

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1045 Session of 2013

INTRODUCED BY WHITE, STACK, GORDNER, BOSCOLA, RAFFERTY, MENSCH, HUGHES, PILEGGI AND BRUBAKER, JUNE 27, 2013

REFERRED TO BANKING AND INSURANCE, JUNE 27, 2013

AN ACT

1 Amending the act of December 5, 1972 (P.L.1280, No.284),
 2 entitled "An act relating to securities; prohibiting
 3 fraudulent practices in relation thereto; requiring the
 4 registration of broker-dealers, agents, investment advisers,
 5 and securities; and making uniform the law with reference
 6 thereto," making extensive substantive and editorial changes;
 7 further providing for definitions, exempt securities, exempt
 8 transactions, required documents for registration statements,
 9 rules for filing federally covered securities, exemptions
 10 from registration provisions, powers for the Department of
 11 Banking and Securities, administration of the act, increasing
 12 assessments, methods of payment of funds and requirements for
 13 administrative proceedings under the act; making a repeal;
 14 and establishing a restricted account in the General Fund.

15 The General Assembly of the Commonwealth of Pennsylvania
 16 hereby enacts as follows:

17 Section 1. Section 102(c), (d), (e), (f), (j), (j.1), (k),
 18 (s) and (t) of the act of December 5, 1972 (P.L.1280, No.284),
 19 known as the Pennsylvania Securities Act of 1972, amended or
 20 added December 7, 1994 (P.L.869, No.126), November 24, 1998
 21 (P.L.829, No.109), July 4, 2002 (P.L.721, No.108), November 23,
 22 2004 (P.L.924, No.128) and November 23, 2004 (P.L.930, No.132),
 23 are amended and the section is amended by adding subsections to
 24 read:

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

4 * * *

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

30 (d) "Bank" means a bank, savings bank, savings institution,

1 savings and loan association, thrift institution, trust company
2 or similar organization which is organized or chartered under
3 the laws of a state or of the United States, is authorized to
4 and receives deposits and is supervised and examined by an
5 official or agency of a state or by the United States if its
6 deposits are insured by the Federal Deposit Insurance
7 Corporation or a successor authorized by Federal law, and any
8 agency, branch or representative office of a foreign bank that
9 is subject to the same degree of regulation and supervision as a
10 domestic bank.

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

14 (i) An agent;

15 (ii) An issuer;

16 (iii) A bank which meets the exceptions from the definition
17 of "broker" under section 3(a)(4)(B) or (E) or the definition of
18 "dealer" under section 3(a)(5)(B) or (C) of the Securities
19 Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78c(a)(4)(B) or
20 (E) or (5)(B) or (C));

21 (iv) An executor, administrator, guardian, conservator or
22 pledgee;

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

27 (vi) A person licensed as a real estate broker or agent
28 under the act of February 19, 1980 (P.L.15, No.9), known as the
29 Real Estate Licensing and Registration Act, and whose
30 transactions in securities are isolated transactions incidental

1 to that business; or

2 (vii) Other persons not within the intent of this subsection
3 whom the [commission] department by regulation designates.

4 (f) "Commission" means the [Pennsylvania] Banking and
5 Securities Commission[.] of the Commonwealth, as established
6 under Subarticle C of Article XI-A of the act of May 15, 1933
7 (P.L.565, No.111), known as the Department of Banking and
8 Securities Code.

9 * * *

10 (f.3) "Commissioner" means a member of the commission.

11 * * *

12 (g.1) "Department" means the Department of Banking and
13 Securities of this Commonwealth.

14 * * *

15 (j) "Investment adviser" means any person who, for
16 compensation, engages in the business of advising others, either
17 directly or through publications [or writings,], writings or
18 electronic means, as to the value of securities or as to the
19 advisability of investing in, purchasing or selling securities,
20 or who, for compensation and as a part of a regular business,
21 issues or promulgates analyses or reports concerning securities.

22 "Investment adviser" does not include:

23 (i) A bank;

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

27 (iii) A broker-dealer [registered under this act without the
28 imposition of the condition referred to in section 305(b)(v);]
29 or its agents whose performance of investment advice is solely
30 incidental to the conduct of business as a broker-dealer and

1 does not receive special compensation for the investment advice;

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

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

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

17 (vii) A person who has a place of business in this State and
18 during the preceding twelve-month period has had not more than
19 five clients in or out of this State and does not hold himself
20 out generally to the public as an investment adviser;

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

23 (ix) A federally covered adviser;

24 (x) A person excluded from the definition of "investment
25 adviser" under section 202(a)(11) of the Investment Advisers Act
26 of 1940 (54 Stat. 847, 15 U.S.C. § 80b-2(a)(11)); or

27 (xi) Other persons not within the intent of this subsection
28 whom the [commission] department by regulation designates.

29 ((j) amended Nov. 24, 1998, P.L.829, No.109)

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

1 (i) Except as provided in paragraph (iii), with respect to
2 any investment adviser registered or required to be registered
3 under this act, any partner, officer, director or person
4 occupying a similar status or performing similar functions, or
5 other individuals employed by or associated with an investment
6 adviser[, except clerical or administrative personnel,] who
7 performs any of the following:

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

10 (B) Manages accounts or portfolios of clients;

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

13 (D) [Solicits, offers or negotiates for the sale of or sells
14 investment advisory services; or] Provides investment advice or
15 holds himself or herself out as providing investment advice;

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

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

23 (iii) An investment advisor representative may not include;

24 (A) individuals who perform only clerical or ministerial
25 acts;

26 (B) an agent whose performance of investment advice is
27 solely incidental to the individual acting as an agent and who
28 does not receive special compensation for investment advisory
29 services; or

30 (C) other individuals that the department determines by

1 regulation.

2 (k) "Institutional investor" means any bank, insurance
3 company, pension or profit sharing plan or trust (except a
4 municipal pension plan or system), investment company, as
5 defined in the Investment Company Act of 1940, or any person,
6 other than an individual, which controls any of the foregoing,
7 the Federal Government, State or any agency or political
8 subdivision thereof, except public school districts of this
9 State, or any other person so designated by regulation of the
10 [commission] department.

11 * * *

12 (s) "Securities Act of 1933," "Securities Exchange Act of
13 1934," "Public Utility Holding Company Act of [1935] 2005,"
14 "Trust Indenture Act of 1939," "Investment Advisers Act of
15 1940," "Investment Company Act of 1940" and "Internal Revenue
16 Code of [1954] 1986" mean the Federal statutes of those names as
17 amended [before or after the effective date of this act], or any
18 successor statutes thereto. Section numbers of such statutes or
19 regulations adopted thereunder and referred to herein include
20 such amendments thereto as may be adopted [before or after the
21 effective date of this act. "Securities and Exchange Commission"
22 means the "United States Securities and Exchange Commission."].

23 (s.1) "Securities and Exchange Commission" means the United
24 States Securities and Exchange Commission.

25 (s.2) "Self-regulatory organization" means a national
26 securities exchange registered under the Securities Exchange Act
27 of 1934, a national securities association registered under the
28 Securities Exchange Act of 1934 or Investment Advisors Act of
29 1940, a clearing agency registered under the Securities Exchange
30 Act of 1934, the Municipal Securities Rulemaking Board

1 established under the Securities Exchange Act of 1934 or an
2 organization operating under the authority of the Commodity
3 Futures Trading Commission.

4 (t) "Security" means any note; stock; treasury stock; bond;
5 debenture; evidence of indebtedness; share of beneficial
6 interest in a business trust; certificate of interest or
7 participation in any profit-sharing agreement; collateral trust
8 certificate; preorganization certificate or subscription;
9 transferable share; investment contract; voting trust
10 certificate; certificate of deposit for a security; limited
11 partnership interest; [certificate of interest or participation
12 in an oil, gas or mining title or lease or in payments out of
13 production under such a title or lease;] fractional undivided
14 interest in oil, gas or other mineral rights; put, call,
15 straddle, option or privilege on a security, certificate of
16 deposit of a security or group or index of securities including
17 any interest in the securities or based upon the value of the
18 securities, or any put, call, straddle, option or privilege
19 entered into on a national securities exchange relating to
20 foreign currency; membership interest in a limited liability
21 company of any class or series, including any fractional or
22 other interest in such interest, unless excluded by clause (v);
23 or, in general, any interest or instrument commonly known as [or
24 having the incidents of] a "security"; or any certificate of
25 interest or participation in, temporary or interim certificate
26 for, receipt for, guarantee of, or warrant or right to subscribe
27 to or purchase, any of the foregoing. All of the foregoing are
28 securities whether or not evidenced by written document.

29 "Security" does not include:

30 (i) Any beneficial interest in any voluntary inter vivos

1 trust which is not created for the purpose of carrying on any
2 business; or

3 (ii) Any beneficial interest in any testamentary trust; or

4 (iii) Any insurance or endowment policy or annuity contract
5 under which an insurance company admitted in this State promises
6 to pay a sum of money (whether or not based upon the investment
7 performance of a segregated fund) either in a lump sum or
8 periodically for life or some other specified period; or

9 (iv) Any certificate issued under section 809 of The
10 Insurance Company Law of 1921, act of May 17, 1921 (P.L.682), as
11 amended; or

12 (v) A membership interest in a limited liability company
13 where all of the following conditions are satisfied:

14 (A) The membership interest is in a company that is not
15 managed by managers;

16 (B) The purchaser of the membership interest enters into a
17 written commitment to be engaged actively and directly in the
18 management of the company; and

19 (C) The purchaser of the membership interest, in fact, does
20 participate actively and directly in the management of the
21 company.

22 * * *

23 Section 2. Section 202 of the act, amended or added December
24 7, 1994 (P.L.869, No.126), November 24, 1998 (P.L.829, No.109)
25 and July 4, 2002 (P.L.721, No.108), is amended to read:

26 Section 202. Exempt Securities.--The following securities
27 are exempted from sections 201 and 211:

28 (a) Any security issued or guaranteed by the United States,
29 any state or Canadian Province, any political subdivision of a
30 state or Canadian Province, foreign government with which the

1 United States currently maintains diplomatic relations, or any
2 agency or corporate or other instrumentality of any of the
3 foregoing, or any certificate of deposit for any of the
4 foregoing, provided that if the issuer or guarantor is a foreign
5 government other than Canada or an instrumentality of a foreign
6 government other than Canada, such security or certificate of
7 deposit therefor is recognized as a valid obligation by the
8 issuer or guarantor thereof or its or their successors.

9 (b) Any security issued or guaranteed by any bank [or
10 savings association and any security the offer, sale, issuance
11 or guarantee of which (i) is subject to regulation by the
12 Interstate Commerce Commission, or (ii) is registered under the
13 Public Utility Holding Company Act of 1935 or the act of May 28,
14 1937 (P.L.1053), known as the "Public Utility Law," or (iii) the
15 issuer of which is regulated as to the issuance or guarantee of
16 such security by a governmental authority of the United States].

17 (b.1) Any security issued or guaranteed by a railroad, other
18 common carrier, public utility holding company that is: (i)
19 regulated in respect to its rates and charges by the United
20 States or any state; (ii) regulated in respect to the issuance
21 or guarantee of the security to be issued in reliance on this
22 section by the United States, any state, Canada or any Canadian
23 province or territory; or (iii) a public utility holding company
24 registered under the Public Utility Holding Company Act of 2005
25 or a subsidiary of such a registered holding company within the
26 meaning of that statute.

27 (c) Any commercial paper which arises out of a current
28 transaction or the proceeds of which have been or are to be used
29 for current transactions, and which evidences an obligation to
30 pay cash within nine months of the date after issuance,

1 exclusive of days of grace, or any renewal of such paper which
2 is likewise limited, or any guarantee of such paper or of any
3 such renewal, except where such paper is proposed to be sold or
4 offered to the public in units of less than five thousand
5 dollars (\$5,000) to any single person.

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

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

26 (f) Any security listed, or approved for listing upon notice
27 of issuance, [on the New York, American, or Philadelphia stock
28 exchange or quoted on the National Market System of the Nasdaq
29 Stock Market] a national securities exchange described in
30 section 18(b)(1) of the Securities Act of 1933 (48 Stat. 74, 15

1 U.S.C. § 77r(b)(1); any other security of the same issuer which
2 is of senior or substantially equal rank; any security called
3 for by subscription rights or warrants so listed[,] or approved
4 [or quoted]; and any warrant or right to purchase or subscribe
5 to any of the foregoing.

6 (g) Any security issued in connection with an employe's
7 stock option, purchase, savings, pension, profit-sharing or
8 similar benefit plan.

9 (h) Any security of a registered broker-dealer issued to its
10 officers, partners or employes, subject to such regulations as
11 the [commission] department may establish.

12 (i) Any security as to which the [commission] department by
13 regulation or order finds that registration is not necessary or
14 appropriate for the protection of investors.

15 (j) Any membership interest in a limited liability company
16 that renders one or more professional services. As used in this
17 subsection, the term "professional services" shall have the
18 meaning set forth in 15 Pa.C.S. § 2902 (relating to
19 definitions).

20 Section 3. Section 203 of the act, amended May 4, 1993
21 (P.L.4, No.4), December 7, 1994 (P.L.869, No.126), November 24,
22 1998 (P.L.829, No.109), July 4, 2002 (P.L.721, No.108) and
23 November 23, 2004 (P.L.918, No.126), is amended to read:

24 Section 203. Exempt Transactions.--The following
25 transactions are exempted from sections 201 and 211:

26 (a) Any non-issuer transaction except where directly or
27 indirectly for the benefit of an affiliate of the issuer.

28 (b) Any non-issuer transaction directly or indirectly for
29 the benefit of an affiliate of the issuer which is exempted from
30 section 5 of the Securities Act of 1933, other than those

1 transactions exempted pursuant to section 3(a)(11) or 3(b) of
2 the Securities Act of 1933, and the rules and regulations now or
3 hereafter adopted thereunder.

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

7 (d) Any sales by an issuer to not more than twenty-five
8 persons in this State during a period of twelve consecutive
9 months if (i) the issuer shall obtain the written agreement of
10 each such person not to sell the security within twelve months
11 after the date of purchase; (ii) no general solicitation through
12 public media advertising, mass mailing, Internet or other means
13 is used in connection with soliciting such sales; (iii) no cash
14 or securities is given or paid, directly or indirectly, to any
15 promoter as compensation in connection therewith unless such
16 compensation is given or paid in connection with a sale made by
17 a broker-dealer registered pursuant to section 301 and any
18 person receiving such compensation is either such broker-dealer
19 or an agent registered pursuant to section 301 of such broker-
20 dealer; (iv) the filing fee specified in section 602(b.1) is
21 paid; and (v) the issuer has provided written notice to each
22 such person of the right to withdraw an acceptance as provided
23 by section 207(m)(2). Purchasers of securities registered under
24 this act or sold in reliance upon an exemption under this act
25 other than this subsection (d), (f) or (s) shall not be included
26 in computing the twenty-five persons for purposes of this
27 exemption. A notice in the form prescribed by the [commission]
28 department, signed by an officer of the issuer and stating the
29 name, principal business address of the issuer, proposed use of
30 the proceeds from the sale and such facts as are necessary to

1 establish this exemption shall be filed, together with a copy of
2 any offering literature used in connection with such offer or
3 sale, with the [commission] department not later than the day on
4 which the issuer receives from any person an executed
5 subscription agreement or other contract to purchase the
6 securities being offered or the issuer receives consideration
7 from any person therefor, whichever is earlier.

8 (e) Any offer to not more than fifty persons in this State
9 during a period of twelve consecutive months (i) if no sales
10 result from such offer or if sales resulting from such offer are
11 exempt by reason of subsection (d) or (f) hereof and (ii) no
12 general solicitation through public media advertising, mass
13 mailing, Internet or other means is used in connection with
14 making the offer. This subsection shall not be applicable to
15 offers made pursuant to any other subsection of this section,
16 except subsections (d) and (f).

17 (f) Any offer or sale of a preorganization subscription or
18 securities of a newly-formed person as part of its initial
19 capitalization to not more than five persons, if no general
20 solicitation through public media advertising, mass mailing,
21 Internet or other means is used in connection with soliciting
22 the sales.

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

26 (h) Any offer, but not a sale, of a security for which a
27 registration statement has been filed under the Securities Act
28 of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.) or a notification
29 of exemption from registration pursuant to Regulation A
30 promulgated under section 3(b) of such act (15 U.S.C. § 77c(b))

1 if (i) no stop order or refusal order is in effect and no public
2 proceeding or examination looking toward such an order is
3 pending under the Securities Act of 1933 or this act; and (ii)
4 no such offer is made until after such registration statement,
5 including a prospectus, has been filed with the [commission]
6 department.

7 (i.1) Any sale of an equity security, [except securities of
8 an open-end or closed-end investment company, face amount
9 certificate company or unit investment trust, as such persons
10 are classified in the Investment Company Act of 1940 (54 Stat.
11 789, 15 U.S.C. § 80a-1 et seq.),] if: (i) the securities are
12 proposed to be registered under section 5 of the Securities Act
13 of 1933 (15 U.S.C. § 77e) and, in fact, become registered under
14 section 5 of the Securities Act of 1933 (15 U.S.C. § 77e); (iv)
15 the issuer of the security is a reporting company as defined in
16 section 102(q); (v) no stop order or refusal order is in effect
17 and no public proceeding or investigation looking toward such an
18 order is pending under the Securities Act of 1933 or this act;
19 (vi) the equity security is [listed on a national securities
20 exchange registered under the Securities Exchange Act of 1934
21 (48 Stat. 881, 15 U.S.C. § 78a et seq.) or quoted on the
22 National Market System or Small Cap Market of the Nasdaq Stock
23 Market] OTC Bulletin; (vii) the issuer, at the time the
24 registration statement becomes effective under section 5 of the
25 Securities Act of 1933, has not received an auditor's report for
26 the immediately preceding fiscal year expressing substantial
27 doubt about the issuer's ability to continue as a going concern
28 unless the securities being sold in reliance upon this
29 subsection are the subject of an offering that is being
30 underwritten on a firm commitment basis by a broker-dealer

1 registered under section 301. An exemption under this section
2 shall terminate upon the termination of the effective period of
3 the registration statement under section 5 of the Securities Act
4 of 1933. For purposes of this subsection, the [commission]
5 department, by regulation, may define the term "equity
6 security."

7 (j) Any transaction in a bond or other evidence of
8 indebtedness secured by a real or chattel mortgage or deed of
9 trust, or by an agreement for the sale of real estate or
10 chattels if: (i) the entire mortgage, deed of trust, or
11 agreement, together with all the bonds or other evidences of
12 indebtedness secured thereby, is offered and sold as a unit;
13 (ii) no public media advertisement is used, mass mailing made or
14 other form of general solicitation is utilized in connection
15 with soliciting the transaction; and (iii) no compensation is
16 paid or given directly or indirectly for soliciting any person
17 in this State in connection with the transaction.

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

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

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

26 (n) Any transaction pursuant to an offer of securities to
27 existing equity security holders of (i) the issuer; (ii) a
28 corporation which prior to the commencement of the offer owned
29 substantially all of the voting stock of the issuer; or (iii) a
30 corporation which organized the issuer for the purpose of the

1 offer, if no compensation, other than a standby commission, is
2 paid or given directly or indirectly for soliciting any equity
3 security holder in this State. "Equity security holders" include
4 persons who at the time of the transaction are holders of
5 convertible securities, nontransferable warrants, or
6 transferable warrants exercisable within not more than ninety
7 days of their issuance.

8 (o) Any transaction incident to a vote by security holders,
9 or written consent of some or all security holders in lieu of
10 such vote, pursuant to the articles of incorporation or the
11 applicable corporation statute or other statute governing such
12 person, or pursuant to a partnership agreement, a declaration of
13 trust, trust indenture or any agreement among security holders
14 on a merger, consolidation, sale of assets in consideration, in
15 whole or in part, of the issuance of securities of another
16 person, reclassification of securities, or reorganization
17 involving the exchange of securities, in whole or in part, for
18 the securities of any other person if, in the case of any
19 proposed transaction where no proxy materials are required or
20 permitted to be filed with the Securities and Exchange
21 Commission by either party to the transaction and where more
22 than twenty-five per cent of the security holders of either
23 party to the transaction are residents of this State, materials
24 specified by regulation of the [commission] department are
25 prepared in connection with the proposed transaction and, after
26 filing with and review by the [commission] department,
27 distributed to the security holders of each party to the
28 transaction prior to the vote or solicitation of written consent
29 and the filing fee specified in section 602(b.1) is paid.

30 (o.1) Any transaction incident to a vote by security

1 holders, or written consent of some or all security holders in
2 lieu of the vote, pursuant to the articles of incorporation or
3 the applicable corporation statute or other statute governing
4 the person, or pursuant to a partnership agreement, a
5 declaration of trust, trust indenture or an agreement among
6 security holders on a merger, consolidation, sale of assets in
7 consideration, in whole or in part, of the issuance of
8 securities of another person, reclassification of securities or
9 reorganization involving the exchange of securities, in whole or
10 in part, for the securities of another person if each of the
11 parties to a transaction described in this section is a bank
12 holding company registered under the Bank Holding Company Act of
13 1956 (70 Stat. 133, 12 U.S.C. § 1841) and subject to the
14 supervision of the Board of Governors of the Federal Reserve
15 System.

16 (p) Any offer or sale of an evidence of indebtedness of an
17 issuer either: organized exclusively for educational,
18 benevolent, fraternal, religious, charitable, social, athletic
19 or reformatory purposes and not for pecuniary profit, if no part
20 of the net earnings of the issuer inures to the benefit of any
21 private shareholder or individual; or organized as a chamber of
22 commerce or trade or professional association if all the
23 following are met:

24 (1) The issuer files a notice with the [commission]
25 department in the form prescribed by the [commission] department
26 not later than five business days before the issuer receives
27 from any person an executed subscription agreement or other
28 contract to purchase the securities being offered or the issuer
29 receives consideration from any person therefor, whichever is
30 earlier. The notice filed with the [commission] department shall

1 be accompanied by a copy of a disclosure document and any
2 offering literature to be used in connection with an offer or
3 sale of securities under this section.

4 (2) The filing fee prescribed in section 602(b.1)(x) has
5 been paid.

6 (3) Each person who accepts an offer to purchase securities
7 under this subsection has received a written notice of a right
8 to withdraw an acceptance as provided in section 207(m)(2).

9 (4) The issuer and any predecessor of the issuer have not
10 defaulted within the current fiscal year and the three preceding
11 fiscal years with respect to any debt security previously sold
12 by the issuer or its predecessor.

13 (5) The total amount of securities proposed to be offered
14 under this subsection are secured by a mortgage or deed of trust
15 upon the existing land and buildings owned by the issuer which
16 mortgage or deed of trust is or will become a first lien at or
17 prior to the issuance of the securities or there exists a
18 provision satisfactory to the [commission] department for
19 escrowing of the proceeds from the sale of the securities until
20 such first lien is established.

21 (6) The total amount of securities proposed to be offered
22 under this subsection does not exceed as of the time the form
23 required by this subsection is filed with the [commission]
24 department seventy-five per cent of the fair market value of the
25 land and buildings to be included in the mortgage or deed of
26 trust.

27 (7) No promoter of the issuer expects or intends to make a
28 profit directly or indirectly from any business activity
29 associated with the organization or operation of the issuer.

30 (8) The issuer complies with regulations of the [commission]

1 department with respect to trust indentures and the use of an
2 offering document.

3 (q) Any bona fide distribution in partial or total
4 liquidation of a person, whether or not the assets being
5 distributed include securities of any other person and whether
6 or not wholly or partially in exchange for the securities of the
7 person making the distribution, and any stock split and any
8 stock dividend, where the corporation distributing the dividend
9 is not the issuer, if nothing of value is given by stockholders
10 for the dividend other than the surrender of a right to a cash
11 or property dividend in lieu of the stock and if the dividend is
12 issued pro rata by class.

13 (r) Any transaction or class of transactions as to which the
14 [commission] department by regulation or order finds that
15 registration is not necessary or appropriate for the protection
16 of investors. As a condition of the availability of an exemption
17 granted or established under this section, the [commission]
18 department may require compliance with the provisions of section
19 207(m) (2) and the rules and regulations promulgated thereunder.

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

25 (i) The issuer files a notice in the form prescribed by rule
26 of the [commission] department, together with a copy of any
27 offering document or literature proposed to be used in
28 connection with such offer and sale, with the [commission]
29 department not later than the day on which the issuer receives
30 from any person an executed subscription agreement or other

1 contract to purchase the securities being offered or the issuer
2 receives consideration from any person therefor, whichever is
3 earlier;

4 (ii) The issuer pays the filing fee specified in section
5 602(b.1);

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

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

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

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

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

29 (C) Been subject to a state administrative enforcement order
30 or judgment finding fraud or deceit in connection with the

1 purchase, offer or sale of any security;

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

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

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

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

29 (i) The securities are sold in good faith reliance that the
30 offering would qualify for an exemption from registration under

1 section 5 of the Securities Act of 1933 (15 U.S.C. § 77e),
2 pursuant to section 3(a)(11) of the Securities Act of 1933 (15
3 U.S.C. § 77c(a)(11)) or the regulations adopted by the
4 Securities and Exchange Commission under section 3(b) of the
5 Securities Act of 1933 (15 U.S.C. § 77c(b)), except an offering
6 under Rule 505 of Regulation D promulgated by the Securities and
7 Exchange Commission under section 3(b) of the Securities Act of
8 1933 (15 U.S.C. § 77c(b));

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

18 (iii) The issuer pays the filing fee specified in section
19 602(b.1);

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

25 (v) Neither the issuer nor a predecessor of the issuer;
26 affiliated issuer; officer, director or general partner of the
27 issuer; promoter of the issuer presently connected with the
28 issuer in any capacity; beneficial owner of ten per cent or more
29 of any class of equity securities of the issuer; underwriter of
30 the securities to be offered under this subsection or any

1 partner, director or officer of such underwriter has within five
2 years of filing a notice pursuant to subparagraph (i):

3 (A) Filed a registration statement which is the subject of a
4 currently effective registration stop order entered by any state
5 securities administrator or the Securities and Exchange
6 Commission;

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

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

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

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

23 The provisions of this subparagraph shall not apply if the party
24 subject to a disqualification described in clause (A), (B), (C),
25 (D) or (E) is licensed or registered to conduct securities-
26 related business in the state in which the order, judgment or
27 decree creating the disqualification was entered against such
28 party; the state securities administrator or the court of
29 regulatory authority that entered the order judgment or decree
30 waives the disqualification prior to the first offer being made

1 in this State under this subsection; or the issuer establishes
2 that it did not know and, in the exercise of reasonable care
3 based on a factual inquiry, could not have known that a
4 disqualification existed under this subparagraph;

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

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

17 (viii) The issuer places a legend on the cover page of any
18 disclosure document proposed to be used in connection with the
19 offering or on the cover page of the subscription agreement
20 advising that the securities described in the disclosure
21 document or the subscription agreement will be sold only to
22 accredited investors and that any resales of the securities made
23 within 12 months from the original date of purchase shall only
24 be made pursuant to an effective registration or to accredited
25 investors;

26 (ix) The issuer is not an investment company as defined in
27 the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.);
28 [and]

29 (x) The issuer is not a development stage company with no
30 specific business plan or purpose or a development stage company

1 that has indicated that its business plan is to engage in a
2 merger or acquisition with an unidentified company or companies
3 or other entity or person[.]; and

4 (xi) The issuer reasonably believes that all purchasers are
5 purchasing for investment and not with the view to distribute,
6 or for sale in connection with a distribution of, the security.
7 A resale of a security sold in reliance on this exemption within
8 12 months from the original date of purchase shall be presumed
9 to be with a view to distribution and not for investment, except
10 resales pursuant to a registration statement effective under
11 section 205 or 206, or accredited investors pursuant to an
12 exemption available under this act.

13 (u) Any offer or sale of a security in an offering which is
14 exempt from registration under section 5 of the Securities Act
15 of 1933 (48 Stat. 74, 15 U.S.C. §77e) in good faith reliance on
16 section 3(b)(2) or 77c(b)(2) and rules and regulation adopted
17 thereunder, provided that the issuer of the securities files
18 with the department all documents that are required by rules of
19 the Securities and Exchange Commission to be filed with the
20 Securities and Exchange Commission at the same time that those
21 documents are filed with the Securities and Exchange Commission.

22 Section 4. Section 204 of the act, amended July 4, 2002
23 (P.L.721, No.108), is amended to read:

24 Section 204. Exemption Proceedings.--(a) The [commission]
25 department may by regulation as to any type of security or
26 transaction, or by order in a particular case, as to any
27 security or transaction increase the number of purchasers or
28 offerees permitted, or waive the conditions in either of
29 sections 202 or 203.

30 (b) The [commission] department may by order deny or revoke

1 any exemption specified in section 202 or 203 with respect to a
2 specific security or transaction. The order shall be issued
3 summarily without notice or hearing. Upon issuance of a summary
4 order, the [commission] department shall promptly provide the
5 order to the person against whom it is issued. The order shall
6 contain findings of fact and conclusions of law and include a
7 notice affording the person an opportunity for a hearing under
8 section 607(a). No order under this section shall operate
9 retroactively. No person shall be considered to have violated
10 section 201 by reason of any offer or sale effected after the
11 entry of an order under this section if he sustains the burden
12 of proof that he did not know, and in the exercise of reasonable
13 care could not have known, of the order.

14 Section 5. Section 205 of the act, amended November 24, 1998
15 (P.L.829, No.109) and July 4, 2002 (P.L.721, No.108), is amended
16 to read:

17 Section 205. Registration by Coordination.--(a)
18 Registration by coordination may be used for any offering for
19 which a registration statement has been filed under the
20 Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.) or
21 for any proposed sale pursuant to Regulation A promulgated under
22 the exemption contained in section 3(b) of such act (15 U.S.C. §
23 77c(b)) provided, except in the case of open-end or closed-end
24 investment company, face amount certificate company or unit
25 investment trust, as such persons are classified in the
26 Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1
27 et seq.), such registration statement or notification of
28 proposed sale has not become effective.

29 (b) A registration statement under this section shall
30 contain the following information and be accompanied by the

1 following documents in addition to the information specified in
2 section 207(b):

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

5 (ii) If the [commission] department by regulation requires,
6 a copy of the articles of incorporation and bylaws or their
7 substantial equivalents currently in effect, a copy of any
8 agreements with or among underwriters, a copy of any indenture
9 or other instrument governing the issuance of the security to be
10 registered, and a specimen or copy of the security;

11 (iii) If the [commission] department by regulation or order
12 requires, any other information, or copies of any documents,
13 filed under the Securities Act of 1933; and

14 (iv) An undertaking to forward to the [commission]
15 department all future amendments to the Federal prospectus or
16 offering circular, other than an amendment which merely delays
17 the effective date of the registration statement, not later than
18 the first business day after they are forwarded to or filed with
19 the Securities and Exchange Commission, or such longer period as
20 the [commission] department permits.

21 (c) A registration statement or notification of any proposed
22 sale filed under this section automatically [~~become~~] becomes
23 effective at the moment the Federal registration statement or
24 notification becomes effective if (i) no stop order is in effect
25 in this State and no proceeding is pending under section 208;
26 and (ii) the registration statement or notification has been on
27 file with the [commission] department for at least ten days.

28 (d) The registrant shall notify the [commission] department
29 promptly [by telephone or telegram], in a manner determined by
30 the department, of the date and time when the Federal

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

21 (e) If the Federal registration statement becomes effective
22 before all the conditions in this section are satisfied and they
23 are not waived, the registration statement automatically becomes
24 effective as soon as all the conditions are satisfied. If the
25 registrant advises the [commission] department of the date when
26 the Federal registration statement is expected to become
27 effective, the [commission] department shall promptly advise the
28 registrant [by telephone or telegram, at the registrant's
29 expense] in a manner determined by the department, whether all
30 the conditions are satisfied and whether it then contemplates

1 the institution of a proceeding under section 208; but this
2 advice by the [commission] department does not preclude the
3 institution of such a proceeding at any time.

4 Section 6. Section 206(b)(16) and (17), (c), and (d) of the
5 act, amended March 25, 1981 (P.L.1, No.1), are amended to read:

6 Section 206. Registration by Qualification.--* * *

7 (b) A registration statement under this section shall
8 contain the information specified in section 207(b), and shall
9 contain the following information and be accompanied by the
10 following documents:

11 * * *

12 (16) [a balance sheet of the issuer as of a date within four
13 months prior to the filing of the registration statement; a
14 profit and loss statement and analysis of surplus for each of
15 the three fiscal years preceding the date of the balance sheet
16 and for any period between the close of the last fiscal year and
17 the date of the balance sheet, or for the period of the issuer's
18 and any predecessors' existence if less than three years; and,
19 if any part of the proceeds of the offering is to be applied to
20 the purchase of any business, the same financial statements
21 which would be required if that business were the registrant, or
22 such other] the financial statements as may be required pursuant
23 to section 609(c) and regulations adopted under that section;
24 and

25 (17) such additional information as the [commission]
26 department requires by regulation or order.

27 For purposes of this section 206(b) the [commission]
28 department may classify issuers and types of securities.

29 (c) Registration under this section becomes effective when
30 the [commission] department so orders. If a registration

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

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

23 Section 7. Section 207 of the act, amended December 7, 1994
24 (P.L.869, No.126), November 24, 1998 (P.L.829, No.109), and July
25 4, 2002 (P.L.721, No.108), is amended to read:

26 Section 207. General Registration Provisions.--(a) A
27 registration statement may be filed by the issuer, any other
28 person on whose behalf the offering is to be made or a licensed
29 broker-dealer.

30 (b) Every registration statement shall specify: (i) the

1 amount of securities to be offered in this State; (ii) the
2 states in which a registration statement or application in
3 connection with the offering has been or is to be filed; (iii)
4 any adverse order, judgment or decree entered in connection with
5 the offering by the regulatory authorities in any state or by
6 any court or the Securities and Exchange Commission, or any
7 withdrawal with prejudice of a registration statement or
8 application relating to the offering; and (iv) the names of all
9 underwriters and broker-dealers selling or offering the
10 securities in this State. Where the names of all underwriters or
11 broker-dealers are not known at the time of filing of the
12 registration statement, such list may be supplemented from time
13 to time prior to or after effectiveness, provided that no delay
14 of effectiveness or suspension shall be caused by the filing of
15 any such supplement.

16 (c) Any document filed under this act or a predecessor law
17 within five years preceding the filing of a registration
18 statement may be incorporated by reference in the registration
19 statement.

20 (d) The [commission] department may by regulation or
21 otherwise permit the omission of any item of information or
22 document from any registration statement.

23 (e) The [commission] department may by regulation or order
24 require as a condition of registration by qualification or as a
25 condition of registration by coordination (if more than sixty-
26 six and two-thirds per cent of the issue of securities part or
27 all of which is to be registered by coordination is to be sold
28 in Pennsylvania) that a report by an accountant, engineer,
29 appraiser or other professional person be filed. The
30 [commission] department may also designate one of its employes

1 to make an examination of the business and records of an issuer
2 of securities for which a registration statement has been filed
3 by qualification.

4 (f) In the case of a non-issuer distribution, information
5 may not be required under section 206(b) or section 207(k)
6 unless it is known to the person filing the registration
7 statement or to the persons on whose behalf the distribution is
8 to be made, or can be furnished by them without unreasonable
9 effort or expense.

10 (g) The [commission] department may by regulation or order
11 require as a condition of registration that any security issued
12 within the past five years or to be issued to a promoter for a
13 consideration substantially different from the public offering
14 price, or to any person for a consideration other than cash, be
15 deposited in escrow; or that the proceeds from the sale of the
16 registered security in this State be escrowed until the issuer
17 receives a specified amount from the sale of the security either
18 in this State or elsewhere; or that the proceeds from the sale
19 of the registered security in this State be escrowed for a
20 specific use as set forth in the prospectus; or it may impose
21 any or all of these requirements. With respect to securities
22 registered by coordination, no escrow of promotional shares
23 hereunder shall be required to extend beyond four years. The
24 [commission] department may by regulation or order determine the
25 conditions of any escrow required hereunder, but may not reject
26 a depository solely because of location in another state.

27 (h) The [commission] department may by regulation require
28 that debt securities of designated classes to be registered by
29 qualification shall be issued under a trust indenture containing
30 such provisions as it determines, but such provisions shall not

1 be in addition to or inconsistent with the terms required or
2 permitted by the Trust Indenture Act of 1939.

3 (i) The [commission] department may by regulation require
4 (i) with respect to registration by coordination that a copy of
5 each form of subscription or sale contract used or proposed to
6 be used in this State be filed with the [commission] department
7 prior to its use in this State; and (ii) with respect to
8 registration by qualification that, as a condition of
9 registration, any security registered be sold only on a
10 specified form of subscription or sale contract; and (iii) that
11 a signed or conformed copy of each such contract be preserved
12 for any period up to three years.

13 (j.1) A registration by coordination is effective for one
14 year from its effective date. The effectiveness of a
15 registration by coordination may be extended beyond the initial
16 one-year effectiveness period in increments of one-year periods
17 up to a maximum of three years from the initial effectiveness
18 date, provided that the security is being offered or distributed
19 in a nonexempted transaction by or for the account of the issuer
20 or other person on whose behalf the offering is being made, or
21 by any underwriter or broker-dealer who is still offering part
22 of an unsold allotment or subscription taken by him as a
23 participant in the distribution and the [commission] department
24 has been notified of such continued offering and the period
25 thereof. [A registration by qualification is effective for one
26 year from its effective date. The fact that a registration
27 statement has been effective in this State with respect to any
28 security does not permit sales of securities of the same class
29 by the issuer or an affiliate of the issuer if such person did
30 not file the registration statement, unless a separate

1 registration statement is filed and declared effective with
2 respect thereto, or an exemption from registration is available.
3 A registration statement may not be withdrawn after its
4 effective date if any of the securities registered have been
5 sold in this State, unless permitted by regulation or order of
6 the commission. No registration statement is effective during
7 the time a stop order is in effect under section 208.]

8 (j.2) A registration by qualification is effective for one
9 year from its effective date. The fact that a registration
10 statement has been effective in this State with respect to a
11 security does not permit sales of securities of the same class
12 by the issuer or an affiliate of the issuer if that person did
13 not file the registration statement, unless a separate
14 registration statement is filed and declared effective with
15 respect to the security, or an exemption from registration is
16 available. A registration statement may not be withdrawn after
17 its effective date if any of the securities registered have been
18 sold in this State, unless permitted by regulation or order of
19 the department. No registration statement is effective during
20 the time a stop order is in effect under section 208.

21 (k) During the effective period of a registration statement,
22 the [commission] department may by regulation require the person
23 who filed the registration statement to file reports with the
24 [commission] department, not more often than quarterly, to keep
25 reasonably current the information contained in the registration
26 statement and to disclose the progress of the offering;
27 provided, however, that no person need comply with any such
28 regulation of the [commission] department if such person files
29 with the [commission] department copies of all reports such
30 person is required to file with the Securities and Exchange

1 Commission and if such reports are filed in a timely manner. If
2 any of the securities registered have been sold in the State,
3 the [commission] department may by regulation extend the period
4 for filing the reports for an additional term not exceeding two
5 years from the date the registration became effective or the
6 date of its last amendment or extension.

7 (1) A registration statement relating to any offering of
8 securities may be amended after its effective date so as to
9 increase the specified amount of securities proposed to be
10 offered in this State. The amendment becomes effective upon the
11 payment of the required filing fee, if any, and when the
12 [commission] department so orders.

13 (m) (1) Except where such securities are registered under
14 section 5 of the Securities Act of 1933, each person who accepts
15 an offer to purchase securities registered by qualification
16 directly from an issuer or an affiliate of an issuer shall have
17 the right to withdraw his acceptance without incurring any
18 liability to the seller, underwriter (if any) or any other
19 person, within two business days after he receives a prospectus
20 relating to the offering (which is not materially different from
21 the final prospectus relating to such offering) and a notice
22 explaining the provisions of this subsection. As used herein,
23 the term "final prospectus" shall mean the document prepared in
24 accordance with such regulations as the [commission] department
25 may provide, to be used by the seller in connection with an
26 offering of securities in this State after the registration of
27 such securities has become effective under this act.

28 (2) Each person who accepts an offer to purchase securities
29 exempted from registration by section 203(d) and (p) directly
30 from an issuer or affiliate of an issuer shall receive a written

1 notice in such form as the [commission] department, by rule, may
2 prescribe informing such person of his right under this
3 subsection to withdraw his acceptance without incurring any
4 liability to the seller, underwriter (if any) or any other
5 person, within two business days from the date of receipt by the
6 issuer of his written binding contract of purchase or, in the
7 case of a transaction in which there is no written binding
8 contract of purchase, within two business days after he makes
9 the initial payment for the securities being offered.

10 (n) For purposes of coordinating the provisions of this act
11 with uniform procedures to facilitate electronic filings of
12 registration statements and notice filings, including, without
13 limitation, by a securities registration depository, the
14 [commission] department, by regulation, may adopt appropriate
15 procedures or forms or waive or modify any provision of section
16 205 or 206 or this section. The [commission] department, by
17 regulation, also may prescribe methods for accepting electronic
18 or digital signatures on forms to be filed electronically with
19 the [commission] department.

20 Section 8. Section 208 of the act, amended November 24, 1998
21 (P.L.829, No.109), July 4, 2002 (P.L.721, No.108) and November
22 23, 2004 (P.L.928, No.131), is amended to read:

23 Section 208. Denial, Suspension, and Revocation of
24 Registrations.--(a) The [commission] department may issue a
25 stop order denying effectiveness to, or suspending or revoking
26 the effectiveness of, any registration statement if it finds
27 that the order is in the public interest and that:

28 (i) The registration statement as of its effective date or
29 as of any earlier date in the case of an order denying
30 effectiveness, or any amendment filed under section 207(1) as of

1 its effective date, or any report under section 207(k) is
2 incomplete in any material respect or contains any statement
3 which was, in the light of the circumstances under which it was
4 made, false or misleading with respect to any material fact, or
5 omitted to state a material fact necessary in order to make the
6 statements made, in the light of the circumstances under which
7 they are made, not misleading;

8 (ii) Any provision of this act or any regulation, order or
9 condition lawfully imposed under this act has been wilfully
10 violated, in connection with the offering by: (A) the person
11 filing the registration statement, (B) the issuer, (C) any
12 partner, officer or director of the issuer, (D) any person
13 occupying a similar status or performing similar functions, (E)
14 any affiliate of the issuer, but only if the person filing the
15 registration statement is an affiliate of the issuer, or (F) any
16 broker-dealer;

17 (iii) The securities are the subject of an administrative
18 stop order or similar order or a permanent or temporary
19 injunction of any court of competent jurisdiction entered under
20 any other Federal or State act applicable to the offering, but
21 the [commission] department may not institute a proceeding
22 against an effective registration statement under this section
23 more than one year from the date of the order or injunction
24 relied on, and it may not enter an order under this section on
25 the basis of an order or injunction entered under any other
26 state act unless that order or injunction was based on facts
27 which would currently constitute a ground for a stop order under
28 this act;

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

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

11 (vi) The applicant or registrant has failed to pay the
12 proper filing fee but the [commission] department shall vacate
13 any such order when the deficiency has been corrected;

14 (vii) Advertising prohibited by section 606 has been used in
15 connection with the sale or offering of the securities;

16 (viii) In the case of an offering of debt securities, the
17 offering involves an excessive debt-to-equity ratio or the
18 issuer, at the time it filed an application under section 205 or
19 206, had received an auditor's report for the immediately
20 preceding fiscal year expressing substantial doubt about the
21 issuer's ability to continue as a going concern;

22 (ix) The offering is being made by a development stage
23 company which has no specific business plan or purpose or has
24 indicated that its business plan is to engage in a merger or
25 acquisition with an unidentified company or companies or other
26 entity or person; or

27 (x) The issuer has loaned money to an officer, director or
28 general partner of the issuer or a person who legally or
29 beneficially owns five per cent or more of a class of equity
30 securities of the issuer or any affiliate of such person which

1 moneys have not been repaid to the issuer prior to effectiveness
2 of the registration statement under this act, except that this
3 provision shall not apply to loans described in section 13(k)(2)
4 or (3) of the Securities Exchange Act of 1934 (48 Stat. 881, 15
5 U.S.C. § 78(m)(2) or(3).

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

11 (c) The [commission] department may by order deny, postpone,
12 suspend or revoke the effectiveness of a registration statement.
13 The order may be issued summarily without notice or hearing.
14 Upon issuance of a summary order, the [commission] department
15 shall promptly provide the order to the applicant or registrant.
16 The order shall contain findings of fact and conclusions of law
17 and include a notice affording the applicant or registrant an
18 opportunity for a hearing under section 607(a). No order shall
19 operate retroactively. No person shall be considered to have
20 violated section 201 solely by reason of an order entered under
21 this section for any offer or sale effected after the entry of
22 an order under this section if the person sustains the burden of
23 proof that the person did not know and in the exercise of
24 reasonable care could not have known of the order.

25 Section 9. Sections 209 and 210 of the act, amended November
26 24, 1998 (P.L.829, No.109), are amended to read:

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

1 and maintain a complete set of books, records, and accounts of
2 such sales and the disposition of the proceeds thereof for a
3 period of three years following the last sale of securities in
4 this State or one year after the disposition of all proceeds,
5 whichever is longer, and shall thereafter, at such times as are
6 required by the [commission] department, make and file in the
7 office of the [commission] department, a report, setting forth
8 the securities sold by it under such registration or exemption,
9 the proceeds derived therefrom and the disposition thereof.

10 (b) Subject to the limitations of section 18 of the
11 Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77r), every
12 open-end or closed-end investment company, face amount
13 certificate company or unit investment trust, as such persons
14 are classified in the Investment Company Act of 1940 (54 Stat.
15 789, 15 U.S.C. § 80a-1 et seq.), making a filing under section
16 205, 206 or 211 shall file reports with the [commission]
17 department at such times and in such manner as the [commission]
18 department, by rule, may prescribe which, at a minimum, set
19 forth the total amount of securities offered and sold in this
20 State during the effective period of the registration statement
21 or notice filing.

22 (c) Except open-end and closed-end investment companies,
23 face amount certificate companies and unit investment trusts, as
24 such persons are classified in the Investment Company Act of
25 1940, every issuer registering securities for sale in this State
26 under section 206 shall file an annual report with the
27 [commission] department, no earlier than three hundred sixty-
28 five days and no later than four hundred twenty days from the
29 effective date of the registration, setting forth the total
30 amount of securities sold in this State during the effective

1 period of the registration statement.

2 Section 210. Retroactive Registration or Amendment of Notice
3 of Filing for Certain Securities.--The [commission] department,
4 by regulation, may establish procedures whereby an issuer that
5 has an effective registration pursuant to section 205 or 206
6 where an effective registration statement is on file with the
7 Securities and Exchange Commission regarding the same securities
8 or an open-end or closed-end investment company, face amount
9 certificate company or unit investment trust, as such persons
10 are classified in the Investment Company Act of 1940 (54 Stat.
11 789, 15 U.S.C. § 80a-1 et seq.), which, during the effective
12 period of registration under section 205 or 206 or the effective
13 period of a notice filing, sold securities in this State in
14 excess of the aggregate amount of securities registered for sale
15 in this State under section 205 or 206 or covered by the notice
16 filing may apply to the [commission] department to register such
17 securities retroactive to the date of the initial registration
18 or to amend the notice filing retroactive to the date of the
19 initial notice filing. An application for retroactive
20 registration or amendment of a notice filing for such securities
21 shall not be granted if, at the time the application is filed, a
22 civil, criminal or administrative proceeding is pending alleging
23 violations of section 201 for the sale of such securities in
24 this State, or such securities were sold more than twenty-four
25 months prior to the date the application was filed with the
26 [commission] department. An application under this section shall
27 not be granted unless the applicable oversale assessment
28 prescribed by section 602.1(d) has been paid.

29 Section 10. Section 211 of the act, added or amended
30 November 24, 1998 (P.L.829, No.109) and July 4, 2002 (P.L.721,

1 No.108), is amended to read:

2 Section 211. Federally Covered Securities.--(a) With
3 respect to any security that is a covered security under section
4 18(b)(2) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. §
5 77r(b)(2)), the following shall apply:

6 (1) An open-end or closed-end investment company, unit
7 investment trust or face amount certificate company, as such
8 persons are classified in the Investment Company Act of 1940 (54
9 Stat. 789, 15 U.S.C. § 80a-1 et seq.), annually shall notify the
10 [commission] department of its intent to offer such federally
11 covered securities for sale in this State by paying the filing
12 fee specified in section 602(b.1) and, if applicable, the
13 assessment specified in section 602.1(a)(5) and filing any or
14 all of the following documents which the [commission]
15 department, by rule or order, may require:

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

22 (ii) After the initial offer of such federally covered
23 security in this State, all documents that are part of an
24 amendment to a Federal registration statement filed with the
25 Securities and Exchange Commission under the Securities Act of
26 1933 or, as an alternative thereto, a notice form adopted by the
27 [commission] department, which shall be filed concurrently with
28 the [commission] department.

29 (iii) Any other documents that are part of a Federal
30 registration statement filed with the Securities and Exchange

1 Commission under the Securities Act of 1933, which shall be
2 filed concurrently with the [commission] department.

3 (2) An initial notice filing by a unit investment trust
4 shall be effective for the period beginning with its effective
5 date in this State and ending one year after the date the
6 registration statement for the same securities became effective
7 with the Securities and Exchange Commission. A renewal notice
8 filing by a unit investment trust shall be effective for a
9 period of one year. An initial or renewal notice filing by a
10 unit investment trust becomes effective upon receipt by the
11 [commission] department of a properly completed filing,
12 including documents required by paragraph (1), and a correct fee
13 and, if applicable, the correct assessment unless another date
14 is requested in writing by the issuer in the notice filing made
15 with the [commission] department.

16 (3) A notice filing by an open-end or closed-end investment
17 company or face amount certificate company, as such terms are
18 classified in the Investment Company Act of 1940, shall be
19 effective for the period beginning with its effective date in
20 this State and ending sixty days after the filer's fiscal year
21 end for the year in which the notice filing was made. A notice
22 filing by an open-end or closed-end investment company or face
23 amount certificate company becomes effective upon receipt by the
24 [commission] department of a properly completed filing,
25 including documents required by paragraph (1), and a correct fee
26 and, if applicable, the correct assessment unless another date
27 is requested in writing by the issuer in the notice filing made
28 with the [commission] department.

29 (b) With respect to any security that is a covered security
30 under section [18(b)(4)(D)] 18(b)(4)(E) of the Securities Act of

1 1933 (48 Stat. 74, 15 U.S.C. [§ 77r(b)(4)(D)] § 77r(b)(4)(E) ,
2 an issuer shall file a notice with the [commission] department
3 on Form D promulgated by the Securities and Exchange Commission
4 [and effective as of September 1, 1996,] not later than fifteen
5 calendar days after the first sale of such federally covered
6 security occurs in this State, together with the filing fee
7 specified in section 602(b.1).

8 (b.1) With respect to any security that is a covered
9 security under section 18(b)(4)(C) of the Securities Act of 1933
10 where: (i) the principal place of business (as that term is
11 defined in the rules and regulations of the Securities and
12 Exchange Commission) is in this State; or (ii) purchasers of 50%
13 or more of the securities sold by the issuer pursuant to an
14 offering made in reliance on section 18(b)(4)(C) of the
15 Securities Act of 1933 are residents of this State, the issuer
16 shall file with the department a copy of the document filed with
17 the Securities and Exchange Commission pursuant to section 4A(b)
18 of the Securities Act of 1933 when it files such document with
19 the Securities and Exchange Commission and within 15 days of
20 when it becomes aware of the facts set forth in this subsection.
21 There shall be no fee for making such filing with the
22 department.

23 (c) (1) The [commission] department may issue a stop order
24 suspending the offer or sale of a security described in
25 [subsection (a) or (b)] subsection (a), (b) or (b.1) upon
26 finding that:

27 (i) The order is necessary or appropriate in the public
28 interest for protection of investors; and

29 (ii) There is a failure to comply with any condition
30 established under this section.

1 (2) A stop order under this section may be issued summarily
2 without notice or hearing. Upon issuance of a summary order, the
3 [commission] department shall promptly provide the order to the
4 person against whom it is issued. The order shall contain
5 findings of fact and conclusions of law and include a notice
6 affording the person an opportunity for a hearing under section
7 607(a). No person shall be considered to have violated section
8 201 solely by reason of an order entered under this section for
9 an offer or sale effected after the entry of an order under this
10 section if the person sustains the burden of proof that the
11 person did not know and in the exercise of reasonable care could
12 not have known of the order.

13 (e) A failure to file or timely file documents with the
14 department or a failure to pay or timely pay a filing fee as
15 required by this section may not create any cause of action for
16 civil liability on the part of any person under section 502 or
17 503.

18 Section 11. Section 301 of the act, amended November 24,
19 1998 (P.L.829, No.109), is amended to read:

20 Section 301. Registration Requirement.--Unless exempted
21 under section 302 hereof:

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

25 (b) It is unlawful for any broker-dealer or issuer to employ
26 an agent to represent him in this State unless the agent is
27 registered under this act. The registration of an agent is not
28 effective during any period when he is not associated with a
29 specified broker-dealer registered under this act or a specified
30 issuer. No agent shall at any time represent more than one

1 broker-dealer or issuer, except that where affiliated
2 organizations are registered broker-dealers, an agent may
3 represent one or more of such organizations. When an agent
4 begins or terminates [a connection] an affiliation with a
5 broker-dealer or issuer, or [begins or terminates those] engages
6 in activities which make him an agent, the agent as well as the
7 broker-dealer or issuer shall promptly notify the [commission]
8 department. The [commission] department may adopt a temporary
9 registration procedure to permit agents to change employers
10 without suspension of their registrations hereunder.

11 (c) It is unlawful for any person to transact business in
12 this State as an investment adviser unless he is so registered
13 or registered as a broker-dealer under this act or unless he is
14 exempted from registration. It is unlawful for any person to
15 transact business in this State as an investment adviser
16 representative unless he is so registered or exempted from
17 registration.

18 (c.1) The following apply:

19 (1) It is unlawful for any:

20 (i) Person required to be registered as an investment
21 adviser under this act to employ an investment adviser
22 representative unless the investment adviser representative is
23 registered under this act or exempted from registration,
24 provided that the registration of an investment adviser
25 representative is not effective during any period when he is not
26 employed by an investment adviser registered under this act; or

27 (ii) Federally covered adviser to employ, supervise or
28 associate with an investment adviser representative having a
29 place of business in this Commonwealth unless such investment
30 adviser representative is registered under this act or exempted

1 from registration.

2 (2) If a registered investment adviser representative begins
3 or terminates employment with an investment adviser or a
4 federally covered adviser, the investment adviser in the case
5 under paragraph (1)(i) or the investment adviser representative
6 in the case of paragraph (1)(ii) shall promptly notify the
7 [commission] department.

8 (3) The [commission] department may adopt a temporary
9 registration procedure to permit investment adviser
10 representatives to change employers without suspension of their
11 registrations under this act.

12 (d) It is unlawful for any licensed broker-dealer, agent
13 [or], investment adviser or investment adviser representative to
14 effect a transaction in securities, directly or indirectly, in
15 this State if the registrant is in violation of this act, or any
16 regulation or order promulgated under this act of which he has
17 notice, if such violation (i) is a material violation; (ii)
18 relates to transactions effected in this State; and (iii) has
19 been committed by such registrant, or if the information
20 contained in his application for registration, as of the date of
21 such transaction, is incomplete in any material respect or is
22 false or misleading with respect to any material fact.

23 (e) Every registration or notice filing expires on December
24 31 of each year unless renewed. No registration or notice filing
25 is effective after its expiration, unless a renewal application
26 has been timely filed, and expiration of a registration for
27 which no renewal application has been filed is deemed an
28 application for withdrawal under section 305(f).

29 (f) It is unlawful for any federally covered adviser to
30 conduct advisory business in this State unless such person

1 complies with the provisions of section 303(a)(iii).

2 Section 12. Sections 302 and 303 of the act, amended
3 November 24, 1998 (P.L.829, No.109) and July 4, 2002 (P.L.721,
4 No.108), are amended to read:

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

7 (a) A broker-dealer registered under the Securities Exchange
8 Act of 1934, who has not previously had any [certificate]
9 registration denied or revoked under this act or any predecessor
10 statute, if he has no place of business in this State and,
11 during [any period of twelve consecutive] the preceding 12
12 months, he does not direct offers to sell or buy into this State
13 in any manner to persons other than broker-dealers,
14 institutional investors or governmental agencies and other
15 instrumentalities designated by regulation of the [commission]
16 department, or to more than five other customers in this State,
17 whether or not the offeror or any of the offerees is then
18 present in this State.

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

22 (c) A person who represents an issuer in effecting
23 transactions in securities registered under section 205 or 206
24 who:

25 (1) Is a bona fide officer, director, partner or employe of
26 the issuer or an individual occupying similar status or
27 performing similar functions; and

28 (2) Does not receive any compensation, directly or
29 indirectly, for effecting the transactions.

30 (d) An investment adviser who does not have a place of

1 business in this State that is registered or exempt from
2 registration under the securities act of the state in which the
3 person has his principal place of business and during the
4 preceding twelve-month period has had not more than five clients
5 who are residents of this State exclusive of other investment
6 advisers, federally covered advisers, broker-dealers or
7 institutional investors.

8 (d.1) An investment adviser representative who is employed
9 by or associated with an investment adviser insofar as he
10 transacts business in this State on behalf of an investment
11 adviser who is exempted by the provisions of subsection (d).

12 (d.2) An investment adviser representative who has a place
13 of business in this State and is employed by or associated with
14 a federally covered adviser and the federally covered adviser
15 meets any of the criteria described in section 303(a) (iii) (A),
16 (B) or (C).

17 (e) Any person who represents an issuer in effecting
18 transactions in:

19 (1) Securities that are exempted by section 202(e), (f) or
20 (g);

21 (2) Securities involved in a transaction exempted by section
22 203(c), (g), (k), (l) or (m); or

23 (3) Securities which are covered securities under section
24 18(b) (1) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. §
25 77r(b) (1)).

26 (e.2) A person that comes within the exclusion described in
27 section 4(b) (1) and (2) of the Securities Act of 1933 (48 Stat.
28 74, 15 U.S.C. § 77d(b)).

29 (e.3) A funding portal, as that term is defined in § 3(a)
30 (80) of the Securities Exchange Act of 1934 (48 Stat. 881, 15

1 U.S.C. § 78c(a)(80)), that is registered as a funding portal
2 with the Securities and Exchange Commission and has its
3 principal place of business (as such term is defined by rules of
4 the Securities and Exchange Commission) in this State. Such
5 funding portal, however, shall be subject to the provisions of
6 Sections 304(d) and 510(f) of the act.

7 (f) The [commission] department may by such regulations as
8 it deems necessary or appropriate in the public interest or for
9 the protection of investors, either unconditionally or upon
10 specified terms and conditions or for specified periods, exempt
11 from the provisions of section 301 any class of persons
12 specified in such regulations.

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

14 (i) Except as provided by clause (iii), any broker-dealer,
15 agent, investment adviser or investment adviser representative
16 may obtain an initial or renewal license by filing an
17 application with the [commission] department. The application
18 shall contain such information, and in such detail, as the
19 [commission] department by rule requires concerning the
20 applicant's form and place of organization, proposed method of
21 doing business, and financial condition, the qualifications and
22 experience of the applicant, including, in the case of a broker-
23 dealer or investment adviser, the qualifications and experience
24 of any partner, officer, director, or affiliate, or a person
25 occupying a similar status or performing similar functions any
26 injunction or administrative order or conviction referred to in
27 section 305(a)(ii), information about affiliates or predecessors
28 of the applicant, and any other matters which the [commission]
29 department determines are relevant to the application. If a
30 broker-dealer, agent, investment adviser or investment adviser

1 representative seeks to obtain an initial or renewal license
2 and, in connection therewith, requests a waiver of any
3 requirement imposed under this section or section 304 or any
4 regulation promulgated thereunder, the [commission] department
5 in granting the waiver may impose conditions on or limit the
6 scope of the initial or renewal license.

7 (ii) If no denial order is in effect and no proceeding is
8 pending under section 305, the registration becomes effective on
9 the forty-fifth day after the filing of the application therefor
10 or any material amendment thereto, or on such earlier date as
11 the [commission] department may order. The [commission]
12 department is directed to cooperate with other securities
13 administrators and regulatory authorities to simplify and
14 coordinate registration, application and renewal procedures.

15 (iii) A federally covered adviser shall file with the
16 [commission] department, prior to acting as a federally covered
17 adviser in this State, a copy of such documents as have been
18 filed with the Securities and Exchange Commission which the
19 [commission] department by regulation may require, together with
20 the fee specified in section 602(d.1). This requirement shall
21 not apply to a federally covered adviser that:

22 (A) Has a place of business in this State and whose only
23 clients in this State are investment advisers, federally covered
24 advisers, broker-dealers or institutional investors;

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

30 (C) Meets the definition of any person described in section

1 102(j)(i) through (viii), (x) or (xi), except a federally
2 covered adviser that is also a broker-dealer registered under
3 section 301, that has an individual employed by or associated
4 with such person who meets the definition of investment adviser
5 representative in section 102(j.1)(ii).

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

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

22 (d) The [commission] department may by regulation require a
23 minimum capital for registered broker-dealers subject to the
24 limitations of section 15 of the Securities Exchange Act of 1934
25 (48 Stat. 881, 15 U.S.C. § 78o) and establish minimum financial
26 requirements for investment advisers subject to the limitations
27 of section 222 of the Investment Advisers Act of 1940 (54 Stat.
28 847, 15 U.S.C. § 80b-18a). The [commission] department may
29 classify broker-dealers for purposes of such requirements and
30 may establish different requirements for those investment

1 advisers who maintain custody of clients' funds or securities or
2 who have discretionary authority over same and those investment
3 advisers who do not.

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

28 Section 13. Section 304 of the act, amended November 24,
29 1998 (P.L.829, No.109), is amended to read:

30 Section 304. Post-registration Provisions.--(a) Every

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

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

28 (c) If the information contained in any document filed with
29 the [commission] department is or becomes inaccurate or
30 incomplete in any material respect, the registrant or federally

1 covered adviser shall promptly file a correcting amendment if
2 the document is filed with respect to a registrant or when such
3 amendment is required to be filed with the Securities and
4 Exchange Commission if the document is filed with respect to a
5 federally covered adviser.

6 (d) The [commission] department shall make periodic
7 examinations, within or without this State, of each broker-
8 dealer and investment adviser at reasonable times and in
9 reasonable scope. These examinations may be made without prior
10 notice to the broker-dealer or investment adviser. For the
11 purpose of avoiding unnecessary duplication of examinations, the
12 [commission] department, in so far as it deems it practicable in
13 administering this subsection, shall cooperate with securities
14 administrators of other states, the Securities and Exchange
15 Commission, and any national securities exchange or national
16 securities association registered under the Securities Exchange
17 Act of 1934 (15 U.S.C. § 78a et seq.) or any other department or
18 agency of this State. The department shall have examination
19 authority under this subsection with respect to a funding
20 portal, as that term is defined in section 3(a)(80) of the
21 Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C.
22 § 78c(a)(80)), that is registered as a funding portal with the
23 Securities and Exchange Commission and has its principal place
24 of business (as defined by rules of the Securities and Exchange
25 Commission) in this State, provided that the department shall
26 not apply any provision of this act or any rule or regulation
27 adopted under this act or take an administrative action that is
28 in addition to, or different from, the requirements for
29 registered funding portals established by the Securities and
30 Exchange Commission.

1 (e) The [commission] department may by regulation prohibit
2 unreasonable charges, commissions or other compensation of
3 broker-dealers and investment advisers, provided that any
4 charges, commissions, or other compensation consistent with
5 rates set by a national securities exchange, when applied to
6 transactions on that exchange, or by the Securities and Exchange
7 Commission or national securities association registered under
8 the Securities Exchange Act of 1934, shall not be deemed
9 unreasonable under this section. Any underwriting compensation
10 permitted by a national securities association registered under
11 the Securities Exchange Act of 1934 with respect to the
12 underwriting activities of its members shall not be deemed
13 unreasonable under this section.

14 (f) The [commission] department may prescribe [rules]
15 regulations and statements of policy which it finds appropriate
16 in the public interest and for the protection of investors for
17 the conduct of business by broker-dealers and investment
18 advisers who are not members of [the National Association of
19 Securities Dealers, Inc. or any other national securities
20 association registered under the Securities Exchange Act of
21 1934] a self-regulatory organization, which association has
22 adopted rules of conduct. The department may adopt a regulation
23 or order requiring an agent or investment adviser representative
24 to participate in a continuing education program approved by the
25 Securities and Exchange Commission and administered by a self-
26 regulatory organization or, in the absence of such a program, a
27 regulation or order issued under this act may require continuing
28 education for an individual registered as an agent or investment
29 adviser representative.

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

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

6 Section 14. Section 305 of the act, amended or added June
7 25, 1986 (P.L.256, No.68), December 18, 1990 (P.L.755, No.190),
8 November 24, 1998 (P.L.829, No.109), July 4, 2002 (P.L.721,
9 No.108) and November 23, 2004 (P.L.930, No.132), is amended to
10 read:

11 Section 305. Denial, Suspension, Revocation and Conditioning
12 of Registration.

13 (a) The [commission] department may, by order, deny,
14 suspend, revoke or condition any registration or may censure any
15 registrant if it finds that such order is in the public interest
16 and that such registrant or applicant, or in the case of any
17 broker-dealer or investment adviser, any affiliate thereof,
18 whether prior or subsequent to becoming associated with such
19 person:

20 (i) Has filed an application for registration or a document
21 in connection with an application for registration which as of
22 its effective date or as of a date after filing in the case of
23 an order denying effectiveness, was incomplete in a material
24 respect or contained a statement which was, in light of the
25 circumstances under which it was made, false or misleading with
26 respect to a material fact; or

27 (ii) Has been: (A) convicted within ten years of the date of
28 the [commission's] department's action of any felony or
29 misdemeanor, or of any substantially equivalent crime by a
30 foreign court of competent jurisdiction, or held liable in a

1 civil action by final judgment of a court and the [commission]
2 department finds that such felony, misdemeanor or civil action:
3 (I) involved the purchase or sale of any security, the taking of
4 a false oath, the making of a false report, bribery, perjury,
5 burglary and any substantially equivalent activity however
6 denominated by the laws of a relevant foreign government or
7 conspiracy to commit any such offense; (II) arose out of the
8 conduct of the business of an issuer, broker-dealer, municipal
9 securities dealer, government securities broker, government
10 securities dealer, investment adviser, bank, insurance company,
11 fiduciary, transfer agent, foreign person performing a function
12 substantially equivalent to any of the foregoing or any entity
13 or person required to be registered under the Commodity Exchange
14 Act (42 Stat. 988, 7 U.S.C. § 1 et seq.) or any substantially
15 equivalent foreign statute or regulation; (III) involved the
16 larceny, theft, robbery, extortion, forgery, counterfeiting,
17 fraudulent concealment, embezzlement, fraudulent conversion or
18 misappropriation of funds or securities or any substantially
19 equivalent activity however denominated by the laws of a
20 relevant foreign government; or (IV) involved the violation of
21 18 U.S.C. § 152 (relating to concealment of assets; false oaths
22 and claims; bribery), 1341 (relating to frauds and swindles),
23 1342 (relating to fictitious name or address) or 1343 (relating
24 to fraud by wire, radio, or television) or Ch. 25 (relating to
25 counterfeiting and forgery) or 47 (relating to fraud and false
26 statements) or a violation of any substantially equivalent
27 foreign statute; or (B) convicted of any other felony; or
28 (iii) Is permanently or temporarily enjoined by any court of
29 competent jurisdiction from engaging in or continuing any
30 conduct or practice involving any aspect of the securities or

1 commodities future contract business or involving fraudulent
2 conduct in the banking or insurance business; or
3 (iv) Is subject to (A) any currently effective order or
4 order entered within the past five years of the Securities and
5 Exchange Commission, the Commodity Futures Trading Commission or
6 the securities administrator of any other state denying
7 registration to or revoking or suspending the registration of
8 such person as a broker-dealer, agent, investment adviser,
9 investment adviser representative, futures commission merchant,
10 commodity pool operator, commodity trading [advisor] adviser or
11 a person associated with a futures commission merchant,
12 commodity pool operator or commodity trading adviser, or (B) any
13 currently effective order of any [national securities
14 association, national securities exchange (as defined in the
15 Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. 78a et
16 seq.)) or self-regulatory organization operating under the
17 authority of the Commodity Futures Trading Commission] self-
18 regulatory organization suspending or expelling such person from
19 membership in such [association, exchange or] self-regulatory
20 organization, or (C) any currently effective cease and desist
21 order or a cease and desist order entered within the past five
22 years by the Securities and Exchange Commission, the Commodity
23 Futures Trading Commission or the securities administrator of
24 any other state and where, in the case of a cease and desist
25 order entered by a state, the cease and desist order contained a
26 finding of a wilful violation of that state's securities law, or
27 (D) a currently effective United States Postal Service fraud
28 order; but the [commission] department may not institute a
29 revocation or suspension proceeding under this subsection on the
30 basis of an order under another state law more than one year

1 after termination of the effectiveness of the order relied on
2 and unless the order was based on facts which would currently
3 constitute grounds for an order under this section; or

4 (v) Has wilfully violated any provision of the Securities
5 Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.), the
6 Securities Exchange Act of 1934, the Trust Indenture Act of 1939
7 (53 Stat. 1149, 15 U.S.C. § 77aaa et seq.), the Investment
8 Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80b-1 et seq.),
9 the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. §
10 80a-1 et seq.), the Commodity Exchange Act, any law of a foreign
11 country governing or regulating any aspect of the business of
12 securities, commodities futures or banking or this act, or of
13 any rule, regulation or order under any of such statutes within
14 the previous ten years; or

15 (vi) Has wilfully aided, abetted, counseled, commanded,
16 induced, or procured the violation by any other person of any of
17 the statutes, rules, regulations or orders referred to in
18 subsection (v) within the previous ten years; or

19 (vii) Has failed reasonably to supervise his agents or
20 employes, if he is a broker-dealer, or his investment adviser
21 representatives or employes, if he is an investment adviser
22 within the previous ten years; or

23 (viii) Is the subject of a currently effective order of the
24 [commission] department denying, suspending or revoking his
25 registration in any other capacity under this act; or

26 (ix) Has engaged in dishonest or unethical practices in the
27 securities business or has taken unfair advantage of a customer
28 within the previous ten years; or

29 (x) Is insolvent, either in the sense that his liabilities
30 exceed his assets or in the sense that he cannot meet his

1 obligations as they mature, or is in such financial condition
2 that he cannot continue in business with safety to his
3 customers, or has not sufficient financial responsibility to
4 carry out the obligations incident to his operations provided
5 that the [commission] department has made a specific finding of
6 insolvency, absence of safety or insufficient financial
7 responsibility; or

8 (xi) Is not qualified on the basis of such factors as
9 training, experience and knowledge of the securities business;
10 except as otherwise provided in subsection (b); or

11 (xii) Is selling or has sold, or is offering or has offered
12 for sale, in this State securities through any unregistered
13 agent required to be registered under this act or for any
14 broker-dealer or issuer with knowledge that such broker-dealer
15 or issuer had not or has not complied with this act; or

16 (xiii) Has made any material misrepresentation to or
17 withheld or concealed from or omitted to state to the
18 [commission] department or any of its representatives any
19 material fact necessary in order to make the statements made, in
20 the light of the circumstances under which they are made, not
21 misleading, or has refused to furnish information reasonably
22 requested by the [commission] department within the previous ten
23 years; or

24 (xiv) Is subject to any currently effective order or orders
25 entered within the past five years by any regulator of another
26 country:

27 (A) denying registration to or revoking or suspending the
28 registration of such person as a broker-dealer, agent,
29 investment adviser, investment adviser representative, futures
30 commission merchant, commodity pool operator, commodity trading

1 adviser or a person associated with a futures commission
2 merchant, commodity pool operator or commodity trading adviser;
3 or

4 (B) denying, revoking or suspending the person's legal
5 authorization to engage in the business of banking or insurance;
6 or

7 (xv) Is subject to any currently effective order of any
8 securities exchange or self-regulatory organization operating
9 under the authority of the securities regulator of another
10 country suspending or expelling such person from membership in
11 such exchange or self-regulatory association; or

12 (xvi) Is subject to a currently effective order or orders
13 entered within the past five years by a state insurance
14 regulator or Federal or state banking regulator denying
15 registration, articles of incorporation or association,
16 certificate of organization or authorization to do business,
17 charter or license, or revoking or suspending the registration,
18 articles of incorporation or association, certificate of
19 organization or authorization to do business, charter or license
20 of such person to engage in the insurance, banking or other
21 financial services industry, or finding that such person has
22 engaged in fraudulent, unethical, dishonest or abusive practices
23 in connection with any aspect of the business of insurance,
24 banking or other financial services.

25 (a.1) The [commission] department, by order, may deny the
26 application of:

27 (i) an agent or investment adviser representative if the
28 individual is obligated pursuant to an award of an arbitration
29 panel to pay compensation to purchasers of securities or
30 investment advice and, as of the date the application is filed

1 with the [commission] department, has not paid the awarded
2 compensation to the purchasers in full and within the time
3 period specified by the arbitration panel; or

4 (ii) a broker-dealer or investment adviser if a promoter,
5 director, chief executive officer, chief financial officer,
6 chief operations officer, chief legal officer, chief compliance
7 officer or general partner (or person occupying a similar status
8 or performing similar functions) of the applicant held a similar
9 position with another broker-dealer, investment adviser or
10 federally covered adviser which entity pursuant to an award of
11 an arbitration panel is obligated to pay compensation to
12 purchasers of securities and, as of the date the application is
13 filed with the [commission] department, has not paid the awarded
14 compensation to the purchasers in full within the time period
15 specified by the arbitration panel.

16 The [commission] department may issue an order prospectively
17 rescinding a denial order issued under this subsection if the
18 person whose application has been denied under this subsection
19 provides credible evidence that the compensation awarded by the
20 arbitration panel which was the basis for denial of the
21 application under this subsection has been paid in full and in
22 cash.

23 (a.2) The [commission] department, by order, may suspend the
24 registration of a broker-dealer, investment adviser, agent or
25 investment adviser representative if such person is obligated,
26 pursuant to an award of an arbitration panel, to pay
27 compensation to purchasers of securities in this Commonwealth
28 and has not paid the awarded compensation in full and in cash.
29 The [commission] department shall rescind the suspension order
30 prospectively if the person provides credible evidence to the

1 [commission] department that the compensation awarded by the
2 arbitration panel has been paid in full and in cash to
3 purchasers of securities in this Commonwealth. Rescission of a
4 suspension order issued under this section shall reinstate the
5 person as a registrant in the same category held at the time the
6 suspension order was issued but only if:

7 (i) the person otherwise currently meets all requirements
8 for registration in that category set forth in this act and
9 regulations promulgated thereunder;

10 (ii) there is no basis for the [commission] department to
11 act pursuant to subsection (a) or (a.1); and

12 (iii) applicable fees and compliance assessments set forth
13 in sections 602 and 602.1 have been paid as if the person had
14 been registered during the period of suspension.

15 (b) The following provisions govern the application of
16 section 305(a) (xi):

17 (i) The [commission] department may not enter an order
18 against a broker-dealer on the basis of the lack of
19 qualification of any person other than (A) the broker-dealer
20 himself if he is an individual, or (B) an agent of the broker-
21 dealer.

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

29 (iii) The [commission] department may not enter an order
30 solely on the basis of lack of experience if the applicant or

1 registrant is qualified by training or knowledge or both.

2 (iv) The [commission] department shall consider that an
3 agent who will work under the supervision of a registered
4 broker-dealer need not have the same qualifications as a broker-
5 dealer.

6 (v) The [commission] department shall consider that an
7 investment adviser is not necessarily qualified solely on the
8 basis of experience as a broker-dealer or agent. When it finds
9 that an applicant for initial or renewal registration as a
10 broker-dealer is not qualified as an investment adviser, it may
11 by order condition the applicant's registration as a broker-
12 dealer upon his not transacting business in this State as an
13 investment adviser.

14 (vi) The [commission] department may by rule provide for an
15 examination, which may be written or oral or both, to be taken
16 by any class of or all applicants, as well as persons who
17 represent or will represent an investment adviser in doing any
18 of the acts which make him an investment adviser.

19 (c) The [commission] department may not institute a
20 suspension or revocation proceeding solely on the basis of a
21 final judicial or administrative order made known to it by the
22 applicant prior to the effective date of the registration unless
23 the proceeding is instituted within the next ninety days
24 following registration. This provision shall not apply to
25 renewals of registrations.

26 (d) The [commission] department may by order summarily deny,
27 postpone or suspend an application or registration pending final
28 determination of any proceeding under this section. The order
29 may be issued summarily without notice or hearing. Upon issuance
30 of a summary order, the [commission] department shall promptly

1 provide the order to the applicant or registrant and the
2 employer or prospective employer if the applicant or registrant
3 is an agent or investment adviser representative. The order
4 shall contain findings of fact and conclusions of law and
5 include a notice affording the applicant or registrant an
6 opportunity for a hearing in accordance with section 607(a).

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

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

1 (vii), (viii), (ix), (xii) and (xiii) within one year after
2 withdrawal became effective and enter a revocation or suspension
3 order as of the last date on which the registration was in
4 effect.

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

13 (h) A person that controls, directly or indirectly, a person
14 who is subject to an action of the department under subsection
15 (a) may be subjected to the same discipline by the department
16 and to the same extent as the controlled person unless the
17 controlling person did not know, and in the exercise of
18 reasonable care could not have known, of the existence of
19 conduct that is the basis for the action by the department
20 against the controlled person.

21 Section 15. Section 306 of the act is amended to read:

22 Section 306. Prohibited Employment.--(a) It is unlawful for
23 any person, as to whom an order suspending or revoking his
24 registration is in effect, wilfully to become or to be employed
25 in any capacity by any broker-dealer or investment adviser or in
26 the position of agent for an issuer without the consent of the
27 [commission] department; and it is unlawful for any broker-
28 dealer, investment adviser or issuer to permit such a person to
29 become or to remain a person employed by him without the consent
30 of the [commission] department if such broker-dealer, investment

1 adviser or issuer knew, or in the exercise of reasonable care
2 should have known, of such order.

3 (b) No issuer (except for a broker-dealer registered
4 hereunder) shall employ any person as an agent hereunder if such
5 issuer knew, or in the exercise of reasonable care should have
6 known, that such person has at any time within the twelve
7 previous months participated in this State as an agent, officer
8 or director of another issuer in the sale of securities of that
9 issuer, which securities were registered under section 205 or
10 206.

11 Section 16. Section 404 of the act, amended November 24,
12 1998 (P.L.829, No.109) and November 23, 2004 (P.L.924, No.128),
13 is amended to read:

14 Section 404. Prohibited Advisory Activities.--(a) It is
15 unlawful for any person who receives, directly or indirectly,
16 any consideration from another person for advising the other
17 person as to the value of securities or their purchase or sale,
18 whether through the issuance of analyses or reports or
19 otherwise, in this State:

20 (1) To employ any device, scheme, or artifice to defraud the
21 other person.

22 (2) To engage in any transaction, act, practice, or course
23 of business which operates as a fraud or deceit upon any other
24 person.

25 (3) Acting as principal for his own account, knowingly to
26 sell any security to or purchase any security from a client, or,
27 acting as broker for a person other than such client, knowingly
28 to effect any sale or purchase of any security for the account
29 of such client, without disclosing to such client in writing
30 before the completion of the transaction the capacity in which

1 he is acting and obtaining the consent of the client to such
2 transaction. The prohibitions of this paragraph shall not apply
3 to any transaction with a customer of a broker-dealer if such
4 broker-dealer is not acting as an investment adviser in relation
5 to such transaction.

6 (4) To engage in any act, practice, or course of business
7 which is fraudulent, deceptive, or manipulative.

8 (5) To fail to disclose to the board of school directors of
9 a public school district or to a municipal pension plan or
10 system in this Commonwealth the compensation that such person
11 will give, directly or indirectly, to another person in
12 connection with either obtaining the board of school directors
13 or municipal pension plan or system as an advisory client or
14 advising the board of school directors or municipal pension plan
15 or system as to any transaction involving the purchase or sale
16 of a security with respect to an investment of public school
17 district funds pursuant to section 440.1 of the act of March 10,
18 1949 (P.L.30, No.14), known as the "Public School Code of 1949,"
19 and 53 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and
20 borrowing) or investment of funds of the municipal pension plan
21 or system. ((5) amended Nov. 23, 2004, P.L.924, No.128)

22 (6) To represent that he is an investment counsel or to use
23 the name "investment counsel" as descriptive of his business
24 unless a substantial part of his business consists of rendering
25 investment advisory services on the basis of the individual
26 needs of his clients.

27 (7) Unless the person is registered as a broker-dealer under
28 this act, to take and have custody of any securities or funds of
29 any client if he fails to meet such requirements therefor as may
30 be prescribed by the [commission] department by regulation.

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

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

11 Section 17. Section 407 of the act, amended November 24,
12 1998 (P.L.829, No.109), is amended to read:

13 Section 407. Misleading Filings; Misrepresentations of
14 [Commission] Department Approval.--(a) It is unlawful for any
15 person to make or cause to be made, in any document filed with
16 the [commission] department or in any proceeding under this act,
17 any statement which is, at the time and in the light of the
18 circumstances under which it is made, false or misleading in any
19 material respect or, in connection with such statement, to omit
20 to state a material fact necessary in order to make the
21 statements made, in the light of the circumstances under which
22 they are made, not misleading. Where any person has failed to
23 make reasonable inquiry as to the accuracy of the information
24 being filed with the [commission] department, such person may
25 not rely upon that failure as a defense to a violation of this
26 section.

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

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

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

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

20 Section 18. Section 504 of the act, amended July 4, 2002
21 (P.L.721, No.108) and November 23, 2004 (P.L.927, No.130), is
22 amended to read:

23 Section 504. Time Limitations on Rights of Action.--(a) No
24 action shall be maintained to enforce any liability created
25 under section 501 (or section 503 in so far as it relates to
26 that section) unless brought before the expiration of five years
27 after the act or transaction constituting the violation or the
28 expiration of one year after the plaintiff receives actual
29 notice or upon the exercise of reasonable diligence should have
30 known of the facts constituting the violation, whichever shall

1 first expire.

2 (b) No action shall be maintained to enforce any liability
3 created under section 502 (or section 503 in so far as it
4 relates to that section) unless brought before the expiration of
5 two years after the violation upon which it is based or the
6 expiration of one year after the plaintiff receives actual
7 notice or upon the exercise of reasonable diligence should have
8 known of the facts constituting such violation, whichever shall
9 first expire.

10 (c) No action shall be maintained to enforce any right of
11 indemnification or contribution created by section 503 unless
12 brought before the expiration of one year after final judgment
13 based upon the liability for which the right of indemnification
14 or contribution exists.

15 (d) No purchaser may commence an action under section 501,
16 502 or 503 if, before suit is commenced, the purchaser has
17 received a written offer: (i) stating the respect in which
18 liability under such section may have arisen and fairly advising
19 the purchaser of his rights; offering to repurchase the security
20 for cash, payable on delivery of the security, equal to the
21 consideration paid, together with interest at the legal rate
22 from the date of payment, less the amount of any income or
23 distributions, in cash or in kind, received thereon or, if the
24 purchaser no longer owns the security, offering to pay the
25 purchaser upon acceptance of the offer an amount in cash equal
26 to the damages computed in accordance with section 501(a); and
27 (ii) stating that the offer may be accepted by the purchaser at
28 any time within a specified period of not less than thirty days
29 after the date of receipt thereof, or such shorter period as the
30 [commission] department may by rule prescribe; and the purchaser

1 has failed to accept such offer in writing within the specified
2 period. The limitations on a purchaser commencing an action
3 under this subsection shall not apply if the purchaser has
4 accepted an offer to repurchase made under this subsection
5 within the time period specified under this subsection and has
6 complied with all the terms of this subsection but has not
7 received the cash payment specified by this subsection within
8 ninety days of the date of acceptance of the offer to
9 repurchase. For purposes of this subsection, the term "cash"
10 shall mean legal tender of the United States, a certified or
11 cashier's check drawn upon a bank as that term is defined in
12 section 102(d), a United States Postal Service money order or a
13 money order issued by a person licensed by the department to
14 conduct such business.

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

1 (f) Offers under subsection (d) or (e) of this section 504
2 shall be in the form and contain the information the
3 [commission] department by rule prescribes. Every offer under
4 this subsection shall be delivered to the offeree personally or
5 sent by certified mail addressed to him at his last known
6 address. If an offer is not performed in accordance with its
7 terms, suit by the offeree under section 501, 502 or 503, shall
8 be permitted without regard to subsections (d) and (e) of this
9 section 504.

10 Section 19. Section 509 of the act, amended or added
11 November 24, 1998 (P.L.829, No.109), July 4, 2002 (P.L.721,
12 No.108) and November 23, 2004 (P.L.926, No.129), is amended to
13 read:

14 Section 509. Right of [Commission] Department to Bring
15 Actions for Injunction and Equitable Relief; Class Actions;
16 Contempt of [Commission] Department Orders.--(a) Whenever it
17 appears to the [commission] department that any person has
18 engaged or is about to engage in any act or practice
19 constituting a violation of any provision of this act or any
20 rule or order hereunder, it may in its discretion bring an
21 action in the name of the people of the Commonwealth of
22 Pennsylvania in the Commonwealth Court or in any of the several
23 courts of common pleas to enjoin, through a preliminary or
24 permanent injunction, temporary restraining order or writ of
25 mandamus, the acts or practices or to enforce compliance with
26 this act or any rule or order hereunder. The [commission]
27 department also may seek and the court upon proper showing shall
28 grant such other ancillary and equitable relief as the facts
29 warrant, including, without limitation, appointment of a
30 receiver, temporary receiver or conservator of the defendant's

1 assets, a freeze of the defendant's assets, obtaining of an
2 accounting, orders of rescission, orders of restitution, orders
3 of disgorgement or other relief as may be appropriate in the
4 public interest. The court shall not require the [commission]
5 department to meet the criteria for an equitable injunction in
6 order for the court to grant an injunction, restraining order or
7 writ of mandamus. The court shall not require the [commission]
8 department to post a bond.

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

19 (c) Any person violating any (i) stop order issued under
20 section 208, (ii) cease advertising order issued under section
21 606(c), (iii) cease and desist order issued under section
22 606(c.1), (iv) order of the [commission] department requiring a
23 rescission pursuant to section 513, (v) order of the
24 [commission] department imposing any bar described in section
25 512, (vi) order of the [commission] department requiring return
26 of sales compensation under section 514(a) or (vii) any order of
27 the [commission] department imposing an administrative
28 assessment under section 602.1(b) or (c) from which no appeal of
29 such an order has been taken pursuant to section 607(d) of the
30 act or which has been sustained on appeal, or which has been

1 appealed but where no supersedeas has been granted for the
2 period during which the order has been violated, shall be deemed
3 to be in contempt of such order. Upon petition and certification
4 of such order by the [commission] department, the Commonwealth
5 Court or any of the courts of common pleas if it finds after
6 hearing or otherwise that the person is not in compliance with
7 the order shall adjudge the person in contempt of the order and
8 shall assess such civil penalties of an amount not less than
9 five thousand dollars (\$5,000) nor greater than fifteen thousand
10 dollars (\$15,000) per violation and grant such equitable relief
11 as it may deem appropriate.

12 (d) If the [commission] department provides work product or
13 services to a receiver, trustee or conservator appointed by a
14 court pursuant to subsection (a), the court, upon petition by
15 the [commission] department for reimbursement of costs for
16 providing such work product or services, may award the
17 [commission] department reimbursement of all direct costs
18 incurred in providing the work product or services to the
19 receiver, trustee or conservator as well as a pro rata portion
20 of salaries of [commission] department staff who were involved
21 in providing the work product or services. This award may be
22 made from funds recovered by and under the control of the
23 receiver, trustee or conservator who holds the funds for the
24 benefit of investors, provided that the award may not exceed ten
25 per cent of the funds held. Reimbursements received by the
26 [commission] department under this subsection shall be treated
27 as moneys received under section 602.1.

28 Section 20. Section 510 of the act, amended November 24,
29 1998 (P.L.829, No.109) and July 4, 2002 (P.L.721, No.108), is
30 amended to read:

1 Section 510. Investigations and Subpoenas.--(a) The
2 [commission] department in its discretion:

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

8 (ii) May, for a reasonable time not exceeding thirty days,
9 take possession of the books, papers, accounts and other
10 records, however created, produced or stored, pertaining to the
11 business of any broker-dealer or investment adviser or
12 pertaining to the activities of any issuer in connection with
13 any transaction in a security, whether or not exempted under
14 section 202 or 203 and the use of any proceeds obtained
15 therefrom, and place a keeper in exclusive charge of them in the
16 place where they are usually kept. During such possession no
17 person shall remove or attempt to remove any of the books,
18 records, accounts, or other papers except pursuant to a court
19 order or with the consent of the [commission] department; but
20 the directors, officers, partners, and employes of the broker-
21 dealer, investment adviser or issuer may examine them, and
22 employes shall be permitted to make entries therein reflecting
23 current transactions;

24 (iii) May require or permit any person to file a statement
25 in writing, under oath or otherwise as the [commission]
26 department determines, as to all the facts and circumstances
27 concerning the matter being investigated;

28 (iv) May publish information concerning any violation of
29 this act or any rule or order hereunder or concerning
30 securities, or practices in the sale thereof, which appear or

1 tend to be unfair, inequitable or fraudulent, but only where it
2 deems such publication to be in the public interest and for the
3 protection of investors; [and]

4 (v) May hold hearings, upon reasonable notice, in respect of
5 any matters arising out of the administration of this act[.];
6 and

7 (vi) May record presentations made at meetings, seminars or
8 other assemblies conducted in a public forum which may involve
9 the offer or sale of securities in this State in any manner that
10 the [commission] department determines appropriate.

11 (b) For the purpose of any investigation, hearing or
12 proceeding under this act, the [commission] department or any
13 officer designated by it may administer oaths and affirmations,
14 subpoena witnesses, compel their attendance, take evidence and
15 require the production of any books, papers, correspondence,
16 memoranda, agreements or other documents or records which the
17 [commission] department deems relevant or material to the
18 inquiry.

19 (c) In case of contumacy by, or refusal to obey a subpoena
20 issued to, any person, the Commonwealth Court or any of the
21 several courts of common pleas of Pennsylvania, upon application
22 by the [commission] department, may issue to the person an order
23 requiring him to appear before the [commission] department, or
24 the officer designated by it, there to produce documentary
25 evidence, if so ordered, or to give evidence touching the matter
26 under investigation or in question. Failure to obey the order of
27 the court may be punished by the court as a contempt.

28 (d) (i) If, in a proceeding before the [commission]
29 department, any person shall refuse to testify or to produce
30 evidence of any other kind on the ground that his testimony or

1 evidence may tend to incriminate him, that person may be ordered
2 to give such testimony. The order to testify shall not be given
3 except upon an order of court after a hearing in which the
4 Attorney General has established a need for the grant of
5 immunity, as hereinafter provided;

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

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

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

26 (v) Any person who shall refuse or decline to testify or
27 produce evidence of any other kind after being granted immunity
28 and ordered by the court shall be guilty of criminal contempt
29 and, upon conviction thereof, shall be sentenced to pay a fine
30 of not exceeding one thousand dollars (\$1,000), or to undergo

1 imprisonment for a period not exceeding one year, or both.

2 (e) At the request of the securities regulatory authority of
3 another jurisdiction, the [commission] department may provide
4 assistance if the requesting authority states that it is
5 conducting an investigation which it deems necessary to
6 determine whether a person has violated, is violating or is
7 about to violate laws or rules relating to securities matters
8 that the requesting authority administers or enforces. The
9 [commission] department may, in its sole discretion, conduct
10 such investigation and use the powers conferred under this
11 section as the [commission] department deems necessary to
12 collect information and evidence pertinent to the request for
13 assistance. The assistance may be provided without regard to
14 whether the facts stated in the request would constitute a
15 violation of this act or the laws of this Commonwealth. In
16 deciding whether to provide such assistance, the [commission]
17 department shall consider whether:

18 (i) the requesting authority is permitted and has agreed to
19 provide reciprocal assistance in securities matters to the
20 [commission] department; and

21 (ii) compliance with the request would prejudice the public
22 interest.

23 (f) Nothing in this act may prohibit the department from
24 investigating and bringing an administrative proceeding with
25 respect to fraud, deceit or unlawful conduct by a funding portal
26 as that term is defined in section 3(a)(80) of the Securities
27 Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78c(a)(80)),
28 provided that the department may not apply any provision of this
29 act or any rule or regulation adopted under this act or take an
30 administrative action that is in addition to, or different from,

1 the requirements for registered funding portals established by
2 the Securities and Exchange Commission.

3 Section 21. Section 511 of the act, amended November 23,
4 2004 (P.L.930, No.132), is amended to read:

5 Section 511. Criminal Penalties.--(a) Except as provided in
6 this section, a person who wilfully violates any material
7 provision of this act, except section 407(a), or any rule under
8 this act, or any order of which he has notice, or who violates
9 section 407(a) knowing that the statement made was false or
10 misleading in any material respect, commits a felony of the
11 third degree and may be fined not more than two hundred fifty
12 thousand dollars (\$250,000) or imprisoned for not more than
13 seven years, or both, if the amount of money paid by the
14 purchaser for the securities involved in the violation is less
15 than two hundred fifty thousand dollars (\$250,000), and not more
16 than five hundred thousand dollars (\$500,000) or imprisoned for
17 not more than seven years, or both, if the amount of money or
18 securities involved in the violation is two hundred fifty
19 thousand dollars (\$250,000) or more. In addition to fine or
20 imprisonment, or both, a person may be sentenced to make
21 restitution.

22 (b) A person who wilfully violates section 401, 408 or 409
23 commits a felony of the second degree and may be fined not more
24 than one million dollars (\$1,000,000) or imprisoned for not more
25 than ten years, or both. In addition to fine or imprisonment, or
26 both, the person may be sentenced to make restitution.

27 (c) (1) A person who wilfully violates section 401, 408 or
28 409 commits a felony of the first degree and may be fined not
29 more than five million dollars (\$5,000,000) or imprisoned for
30 not more than twenty years, or both, if one of the conditions

1 specified in paragraph (2) or (3) is met, and not more than ten
2 million dollars (\$10,000,000) or imprisoned for not more than
3 twenty years, or both, if both of the conditions specified in
4 paragraphs (2) and (3) are met. In addition to a fine or
5 imprisonment, or both, the person may be sentenced to make
6 restitution.

7 (2) Within ten years of being convicted under this
8 subsection for wilful violation of section 401, 408 or 409, the
9 person was the subject of:

10 (i) a criminal felony conviction;

11 (ii) an injunction issued by any court of competent
12 jurisdiction; or

13 (iii) an order of the Securities and Exchange Commission,
14 the Commodity Futures Trading Commission, the securities,
15 banking or insurance regulator of another state, a Federal
16 banking regulator or the securities, banking or insurance
17 regulatory authority of another country which found that the
18 person wilfully violated any provision of the Federal or State
19 securities, banking, insurance or commodities laws or the
20 securities, commodities, insurance or banking laws of that
21 country.

22 (3) One or more of the victims of the unlawful conduct is
23 sixty years of age or older.

24 (d) A person who knowingly alters, destroys, shreds,
25 mutilates, conceals, covers up, falsifies or makes a false entry
26 in any record, document or tangible object with the intent to
27 impede, obstruct or influence an investigation by the
28 [commission] department under section 510 or an examination
29 under section 304(d) commits a felony of the second degree and
30 may be fined not more than five hundred thousand dollars

1 (\$500,000) or imprisoned for not more than ten years, or both.

2 (e) A person who knowingly alters, destroys, shreds,
3 mutilates or conceals a record, document or other object or
4 attempts to do so with the intent to impair its integrity or
5 availability for use in a proceeding before the [commission]
6 department or in a proceeding brought by the [commission]
7 department or otherwise obstructs, influences or impedes such
8 proceedings or attempts to do so commits a felony of the second
9 degree and may be fined not more than five hundred thousand
10 dollars (\$500,000) or imprisoned for not more than ten years, or
11 both.

12 (f) A person who knowingly, with the intent to retaliate,
13 takes any action harmful to another person, including
14 interference with the lawful employment or livelihood of another
15 person, for providing the [commission] department with any
16 truthful information relating to a violation of this act commits
17 a felony of the second degree and may be fined not more than
18 five hundred thousand dollars (\$500,000) or imprisoned for not
19 more than ten years, or both.

20 (g) (1) Each of the acts specified in subsections (a)
21 through (f) shall constitute a separate offense, and a
22 prosecution or conviction for any such offense shall not bar
23 prosecution or conviction for any other offense. No indictment
24 or information may be returned under this act more than five
25 years after the alleged violation.

26 (2) This section shall be construed to provide additional
27 and cumulative remedies, and nothing contained in this act shall
28 be construed to affect the ability of the Commonwealth to bring
29 an information or indictment under common law or other criminal
30 statutory provisions for the same conduct.

1 (h) The following persons have jurisdiction to investigate
2 violations of this section and institute criminal proceedings
3 for any violation of this section:

4 (1) The district attorney of a county.

5 (2) The Attorney General, in addition to the authority
6 conferred upon the Attorney General by the act of October 15,
7 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys
8 Act." This paragraph includes authority over a series of
9 violations involving more than one county of this Commonwealth
10 or involving any county of this Commonwealth and another state.
11 No person charged with a violation of this section by the
12 Attorney General shall have standing to challenge the authority
13 of the Attorney General to investigate or prosecute the case,
14 and, if any such challenge is made, the challenge shall be
15 dismissed and no relief shall be available in the courts of this
16 Commonwealth to the person making the challenge.

17 (i) No person charged with a violation of this section by
18 the Attorney General shall have standing to challenge the
19 authority of the Attorney General to investigate or prosecute
20 the case, and, if any such challenge is made, the challenge
21 shall be dismissed and no relief shall be available in the
22 courts of this Commonwealth to the person making the challenge.

23 Section 22. Sections 512 and 513 of the act, added November
24 24, 1998 (P.L.829, No.109), are amended to read:

25 Section 512. Statutory Bars.--(a) After giving notice and
26 opportunity for a hearing, the [commission] department, where it
27 has determined that a person wilfully violated this act or any
28 rule or order thereunder or knowingly aided in the act or
29 transaction constituting such violation, may issue an order
30 accompanied by written findings of fact and conclusions of law

1 which bars, conditionally or unconditionally and either
2 permanently or for such period of time as the [commission]
3 department shall determine, such person from:

4 (1) Representing an issuer offering or selling securities in
5 this State;

6 (2) Acting as promoter, officer, director or partner of an
7 issuer (or an individual occupying a similar status or
8 performing similar functions) offering or selling securities in
9 this State or of a person who controls or is controlled by such
10 issuer;

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

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

15 (5) Relying upon an exemption from registration contained in
16 section 202, 203 or 302.

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

20 (c) It shall be unlawful for any broker-dealer or investment
21 adviser to permit a person as to whom an order is in effect
22 under this section, without the consent of the [commission]
23 department, to become or remain associated with a broker-dealer
24 or investment adviser in contravention of such order if the
25 broker-dealer or investment adviser knew or in the exercise of
26 reasonable care should have known of such order.

27 (d) It shall be unlawful for any issuer to permit, without
28 the consent of the [commission] department, a person as to whom
29 an order is in effect under this section to participate in the
30 offer or sale of the issuer's securities in this State in

1 contravention of such order if the issuer knew or in the
2 exercise of reasonable care should have known of such order.

3 Section 513. [Commission] Department Orders of Rescission.--

4 After giving notice and opportunity for a hearing, the

5 [commission] department, where it has determined that an issuer

6 wilfully violated section 201 or 401, may issue an order

7 accompanied by written findings of fact and conclusions of law

8 which requires the issuer or any control person of the issuer

9 who knowingly aided in the act or transaction constituting such

10 violation to effect a rescission offer in a manner which the

11 [commission] department by rule or order may prescribe to

12 persons who purchased securities of the issuer in this State

13 involved in the violation. The [commission] department shall not

14 issue an order under this section with respect to any public

15 proceeding which was instituted prior to the date of enactment.

16 Section 23. Section 514 of the act, added July 4, 2002

17 (P.L.721, No.108), is amended to read:

18 Section 514. Return of Sales Compensation.--(a) After

19 giving notice and opportunity for hearing, the [commission]

20 department, where it has determined that a person who

21 represented an issuer in effecting transactions in securities in

22 this Commonwealth while in willful violation of section 301(a)

23 and received compensation in connection with these transactions,

24 may issue an order, accompanied by written findings of fact and

25 conclusions of law, which requires the person to return to

26 purchasers of securities in this Commonwealth, in cash, the

27 amount of compensation received for effecting those securities

28 transactions.

29 (b) No order shall be issued under this section if the

30 transactions in securities meet any of the following criteria:

1 (1) The transactions involved securities which were the
2 subject of an effective registration statement filed with the
3 United States Securities and Exchange Commission under section 5
4 of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et
5 seq.).

6 (2) The transactions involved securities which are exempted
7 securities under section 3(a) of the Securities Act of 1933
8 except section 3(a)(4) and (11).

9 (3) The transactions are exempt from registration under
10 section 5 of the Securities Act of 1933 pursuant to section 4
11 thereof except a transaction for which the issuer is relying on
12 any rule or regulation promulgated by the United States
13 Securities and Exchange Commission under section 4(2) of the
14 Securities Act of 1933.

15 (c) The [commission] department may issue more than one
16 order under this section against the same person involving the
17 same security.

18 (d) An order issued under this section shall not be deemed
19 conclusive as to the total number of purchasers in this
20 Commonwealth of any particular security or the total dollar
21 amount of sales compensation received by a person for
22 transactions effected in a particular security with purchasers
23 in this Commonwealth for which liability may be imposed under
24 subsection (a).

25 Section 24. Section 515 of the act, added November 23, 2004
26 (P.L.922, No.127), is amended to read:

27 Section 515. Temporary Freeze Authority.--(a) Whenever,
28 during the course of a lawful investigation involving possible
29 violations of this act or rule or order issued thereunder by an
30 issuer that is not subject to the reporting requirements of

1 section 13 or 15(d) of the Securities Exchange Act of 1934 (48
2 Stat. 881, 15 U.S.C. §§ 78m and 78o(d)) or any of its directors,
3 officers, partners, controlling persons, agents or employes, it
4 shall appear to the [commission] department that it is likely
5 that the issuer will make extraordinary payments, whether
6 compensation or otherwise, to any such persons, the [commission]
7 department may petition the Commonwealth Court or any court of
8 common pleas for a temporary order requiring the issuer to
9 escrow, subject to court supervision, those payments in an
10 interest-bearing account for forty-five days. A temporary order
11 may be issued and entered under this subsection only after
12 notice and opportunity for hearing unless the court determines
13 that notice and hearing prior to entry of the order would be
14 impracticable or contrary to the public interest.

15 (b) A temporary order issued under subsection (a) shall:

16 (i) become effective immediately;

17 (ii) be served upon the parties subject to it; and

18 (iii) be effective and enforceable for forty-five days

19 unless set aside, limited or suspended by a court of competent
20 jurisdiction and may be extended by the court upon good cause
21 shown for not longer than forty-five additional days, provided
22 that the combined period of the order shall not exceed ninety
23 days.

24 (c) If the issuer or other person described in subsection
25 (a) is charged with a violation of this act or rule or order
26 issued under this act before the expiration of the effective
27 period of a temporary order as set forth in subsection (b),
28 including any applicable extension period, the order shall
29 remain in effect, subject to court approval, until the
30 conclusion of any legal proceedings related thereto, and the

1 affected issuer or other person shall have the right to petition
2 the court for review of the order.

3 (d) If the issuer or other person described in subsection
4 (a) is not charged with a violation of this act or rule or order
5 issued under this act before the expiration of the effective
6 period of a temporary order as set forth in subsection (b),
7 including any applicable extension period, the escrow shall
8 terminate at the expiration of the forty-five-day effective
9 period or the expiration of any extension period, as applicable,
10 and the disputed payments with accrued interest shall be
11 returned to the issuer or other affected person.

12 (e) This section shall not apply to an issuer or director,
13 officer, partner, controlling person, agent or employe of an
14 issuer that has not more than one hundred equity security
15 holders.

16 Section 25. Section 601 of the act, amended December 19,
17 1975 (P.L.601, No.171) and July 4, 2002 (P.L.721, No.108), is
18 amended to read:

19 Section 601. Administration.--(a) This act shall be
20 administered by the [commission, which shall be an independent
21 administrative board subject to the provisions of The
22 Administrative Code of 1929. It shall consist of three
23 commissioners appointed by the Governor with the advice and
24 consent of the Senate. The commissioners shall hold office at
25 the pleasure of the Governor and until their successors are duly
26 appointed and qualified. A quorum of the commission shall be a
27 majority of the commissioners then serving. Any action taken at
28 a meeting at which a quorum of the commission is present shall
29 be the lawful act of the commission for all purposes]
30 department.

1 [(b) The commission shall also employ a secretary, who shall
2 certify to all actions of the commission and shall make and keep
3 all files and records of proceedings before it.]

4 (c) It is unlawful for the [commission] department or any of
5 its officers or employes to use for personal benefit any
6 information which is filed with or obtained by the [commission]
7 department and which is not generally available to the public.
8 Nothing in this act authorizes the [commission] department or
9 any of its officers or employes to disclose such confidential
10 information except among themselves or to other securities
11 administrators, regulatory authorities or governmental agencies,
12 or when necessary or appropriate in a proceeding or
13 investigation under this act or any other law of this State.

14 (c.1) Except for the privileges created in this subsection,
15 no provision of this act either creates or derogates from any
16 privilege which exists at common law or otherwise when
17 documentary or other evidence is sought under a subpoena
18 directed to the [commission] department or any of its officers
19 or employes.

20 (1) The documents described in clause (2) and any testimony
21 sought concerning information in those documents are privileged
22 from disclosure under a subpoena directed to the [commission]
23 department or any of its officers or employes if the documents
24 relate to:

25 (i) An investigation authorized under section 510 [which has
26 not been closed].

27 (ii) An action in which neither the [commission] department
28 nor any of its officers or employes is a party.

29 (2) The documents which are the subject of the privilege
30 created in clause (1) include:

1 (i) Documents relating to an investigation conducted under
2 section 510, including, but not limited to, statements made or
3 taken in accordance with section 510(a) or (b) and documents in
4 possession of the [commission] department under section 510(a)
5 (ii).

6 (ii) Documents received in connection with a subpoena issued
7 under section 510.

8 (iii) Documents relating to an examination conducted under
9 section 304(d).

10 (iv) Documents obtained from a securities administrator,
11 regulatory authority or law enforcement or governmental agency
12 relating to an investigation authorized under section 510 or an
13 examination conducted in accordance with section 304(d).

14 (v) Documents deemed confidential by order of the
15 [commission] department under section 603(c).

16 (3) Complaints filed with the [commission] department and
17 testimony concerning information in the complaints are
18 privileged absolutely from disclosure under a subpoena directed
19 to the [commission] department or its officers or employees.

20 (4) No privilege is created under clause (1) or (3) if
21 document sought under a subpoena directed to the [commission]
22 department or its officers or employees is otherwise publicly
23 available.

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

28 (e) The commission shall adopt a seal bearing the
29 inscription: "Pennsylvania Securities Commission." The seal
30 shall be affixed to or imprinted on all orders or certificates

1 issued by it and such other instruments as the commission
2 directs. All courts shall take judicial notice of the seal.]

3 Section 26. Section 602 of the act, added November 23, 2004
4 (P.L.918, No.126), is amended to read:

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

8 (b) (Reserved).

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

10 (i) (Reserved).

11 (ii) Registration statement filings under section
12 205, except as provided in subclause (iv), based upon
13 the maximum aggregate offering price at which such
14 securities are to be offered in this State during the
15 effective period of the registration statement:

16 (A) less than \$10,000,000..... \$750

17 (B) \$10,000,000 or more..... 1,000

18 (iii) Registration statement filings under section
19 206, except as provided in subclause (iv)..... 500

20 Plus 1/20 of 1% of the maximum
21 aggregate offering price at
22 which such securities are to be
23 offered in this State during
24 the effective period of the
25 registration up to a maximum
26 filing fee of \$3,000.

27 (iv) In the case of registration statement filings
28 under section 205 or 206 or notice filings under
29 section 211 by an open-end or closed-end investment
30 company, face amount certificate company or unit

1 investment trust, as such persons are classified in
2 the Investment Company Act of 1940.

3 Based upon the maximum
4 aggregate offering price at
5 which such securities are to be
6 offered in this State during
7 the effective period of the
8 registration or notice filing,
9 the fee for (A) \$4,000,000 or
10 less, 1/20 of 1% with a minimum
11 fee of \$350; (B) more than
12 \$4,000,000 but less than
13 \$100,000,000, \$3,000; (C)
14 \$100,000,000 or more, \$3,500;
15 or (D) for an indefinite amount
16 of securities to be offered in
17 this State during the effective
18 period of registration or
19 notice filing. The amount
20 specified in clause (C) plus a
21 \$500 assessment specified in
22 section 602.1(a) (5).

23 (v) Exemption filings under section 203(o) shall
24 be:..... 350

25 (vi) When a registration statement or notice of
26 filing made under section 211(a) is withdrawn before
27 the effective date or a pre-effective stop order is
28 entered under section 208, the amount that the
29 [commission] department shall retain from the filing
30 fee and, if applicable, an assessment imposed under

1 section 602.1(a)(5) shall be:

2 (A) Under section 205 or a notice filing under
3 section 211(a)..... 400

4 (B) Under section 206..... 250

5 (vii) Filing a notice on SEC Form D under section
6 211(b)..... 525

7 (viii) Filing an application for exemption from
8 registration under section 203(d) or (s):

9 (A) Where the maximum aggregate offering price at
10 which such securities are offered in this State is
11 less than \$1,000,000..... 150

12 (B) Where the maximum aggregate offering price at
13 which such securities are offered in this State is
14 \$1,000,000 or more..... 400

15 (ix) Filing an application for exemption from
16 registration under section 203(t)..... 500

17 (x) Filing an application for exemption from
18 registration under section 203(p)..... 100

19 (b.2) There shall be no refund of any filing fee specified
20 in subsection (b.1)(vii) through (x).

21 (c) (Reserved).

22 (d) (Reserved).

23 (d.1) Every applicant for an initial or renewal license
24 under section 301 shall pay a filing fee of three hundred fifty
25 dollars (\$350) in the case of a broker-dealer, eighty dollars
26 (\$80) in the case of an agent, two hundred seventy-five dollars
27 (\$275) in the case of an investment adviser and eighty dollars
28 (\$80) in the case of an investment adviser representative. The
29 term of an agent's or associated person's registration hereunder
30 shall be concurrent with that of his employer, if a broker-

1 dealer or an investment adviser. When an agent changes
2 employers, an eighty dollar (\$80) fee shall be paid. When an
3 investment adviser representative changes employers, an eighty
4 dollar (\$80) fee shall be paid. When an application is denied or
5 withdrawn or a registration revoked, the filing fee shall be
6 retained. A federally covered adviser shall pay an annual notice
7 filing fee of three hundred fifty dollars (\$350).

8 (e) The fee for the [commission's] department's acting as an
9 escrow holder for securities under section 207 is one hundred
10 dollars (\$100).

11 (f) The [commission] department may fix by regulation a
12 reasonable charge for any publication issued under its
13 authority.

14 (g) The [commission] department may fix by regulation
15 reasonable charges for the cost of administering examinations
16 required for registration under this act by section 301.

17 Section 27. Section 602.1 of the act, amended or added May
18 4, 1993 (P.L.4, No.4), December 7, 1994 (P.L.869, No.126),
19 November 24, 1998 (P.L.829, No.109) July 4, 2002 (P.L.721,
20 No.108) and November 23, 2004 (P.L.915, No.125), is amended to
21 read:

22 Section 602.1. Assessments.--(a) (1) Each agent and
23 investment adviser representative, when applying for an initial
24 license under section 301 or changing employers, shall pay a
25 compliance assessment in accordance with the following schedule:
26 [thirty-two dollars (\$32) for the period July 1, 2001, through
27 June 30, 2004, thirty-five dollars (\$35) for the period July 1,
28 2004, through June 30, 2007, thirty-seven dollars (\$37) for the
29 period July 1, 2007, through June 30, 2010, and forty dollars
30 (\$40) thereafter] forty-five dollars (\$45) for the period July

1 1, 2013, through June 30, 2016, fifty dollars (\$50) for the
2 period July 1, 2016, through June 30, 2019, and fifty-five
3 dollars (\$55) thereafter.

4 (2) Each agent and investment adviser representative, when
5 applying for a renewal license under section 301, shall pay a
6 compliance assessment in accordance with the following schedule:
7 [seventeen dollars (\$17) for the period July 1, 2001, through
8 June 30, 2004, twenty (\$20) for the period July 1, 2004, through
9 June 30, 2007, twenty-two dollars (\$22) for the period July 1,
10 2007, through June 30, 2010, and twenty-five (\$25) thereafter]
11 thirty dollars (\$30) for the period July 1, 2013, through June
12 30, 2016, thirty-five dollars (\$35) for the period July 1, 2016,
13 through June 30, 2019, and forty dollars (\$40) thereafter.

14 (3) Each broker-dealer, when applying for an initial or
15 renewal license under section 301, shall pay a compliance
16 assessment in accordance with the following schedule: [one
17 hundred dollars (\$100) for the period beginning with the date of
18 enactment of this paragraph through June 30, 2001, and one
19 hundred fifty dollars (\$150) thereafter] one hundred seventy-
20 five dollars (\$175) for the period July 1, 2013, through June
21 30, 2019, and two hundred dollars (\$200) thereafter.

22 (4) Each investment adviser, when applying for an initial or
23 renewal license under section 301, shall pay a compliance
24 assessment in accordance with the following schedule: [fifty
25 dollars (\$50) for the period beginning with the date of
26 enactment of this paragraph through June 30, 2001, and seventy-
27 five dollars (\$75) thereafter] one hundred dollars (\$100) for
28 the period July 1, 2013, through June 30, 2019, and one hundred
29 twenty-five dollars (\$125) thereafter.

30 (5) The assessment for a notice filing by an open-end or

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

8 (b) A registrant, applicant for registration, issuer or
9 other person upon whom the [commission] department has conducted
10 an examination, audit, investigation or prosecution and who has
11 been determined by the [commission] department to have violated
12 this act or rule or order of the [commission] department under
13 this act shall pay for all the costs incurred in the conduct of
14 such examination, audit, investigation or prosecution. These
15 costs shall include, but not be limited to, the salaries and
16 other compensation paid to clerical, accounting, administrative,
17 investigative, examiner and legal personnel, the actual amount
18 of expenses reasonably incurred by such personnel and the
19 [commission] department in the conduct of such examination,
20 audit, investigation or prosecution, including a pro rata
21 portion of the [commission's] department's administrative
22 expenses.

23 (c) After giving notice and opportunity for a hearing, the
24 [commission] department may issue an order accompanied by
25 written findings of fact and conclusions of law which imposes an
26 administrative assessment in the amounts provided in paragraph
27 (1) against a broker-dealer, agent, investment adviser or
28 investment adviser representative registered under section 301
29 or an affiliate of any broker-dealer or investment adviser where
30 the [commission] department determines that the person within

1 the previous ten years willfully has violated this act or a rule
2 or order of the [commission] department under this act or has
3 engaged in dishonest or unethical practices in the securities
4 business; has taken unfair advantage of a customer; or has
5 failed reasonably to supervise its agents or employees or against
6 any other person if the [commission] department determines that
7 the person wilfully violated section 301, 401, 404, 406 through
8 409 or 512(d) or a cease and desist order issued by the
9 [commission] department under section 606(c.1).

10 (1) The [commission] department, in issuing an order under
11 this subsection, may impose the administrative assessments set
12 forth below. Each act or omission that provides a basis for
13 issuing an order under this subsection shall constitute a
14 separate violation.

15 (i) In issuing an order against any broker-dealer, agent,
16 investment adviser or investment adviser representative
17 registered under section 301 or an affiliate of any broker-
18 dealer or investment adviser, the [commission] department may
19 impose a maximum administrative assessment of up to one hundred
20 thousand dollars (\$100,000) for each act or omission that
21 constitutes a violation of the act or rule or order issued under
22 this act or that constitutes a dishonest or unethical practice
23 in the securities business, taking unfair advantage of a
24 customer, or failure to reasonably supervise its agents or
25 employees. If any of the victims of the person's [violative]
26 conduct were individuals aged 60 or more, the [commission]
27 department also may impose a special administrative assessment
28 in addition to the foregoing amounts of up to fifty thousand
29 dollars (\$50,000).

30 (ii) In issuing an order against a person for wilful

1 violation of section 401(a) or (c), 404, 406, 408, 409 or 512(d)
2 or for wilful violation of a cease and desist order issued under
3 section 606(c.1), the [commission] department may impose a
4 maximum administrative assessment of up to one hundred thousand
5 dollars (\$100,000) for each act or omission that constitutes a
6 violation of any of those sections. In addition to the foregoing
7 assessment, the [commission] department also may impose a
8 special administrative assessment of up to fifty thousand
9 dollars (\$50,000) for each of the provisions described as
10 follows that the [commission] department determines are
11 applicable:

12 (A) The person, within seven years prior to the [commission]
13 department taking action under this subsection, was the subject
14 of: a criminal felony conviction; an injunction issued by any
15 court of competent jurisdiction; or an order of the Securities
16 and Exchange Commission, the Commodity Futures Trading
17 Commission, the securities, banking or insurance regulator of
18 another state, a Federal banking regulator or the securities,
19 banking or insurance regulatory authority of another country
20 which found that the person wilfully had violated any provision
21 of the Federal or state securities, banking, insurance, or
22 commodities laws or the securities, commodities, insurance or
23 banking laws of another country.

24 (B) The person's [violative] conduct involved individuals
25 aged 60 or more.

26 (C) The person's [violative] conduct involved use of the
27 Internet or boiler room tactics which included, without
28 limitation, use of any high-pressure sales tactics designed to
29 create an artificially short time period for which the person
30 being solicited is pressured to make an investment decision or

1 overcome the person's reluctance to commit to the investment
2 being offered, use of scripts designed to allay any objections
3 or concerns expressed by the person being solicited or making
4 repeated telephone calls or sending multiple e-mail messages to
5 the same person pressuring the person to make an immediate
6 investment decision.

7 (iii) In issuing an order against a person for wilful
8 violation of section 401(b) or 407, the [commission] department
9 may impose an administrative assessment of up to fifty thousand
10 dollars (\$50,000) for each of the criteria described in
11 subclause (ii)(A) and (C) that the [commission] department
12 determines are applicable. No assessment shall be imposed under
13 this subclause if the person is subject to an administrative
14 assessment imposed under any other provision of this subsection.

15 (iv) In issuing an order against a person, other than a
16 federally covered adviser, for wilful violation of section 301,
17 the [commission] department may impose the following
18 administrative assessments which may be in addition to an
19 administrative assessment imposed under any other provision of
20 this subsection:

21 (A) For a person who at the time of the wilful violation was
22 not registered under section 301, was not registered as a broker
23 or dealer with the United States Securities and Exchange
24 Commission under the Securities Exchange Act of 1934 (48 Stat.
25 881, 15 U.S.C. § 78a et seq.) and was not a member of a national
26 securities association registered under that act, the
27 [commission] department may impose a maximum administrative
28 assessment of up to fifty thousand dollars (\$50,000) for each
29 act or omission which constitutes a violation of section 301.

30 (B) For a person (not an individual) that at the time of the

1 wilful violation was not registered under section 301 but was
2 registered as a broker or dealer with the United States
3 Securities and Exchange Commission under the Securities Exchange
4 Act of 1934 and was a member of a national securities
5 association registered under that act, the [commission]
6 department may impose a maximum administrative assessment of up
7 to fifty thousand dollars (\$50,000) for each act or omission
8 which constitutes a violation of section 301. An assessment
9 imposed under this subclause shall be in addition to any
10 liability a person may have under an order issued under section
11 514.

12 (v) In issuing an order for wilful violation of section
13 301(c.1)(1)(ii) against a person that is a federally covered
14 adviser, the [commission] department may impose the following
15 administrative assessments:

16 (A) Up to one hundred thousand dollars (\$100,000) if the
17 number of investment adviser representatives involved in the
18 violation was less than five.

19 (B) Up to two hundred thousand dollars (\$200,000) if the
20 number of investment adviser representatives involved in the
21 violation was five or more.

22 (vi) In issuing an order for a wilful violation of section
23 301(f) against a person that is a federally covered adviser, the
24 [commission] department may impose an administrative assessment
25 of two thousand dollars (\$2,000).

26 (2) For purposes of determining the amount of administrative
27 assessment to be imposed in an order issued under this
28 subsection, the [commission] department shall consider:

29 (i) The circumstances, nature, frequency, seriousness,
30 magnitude, persistence and willfulness of the conduct

1 constituting the violation.

2 (ii) The scope of the violation, including the number of
3 persons in and out of this Commonwealth affected by the conduct
4 constituting the violation.

5 (iii) The amount of restitution or compensation that the
6 violator has made and the number of persons in this Commonwealth
7 to whom the restitution or compensation has been made.

8 (iv) Past and concurrent conduct of the violator that has
9 given rise to any sanctions or judgment imposed by, or pleas of
10 guilty or nolo contendere or settlement with, the [commission]
11 department or any securities administrator of any other state or
12 other country, any court of competent jurisdiction, the
13 Securities and Exchange Commission, the Commodity Futures
14 Trading Commission, any other Federal or State agency or any
15 national securities association or national securities exchange
16 as defined in the Securities Exchange Act of 1934 (48 Stat. 881,
17 15 U.S.C. § 78a et seq.).

18 (v) Any other factor that the [commission] department finds
19 appropriate in the public interest or for the protection of
20 investors and consistent with the purposes fairly intended by
21 the policy and provisions of this act.

22 (3) An administrative assessment imposed by an order issued
23 under this subsection is not mutually exclusive of any other
24 remedy available under this act.

25 (4) The [commission] department shall not impose an
26 administrative assessment with respect to any public proceeding
27 which was instituted prior to the date of its enactment.

28 (d) Each application filed with the [commission] department
29 under section 210 by an issuer that has an effective
30 registration statement on file with the department pursuant to

1 section 205 or 206 or an open-end or closed-end investment
2 company, face amount certificate company or unit investment
3 trust, as those persons are classified in the Investment Company
4 Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.), to
5 register securities sold in this State in excess of the
6 aggregate amount of securities registered under section 205 or
7 206 and each amendment to a notice filing submitted relating to
8 securities sold in the State in excess of those included on an
9 earlier notice filing shall include the payment of an oversale
10 assessment which shall be three times an amount which equals the
11 difference between the registration or notice filing fee that
12 would have been payable under section 602(b.1) based upon the
13 total amount of securities sold in this State and the total
14 registration or notice filing fees previously paid to the
15 [commission] department with respect to such registration or
16 notice filing, but in no case shall the oversale assessment be
17 less than three hundred fifty dollars (\$350) or be more than
18 three thousand dollars (\$3,000).

19 (e) Moneys payable for assessments established by this
20 section shall be collected by the [commission] department and
21 deposited into the General Fund and shall be credited to the
22 appropriation of the [commission] department for the fiscal year
23 received. These moneys are intended to meet the expenses of the
24 [commission] department in administering the provisions of this
25 act, including any or all of the following activities:

26 (1) expenses, including personnel, operating and fixed
27 assets costs, relating to the registration of broker-dealers,
28 agents, investment advisers and associated persons under section
29 301 and the conduct of examinations of broker-dealers and
30 investment [advisors] advisers registered under section 301 and

1 other compliance-related activities of the [commission]
2 department;

3 (2) nonpersonnel expenses related to establishing and
4 maintaining an entrepreneur education program to educate small
5 business persons in this Commonwealth as to the issuance of
6 securities as a means of raising capital;

7 (3) nonpersonnel expenses related to establishing and
8 maintaining a securities fraud awareness program to educate
9 public investors in this Commonwealth about fraudulent and
10 manipulative securities practices;

11 (4) nonpersonnel expenses related to conducting enforcement-
12 related activities of the [commission] department; and
13 thereafter,

14 (5) other expenses of the [commission] department necessary
15 to implement the provisions of this act.

16 Section 28. Section 603 of the act, amended July 4, 2002
17 (P.L.721, No.108), is amended to read:

18 Section 603. Administrative Files.--(a) A document is filed
19 when it is received by the [commission] department or by any
20 other person which the [commission] department by regulation or
21 order may designate.

22 (b) The [commission] department shall keep a register of all
23 registrants, registration statements and notice filings which
24 are or have ever been effective under this act and all denial,
25 suspension or revocation orders which have been entered under
26 this act. The register shall be open for public inspection.

27 (c) The information contained in or filed with any
28 registration statement, application, notice filing or report
29 shall be made available to the public in accordance with
30 regulations prescribed by the [commission] department; except

1 that the [commission] department may make the following orders
2 or regulations:

3 (1) Upon proper showing of the registrant or issuer, the
4 [commission] department may order certain filings or parts of
5 filings nonpublic.

6 (2) The [commission] department, by rule or order, may deem
7 certain categories of information filed with the [commission]
8 department as nonpublic.

9 (d) The [commission] department upon request shall furnish
10 to any person, at a reasonable charge, a copy of any document
11 described in subsection (c) in any medium available to the
12 [commission] department. Upon request and payment of a
13 reasonable charge, the document may be certified under the seal
14 of the [commission] department.

15 (e) The [commission] department, by order, may subsequently
16 make public information contained in the documents described in
17 subsection (c) (1) and (2), and the order may limit the amount of
18 information made public or place conditions on its use. Prior to
19 issuing an order under this subsection, the [commission]
20 department shall notify in writing the person who originally
21 requested confidentiality at the person's last known address in
22 the [commission's] department's files at least thirty days
23 before the [commission] department may issue an order under this
24 subsection.

25 Section 29. Sections 604 and 605 of the act are amended to
26 read:

27 Section 604. Interpretive Opinions of [Commission]
28 Department.--The [commission] department in its discretion may
29 honor requests from interested persons for interpretive opinions
30 and may make such opinions available to the public under section

1 603(c).

2 Section 605. Commissioners and [Commission] Department
3 Employes; Relationship with Licensed Persons or Qualified
4 Organizations.--(a) Neither the commissioners nor any employe,
5 clerk or servant of the [commission] department, during their
6 respective terms of employment, shall be interested as a
7 director, officer, shareholder, member, partner, agent, or
8 employe of any person who, during the period of such official's
9 or employe's association with the [commission] department, (i)
10 was licensed or applied for license as a broker-dealer, agent
11 [or], investment adviser or investment adviser representative
12 under this act, or (ii) applied for or secured the registration
13 of securities under this act.

14 (b) Nothing contained in subsection (a) shall prohibit the
15 holding or purchasing of any securities by any employe, clerk,
16 or servant in accordance with such regulations as the
17 [commission] department shall adopt for the purpose of
18 protecting the public interest and avoiding conflicts of
19 interest with respect to such employes, clerks and servant.

20 (c) Nothing contained in subsection (a) shall prohibit the
21 holding or purchasing of any securities by any commissioner if:
22 either (i) the commissioner, together with his spouse, minor
23 children and parents or other relatives who are members of his
24 household, owns less than one-tenth of one per cent of any class
25 of outstanding securities of any issuer described in subsection
26 (a)(ii); or (ii) such security is held or purchased through a
27 management account or trust administered by a bank or trust
28 company authorized to do business in this State which has sole
29 investment discretion regarding the holding, purchase and sale
30 of securities, and (A) the commissioner did not, directly or

1 indirectly, advise, counsel, command or suggest the holding,
2 purchase or sale of any such security or furnish any information
3 relating to any such security to such bank or trust company, and
4 (B) such account or trust does not at any time have more than
5 ten per cent of its total assets invested in the securities of
6 any one issuer or hold more than five per cent of the
7 outstanding shares or units of any class of securities of any
8 one issuer. Each commissioner shall report to the Governor not
9 less often than quarterly all holdings, purchases, and sales of
10 securities by him, which reports shall be retained by the
11 Governor's office as public documents.

12 Section 30. Sections 606 and 607 of the act, amended July 4,
13 2002 (P.L.721, No.108), are amended to read:

14 Section 606. Miscellaneous Powers of [Commission]
15 Department.--(a) The [commission] department may, by
16 regulation, require any issuer of securities registered under
17 this act or exempted from registration under section 203(d) or
18 (p), which issuer has not filed reports with the Securities and
19 Exchange Commission pursuant to sections 13 or 15(d) of the
20 Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. §§ 78m
21 or 78o(d)), to distribute financial information to its security
22 holders at least annually.

23 (b) If, in its opinion, the public interest and the
24 protection of investors so require, the [commission] department
25 may apply to a court of competent jurisdiction for an order
26 suspending all trading in this Commonwealth by broker-dealers
27 and agents in any security for any period.

28 (c) No person shall publish in this State any advertisement
29 concerning any security (other than advertisements relating to
30 federally covered securities, tombstone advertisements permitted

1 under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a
2 et seq.) and the Investment Company Act of 1940 (54 Stat. 789,
3 15 U.S.C. § 80a-1 et seq.) and the rules and regulations
4 promulgated thereunder) except in accordance with such rules as
5 the [commission] department may promulgate from time to time. No
6 person shall publish any advertisement concerning any security
7 in this State after the [commission] department issues a cease
8 advertising order in which it finds that the advertisement
9 contained an untrue statement of a material fact or omitted to
10 state a material fact necessary in order to make the statements
11 made, in the light of the circumstances under which they were
12 made, not misleading. The order may be issued summarily without
13 notice or hearing. Upon issuance of a summary order, the
14 [commission] department shall promptly provide the order to the
15 person against whom it is issued. The order shall contain
16 findings of fact and conclusions of law and include a notice
17 affording the person an opportunity for a hearing under section
18 607(a).

19 (c.1) Whenever the [commission] department finds that any
20 person has engaged or is about to engage in any act or practice
21 constituting a violation of any provision of this act or any
22 rule or order thereunder, the [commission] department may order
23 such person to cease and desist from such act or practice. The
24 order may be issued summarily without notice or hearing. Upon
25 issuance of a summary order, the [commission] department shall
26 promptly provide the order to the person against whom it is
27 issued. The order shall contain findings of fact and conclusions
28 of law and include a notice affording the person an opportunity
29 for a hearing under section 607(a).

30 [(d) The commission may, by regulation, delegate any powers

1 specified in this act to be exercised by the commission to
2 members of the commission's staff, except for powers related to
3 hearings.]

4 (e) Wherever the department is authorized to impose or
5 accept payment of funds pursuant to this act, the following
6 methods of payment shall apply:

7 (1) The department may designate receipt of the payments by
8 any means, including wire transfer, credit card, debit card or
9 other similar device.

10 (2) The department may permit the payment to be made using
11 any medium, including telephone, facsimile transmission, wire
12 transmission, electronic mail, Internet site or any other method
13 related to any transmission mechanism, including the Internet.

14 (3) The department may enter into any agreement in order to
15 implement this section.

16 Section 607. Hearings and Judicial Review.--(a) Within
17 thirty days after receipt of a summary order issued under
18 section 204(b), 208(c), 211(c), 305(d), 606(c) or 606(c.1), the
19 person against whom the order was issued and entered may file
20 with the commission a written request for a hearing in respect
21 to any matters determined by the order. Upon receipt of the
22 written request, the matter shall be set down for a hearing to
23 commence within thirty days after receipt of the request unless
24 the person making the request consents to a later date. If the
25 person making the request consents to a later date for the
26 hearing but fails, after notification by first class mail to the
27 person's last known address in the [commission's] department's
28 files, to consent to a hearing date that is within one hundred
29 eighty days of the date the written request for a hearing was
30 filed with the commission under this subsection, the request for

1 hearing shall be deemed abandoned, and the summary order shall
2 be deemed a final order. After hearing, the commission may
3 determine to [rescind,] modify or vacate the summary order or
4 make it a final order. If no hearing is requested or a request
5 for a hearing is filed untimely, the summary order shall be
6 deemed to be a final order.

7 [(b) Within thirty days after receipt of an order issued and
8 entered by the commission after a hearing, the person against
9 whom the order was issued and entered may apply to the
10 commission for a rehearing. The commission, in its sole
11 discretion, may grant the application and hold a rehearing.
12 Failure of the commission to grant a rehearing within thirty
13 days of receipt of an application shall constitute a denial.
14 After rehearing, the commission may issue an order affirming,
15 vacating or modifying the original order.]

16 (c) Hearings and rehearings shall be public.

17 (d) Orders of the [commission] department shall be subject
18 to judicial review in accordance with law, but orders originally
19 entered without a hearing may be reviewed only if the party
20 seeking review has filed a request for a hearing within the time
21 provided under subsection (a). Filing for judicial review of a
22 [commission] department order shall not operate as a stay of the
23 [commission's] department's order unless specifically ordered by
24 the court.

25 (e) All administrative proceedings conducted by the
26 department pursuant to this act shall be subject to the
27 requirements of 2 Pa.C.S. (relating to administrative law and
28 procedure). For purposes of this subsection, the term
29 "administrative proceeding" means any proceeding other than a
30 judicial proceeding, the outcome of which is required to be

1 based on a record or documentation prescribed by law, or in
2 which law or regulation is particularized in application to a
3 person subject to this act. The provisions of this subsection
4 shall supplement and not repeal or limit requirements of 2
5 Pa.C.S.

6 Section 31. Section 609 of the act, amended November 24,
7 1998 (P.L.829, No.109) and July 4, 2002 (P.L.721, No.108), is
8 amended to read:

9 Section 609. Regulations, Forms and Orders.--(a) The
10 [commission] department may make, amend and rescind any
11 regulations, forms and orders that are necessary to carry out
12 this act, including regulations and forms governing registration
13 statements, notice filings, applications and reports, and
14 defining any terms, whether or not used in this act, insofar as
15 the definitions are not inconsistent with this act. All
16 regulations of the [commission] department (other than those
17 relating solely to its internal administration) shall be of
18 general application and future effect and shall be made, amended
19 or rescinded in accordance with the act of June 4, 1945
20 (P.L.1388, No.442), known as the "Administrative Agency Law,"
21 and the act of July 31, 1968 (P.L.769, No.240), known as the
22 "Commonwealth Documents Law." For the purpose of rules and
23 forms, the [commission] department may classify securities,
24 persons and matters within its jurisdiction, and prescribe
25 different requirements for different classes. The [commission]
26 department may, in its discretion, waive any requirement of any
27 regulation or form in situations where, in its opinion, such
28 requirement is not necessary in the public interest or for the
29 protection of investors.

30 (b) No regulation, form or order may be made, amended or

1 rescinded unless the [commission] department finds that the
2 action is necessary or appropriate in the public interest and
3 for the protection of investors and consistent with the purposes
4 fairly intended by the policy and provisions of this act.

5 (c) Subject to the limitations of the Securities Act of 1933
6 (48 Stat. 74, 15 U.S.C. § 77a et seq.), the Securities Exchange
7 Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.) and the
8 Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80a-1
9 et seq.), the [commission] department may by regulation or order
10 prescribe the kind, form and content of financial statements
11 required under this act, the fiscal or other periods and dates
12 for such statements, the circumstances under which consolidated
13 or other combining financial statements shall be filed, or other
14 requirements it deems necessary for financial statement
15 presentation purposes, and whether any required financial
16 statements shall be certified by independent certified
17 accountants in good standing with this State. All financial
18 statements shall be prepared reflecting conformity with
19 generally accepted accounting principles in the United States
20 consistently applied, unless variance therefrom is disclosed in
21 an acceptable manner, and shall reflect pertinent disclosures by
22 financial notes or other form, where required for that data in
23 compliance with pronouncements by recognized authoritative
24 accounting bodies or if applicable, by governmental agencies,
25 and if otherwise permitted by regulation or order of the
26 commission.

27 (d) No provision of this act imposing any liability applies
28 to any act done or omitted in good faith in conformity with any
29 regulation, form or order of the [commission] department,
30 notwithstanding that the regulation form or order may later be

1 amended or rescinded or be determined to be invalid for any
2 reason.

3 [(e) The commission may propose and adopt regulations under
4 this act prior to its effective date, provided that such
5 regulations do not take effect until on or after the effective
6 date of this act.]

7 (f) (1) An application for registration of securities shall
8 be deemed abandoned if the application has been on file with the
9 [commission] department for a minimum of twelve consecutive
10 months and the applicant has failed to respond to the
11 [commission's] department's notice of abandonment sent by first
12 class mail to the applicant's last known address in the
13 [commission's] department's files within sixty calendar days
14 after the date the notification was mailed by the [commission]
15 department. There shall be no refund of any fees paid by the
16 applicant.

17 (2) An application for registration as a broker-dealer,
18 agent, investment [advisor] adviser or investment adviser
19 representative shall be deemed abandoned if the application has
20 been on file with the [commission] department for a minimum of
21 six consecutive months and the applicant has failed to respond
22 to the [commission's] department's notice of abandonment sent by
23 first class mail to the applicant's last known address in the
24 [commission's] department's files within sixty calendar days
25 after the date the notification was mailed by the [commission]
26 department. There shall be no refund of any fees or assessments
27 paid by the applicant.

28 Section 32. Section 610 of the act is repealed:

29 [Section 610. Destruction of Documents and Records.--The
30 commission may make such regulations with respect to record

1 retention as it may deem appropriate and desirable, consistent
2 with law.]

3 Section 33. The act is amended by adding a section to read:

4 Section 703.1. Securities Regulation Account.--(a) The
5 Securities Regulation Account is established as a restricted
6 account within the General Fund.

7 (b) The Securities Regulation Account shall be funded from
8 the following sources:

9 (1) For the fiscal year in which the Securities Regulation
10 Account is established, the auction rate securities settlement
11 funds received by the former Pennsylvania Securities Commission
12 shall be deposited into the account.

13 (2) For each fiscal year following the fiscal year in which
14 the account was established, the amount approved under
15 subsection (d) shall be transferred from the General Fund to the
16 Securities Regulation Account until it reaches a balance of
17 \$12.5 million.

18 (c) The moneys in the Securities Regulation Account are
19 appropriated to the department for the following administrative
20 and operating costs:

21 (1) Special initiatives or strategic regulatory needs or
22 developments.

23 (2) Investor and entrepreneurial education and outreach
24 programs.

25 (3) Unanticipated or adverse industry circumstances that
26 require enhanced investor protection activities.

27 (d) The department shall annually submit to the Governor,
28 for approval or disapproval, an estimate, based on the
29 department's assessment of prevailing economic and regulatory
30 conditions, of the amount of the assessments, fees and

1 administrative penalties generated from section 602.1(b) and (c)
2 and deposited in the General Fund to be transferred from the
3 General Fund to the Securities Regulation Account.

4 Section 34. This act shall take effect in 60 days.