←

1 any issuer who employs agents in connection with any security or  
2 transaction not exempted by section 202 or 203 in an amount not  
3 exceeding ten thousand dollars (\$10,000), and all bonds required  
4 shall provide for suit thereon by injured customers, clients or  
5 purchasers, but no bond may be required of any registered  
6 broker-dealer or investment adviser whose net capital exceeds  
7 the amount prescribed ~~by rule~~ IN THIS SECTION 303 OR BY <—  
8 REGULATION for this purpose. Such bond, unless cancelled as  
9 provided herein, shall be in effect during the entire period  
10 that a registration is in effect. Every bond shall contain a  
11 provision that such bond is not cancellable, except on thirty-  
12 days prior written notice to the person ~~for~~ BY whom the bond was <—  
13 ~~issued~~ POSTED and the commission, provided that such <—  
14 cancellation shall not affect any liability incurred or accrued  
15 prior to the effective date of such cancellation.

16 ~~(g) The commission may by rule or order impose other <—~~  
17 ~~conditions in connection with the issuance of licenses under~~  
18 ~~this act as it deems appropriate in the public interest and for~~  
19 ~~the protection of investors.~~

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

1 (b) Every registered broker-dealer and investment adviser  
2 shall file such FINANCIAL reports as the commission by rule ←  
3 REGULATION prescribes. ←

4 (c) If the information contained in any document filed with  
5 the commission is or becomes inaccurate or incomplete in any  
6 material respect, the registrant shall promptly file a  
7 correcting amendment.

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

21 (e) The commission may by ~~rule~~ REGULATION prohibit ←  
22 unreasonable charges, commissions or other compensation of  
23 broker-dealers and investment advisers, provided that any  
24 ~~commission rate~~ CHARGES, COMMISSIONS, OR OTHER COMPENSATION ←  
25 CONSISTENT WITH RATES set by a national securities exchange,  
26 when applied to transactions on that exchange, ~~and any~~ ←  
27 ~~commission rate set~~ OR by the Securities and Exchange Commission ←  
28 OR NATIONAL SECURITIES ASSOCIATION REGISTERED UNDER THE ←  
29 SECURITIES EXCHANGE ACT OF 1934, shall not be deemed  
30 unreasonable under this section. Any underwriting compensation

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

5 (f) The commission may prescribe rules WHICH IT FINDS ←  
6 APPROPRIATE IN THE PUBLIC INTEREST AND FOR THE PROTECTION OF  
7 INVESTORS for the conduct of business by broker-dealers and  
8 investment advisers ~~which it finds appropriate in the public~~ ←  
9 ~~interest and for the protection of investors.~~ WHO ARE NOT ←  
10 MEMBERS OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.  
11 OR ANY OTHER NATIONAL SECURITIES ASSOCIATION REGISTERED UNDER  
12 THE SECURITIES EXCHANGE ACT OF 1934, WHICH ASSOCIATION HAS  
13 ADOPTED RULES OF CONDUCT.

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

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

27 (i) Has, in any application for registration or in any  
28 report required to be filed with the commission under this act,  
29 or in any proceeding before the commission, wilfully made or  
30 caused to be made any statement which was at the time and in the

1 light of the circumstances under which it was made false or  
2 misleading with respect to any material fact, or has wilfully  
3 omitted to state in any such application, report or proceeding,  
4 any material fact which is required to be stated therein or  
5 necessary in order to make the statements made, in the light of  
6 the circumstances under which they are made, not misleading, or  
7 has wilfully failed to amend or supplement such an application,  
8 report or statement in a timely manner in accordance with rules  
9 which may be adopted by the commission; or

10 (ii) Has, within ten years of the date of the commission's  
11 action, been either (A) convicted of a felony or misdemeanor, or  
12 (B) held liable in a civil action by final judgment of a court  
13 based upon conduct showing moral turpitude, and the commission  
14 finds that any such felony, misdemeanor or civil action (I)  
15 involved the purchase or sale of any security, or any other  
16 aspect of the securities business, (II) arose out of the conduct  
17 of the business of a broker-dealer, investment adviser or issuer  
18 with respect to a security or transaction not exempt under  
19 section 202 or 203, (III) involved embezzlement, fraudulent  
20 conversion or misappropriation of property, funds or securities,  
21 or (IV) involved the violation of section 1341, 1342 or 1343 of  
22 Title 18 of the United States Code; or

23 (iii) Is permanently or temporarily enjoined by any court of  
24 competent jurisdiction from engaging in or continuing any  
25 conduct or practice involving any aspect of the securities  
26 BUSINESS OR INVOLVING FRAUDULENT CONDUCT IN THE banking or ←  
27 insurance business; or

28 (iv) Is subject to any currently effective order or order  
29 entered within the past five years of the Securities and  
30 Exchange Commission or the securities administrator of any other



1 state denying registration to or revoking or suspending the  
2 registration of such person as a broker-dealer, agent or  
3 investment adviser or is subject to any currently effective  
4 order of any national securities association or national  
5 securities exchange (as defined in the Securities Exchange Act  
6 of 1934) suspending or expelling such person from membership in  
7 such association or exchange, or is the subject of a currently  
8 effective United States Postal Service fraud order; but the  
9 commission may not institute a revocation or suspension  
10 proceeding under this subsection on the basis of an order under  
11 another state law MORE THAN ONE YEAR AFTER TERMINATION OF THE  
12 EFFECTIVENESS OF THE ORDER RELIED ON AND unless the order was  
13 based on facts which would currently constitute grounds for an  
14 order under this section; or

15 (v) Has wilfully violated any provision of the Securities  
16 Act of 1933, the Securities Exchange Act of 1934, the Trust  
17 Indenture Act of 1939, the Investment Advisers Act of 1940, the  
18 Investment Company Act of 1940 or this act, or any predecessor  
19 law, or of any rule or regulation under any of such statutes; or

20 (vi) Has wilfully aided, abetted, counseled, commanded,  
21 induced, or procured the violation by any other person of any of  
22 the statutes or rules or regulations referred to in subsection  
23 (v); or

24 (vii) Has failed reasonably to supervise his agents, if he  
25 is a broker-dealer, or his employes, if he is an investment  
26 adviser, but no person shall be deemed to have failed in such  
27 supervision if there have been established procedures, and a  
28 system for applying such procedures, which would reasonably be  
29 expected to prevent and detect, in so far as practicable, any  
30 violation of statutes, rules or orders described in subsection

1 (v) and if such person has reasonably discharged the duties and  
2 obligations incumbent upon him by reason of such procedures and  
3 system without reasonable cause to believe that such procedures  
4 and system were not being complied with; or

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

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

10 or

11 (x) Is insolvent, either in the sense that his liabilities  
12 exceed his assets or in the sense that he cannot meet his  
13 obligations as they mature, or is in such financial condition  
14 that he cannot continue in business with safety to his  
15 customers, or has not sufficient financial responsibility to  
16 carry out the obligations incident to his operations PROVIDED ←  
17 THAT THE COMMISSION HAS MADE A SPECIFIC FINDING OF INSOLVENCY,  
18 ABSENCE OF SAFETY OR INSUFFICIENT FINANCIAL RESPONSIBILITY; or

19 (xi) Is not qualified on the basis of such factors as  
20 training, experience and knowledge of the securities business;  
21 EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B); or ←

22 (xii) Is selling or has sold, or is offering or has offered  
23 for sale, in this State securities through any ~~unlicensed agent~~ ←  
24 UNREGISTERED AGENT REQUIRED TO BE REGISTERED UNDER THIS ACT or ←  
25 for any broker-dealer or issuer with knowledge that such broker-  
26 dealer or issuer had not or has not complied with this act; or

27 (xiii) Has made any material misrepresentation to or  
28 withheld or concealed from or omitted to state to the commission  
29 or any of its representatives any material fact necessary in  
30 order to make the statements made, in the light of the

1 circumstances under which they are made, not misleading, or has  
2 refused to furnish information reasonably requested by the  
3 commission.

4 ~~(b) The enumeration of the causes stated in subsection (a)~~ <—  
5 ~~shall not be exclusive, and the commission may deny, suspend or~~  
6 ~~revoke any registration or censure any registrant or applicant~~  
7 ~~for any cause, whether similar to or different from these~~  
8 ~~causes, when necessary or appropriate in the public interest or~~  
9 ~~for the protection of investors.~~

10 (B) THE FOLLOWING PROVISIONS GOVERN THE APPLICATION OF <—  
11 SECTION 305 (A) (XI):

12 (I) THE COMMISSION MAY NOT ENTER AN ORDER AGAINST A BROKER-  
13 DEALER ON THE BASIS OF THE LACK OF QUALIFICATION OF ANY PERSON  
14 OTHER THAN (A) THE BROKER-DEALER HIMSELF IF HE IS AN INDIVIDUAL,  
15 OR (B) AN AGENT OF THE BROKER-DEALER.

16 (II) THE COMMISSION MAY NOT ENTER AN ORDER AGAINST AN  
17 INVESTMENT ADVISER ON THE BASIS OF THE LACK OF QUALIFICATION OF  
18 ANY PERSON OTHER THAN (A) THE INVESTMENT ADVISER HIMSELF IF HE  
19 IS AN INDIVIDUAL, OR (B) ANY OTHER PERSON WHO REPRESENTS THE  
20 INVESTMENT ADVISER IN DOING ANY OF THE ACTS WHICH MAKE HIM AN  
21 INVESTMENT ADVISER.

22 (III) THE COMMISSION MAY NOT ENTER AN ORDER SOLELY ON THE  
23 BASIS OF LACK OF EXPERIENCE IF THE APPLICANT OR REGISTRANT IS  
24 QUALIFIED BY TRAINING OR KNOWLEDGE OR BOTH.

25 (IV) THE COMMISSION SHALL CONSIDER THAT AN AGENT WHO WILL  
26 WORK UNDER THE SUPERVISION OF A REGISTERED BROKER-DEALER NEED  
27 NOT HAVE THE SAME QUALIFICATIONS AS A BROKER-DEALER.

28 (V) THE COMMISSION SHALL CONSIDER THAT AN INVESTMENT ADVISER  
29 IS NOT NECESSARILY QUALIFIED SOLELY ON THE BASIS OF EXPERIENCE  
30 AS A BROKER-DEALER OR AGENT. WHEN IT FINDS THAT AN APPLICANT FOR

1 INITIAL OR RENEWAL REGISTRATION AS A BROKER-DEALER IS NOT  
2 QUALIFIED AS AN INVESTMENT ADVISER, IT MAY BY ORDER CONDITION  
3 THE APPLICANT'S REGISTRATION AS A BROKER-DEALER UPON HIS NOT  
4 TRANSACTING BUSINESS IN THIS STATE AS AN INVESTMENT ADVISER.

5 (VI) THE COMMISSION MAY BY RULE PROVIDE FOR AN EXAMINATION,  
6 WHICH MAY BE WRITTEN OR ORAL OR BOTH, TO BE TAKEN BY ANY CLASS  
7 OF OR ALL APPLICANTS, AS WELL AS PERSONS WHO REPRESENT OR WILL  
8 REPRESENT AN INVESTMENT ADVISER IN DOING ANY OF THE ACTS WHICH  
9 MAKE HIM AN INVESTMENT ADVISER.

10 (c) The commission may not institute a suspension or  
11 revocation proceeding on the basis of a fact or transaction  
12 known to it when the registration became effective unless the  
13 proceeding is instituted within thirty days after such effective  
14 date.

15 (d) The commission may by order summarily deny, postpone or  
16 suspend an application for registration pending final  
17 determination of any proceeding under this section. Upon the  
18 entry of the order, the commission shall promptly notify the  
19 applicant or registrant, as well as the employer or prospective  
20 employer if the applicant or registrant is an agent, that it has  
21 been entered and of the reasons therefor and that within fifteen  
22 days after the receipt of a written request the matter will be  
23 set down for hearing. If no hearing is requested and none is  
24 ordered by the commission, the order will remain in effect until  
25 it is modified or vacated by the commission. If a hearing is  
26 requested or ordered, the commission, after notice of and  
27 opportunity for hearing, may modify or vacate the order or  
28 extend it until final determination.

29 (e) If the commission finds that any registrant or applicant  
30 is no longer in existence or has ceased to do business as a

1 broker-dealer, agent or investment adviser, or is subject to an  
2 adjudication of mental incompetence or to the control of a  
3 committee, conservator or guardian, or cannot be located after  
4 reasonable search, the commission may by order revoke the  
5 registration or deny the application.

6 (f) Withdrawal from the status of a registered broker-  
7 dealer, agent or investment adviser becomes effective ~~thirty~~ ←  
8 ~~days~~ ON THE THIRTIETH DAY after receipt of an application to ←  
9 withdraw, or within such shorter period as the commission  
10 determines, unless a revocation or suspension proceeding is  
11 pending before the commission when the application is filed or a  
12 proceeding to revoke or suspend or to impose conditions upon the  
13 withdrawal is instituted before the commission within thirty  
14 days after the application is filed. If a proceeding is SO ←  
15 pending or instituted, withdrawal becomes effective at such time  
16 and upon such conditions as the commission by order determines.  
17 If no proceeding is SO pending or instituted and withdrawal ←  
18 automatically becomes effective, the commission may institute a  
19 revocation or suspension proceeding under subsection (a) (ii)  
20 within one year after withdrawal became effective and enter a  
21 revocation or suspension order as of the last date on which the  
22 registration was in effect.

23 (g) No order may be entered under this section except under  
24 subsection (d) without appropriate prior notice to the applicant  
25 or registrant as well as the employer or prospective employer if  
26 the applicant or registrant is an agent, opportunity for hearing  
27 and written findings of fact and conclusions of law. In cases of  
28 denial orders, such findings and conclusions shall be provided  
29 only if requested by the applicant.

30 Section 306. Prohibited Employment.--(a) It is unlawful for

1 any person, as to whom an order suspending or revoking his  
2 registration is in effect, willfully to become or to be employed  
3 in any capacity by any broker-dealer or investment adviser or in  
4 the position of agent for an issuer without the consent of the  
5 commission; and it is unlawful for any broker-dealer, investment  
6 adviser or issuer ~~(when such employment is in connection with a~~ ←  
7 ~~security or transaction not exempted under section 202 or 203)~~  
8 to permit such a person to become or to remain a person employed  
9 by him without the consent of the commission if such broker-  
10 dealer, investment adviser or issuer knew, or in the exercise of  
11 reasonable care should have known, of such order.

12 (b) No issuer (except for a broker-dealer registered  
13 hereunder) shall employ any person as an agent hereunder if such  
14 ISSUER KNEW, OR IN THE EXERCISE OF REASONABLE CARE SHOULD HAVE ←  
15 KNOWN, THAT SUCH person has at any time within the twelve  
16 previous months participated in this State as an agent, officer  
17 or director of ~~an~~ ANOTHER issuer in the sale of securities of ←  
18 that issuer, which securities were registered under section 205  
19 or 206.

20 PART IV

21 FRAUDULENT AND PROHIBITED PRACTICES

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

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

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

30 (c) To engage in any act, practice or course of business

1 which operates or would operate as a fraud or deceit upon any  
2 person.

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

5 (a) For the purpose of creating a false or misleading  
6 appearance of active trading in a security or a false or  
7 misleading appearance with respect to the market for a security:

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

10 (ii) to enter any order or orders for the purchase (or sale) <—  
11 of the security with the knowledge that an order or orders of  
12 substantially the same size, at substantially the same time, and  
13 at substantially the same price for the sale (or purchase) of <—  
14 the security, have been or will be entered by or for the same or  
15 affiliated persons;

16 (b) To effect, alone or with one or more other persons, a  
17 series of transactions in any security creating actual or  
18 apparent active trading in the security or raising or depressing  
19 the price of the security for the purpose of inducing the  
20 purchase or sale of the security by others; or

21 (c) To induce the purchase or sale of any security by the  
22 circulation or dissemination of information to the effect that  
23 the price of the security will or is likely to rise or fall  
24 because of market operations of any one or more persons  
25 conducted for the purpose of raising or depressing the price of  
26 the security, if he is selling or offering to sell or purchasing  
27 or offering to purchase the security or is receiving a  
28 consideration, directly or indirectly, from any such person.

29 Section 403. Prohibited Transactions; Broker-dealers and  
30 Agents.--(a) No broker-dealer or agent shall effect any <—

1 transaction in, or induce or attempt to induce the purchase or  
2 sale of, any security in this State by means of any  
3 manipulative, deceptive or other fraudulent scheme, device, or  
4 contrivance. ~~The commission may, by rule, define such schemes,~~ ←  
5 ~~devices or contrivances as are manipulative, deceptive, or~~  
6 ~~otherwise fraudulent.~~

7 ~~(b) No broker dealer or agent shall effect any transaction~~  
8 ~~in, or induce or attempt to induce the purchase or sale of any~~  
9 ~~security in this State in connection with which such broker-~~  
10 ~~dealer or agent engages in any fraudulent, deceptive or~~  
11 ~~manipulative act or practice or makes any fictitious quotation.~~  
12 ~~The commission may, by rule, define and prescribe means~~  
13 ~~reasonably designed to prevent such acts and practices as are~~  
14 ~~fraudulent, deceptive, or manipulative and such quotations as~~  
15 ~~are fictitious.~~

16 ~~(c) 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 contravention of such rules as the~~  
19 ~~commission may prescribe as necessary or appropriate in the~~  
20 ~~public interest or for the protection of investors to provide~~  
21 ~~safeguards with respect to the financial responsibility of~~  
22 ~~broker dealers.~~

23 ~~(d) No broker dealer or agent shall effect or attempt to~~  
24 ~~effect in this State, in contravention of such rules as the~~  
25 ~~commission may prescribe as necessary or appropriate in the~~  
26 ~~public interest or for the protection of investors, (i) any~~  
27 ~~transaction in connection with any security whereby any party to~~  
28 ~~such transaction acquires any put, call, straddle, or other~~  
29 ~~option or privilege of buying or selling the security, or (ii)~~  
30 ~~any transaction in connection with any security with relation to~~



1 ~~which he has, directly or indirectly, any interest in any such~~  
2 ~~put, call, straddle, option, or privilege, or (iii) any~~  
3 ~~transaction in any security for the account of any person who he~~  
4 ~~has reason to believe has, and who actually has, directly or~~  
5 ~~indirectly, any interest in any such put, call, straddle,~~  
6 ~~option, or privilege with relation to such security.~~

7 ~~(c) No broker dealer registered under this act shall effect~~  
8 ~~any transaction in or induce or attempt to induce the purchase~~  
9 ~~or sale of any security in this State in contravention of such~~  
10 ~~rules as the commission may prescribe designed to promote just~~  
11 ~~and equitable principles of trade, to provide safeguards against~~  
12 ~~unreasonable profits or unreasonable rates of commissions or~~  
13 ~~other charges, and in general to protect investors and the~~  
14 ~~public interest, and to remove impediments to and protect the~~  
15 ~~mechanism of a free and open market. CONTRIVANCE, FICTITIOUS~~ ←  
16 ~~QUOTATION, OR IN VIOLATION OF THIS ACT OR ANY REGULATION OR~~  
17 ~~ORDER HEREUNDER.~~

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

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

23 (b) To engage in any transaction, practice, or course of  
24 business which operates ~~or would operate~~ as a fraud or deceit ←  
25 upon any client or prospective client.

26 (c) Acting as principal for his own account, knowingly to  
27 sell any security to or purchase any security from a client for  
28 whom he is acting as investment adviser, or, acting as broker  
29 for a person other than such client, knowingly to effect any  
30 sale or purchase of any security for the account of such client,

1 without disclosing to such client in writing before the  
2 completion of the transaction the capacity in which he is acting  
3 and obtaining the written consent of the client to such  
4 transaction.

5 (d) To engage in any act, practice, or course of business  
6 which is fraudulent, deceptive, or manipulative. ~~The commission~~ <—  
7 ~~may, by rule, define and prescribe means reasonably designed to~~  
8 ~~prevent such acts, practices, and courses of business as are~~  
9 ~~fraudulent, deceptive, or manipulative.~~

10 (e) To represent that he is an investment counsel or to use  
11 the name "investment counsel" as descriptive of his business  
12 unless his principal business consists of acting as investment  
13 adviser and a substantial part of his business consists of  
14 rendering investment advisory services on the basis of the  
15 individual needs of his clients.

16 (f) ~~To~~ UNLESS AN ADVISOR IS REGISTERED AS A BROKER-DEALER <—  
17 UNDER THIS ACT, TO take and have custody of any securities or  
18 funds of any client if he fails to meet such requirements  
19 therefor as may be prescribed by the commission by rule <—  
20 REGULATION. <—

21 ~~Section 405. Contract Requirements. (a) No investment~~ <—  
22 ~~adviser shall in this State enter into, extend or renew any~~  
23 ~~investment advisory contract entered into, extended or renewed~~  
24 ~~on or after the effective date of this act, if such contract:~~

25 (i) ~~Provides for compensation to the investment adviser on~~  
26 ~~the basis of a share of capital gains upon or capital~~  
27 ~~appreciation of the funds or any portion of the funds of the~~  
28 ~~client, except (A) where the investment adviser has not~~  
29 ~~registered and is not required to register under this act, (B)~~  
30 ~~where such contract is for the rendering of investment advisory~~

1 ~~services to an institutional investor, and (C) as may be~~  
2 ~~otherwise permitted by rule of the commission;~~

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

6 ~~(iii) Fails to provide, in writing, that the investment~~  
7 ~~adviser, if a partnership, will notify the other party to the~~  
8 ~~contract of any change in the membership of such partnership~~  
9 ~~within a reasonable time after such change.~~

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

30 SECTION 405. CONTRACT REQUIREMENTS.--IT IS UNLAWFUL FOR ANY

<—

1 INVESTMENT ADVISER TO ENTER INTO, EXTEND, OR RENEW ANY  
2 INVESTMENT ADVISORY CONTRACT UNLESS IT PROVIDES IN WRITING:

3 (1) THAT THE INVESTMENT ADVISER SHALL NOT BE COMPENSATED ON  
4 THE BASIS OF A SHARE OF CAPITAL GAINS UPON OR CAPITAL  
5 APPRECIATION OF THE FUNDS OR ANY PORTION OF THE FUNDS OF THE  
6 CLIENT;

7 (2) THAT NO ASSIGNMENT OF THE CONTRACT MAY BE MADE BY THE  
8 INVESTMENT ADVISER WITHOUT THE CONSENT OF THE OTHER PARTY TO THE  
9 CONTRACT; AND

10 (3) THAT THE INVESTMENT ADVISER, IF A PARTNERSHIP, SHALL  
11 NOTIFY THE OTHER PARTY TO THE CONTRACT OF ANY CHANGE IN THE  
12 MEMBERSHIP OF THE PARTNERSHIP WITHIN A REASONABLE TIME AFTER THE  
13 CHANGE.

14 CLAUSE (1) DOES NOT PROHIBIT AN INVESTMENT ADVISORY CONTRACT  
15 WHICH PROVIDES FOR COMPENSATION BASED UPON THE TOTAL VALUE OF A  
16 FUND AVERAGED OVER A DEFINITE PERIOD, OR AS OF DEFINITE DATES OR  
17 TAKEN AS OF A DEFINITE DATE, OR IN ANY OTHER MANNER PERMITTED BY  
18 THE INVESTMENT ADVISERS ACT OF 1940, AND THE RULES AND  
19 REGULATIONS PROMULGATED THEREUNDER OR ANY CONTRACT FOR THE  
20 RENDERING OF INVESTMENT ADVISORY SERVICES TO AN INSTITUTIONAL  
21 INVESTOR. "ASSIGNMENT," AS USED IN CLAUSE (2), INCLUDES ANY  
22 DIRECT OR INDIRECT TRANSFER OR HYPOTHECATION OF AN INVESTMENT  
23 ADVISORY CONTRACT BY THE ASSIGNOR OR OF A CONTROLLING BLOCK OF  
24 THE ASSIGNOR'S OUTSTANDING VOTING SECURITIES BY A SECURITY  
25 HOLDER OF THE ASSIGNOR; BUT, IF THE INVESTMENT ADVISOR IS A  
26 PARTNERSHIP, NO ASSIGNMENT OF AN INVESTMENT ADVISORY CONTRACT IS  
27 CONSIDERED TO RESULT FROM THE DEATH OR WITHDRAWAL OF A MINORITY  
28 OF THE MEMBERS OF THE INVESTMENT ADVISER HAVING ONLY A MINORITY  
29 INTEREST IN THE BUSINESS OF THE INVESTMENT ADVISER, OR FROM THE  
30 ADMISSION TO THE INVESTMENT ADVISER OF ONE OR MORE MEMBERS WHO,

1 AFTER ADMISSION, WILL BE ONLY A MINORITY OF THE MEMBERS AND WILL  
2 HAVE ONLY A MINORITY INTEREST IN THE BUSINESS.

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

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

25 (b) It is unlawful for any person registered as a broker-  
26 dealer, agent or investment adviser under this act to represent  
27 or imply in any manner whatsoever that such person has been  
28 sponsored, recommended, or approved or that his abilities or  
29 qualifications have in any respect been passed upon by the  
30 commission. Nothing in this section prohibits a statement (other

1 than in a paid advertisement) that a person is registered under  
2 this act, if such statement is true in fact and if the effect of  
3 such registration is not misrepresented.

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

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

16 PART V

17 ENFORCEMENT

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

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

14 (b) Any person who purchases a security in violation of  
15 sections 401, 403, 404 or otherwise by means of any untrue  
16 statement of a material fact or any omission to state a material  
17 fact necessary in order to make the statements made, in light of  
18 the circumstances under which they are made, not misleading,  
19 shall be liable to the person selling the security to him, who  
20 may sue either at law or in equity to recover the security, plus  
21 any income OR DISTRIBUTIONS, IN CASH OR IN KIND, received by the ←  
22 purchaser thereon, upon tender of the consideration received, or  
23 for damages if the purchaser no longer owns the security.

24 Damages are the excess of the value of the security when the  
25 purchaser disposed of it, plus interest at the legal rate from  
26 the date of disposition, over the consideration paid for the  
27 security. Tender requires only notice of willingness to pay the  
28 amount specified in exchange for the security. Any notice may be  
29 given by service as in civil actions or by certified mail to the  
30 last known address of the person liable.

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

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

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 IN VIOLATION OR SECTION 406, for damages equal to the <—  
22 difference between the price at which such security was  
23 purchased or sold and the market value which such security would  
24 have had at the time of the purchase or sale if the information  
25 known to the defendant had been publicly disseminated prior to  
26 that time and a reasonable time had elapsed for the market to  
27 absorb the information, plus interest at the legal rate, unless  
28 the defendant proves that the plaintiff knew the information or  
29 that the plaintiff would have purchased or sold at the same  
30 price even if the information had been revealed to him.



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

1 consideration for the security sold, even though an offer to  
2 sell or a contract of sale may have been made or entered into  
3 without registration.

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

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

1 ~~which he sustains that relationship.~~

2 Section 504. Time Limitations on Rights of Action.--(a) No  
3 action shall be maintained to enforce any liability created  
4 under section 501 (or section 503 in so far as it relates to  
5 that section) unless brought before the expiration of ~~six~~ THREE <—  
6 years after the act or transaction constituting the violation or  
7 the expiration of one year after the plaintiff receives actual  
8 notice or upon the exercise of reasonable diligence should have  
9 known of the facts constituting the violation, ~~and of the~~ <—  
10 ~~remedies provided for herein,~~ whichever shall first expire.

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

19 (c) No action shall be maintained to enforce any right of  
20 indemnification or contribution created by section ~~504~~ 503 <—  
21 unless brought before the expiration of one year after final  
22 judgment based upon the liability for which the right of  
23 indemnification or contribution exists.

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

1 from the date of payment, less the amount of any income OR ←  
2 DISTRIBUTIONS, IN CASH OR IN KIND, received thereon or, if the  
3 purchaser no longer owns the security, offering to pay the  
4 purchaser upon acceptance of the offer an amount in cash equal  
5 to the damages computed in accordance with section 501 (a); and  
6 (ii) stating that the offer may be accepted by the purchaser at  
7 any time within a specified period of not less than thirty days  
8 after the date of receipt thereof, or such shorter period as the  
9 commission may by rule prescribe; and the purchaser has failed  
10 to accept such offer in writing within the specified period.

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

26 (f) Offers UNDER SUBSECTION (D) OR (E) OF THIS SECTION 504 ←  
27 shall be in the form and contain the information the commission  
28 by rule prescribes. Every offer under this subsection shall be  
29 delivered to the offeree personally or sent by certified mail  
30 addressed to him at his last known address. If an offer is not

1 performed in accordance with its terms, suit by the offeree  
2 under section 501, 502 or 503, shall be permitted without regard  
3 to SUBSECTIONS (D) AND (E) OF this section 504. ←

4 Section 505. Death of Plaintiff or Defendant.--Every cause  
5 of action under this act survives the death of any person who  
6 might have been a plaintiff or defendant.

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

14 Section 507. No Waiver of Right of Action.--Any condition,  
15 stipulation or provision binding any person acquiring any  
16 security to waive compliance with any provision of this act or  
17 any rule or order hereunder is void.

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

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

1 courts of common pleas of Pennsylvania to enjoin the acts or  
2 practices or to enforce compliance with this act or any rule or  
3 order hereunder. Upon a proper showing, a permanent or  
4 preliminary injunction, restraining order, or writ of ~~mandate~~ ←  
5 MANDAMUS shall be granted, and a receiver or conservator may be ←  
6 appointed for the defendant or the defendant's assets. The court  
7 may not require the commission to post a bond.

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

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

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

25 (ii) May, for a reasonable time not exceeding thirty days,  
26 take possession of the books, records, accounts and other papers  
27 pertaining to the business of any broker-dealer or investment  
28 adviser or pertaining to the activities of any issuer in  
29 connection with any ~~security or transaction~~, TRANSACTION IN A ←  
30 SECURITY, whether or not exempted under section 202 or 203 and

1 the use of any proceeds obtained therefrom, and place a keeper  
2 in exclusive charge of them in the place where they are usually  
3 kept. During such possession no person shall remove or attempt  
4 to remove any of the books, records, accounts, or other papers  
5 except pursuant to a court order or with the consent of the  
6 commission; but the directors, officers, partners, and employes  
7 of the broker-dealer, investment adviser or issuer may examine  
8 them, and employes shall be permitted to make entries therein  
9 reflecting current transactions.

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

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

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

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

29 (c) In case of contumacy by, or refusal to obey a subpoena  
30 issued to, any person, the Commonwealth Court or any of the

1 several courts of common pleas of Pennsylvania, upon application  
2 by the commission, may issue to the person an order requiring  
3 him to appear before the commission, or the officer designated  
4 by it, there to produce documentary evidence, if so ordered, or  
5 to give evidence touching the matter under investigation or in  
6 question. Failure to obey the order of the court may be punished  
7 by the court as a contempt.

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

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

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



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

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

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

25 ~~(b) Any person who wilfully employs, directly or indirectly,~~ <—  
26 ~~any device, scheme, or artifice to defraud in connection with~~  
27 ~~the offer, purchase, or sale of any security or wilfully~~  
28 ~~engages, directly or indirectly, in any act, practice, or course~~  
29 ~~of business which operates or would operate as a fraud or deceit~~  
30 ~~upon any person in connection with the offer, purchase, or sale~~

1 ~~of any security shall upon conviction be fined not more than~~  
2 ~~five thousand dollars (\$5,000), or imprisoned for not more than~~  
3 ~~five years, or both.~~

4 PART VI

5 ADMINISTRATION

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

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

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

1 officers or employes.

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

6 (e) The commission shall adopt a seal bearing the  
7 inscription: "Pennsylvania Securities Commission." The seal  
8 shall be affixed to or imprinted on all orders or certificates  
9 issued by it and such other instruments as the commission  
10 directs. All courts shall take judicial notice of the seal.

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

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

~~1 or unit investment trust, as such terms are defined in the  
2 Investment Company Act of 1940, the additional fee shall be one  
3 twentieth of one per cent of the maximum aggregate offering  
4 price at which the securities are to be offered in this State,  
5 and there shall be no maximum fee. When a registration statement  
6 is withdrawn before the effective date or a pre effective stop  
7 order is entered under section 208, the minimum fee shall be  
8 retained.~~

9 (B) THE FILING FEES FOR SALES OF SECURITIES UNDER THIS ACT ←  
10 SHALL BE AS FOLLOWS:

11 (1) ONE HUNDRED DOLLARS (\$100) FOR EXEMPTION FILINGS UNDER  
12 SECTION 203 (I), EXCEPT AS PROVIDED IN CLAUSE (4) BELOW;

13 (2) TWO HUNDRED FIFTY DOLLARS (\$250) FOR EVERY REGISTRATION  
14 STATEMENT FILED UNDER SECTION 205, EXCEPT AS PROVIDED IN CLAUSE  
15 (4) BELOW;

16 (3) ONE HUNDRED DOLLARS (\$100) PLUS ONE-TWENTIETH OF ONE PER  
17 CENT OF THE MAXIMUM AGGREGATE OFFERING PRICE AT WHICH SUCH  
18 SECURITIES ARE OFFERED IN THIS STATE FOR EVERY REGISTRATION  
19 STATEMENT FILED UNDER SECTION 206, EXCEPT THAT THE MAXIMUM  
20 FILING FEE SHALL BE ONE THOUSAND DOLLARS (\$1,000);

21 (4) IN THE CASE OF AN OFFERING OF SECURITIES BY AN OPEN-END  
22 OR CLOSED-END INVESTMENT COMPANY, FACE AMOUNT CERTIFICATE  
23 COMPANY OR UNIT INVESTMENT TRUST, AS SUCH TERMS ARE DEFINED IN  
24 THE INVESTMENT COMPANY ACT OF 1940, THE FILING FEE SHALL BE THE  
25 SAME AS SPECIFIED IN CLAUSE (3) ABOVE; AND

26 (5) WHEN A REGISTRATION STATEMENT IS WITHDRAWN BEFORE THE  
27 EFFECTIVE DATE OR A PRE-EFFECTIVE STOP ORDER IS ENTERED UNDER  
28 SECTION 208, THE COMMISSION SHALL RETAIN ONE HUNDRED DOLLARS  
29 (\$100) FROM THE FILING FEE.

30 (c) The fee for filing an application for exemption from

1 registration under section 203 ~~(n)~~ (O) (ii) shall be fifty ←  
2 dollars ~~(\$50)~~. TWO HUNDRED FIFTY DOLLARS (\$250). There shall be ←  
3 no filing fee for an application under section 203 ~~(n)~~ (O) (i). ←

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

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

26 ~~(f) For the purpose of determining the fees fixed in~~  
27 ~~subsection (b):~~

28 ~~(i) The value of the securities shall be the price at which~~  
29 ~~the issuer or seller proposes to sell the securities, or the~~  
30 ~~value, as alleged in the application, or the actual value, as~~

1 ~~determined by the commission, of the consideration (if other~~  
2 ~~than money) to be received in exchange therefor, or of the~~  
3 ~~securities when sold, whichever is greater.~~

4 ~~(ii) Interim or voting trust certificates shall have a value~~  
5 ~~equal to the aggregate value of the securities to be represented~~  
6 ~~by the interim or voting trust certificates.~~

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

15 ~~(iv) The maximum aggregate offering price for securities of~~  
16 ~~companies registered under the Investment Company Act of 1940~~  
17 ~~shall be determined by multiplying the number of shares or~~  
18 ~~interests offered by the average between the high and low~~  
19 ~~"market price" for such securities on the fifteenth business day~~  
20 ~~prior to the effective date of registration (or the applicable~~  
21 ~~exemption) hereunder. The market prices shall be the amounts~~  
22 ~~quoted on the securities exchange or quotation service on which~~  
23 ~~such securities are listed. If the market prices for such~~  
24 ~~securities cannot be determined in accordance with the~~  
25 ~~foregoing, then the market price shall be the average of the~~  
26 ~~high "Bid" and low "Asked" prices for such securities on such~~  
27 ~~date, as quoted by any three market makers therefor or such~~  
28 ~~other persons as the commission may, by order, specify. If there~~  
29 ~~is no market for such securities, then the fee provided herein~~  
30 ~~shall be based on the initial offering price for such~~

1 ~~securities.~~

2 ~~(g)~~ SEVENTY-FIVE DOLLARS (\$75). <—

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

13 ~~(h)~~ (G) The commission may fix by ~~rule~~ REGULATION a <—  
14 reasonable charge for any publication issued under its  
15 authority.

16 ~~(i)~~ (H) The commission may fix by ~~rule~~ REGULATION reasonable <—  
17 charges for THE COST OF administering examinations required for <—  
18 registration under this 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~~ REGULATIONS <—

1 prescribed by the commission; provided that, upon proper showing  
2 of the registrant or issuer, the commission ~~may~~ SHALL treat ←  
3 certain filings as confidential. ~~The commission may publish any~~ ←  
4 ~~information filed with or obtained by it if, in the judgment of~~  
5 ~~the 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.~~ MADE AVAILABLE TO THE PUBLIC UNDER SUBSECTION (C) ←  
11 ABOVE.

12 Section 604. Interpretive Opinions of Commission.--The  
13 commission in its discretion may honor requests from interested  
14 persons for interpretive opinions AND MAY MAKE SUCH OPINIONS ←  
15 AVAILABLE TO THE PUBLIC UNDER SECTION 603 (C).

16 Section 605. Commissioners and Commission Employes;  
17 Relationship with Licensed Persons or Qualified Organizations.--

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

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



1 employes, clerks and servant.

2 (c) Nothing contained in subsection (a) shall prohibit the  
3 holding or purchasing of any securities by any commissioner if;  
4 either (i) the commissioner, together with his spouse, minor  
5 children and parents or other relatives who are members of his  
6 household, owns less than one-tenth of one per cent of any class  
7 of outstanding securities of any issuer described in subsection  
8 (a) (ii); or (ii) such security is held or purchased through a  
9 management account or trust administered by a bank or trust  
10 company authorized to do business in this State which has sole  
11 investment discretion regarding the holding, purchase and sale  
12 of securities, and (A) the commissioner did not, directly or  
13 indirectly, advise, counsel, command or suggest the holding,  
14 purchase or sale of any such security or furnish any information  
15 relating to any such security to such bank or trust company, and  
16 (B) such account or trust does not at any time have more than  
17 ten per cent of its total assets invested in the securities of  
18 any one issuer or hold more than five per cent of the  
19 outstanding shares or units of any class of securities of any  
20 one issuer. Each commissioner shall report to the Governor not  
21 less often than quarterly all holdings, purchases, and sales of  
22 securities by him ~~as authorized in this subsection~~, which <—  
23 reports shall be retained by the Governor's office as public  
24 documents.

25 Section 606. Miscellaneous Powers of Commission.--(a) The  
26 commission may, by ~~rule or order~~, REGULATION, require any issuer <—  
27 of securities registered under this act or exempted from  
28 registration under section 203 (d), (p), or (r), WHICH ISSUER IS <—  
29 NOT A REPORTING COMPANY, to distribute ~~specified~~ financial <—  
30 information to its shareholders at least annually.

1       ~~(b) If the commission has reason to believe that any sale of~~ <—  
2 ~~an unregistered security is unfair, inequitable or fraudulent,~~  
3 ~~it may, by order, prohibit further sales of such security in~~  
4 ~~this State until it is registered under this act.~~

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

27       ~~(d) Every domestic corporation, business, trust, limited~~  
28 ~~partnership or other similar entity, and every such foreign~~  
29 ~~company licensed to do business in this State, shall, within~~  
30 ~~twenty days after receipt of written request from the~~

1 ~~commission, furnish it with a list of all or part of its~~  
2 ~~stockholders, partners or other holders of ownership interests~~  
3 ~~as the commission may request, showing the amount of stock or~~  
4 ~~other ownership interest held by each, which list shall be duly~~  
5 ~~verified by the president or secretary of the corporation, or~~  
6 ~~officer or managing agent of such entity, if not a corporation.~~

7 ~~(e)~~ (C) No person shall publish in this State any <—  
8 advertisement concerning any security (OTHER THAN TOMBSTONE <—  
9 ADVERTISEMENTS PERMITTED UNDER THE SECURITIES ACT OF 1933 AND  
10 THE INVESTMENT COMPANY ACT OF 1940 AND THE RULES AND REGULATIONS  
11 PROMULGATED THEREUNDER) except in accordance with such rules as  
12 the commission may promulgate from time to time. No person shall  
13 publish any advertisement concerning any security in this State  
14 after the commission finds that the advertisement contains any  
15 statement that is false or misleading or omits to make any  
16 statement necessary in order to make the statements made, in the  
17 light of the circumstances under which they are made, not  
18 misleading and so notifies the person in writing. Such  
19 notification may be given summarily without notice ~~of~~ OR <—  
20 hearing. At any time after the issuance of a notification under  
21 this section, the person desiring to use the advertisement may  
22 request in writing that the order be rescinded. Upon the receipt  
23 of such a written request, the matter shall be set down for  
24 hearing to commence within thirty days after such receipt unless  
25 the person making the request consents to a later date. After  
26 such hearing, the commission shall determine whether to affirm  
27 and continue or to rescind such order.

28 ~~(f)~~ (D) The commission may, by ~~rule,~~ REGULATION, delegate <—  
29 any powers specified ~~herein~~ IN THIS ACT to be exercised by the <—  
30 commission to members of the commission's staff, except for

1 powers related to hearings.

2 Section 607. Hearings and Judicial Review.--(a) Within  
3 thirty days after any order has become effective without a  
4 hearing, any interested party may apply to the commission for a  
5 hearing in respect to any matters determined by the order, and a  
6 hearing shall be held within thirty days after the application  
7 is filed. After the hearing the commission may modify the order  
8 as it deems appropriate.

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

21 (c) Disciplinary hearings and rehearings shall be public  
22 unless the commission grants a request joined in by all parties  
23 that the hearing be conducted privately. Investigatory hearings  
24 shall not be open to members of the general public unless all  
25 parties to the hearing agree otherwise.

26 (d) Orders of the commission shall be subject to judicial  
27 review in accordance with law, but orders originally entered  
28 without a hearing may be reviewed only if the party seeking  
29 review has requested a hearing within the time provided by  
30 subsection (a).

1 Section 608. Injunction Procedure.--(a) No injunction shall  
2 issue in any proceeding under this act suspending or staying any  
3 order of the commission, except upon application to the  
4 Commonwealth Court of Pennsylvania or the presiding judge  
5 thereof, notice of which shall be given to the commission and  
6 other parties to the proceeding, and except after an opportunity  
7 for a hearing thereon. No injunction shall issue in any other  
8 proceeding or action, in any court, which shall have the effect  
9 of delaying or preventing any such order from becoming  
10 effective, unless the parties to the proceeding before the  
11 commission are also parties to the court proceeding or action  
12 and except after notice and opportunity for a hearing.

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

27 Section 609. ~~Rules~~, REGULATIONS, Forms and Orders.--(a) The <—  
28 commission may make, amend and rescind any ~~rules~~, REGULATIONS, <—  
29 forms and orders that are necessary to carry out this act,  
30 including ~~rules~~ REGULATIONS and forms governing registration <—

1 statements, applications and reports, and defining any terms,  
2 whether or not used in this act, insofar as the definitions are  
3 not inconsistent with this act. All ~~rules~~ REGULATIONS of the ←  
4 commission (other than those relating solely to its internal  
5 administration) shall BE OF GENERAL APPLICATION AND FUTURE ←  
6 EFFECT AND SHALL be made, amended or rescinded in accordance  
7 with the act of June 4, 1945 (P.L.1388), known as the  
8 "Administrative Agency ~~Law.~~" LAW," AND THE ACT OF JULY 31, 1968 ←  
9 (P.L.240), KNOWN AS THE "COMMONWEALTH DOCUMENTS LAW," AND NO  
10 REGULATION SHALL BE EFFECTIVE UNTIL A PUBLIC HEARING IS HELD  
11 THEREON OR UNTIL THIRTY DAYS AFTER THE REGULATION IS PUBLISHED  
12 PURSUANT TO SUCH "COMMONWEALTH DOCUMENTS LAW." For the purpose  
13 of rules and forms, the commission may classify securities,  
14 persons and matters within its jurisdiction, and prescribe  
15 different requirements for different classes. The commission  
16 may, in its discretion, waive any requirement of any ~~rule~~ ←  
17 REGULATION or form in situations where, in its opinion, such ←  
18 requirement is not necessary in the public interest or for the  
19 protection of investors.

20 (b) No ~~rule,~~ REGULATION, form or order may be made, amended ←  
21 or rescinded unless the commission finds that the action is  
22 necessary or appropriate in the public interest and for the  
23 protection of investors AND CONSISTENT WITH THE PURPOSES FAIRLY ←  
24 INTENDED BY THE POLICY AND PROVISIONS OF THIS ACT.

25 ~~(c) The commission may by rule or order prescribe the form ←  
26 and content of financial statements required under this act, the  
27 circumstances under which consolidated financial statements  
28 shall be filed, and whether any required financial statements  
29 shall be certified by independent or certified public  
30 accountants. All financial statements shall be prepared in~~

1 ~~accordance with generally accepted accounting principles~~  
2 ~~consistently applied, unless otherwise permitted by rule or~~  
3 ~~order.~~

4 (C) THE COMMISSION MAY BY REGULATION OR ORDER PRESCRIBE THE <—  
5 KIND, FORM AND CONTENT OF FINANCIAL STATEMENTS REQUIRED UNDER  
6 THIS ACT, THE FISCAL OR OTHER PERIODS AND DATES FOR SUCH  
7 STATEMENTS, THE CIRCUMSTANCES UNDER WHICH CONSOLIDATED OR OTHER  
8 COMBINING FINANCIAL STATEMENTS SHALL BE FILED, OR OTHER  
9 REQUIREMENTS IT DEEMS NECESSARY FOR FINANCIAL STATEMENT  
10 PRESENTATION PURPOSES, AND WHETHER ANY REQUIRED FINANCIAL  
11 STATEMENTS SHALL BE CERTIFIED BY INDEPENDENT PUBLIC OR CERTIFIED  
12 ACCOUNTANTS IN GOOD STANDING WITH THIS STATE. ALL FINANCIAL  
13 STATEMENTS SHALL BE PREPARED REFLECTING CONFORMITY WITH  
14 GENERALLY ACCEPTED ACCOUNTING PRINCIPLES CONSISTENTLY APPLIED,  
15 UNLESS VARIANCE THEREFROM IS DISCLOSED IN AN ACCEPTABLE MANNER,  
16 AND SHALL REFLECT PERTINENT DISCLOSURES BY FINANCIAL NOTES OR  
17 OTHER FORM, WHERE REQUIRED FOR THAT DATA IN COMPLIANCE WITH  
18 PRONOUNCEMENTS BY RECOGNIZED AUTHORITATIVE ACCOUNTING BODIES OR  
19 IF APPLICABLE, BY GOVERNMENTAL AGENCIES, AND UNLESS OTHERWISE  
20 PERMITTED BY REGULATION OR ORDER.

21 (d) No provision of this act imposing any liability applies  
22 to any act done or omitted in good faith in conformity with any  
23 ~~rule,~~ REGULATION, form or order of the commission, <—  
24 notwithstanding that the ~~rule,~~ REGULATION, form or order may <—  
25 later be amended or rescinded or be determined to be invalid for  
26 any reason.

27 (E) THE COMMISSION MAY PROPOSE AND ADOPT REGULATIONS UNDER <—  
28 THIS ACT PRIOR TO ITS EFFECTIVE DATE, PROVIDED THAT SUCH  
29 REGULATIONS DO NOT TAKE EFFECT UNTIL ON OR AFTER THE EFFECTIVE  
30 DATE OF THIS ACT.

1 Section 610. Destruction of Documents and Records.--The  
2 commission may make such regulations with respect to record  
3 retention as it may deem appropriate and desirable, consistent  
4 with law.

5 PART VII

6 GENERAL PROVISIONS

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

29 (b) When any person, including any nonresident of this  
30 State, engages in conduct prohibited or made actionable by this



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

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

26 Section 702. Scope of Act.--(a) The provisions of this act  
27 concerning sales and offers to sell apply ~~when~~ TO PERSONS WHO ←  
28 SELL OR OFFER TO SELL WHEN (I) a sale or offer to sell is made  
29 in this State or when (II) an offer to purchase is made and ←  
30 accepted in this State. The provisions concerning purchases and

1 offers to purchase apply ~~when~~ TO PERSONS WHO BUY OR OFFER TO BUY ←  
2 WHEN (I) a purchase or offer to purchase is made in this State  
3 or WHEN (II) an offer to sell is made and accepted in this ←  
4 State.

5 (b) For the purpose of this section, an offer to sell or to  
6 purchase is made in this State, whether or not either party is  
7 then present in this State, when the offer originates from this  
8 State or is directed by the offeror to this State and received  
9 by the offeree in this State ~~but~~ ; PROVIDED, HOWEVER, for the ←  
10 purpose of section 201 an offer to sell which is not directed to  
11 or received by the offeree in this State is not made in this  
12 State.

13 (c) For the purpose of this section, an offer to purchase or  
14 to sell is accepted in this State when acceptance is  
15 communicated to the offeror in this State, and has not  
16 previously been communicated to the offeror, orally or in  
17 writing, outside this State; and acceptance is communicated to  
18 the offeror in this State, whether or not either party is then  
19 present in this State, when the offeree directs it to the  
20 offeror in this State reasonably believing the offeror to be in  
21 this State, and it is received by the offeror in this State.

22 (d) An offer to sell or to purchase is not made in this  
23 State when the publisher circulates, or there is circulated on  
24 his behalf in this State, any bona fide newspaper or other  
25 publication of general, regular and paid circulation which is  
26 not published in this State, or a radio or television program  
27 originating outside this State is received in this State.

28 Section 703. Statutory Policy.--(a) This act shall be so  
29 construed as to effectuate its general purpose to make uniform  
30 the law of those states which enact the "Uniform Securities Act"

1 and to coordinate the interpretation and administration of this  
2 act with related Federal regulation.

3 (b) If any provision of this act or the application thereof  
4 to any person or circumstance is held invalid, the invalidity  
5 shall not affect other provisions or applications of this act  
6 which can be given effect without the invalid provision or  
7 application, and to this end the provisions of this law are  
8 declared to be severable.

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

14 (b) No civil suit or action may be maintained to enforce any  
15 liability ~~or to establish that any securities are void~~ under <—  
16 prior law unless brought within any period of limitation which  
17 applied when the cause of action accrued.

18 (c) All effective certificates, orders, consents, and  
19 registrations under prior law, all administrative orders  
20 relating to the same and all conditions imposed upon the same  
21 remain in effect so long as they would have remained in effect  
22 if this act had not been enacted. They are considered to have  
23 been filed, entered, or imposed under this act, but are governed  
24 by prior law.

25 (D) PRIOR LAW APPLIES IN RESPECT OF ANY OFFER OR SALE MADE <—  
26 WITHIN SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ACT PURSUANT  
27 TO AN OFFERING BEGUN IN GOOD FAITH BEFORE ITS EFFECTIVE DATE ON  
28 THE BASIS OF AN EXEMPTION AVAILABLE UNDER PRIOR LAW.

29 ~~(d)~~ (E) Judicial review of all administrative orders as to <—  
30 which review proceedings have not been instituted by the

1 effective date of this act are governed by section 607, except  
2 that no review proceeding may be instituted unless the petition  
3 is filed within any period of limitation which applied to a  
4 review proceeding when the order was entered AND IN ANY EVENT <—  
5 WITHIN SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS ACT.

6 Section 705. Effective Date.--This act shall take effect  
7 ~~January 1, 1973.~~ OCTOBER 1, 1972. <—