# PENNSYLVANIA SECURITIES ACT OF 1972

## AN ACT

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

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

# PART I

# SHORT TITLE; DEFINITIONS

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

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

(a) "Advertisement" means any communication, used in connection with a sale or purchase or an offer to sell or purchase a security which is publicly disseminated by means of print, radio, television, Internet or other media.

(b) An "affiliate" of, or a person "affiliated" with, a specified person, means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified.

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

(d) "Bank" means a bank, savings bank, savings institution, savings and loan association, thrift institution, trust company or similar organization which is organized or chartered under the laws of a state or of the United States, is authorized to and receives deposits and is supervised and examined by an official or agency of a state or by the United States if its deposits are insured by the Federal Deposit Insurance Corporation or a successor authorized by Federal law.

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

(i) An agent;

(ii) An issuer;

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

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

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

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

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

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

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

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

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

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

(i) "Guaranteed" means guaranteed as to payment of principal, interest, purchase price, dividend or call premium.

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

(i) A bank;

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

(iii) A broker-dealer registered under this act without the imposition of the condition

referred to in section 305(b)(v);

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

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

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

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

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

(ix) A federally covered adviser;

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

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

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

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

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

(B) Manages accounts or portfolios of clients;

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

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

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

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

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

subdivision thereof, except public school districts of this State, or any other person so designated by regulation of the commission.

(k.1) “Knowing and knowingly” as used in sections 511(a) and 512(a) shall have the same meaning as the term “knowingly” is defined in 18 Pa.C.S. §302(b)(2) (relating to general requirements of culpability).

(l) "Issuer" means any person who issues or proposes to issue any security, and any promoter who acts for an issuer proposed to be formed. With respect to certificates of deposit, voting trust certificates or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be used. With respect to certificates of interest or participation in oil, gas or mining titles or leases or in payments out of production under such titles or leases, the term "issuer" means the person or persons actively managing the exploration or development of the property who sell such interests or participations or payments or any person or persons who subdivide and sell such interests or participations or payments. The determination of the person or persons actively managing the exploration or development of the property shall be made on the basis of the actual relationship of the parties and not on the basis of the legal designation of a person's interest. Members of unincorporated associations, which members have limited liability, and any trustee or member of a trust, committee or other legal entity shall not be deemed to be an "issuer" for the purposes of this act.

(m) "Non-issuer transaction" means any transaction not directly or indirectly for the benefit of the issuer.

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

(o) "Promoter" includes (i) any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer; (ii) any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, ten per cent or more of any class of securities of the issuer or ten per cent or more of the proceeds from the sale of any class of securities. For purposes of sections 207 and 208, a “promoter” includes (iii) any person who is described in clauses (i) and (ii); (iv) any person who is an officer or director of the issuer; (v) any person who legally or beneficially owns, directly or indirectly, five per cent or more of any class of the issuer’s equity securities; or (vi) any person is an affiliate of a person described in clauses (i), (ii), (iii), (iv) or (v). “Promoter” does not include a person who receives securities or proceeds solely as underwriting compensation if that person does not otherwise come within the definition of “promoter”.

(p) "Publish" means publicly to issue or circulate by newspaper, mail, radio, television, Internet or other media or otherwise to disseminate to the public.

(q) "Reporting company" means any person which has been required to file, and has filed, all required periodic reports with the Securities and Exchange Commission and has filed all annual reports, if any, which it is required to file for at least twelve months prior to the time of application of this definition for persons filing pursuant to the provisions of section 13 or 15(d) of the Securities Exchange Act of 1934 or the provisions of section 30 of the Investment Company Act of 1940.

(r)(i) "Sale" or "sell" includes every sale, disposition or exchange, and every contract of sale of, or contract to sell, a security or interest in a security for value or any issuance of securities pursuant to any

merger, consolidation, sale of assets or other corporate reorganization, involving the exchange of securities, in whole or in part, for the securities of any other person.

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

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

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

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

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

(vii) The terms "sale," "sell," "offer" and "offer to sell" do not include: (A) any bona fide secured transaction in, or loan of, outstanding securities; or (B) any dividend payable with respect to the securities of a corporation in the same or any other class of securities of such corporation.

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

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

(t) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; share of beneficial interest in a business trust; certificate of interest or participation in any profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; limited partnership interest; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; membership interest in a limited liability company of any class or series, including any fractional or other interest in such interest (unless excluded by clause (v)); or, in general, any interest or instrument commonly known as or having the incidents of a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. All of the foregoing are securities whether or not evidenced by written document. "Security" does not include:

(i) Any beneficial interest in any voluntary inter vivos trust which is not created for the purpose of carrying on any business; or

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

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

period; or

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

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

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

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

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

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

(v) "Underwriter" means a person who has agreed with an issuer or other person on whose behalf a distribution is to be made (i) to purchase securities for distribution or (ii) to distribute securities for or on behalf of such issuer or other person or (iii) to manage or supervise a distribution of securities for or on behalf of such issuer or other person.

(w) “Wilful and “wilfully” mean the following:

(1) As used in all sections of the act, except section 511 with respect to a wilful violation of section 401(a) of the act, and notwithstanding any law or statute to the contrary, wilful means that the person acted intentionally in the sense that the person intended to do the act and was aware of what the person was doing. Proof of evil motive or intent to violate the act or knowledge that the person’s conduct violated the act is not required.

(2) For purposes of section 511 with respect to a wilful violation of section 401(a) of the act, wilful means that the person acted intentionally, knowingly, recklessly or negligently as those terms are defined in 18 Pa. C.S. §302 (relating to general requirements of culpability).

# PART II
# REGISTRATION OF SECURITIES
# AND
# NOTICE FILINGS BY ISSUERS OF
# FEDERALLY COVERED SECURITIES

**Section 201. Registration Requirement.--**It is unlawful for any person to offer or sell any security in this State unless the security is registered under this act, the security or transaction is exempted under section 202 or 203 hereof or the security is a federally covered security.

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

(a) Any security issued or guaranteed by the United States, any state or Canadian Province, any political subdivision of a state or Canadian Province, foreign government with which the United States currently maintains diplomatic relations, or any agency or corporate or other instrumentality of any of the foregoing, or any certificate of deposit for any of the foregoing, provided that if the issuer or guarantor is

a foreign government other than Canada or an instrumentality of a foreign government other than Canada, such security or certificate of deposit therefor is recognized as a valid obligation by the issuer or guarantor thereof or its or their successors.

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

(c) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date after issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal, except where such paper is proposed to be sold or offered to the public in units of less than five thousand dollars ($5,000) to any single person.

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

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

(f) Any security listed, or approved for listing upon notice of issuance, on the New York, American, or Philadelphia stock exchange or quoted on the National Market System of the Nasdaq Stock Market; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed, approved or quoted; and any warrant or right to purchase or subscribe to any of the foregoing.

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

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

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

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

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

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

(b) Any non-issuer transaction directly or indirectly for the benefit of an affiliate of the issuer which is exempted from section 5 of the Securities Act of 1933, other than those transactions exempted pursuant to section 3(a)(11) or 3(b) of the Securities Act of 1933, and the rules and regulations now or hereafter adopted thereunder.

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

(d) Any sales by an issuer to not more than twenty-five persons in this State during a period of twelve consecutive months if (i) the issuer shall obtain the written agreement of each such person not to sell the security within twelve months after the date of purchase; (ii) no public media advertisement is used or mass mailing made in connection with soliciting such sales; (iii) no cash or securities is given or paid, directly or indirectly, to any promoter as compensation in connection therewith unless such compensation is given or paid in connection with a sale made by a broker-dealer registered pursuant to section 301 and any person receiving such compensation is either such broker-dealer or an agent registered pursuant to section 301 of such broker-dealer; (iv) the filing fee specified in section 602(b.1) is paid; and (v) the issuer has provided written notice to each such person of the right to withdraw an acceptance as provided by Section 207(m)(2). Purchasers of securities registered under this act or sold in reliance upon an exemption under this act other than this subsection (d), (f) or (s) shall not be included in computing the twenty-five persons for purposes of this exemption. A notice in the form prescribed by the commission, signed by the officers or directors of the issuer under oath and stating the name, principal business address of the issuer, proposed use of the proceeds from the sale and such facts as are necessary to establish this exemption shall be filed, together with a copy of any offering literature used in connection with such offer or sale, with the commission not later than the day on which the issuer receives from any person an executed subscription agreement or other contract to purchase the securities being offered or the issuer receives consideration from any person therefor, whichever is earlier.

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

(f) Any offer or sale of a preorganization subscription or securities of a newly-formed person as part of its initial capitalization to not more than five persons.

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

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

(i.1) Any sale of an equity security, except securities of an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.) if: (i) the securities are proposed to be registered under Section 5 of the Securities Act of 1933 (15 U.S.C. § 77e) and, in fact, become registered under Section 5 of the Securities Act of 1933 (15 U.S.C. § 77e); (iv) the issuer of the security is a reporting company as defined in section 102(q); (v) no stop order or refusal order is in effect and no public proceeding or investigation looking toward such an order is pending under the Securities Act of 1933 or this Act; (vi) the equity security is listed on a national securities exchange registered under the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.) or quoted on the National Market System or Small Cap Market of the Nasdaq Stock Market; (vii) the issuer, at the time the registration statement becomes effective under section 5 of the Securities Act of 1933, has not received an auditor's report for the

immediately preceding fiscal year expressing substantial doubt about the issuer's ability to continue as a going concern unless the securities being sold in reliance upon this subsection are the subject of an offering that is being underwritten on a firm commitment basis by a broker-dealer registered under Section 301. An exemption under this Section shall terminate upon the termination of the registration statement under Section 5 of the Securities Act of 1933. For purposes of this subsection, the Commission, by regulation, may define the term "equity security".

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

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

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

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

(n) Any transaction pursuant to an offer of securities to existing equity security holders of (i) the issuer; (ii) a corporation which prior to the commencement of the offer owned substantially all of the voting stock of the issuer; or (iii) a corporation which organized the issuer for the purpose of the offer, if no compensation, other than a standby commission, is paid or given directly or indirectly for soliciting any equity security holder in this State. "Equity security holders" include persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance.

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

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

(1) The issuer files a notice with the commission in the form prescribed by the commission not later than five business days before the issuer receives from any person an executed subscription agreement or other contract to purchase the securities bing offered or the issuer receives consideration from any person therefore, whichever is earlier. The notice filed with the commission shall be accompanied by a copy of a disclosure document and any offering literature to be used in connection with an offer or sale of securities under this section.

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

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

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

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

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

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

(8) The issuer complies with regulations of the commission with respect to trust indentures and the use of an offering document.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The securities are sold in good faith reliance that the offering would qualify for an exemption from registration under section 5 of the Securities Act of 1933 (15 U.S.C. § 77e), pursuant to section 3(a)(11) of the Securities Act of 1933 (15 U.S.C. § 77c(a)(11)), or the regulations adopted by the Securities and Exchange Commission under section 3(b) of the Securities Act of 1933 (15 U.S.C. § 77c(b)), except an offering under Rule 505 of Regulation D promulgated by the Securities and Exchange Commission under section 3(b) of the Securities Act of 1933 (15 U.S.C. § 77c(b));

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 204. Exemption Proceedings.**--(a) The commission may by regulation as to any type of security

or transaction, or by order in a particular case, as to any security or transaction increase the number of purchasers or offerees permitted, or waive the conditions in either of sections 202 or 203.

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

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

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

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

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

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

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

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

(d) The registrant shall notify the commission promptly by telephone or telegram of the date and time when the Federal registration statement became effective and the content of the price amendment, if any, and shall file a post-effective amendment promptly containing the information and documents in the price amendment. "Price amendment" means the final Federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the commission may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection is effected, if it promptly notifies the registrant by telephone or telegram of the issuance of such order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order shall be

vacated as of the time of its entry. The commission may by regulation or order waive any of the conditions specified in subsection (b) or (c).

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

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

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

(1) with respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) with respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five years; the amount of securities of the issuer held by him as of a specified date within thirty days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;

(3) with respect to persons covered by clause (2): the remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries, and affiliates) to all those persons in the aggregate;

(4) with respect to any person owning of record, or beneficially if known, ten per cent or more of the outstanding shares of any class of equity security of the issuer: the information specified in clause (2) other than his occupation;

(5) with respect to every promoter if the issuer was organized within the past three years: the information specified in clause (2), any amount paid to him within that period or intended to be paid to him, and the consideration for any such payment;

(6) with respect to any person on whose behalf any part of the offering is to be made in a non-issuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected; and a statement of his reasons for making the offering;

(7) the capitalization and long-term debt (on both a current and pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is

to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable; the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(9) the estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition);

(10) a description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in clause (2), (4), (5), (6), or (8) and by any person who holds or will hold ten per cent or more in the aggregate of any such options;

(11) the dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(12) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

(13) a specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

(14) a signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state whether the security when sold will be legally issued, fully paid, and non-assessable, and, if a debt security, a binding obligation of the issuer;

(15) the written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement;

(16) a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business,

the same financial statements which would be required if that business were the registrant, or such other financial statements as may be required pursuant to section 609(c); and

(17) such additional information as the commission requires by regulation or order.

For purposes of this section 206(b), the commission may classify issuers and types of securities.

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

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

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

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

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

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

(e) The commission may by regulation or order require as a condition of registration by qualification or as a condition of registration by coordination (if more than sixty-six and two-thirds per cent of the issue of securities part or all of which is to be registered by coordination is to be sold in Pennsylvania) that a report by an accountant, engineer, appraiser or other professional person be filed. The commission may also designate one of its employes to make an examination of the business and records of an issuer of securities for which a registration statement has been filed by qualification.

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

(g) The commission may by regulation or order require as a condition of registration that any

security issued within the past five years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; or that the proceeds from the sale of the registered security in this State be escrowed until the issuer receives a specified amount from the sale of the security either in this State or elsewhere; or that the proceeds from the sale of the registered security in this State be escrowed for a specific use as set forth in the prospectus; or it may impose any or all of these requirements. With respect to securities registered by coordination, no escrow of promotional shares hereunder shall be required to extend beyond four years. The commission may by regulation or order determine the conditions of any escrow required hereunder, but may not reject a depository solely because of location in another state.

(h) The commission may by regulation require that debt securities of designated classes to be registered by qualification shall be issued under a trust indenture containing such provisions as it determines, but such provisions shall not be in addition to or inconsistent with the terms required or permitted by the Trust Indenture Act of 1939.

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

(j.1) A registration by coordination is effective for one year from its effective date. The effectiveness of a registration by coordination may be extended beyond the initial one year effectiveness period in increments of one year periods up to a maximum of three years from the initial effectiveness date, provided that the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution and the Commission has been notified of such continued offering and the period thereof. A registration by qualification is effective for one year from its effective date. The fact that a registration statement has been effective in this State with respect to any security does not permit sales of securities of the same class by the issuer or an affiliate of the issuer if such person did not file the registration statement, unless a separate registration statement is filed and declared effective with respect thereto, or an exemption from registration is available. A registration statement may not be withdrawn after its effective date if any of the securities registered have been sold in this State, unless permitted by regulation or order of the Commission. No registration statement is effective during the time a stop order is in effect under Section 208.

(k) During the effective period of a registration statement, the commission may by regulation require the person who filed the registration statement to file reports with the commission, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering; provided, however, that no person need comply with any such regulation of the commission if such person files with the commission copies of all reports such person is required to file with the Securities and Exchange Commission and if such reports are filed in a timely manner. If any of the securities registered have been sold in the State, the commission may by regulation extend the period for filing the reports for an additional term not exceeding two years from the date the registration became effective or the date of its last amendment or extension.

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

(m)(1) Except where such securities are registered under section 5 of the Securities Act of 1933, each person who accepts an offer to purchase securities registered by qualification directly from an issuer or an affiliate of an issuer shall have the right to withdraw his acceptance without incurring any liability

to the seller, underwriter (if any) or any other person, within two business days after he receives a prospectus relating to the offering (which is not materially different from the final prospectus relating to such offering) and a notice explaining the provisions of this subsection. As used herein, the term "final prospectus" shall mean the document prepared in accordance with such regulations as the commission may provide, to be used by the seller in connection with an offering of securities in this State after the registration of such securities has become effective under this act.

(2) Each person who accepts an offer to purchase securities exempted from registration by section 203(d) and (p), directly from an issuer or affiliate of an issuer shall receive a written notice in such form as the Commission, by rule, may prescribe, informing such person of his right under this subsection to withdraw his acceptance without incurring any liability to the seller, underwriter (if any) or any other person, within two business days from the date of receipt by the issuer of his written binding contract of purchase or, in the case of a transaction in which there is no written binding contract of purchase, within two business days after he makes the initial payment for the securities being offered.

(n) For purposes of coordinating the provisions of this Act with uniform procedures to facilitate electronic filings of registration statements and notice filings, including without limitation, by a securities registration depository, the Commission, by regulation, may adopt appropriate procedures or forms or waive or modify any provision of Section 205 or 206 or this section. The commission, by regulation, also may prescribe methods for accepting electronic or digital signatures on forms to be filed electronically with the commission.

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

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

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

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

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

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

this section;

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

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

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

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

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

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

**Section 209. Books, Records and Accounts.**--(a) Every issuer registering securities for sale in this State or who has sold securities in this State pursuant to an exemption contained in section 202(e), 203(d), 203(p) or 203(r) shall at all times keep and maintain a complete set of books, records, and accounts of such sales and the disposition of the proceeds thereof for a period of three years following the last sale of securities in this State or one year after the disposition of all proceeds, whichever is longer, and shall thereafter, at such times as are required by the commission, make and file in the office of the commission, a report, setting forth the securities sold by it under such registration or exemption, the proceeds derived therefrom and the disposition thereof.

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

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

**Section 210. Retroactive Registration or Amendment of Notice of Filing for Certain Securities.**--The Commission, by regulation, may establish procedures whereby an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C 80a-1 et seq.), which, during the effective period of registration under Section 205 or 206 or the effective period of a notice filing, sold securities in this state in excess of the aggregate amount of securities registered for sale in this state under Section 205 or 206 or covered by the notice filing may apply to the Commission to register such securities retroactive to the date of the initial registration or to amend he notice filing retroactive to the date of the initial notice filing. An application for retroactive registration or amendment of a notice filing for such securities shall not be granted if, at the time the application is filed, a civil, criminal or administrative proceeding is pending alleging violations of Section 201 for the sale of such securities in this state, or such securities were sold more than twenty-four months prior to the date the application was filed with the Commission. An application under this section shall not be granted unless the applicable oversale assessment prescribed by Section 602.1(d) has been paid.

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

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

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

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

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

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

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

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

(c) (1) The commission may issue a stop order suspending the offer or sale of a security described in subsection (a) or (b) upon finding that:

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

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

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

# PART III

# REGISTRATION OF BROKER-DEALERS, AGENTS INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES AND NOTICE FILINGS BY FEDERALLY COVERED ADVISERS

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

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

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

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

(c.1) The following apply:

(1) It is unlawful for any:

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

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

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

(3) The commission may adopt a temporary registration procedure to permit investment adviser representatives to change employers without suspension of their registrations under this act.

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

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

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

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

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

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

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

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

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

(d) An investment adviser who does not have a place of business in this State and during the preceding twelve-month period has had not more than five clients who are residents of this State exclusive of other investment advisers, federally covered advisers, broker-dealers or institutional investors.

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

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

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

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

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

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

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

**Section 303. Registration and Notice Filing Procedure.**--(a) (i) except as provided by clause (iii), any broker-dealer, agent, investment adviser or investment adviser representative may obtain an initial or renewal license by filing an application with the commission. The application shall contain such information, and in such detail, as the commission by rule requires concerning the applicant's form and place of organization, proposed method of doing business, and financial condition, the qualifications and experience of the applicant, including, in the case of a broker-dealer or investment adviser, the qualifications and experience of any partner, officer, director, or affiliate, or a person occupying a similar status or performing similar functions any injunction or administrative order or conviction referred to in section 305(a)(ii), information about affiliates or predecessors of the applicant, and any other matters which the commission determines are relevant to the application. If a broker-dealer, agent, investment adviser or investment adviser representative seeks to obtain an initial or renewal license and, in connection therewith, requests a waiver of any requirement imposed under this section or section 304 or any regulation promulgated thereunder, the commission, in granting the waiver, may impose conditions on, or limit the scope of, the initial or renewal license.

(ii) If no denial order is in effect and no proceeding is pending under section 305, the

registration becomes effective on the forty-fifth day after the filing of the application therefor or any material amendment thereto, or on such earlier date as the commission may order. The commission is directed to cooperate with other securities administrators and regulatory authorities to simplify and coordinate registration, application and renewal procedures.

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

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

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

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

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

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

(d) The commission may by regulation require a minimum capital for registered broker-dealers, subject to the limitations of section 15 of the Securities Exchange Act of 1934, (48 Stat. 881, 15 U.S.C. § 78o) and establish minimum financial requirements for investment advisers, subject to the limitations of section 222 of the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80b-18a). The commission may classify broker-dealers for purposes of such requirements and may establish different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.

(e) The commission may by regulation require surety bonds to be posted by any broker-dealer, investment adviser, and any issuer who employs agents subject to registration under section 301 in connection with effecting transactions in any security not exempted by section 202(e), (f) or (g) or effecting securities transactions not exempted by section 203(c), (g), (k), (l) or (m) in any amount the commission may prescribe, subject to the limitations of section 15 of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78o) for broker-dealers and section 222 of the Investment Advisers Act of 1940 for investment advisers and may determine their conditions. All bonds required shall provide for suit thereon by injured customers, clients or purchasers, but no bond may be required of any registered broker-dealer or investment adviser whose net capital or minimum financial requirements exceeds the amount prescribed by regulation for this purpose. Such bond, unless canceled as provided herein, shall be in effect during the entire period that a registration is in effect. Every bond shall contain a provision that such bond is not cancelable, except on thirty-days prior written notice to the person by whom the bond was posted and the commission,

provided that such cancellation shall not affect any liability incurred or accrued prior to the effective date of such cancellation.

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

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

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

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

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

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

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

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

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

(ii) Has been: (A) convicted within ten years of the date of the commission's action, of any felony or misdemeanor, or of any substantially equivalent crime by a foreign court of competent jurisdiction, or held liable in a civil action by final judgment of a court and the commission finds that such felony, misdemeanor or civil action: (I) involved the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary and any substantially equivalent activity however denominated by the laws of a relevant foreign government or conspiracy to commit any such offense; (II) arose out of the conduct of the business of an issuer, broker-dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, foreign person performing a function substantially equivalent to any of the foregoing or any entity or person required to be registered under the Commodity Exchange Act (42 Stat. 988, 7 U.S.C. § 1 et seq.) or any substantially equivalent foreign statute or regulation; (III) involved the larceny, theft, robbery extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion or misappropriation of funds or securities, or any substantially equivalent activity however denominated by the laws of a relevant foreign government; or (IV) involved the violation of 18 U.S.C. §§ 152 (relating to concealment of assets; false oaths and claims, bribery), 1341 (relating to frauds and swindles), 1342 (relating to fictitious name or address), 1343 (relating to fraud by wire, radio or television), Chs. 25 (relating to counterfeiting and forgery) or 47 (relating to fraud and false statements) or a violation of any substantially equivalent foreign statute; or (B) convicted of any other felony; or

(iii) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities or commodities future contract business or involving fraudulent conduct in the banking or insurance business; or

(iv) Is subject to (A) any currently effective order or order entered within the past five years of the Securities and Exchange Commission, the Commodity Futures Trading Commission or the securities administrator of any other state denying registration to or revoking or suspending the registration of such person as a broker-dealer, agent, investment adviser, investment adviser representative, futures commission merchant, commodity pool operator, commodity trading advisor or a person associated with a futures commission merchant, commodity pool operator or commodity trading adviser, or (B) any currently effective order of any national securities association, national securities exchange (as defined in the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. 78a et seq)) or self-regulatory organization operating under the authority of the Commodity Futures Trading Commission suspending or expelling such person from membership in such association, exchange or self-regulatory organization, or (C) any currently effective cease and desist order or a cease and desist order entered within the past five years by the Securities and Exchange Commission, the Commodity Futures Trading Commission or by the securities administrator of any other state and where, in the case of a cease and desist order entered by a state, the cease and desist order contained a finding of a willful violation of that state's securities law, or (D) a currently effective United States Postal Service fraud order; but the commission may not institute a revocation or suspension proceeding under this subsection on the basis of an order under another state law more than one year after termination of the effectiveness of the order relied on and unless the order was

based on facts which would currently constitute grounds for an order under this section; or

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

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

(vii) Has failed reasonably to supervise his agents or employes, if he is a broker-dealer, or his investment adviser representatives or employes, if he is an investment adviser; or

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

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

(x) Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, or is in such financial condition that he cannot continue in business with safety to his customers, or has not sufficient financial responsibility to carry out the obligations incident to his operations provided that the commission has made a specific finding of insolvency, absence of safety or insufficient financial responsibility; or

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

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

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

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

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

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

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

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

(a.1) The commission, by order, may deny the application of:

(i) an agent or investment adviser representative if the individual is obligated, pursuant to an award of an arbitration panel, to pay compensation to purchasers of securities and, as of the date the application is filed with the commission, has not paid the awarded compensation to the purchasers in full and within the time period specified by the arbitration panel; or

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

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

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

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

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

(iii) The commission may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both.

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

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

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

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

(d) The commission may by order summarily deny, postpone or suspend an application or registration pending final determination of any proceeding under this section. The order may be issued summarily without notice or hearing. Upon issuance of a summary order, the commission shall promptly provide the order to the applicant or registrant and the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative. The order shall contain findings of fact and conclusions of law and include a notice affording the applicant or registrant an opportunity for a hearing in accordance with section 607(a).

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

(f) Withdrawal from the status of a registered broker-dealer, agent, investment adviser or investment adviser representative becomes effective on the thirtieth day after receipt of an application to withdraw, or within such shorter period as the commission determines, unless a revocation or suspension proceeding is pending before the commission when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted before the commission within thirty days after the withdrawal application is filed. If a proceeding is so pending or instituted, withdrawal becomes effective at such time and upon such conditions as the commission by order determines. If no proceeding is so pending or instituted and withdrawal automatically becomes effective, the commission may institute a revocation or suspension proceeding under subsections (a)(i), (v), (vi) (vii), (viii), (ix), (xii) and (xiii) within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which the registration was in effect.

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

**Section 306. Prohibited Employment.**--(a) It is unlawful for any person, as to whom an order suspending or revoking his registration is in effect, wilfully to become or to be employed in any capacity by any broker-dealer or investment adviser or in the position of agent for an issuer without the consent of the commission; and it is unlawful for any broker-dealer, investment adviser or issuer to permit such a person to become or to remain a person employed by him without the consent of the commission if such broker-dealer, investment adviser or issuer knew, or in the exercise of reasonable care should have known, of such order.

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

# PART IV

# FRAUDULENT AND PROHIBITED PRACTICES

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

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

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

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

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

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

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

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

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

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

**Section 403. Prohibited Transactions; Broker-dealers and Agents.**--No broker-dealer or agent shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any security in this State by means of any manipulative, deceptive or other fraudulent scheme, device, or contrivance, fictitious quotation, or in violation of this act or any regulation or order hereunder.

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

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

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

(3) Acting as principal for his own account, knowingly to sell any security to or

purchase any security from a client, or, acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of the transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. The prohibitions of this paragraph shall not apply to any transaction with a customer of a broker-dealer if such broker-dealer is not acting as an investment adviser in relation to such transaction.

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

(5) To fail to disclose to the board of school directors of a public school district in this commonwealth the compensation that such person will give, directly or indirectly, to another person in connection with either obtaining the board of school directors as an advisory client or advising the board of school directors as to any transaction involving the purchase or sale of a security with respect to an investment of public school district funds pursuant to section 440.1 of the act of March 10, 1949 (P.L. 30, No. 14), known as the Public School Code of 1949, and 53 PA.C.S. PT. VII Subpt. B (relating to indebtedness and borrowing).

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

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

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

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

**Section 405. Contract Requirements.**--It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract if such contract:

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

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

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

Clause (1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date, or in any other manner permitted by the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80b-1 et seq.), and the rules and regulations promulgated thereunder or any contract for the rendering of investment advisory services to an institutional investor. "Assignment," as used in clause (2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is

considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

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

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

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

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

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

**Section 408. Prohibited transactions involving nonprofit organizations.**--It is unlawful for any person to purchase or sell, or induce or attempt to induce the purchase or sale of, any security in this commonwealth by means of any manipulative, deceptive or other fraudulent scheme, device or contrivance, or in violation of this act or any regulation or order hereunder, in a transaction involving an organization formed exclusively for educational, benevolent, fraternal, religious, charitable, social, athletic, reformatory or cultural purposes and not for pecuniary profit or other charitable organization as defined under Section 3 of the act of December 19, 1990 (P.L.1200, No.202), known as the "Solicitation of Funds for Charitable Purposes Act," in which the purchase or sale of the security is a condition for receipt by the organization of a gift, grant, donation or similar contribution or of a promise therefor.

**Section 409. Prohibited transactions involving public school districts in this state.**--It shall be unlawful for any person to purchase or sell, or induce or attempt to induce the purchase or sale of, any security in this State by means of any manipulative, deceptive or other fraudulent scheme, device or contrivance, or in violation of this act or regulation or order issued under this act, in a transaction involving a public school district in this State.

**Section 410. Prearranged trading programs.**–In connection with the offer, sale or purchase of any security in this State, no person shall be deemed to have violated section 401 or 406 or otherwise to have made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading if such person demonstrates that the offer, sale or purchase was prearranged in accordance with 17 C.F.R. §240.10b5-1(c) (relating to trading "on the basis of" material nonpublic information in insider trading cases), or any successor thereto, promulgated under section 10(b) of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. §79a et seq.).

# PART V

# ENFORCEMENT

**Section 501. Civil Liabilities.**--(a) Any person who: (i) offers or sells a security in violation of section 407(c) or at any time when such person has committed a material violation of section 301, or any regulation relating to either section 301 or 407(c), or any order under this act of which he has notice; or (ii) offers or sells a security in violation of sections 401, 403, 404 or otherwise by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the purchaser not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know and in the exercise of reasonable care could not have known of the untruth or omission, shall be liable to the person purchasing the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, less the amount of any income or distributions, in cash or in kind, received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition. Tender shall require only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable.

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

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

(d) Any investment adviser who violates section 405 shall be liable to the other party to the investment advisory contract for all fees paid under such contract to the investment adviser, less any profits earned by such party through transactions effected as a result of advice given under the contract, plus interest at the legal rate. In addition, either party may, at any time, declare the contract null and void as of the date of such declaration.

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

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

(g) Any person who violates section 404(a)(1) through (4), any material provision of section 404(a)(7), or otherwise makes any untrue statement of a material fact or omits stating a material fact necessary in order to make statements made, in the light of the circumstances under which they are made, not misleading (the person not knowing of the untruth or omission) and who does not sustain the burden of proof that he did not know and, in the exercise of reasonable care could not have known of the untruth or omission, shall be liable to the person purchasing the security. The person purchasing the security may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, less the amount of income or distribution, in cash or in kind, received on the security, upon the tender of the security or for damages if the person no longer owns the security. Damages are the amount that would be recoverable upon a tender, less the value of the security when the person disposed of it, plus interest at the legal rate from the date of disposition. Tender shall require only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions specified in the Pennsylvania Rules of Civil Procedure. A person who is liable under this section and any offeror or seller of the security liable under subsection (a) are jointly and severally liable to the person purchasing the security.

**Section 502. Violation of Registration Requirements.**--Any person who violates section 201 or any material condition imposed under section 206 or 207 shall be liable to the person purchasing the security offered or sold in violation of section 201 from him who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, less the amount of any income or distributions, in cash or in kind, received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages shall be the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and interest at the legal rate from the date of disposition. Any person on whose behalf an offering is made and any underwriter of the offering, whether on a best efforts or a firm commitment basis, shall be jointly and severally liable under this section, but in no event shall any underwriter be liable in any suit or suits authorized under this section for damages in excess of the total price at which the securities underwritten by him and distributed to the public were offered to the public. Tender requires only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable. No person shall be liable under this section if the sale of the security is registered prior to the payment or receipt of any part of the consideration for the security sold, even though an offer to sell or a contract of sale may have been made or entered into without registration.

**Section 503. Joint and Several Liability; Contribution; Corporation's Right of Indemnification.-**

(a) Every affiliate of a person liable under section 501 or 502, every partner, principal executive officer or director of such person, every person occupying a similar status or performing similar functions, every employe of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the act or transaction constituting the violation, are also liable jointly and severally with and to the same extent as such person, unless the person liable hereunder proves that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

(b) A corporation which is liable under this act shall have a right of indemnification against any of its affiliates whose wilful violation of any provision of this act gave rise to such liability. All persons civilly liable under this act shall have a right of contribution against all other persons similarly liable, based upon each person's proportionate share of the total liability, except that no person whose wilful violation of any provision of this act has given rise to any civil liability shall have any right of contribution against any other person guilty merely of a negligent violation.

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

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

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

(d) No purchaser may commence an action under section 501, 502 or 503 if, before suit is commenced, the purchaser has received a written offer: (i) stating the respect in which liability under such section may have arisen and fairly advising the purchaser of his rights; offering to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, together with interest at the legal rate from the date of payment, less the amount of any income or distributions, in cash or in kind, received thereon or, if the purchaser no longer owns the security, offering to pay the purchaser upon acceptance of the offer an amount in cash equal to the damages computed in accordance with section 501(a); and (ii) stating that the offer may be accepted by the purchaser at any time within a specified period of not less than thirty days after the date of receipt thereof, or such shorter period as the commission may by rule prescribe; and the purchaser has failed to accept such offer in writing within the specified period. The limitations on a purchaser commencing an action under this subsection shall not apply if the purchaser has accepted an offer to repurchase made under this subsection within the time period specified under this subsection and has complied with all the terms of this subsection but has not received the cash payment specified by this subsection within ninety days of the date of acceptance of the offer to repurchase.

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

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

**Section 505. Death of Plaintiff or Defendant.**--(505 repealed Apr. 28, 1978, P.L.202, No.53)

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

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

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

**Section 509. Right of Commission to Actions for Injunction and Equitable Relief; Class Actions; Contempt of Commission Orders.**--(a) Whenever it appears to the commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, it may in its discretion bring an action in the name of the people of the Commonwealth of Pennsylvania in the Commonwealth Court or in any of the several courts of common pleas to enjoin, through a preliminary or permanent injunction, temporary restraining order or writ of mandamus, the acts or practices or to enforce compliance with this act or any rule or order hereunder. The commission also may seek, and the court, upon proper showing, shall grant such other ancillary and equitable relief as the facts warrant including, without limitation, appointment of a receiver, temporary receiver or conservator of the defendant's assets, a freeze of the defendant's assets, obtaining of an accounting, orders of rescission, orders of restitution, orders of disgorgement or other relief as may be appropriate in the public interest. The court shall not require the commission to meet the criteria for an equitable injunction in order for the court to grant an injunction, restraining order or writ of mandamus. The court shall not require the commission to post a bond.

(b) The commission may, with the approval of the Attorney General, include in any action authorized by subsection (a) a claim for damages under section 501, 502 or 503 on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award appropriate relief to such persons, if the court finds that enforcement of the rights of such persons by private civil action, whether by class action or otherwise, would be so burdensome or expensive as to be impractical. (509 repealed insofar as inconsistent Oct. 15, 1980, P.L.950, No.164)

(c) Any person violating any (i) stop order issued under section 208, (ii) cease advertising order issued under section 606(c), (iii) cease and desist order issued under section 606(c.1), (iv) order of the commission requiring a rescission pursuant to section 513, (v) order of the commission imposing any bar described in section 512, (vi) order of the commission requiring return of sales compensation under section 514(a), or (vii) any order of the commission imposing an administrative assessment under section 602.1(b) or (c) from which no appeal of such an order has been taken pursuant to section 607(d) of the act or which has been sustained on appeal, or which has been appealed but where no supersedeas has been granted for the period during which the order has been violated, shall be deemed to be in contempt of such order. Upon petition and certification of such order by the commission, the Commonwealth Court or any of the courts of common pleas, if it finds after hearing or otherwise that the person is not in compliance with the order, shall adjudge the person in contempt of the order and shall assess such civil penalties of an amount not less than five thousand dollars ($5,000) nor greater than fifteen thousand dollars ($15,000) per violation and grant such equitable relief as it may deem appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the requesting authority is permitted and has agreed to provide reciprocal assistance in securities matters to the commission; and

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

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

(b) A person who wilfully violates Section 401, 408 or 409 commits a felony of the third degree and may be fined not more than twenty thousand dollars ($20,000) if none of the victims of the person's violative conduct were individuals aged 60 or more and not more than one hundred thousand ($100,000) if any of the victims of the person's violative conduct were individuals aged 60 or more, or imprisoned for not more than seven years, or both. In addition to fine or imprisonment, or both, the person may be sentenced to make restitution.

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

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

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

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

(3) Being registered as a broker-dealer, agent, investment adviser or investment adviser

representative under section 301;

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

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

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

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

(d) It shall be unlawful for any issuer to permit, without the consent of the commission, a person as to whom an order is in effect under this section to participate in the offer or sale of the issuer's securities in this state in contravention of such order if the issuer knew or in the exercise or reasonable care should have known of such order.

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

**Section 514. Return of sales compensation.**–(a) After giving notice and opportunity for hearing, the commission, where it has determined that a person who represented an issuer in effecting transactions in securities in this Commonwealth while in willful violation of section 301(a) and received compensation in connection with these transactions, may issue an order, accompanied by written findings of fact and conclusions of law, which requires the person to return to purchasers of securities in this Commonwealth, in cash, the amount of compensation received for effecting those securities transactions.

(b) No order shall be issued under this section if the transactions in securities meet any of the following criteria:

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

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

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

(c) The commission may issue more than one order under this section against the same person involving the same security.

(d) An order issued under this section shall not be deemed conclusive as to the total number

of purchasers in this Commonwealth of any particular security or the total dollar amount of sales compensation received by a person for transactions effected in a particular security with purchasers in this Commonwealth for which liability may be imposed under subsection (a).

# PART VI

# ADMINISTRATION

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

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

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

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

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

(i) An investigation authorized under section 510 which has not been closed.

(ii) An action in which neither the commission nor any of its officer or employes is a party.

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

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

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

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

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

(v) Documents deemed confidential by order of the commission under section 603(c).

(3) Complaints filed with the commission and testimony concerning information in the complaints are privileged absolutely from disclosure under subpoena directed to the commission or its officers or employes.

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

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

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

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

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

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

(A) Less than $10,000,000 . . . . . 500

(B) $10,000,000 or more . . . . . 750

(iii) Registration statement filings under section 206, except as provided in subclause (iv) . . . . . 350

Plus 1/20 of 1% of the maximum aggregate offering price at which such securities are to be offered in this State, during the effective period of the registration up to a maximum filing fee of $2,150.

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

Based upon the maximum aggregate offering price at which such securities are to be offered in this State during the effective period of the registration, or notice filings, the fee for:

(A) $4,000,000 or less is 1/20 of 1% with a minimum fee of . . . . . 350

(B) More than $4,000,000 but less than $100,000,000 . . . . . 3,000

(C) $100,000,000 or . . . . . 3,500

(D) For an indefinite amount of securities to be offered in this State during the

effective period of the registration or notice filing. The amount specified in (C) plus a $500 assessment specified in section 602.1(a)(5).

(v) Exemption filings under section 203(o) . . . . . 250

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

(A) Under section 205 or a notice filing under section 211(a) . . . . . 300

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

(vii) Filing a notice on SEC Form D under section 211(b) . . . . . 500

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

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

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

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

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

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

**Editor's Note:** Subsection (c) was redesignated as Section 602.1(b) by Act 4 of 1993 (effective May 4, 1993). Subsection (d) was rendered superfluous with the enactment of Act 190 of 1990 (effective December 18, 1990) that adopted subsection (d.1) and therefore has not been reproduced here.

(d.1) Every applicant for an initial or renewal license under section 301 shall pay a filing fee of two hundred fifty dollars ($250) in the case of a broker-dealer, fifty dollars ($50) in the case of an agent and two hundred dollars ($200) in the case of an investment adviser and fifty dollars ($50) in the case of an investment adviser representative. The term of an agent's registration hereunder shall be concurrent with that of his employer, if a broker-dealer. When an agent changes employers, a fifty dollar ($50) fee shall be paid. When an investment adviser representative changes employers, a fifty dollar ($50) fee shall be paid. When an application is denied or withdrawn or a registration revoked, the filing fee shall be retained. A federally covered adviser shall pay an annual notice filing fee of three hundred dollars ($300).

(e) The fee for the commission's acting as an escrow holder for securities under section 207 is seventy-five dollars ($75).

(f) The commission may fix by regulation a reasonable charge for any publication issued under its authority.

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

**Section 602.1. Assessments.**--(a) (1) Each agent and investment adviser representative, when applying for an initial license under section 301 or changing employers, shall pay a compliance assessment in accordance with the following schedule: thirty-two dollars ($32) for the period July 1, 2001 through June

30, 2004, thirty-five dollars ($35) for the period July 1, 2004, through June 30, 2007, thirty-seven ($37) for the period July 1, 2007, through June 30, 2010, and forty dollars ($40) thereafter.

(2) Each agent and investment adviser representative, when applying for a renewal license under section 301, shall pay a compliance assessment in accordance with the following schedule: seventeen dollars ($17) for the period July 1, 2001 through June 30, 2004, twenty dollars ($20) for the period July 1, 2004, through June 30, 2007, twenty-two dollars ($22) for the period July 1, 2007, through June 30, 2010, and twenty-five dollars ($25) thereafter.

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

(4) Each investment adviser when applying for an initial or renewal license under section 301 shall pay a compliance assessment in accordance with the following schedule: fifty dollars ($50) for the period beginning with the date of enactment of this paragraph through June 30, 2001 and seventy-five dollars ($75) thereafter.

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

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

(c) After giving notice and opportunity for a hearing, the commission may issue an order accompanied by written findings of fact and conclusions of law which imposes an administrative assessment in the amounts provided in paragraph (1) against a broker-dealer, agent, investment adviser or investment adviser representative registered under section 301 or an affiliate of any broker-dealer or investment adviser where the commission determines that the person willfully has violated this act or a rule or order of the commission under this act or has engaged in dishonest or unethical practices in the securities business; has taken unfair advantage of a customer; or has failed reasonably to supervise its agents or employees or against any other person if the commission determines that the person willfully violated sections 301, 401, 404, 406 through 409 or 512(d) or a cease and desist order issued by the commission under section 606(c.1) of this act.

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

(i) In issuing an order against any broker-dealer, agent, investment adviser, or investment adviser representative registered under section 301 or an affiliate of any broker-dealer or investment adviser, the commission may impose an administrative assessment of up to fifty thousand dollars ($50,000) for a single violation or up to five hundred thousand dollars ($500,000) for multiple violations in a single proceeding or a series of related proceedings. If any of the victims of the person's violative conduct were individuals aged 60 or more, the commission also may impose a special administrative assessment in addition to the foregoing amounts of up to fifty thousand dollars ($50,000).

(ii) In issuing an order against a person for willful violation of section 401(a) or (c), 404, 406, 408, 409 or 512(d) or for willful violation of a cease and desist order issued under section 606(c.1), the commission may impose an administrative assessment of up to fifty thousand dollars ($50,000) for a single violation or up to three hundred thousand dollars ($300,000) for multiple violations in a single proceeding or a series of related proceedings. In addition to the foregoing assessment, the commission also may impose a special administrative assessment of up to fifty thousand dollars ($50,000) for each of the provisions described as follows, that the commission determines are applicable:

(A) The person, within seven years prior to the commission taking action under this subsection, was the subject of: a criminal felony conviction; an injunction issued by any court of competent jurisdiction or an order of the Securities and Exchange Commission, the Commodity Futures Trading Commission, the securities, banking or insurance regulator of another state, a Federal banking regulator or the securities, banking or insurance regulatory authority of another country which found that the person willfully had violated any provision of the Federal or State securities, banking, insurance, or commodities laws or the securities, commodities, insurance or banking laws of another country.

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

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

(iii) In issuing an order against a person for willful violation of section 401(b) or 407, the commission may impose an administrative assessment of up to twenty-five thousand dollars ($25,000) for each of the criteria described in subparagraphs (ii)(A) and (C) that the commission determines are applicable. No assessment shall be imposed under this subclause if the person is subject to an administrative assessment imposed under any other provision of this subsection.

(iv) In issuing an order against a person, other than a federally covered adviser, for wilful violation of section 301, the commission may impose the following administrative assessments unless the person is subject to an administrative assessment imposed under any other provision of this subsection or the public proceeding to which the assessment relates was instituted prior to the date of enactment of this subclause:

(A) For a person who, at the time of the wilful violation, was not registered under section 301, was not registered as a broker or dealer with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934 (948 Stat. 881, 15 U.S.C. §78(a) et seq.) and was not a member of a national securities association registered under that act, the commission may impose an administrative assessment of up to fifty thousand dollars ($50,000) for a single violation or up to two hundred fifty thousand dollars ($250,000) for multiple violations in a single proceeding or series of related proceedings.

(B) For a person (not an individual) that, at the time of the wilful violation, was not registered under section 301 but was registered as a broker or dealer with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934 and was a member of a national securities association registered under the act, the commission may impose an administrative assessment of up to fifty thousand dollars ($50,000) for a single violation or up to three hundred thousand dollars ($300,000) for multiple violations in a single proceeding or series of related proceedings.

An assessment imposed under this subclause shall be in addition to any liability

a person may have under an order issued under section 514.

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

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

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

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

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

(i) The circumstances, nature, frequency, seriousness, magnitude, persistence and willfulness of the conduct constituting the violation.

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

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

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

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

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

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

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

(e) Moneys payable for assessments established by this section shall be collected by the commission and deposited into the General Fund and shall be credited to the appropriation of the commission for the fiscal year received. These moneys are intended to meet the expenses of the commission in administering the provisions of this Act, including any or all of the following activities:

(1) Expenses, including personnel, operating and fixed assets costs, relating to the registration of broker-dealers, agents, investment advisers and associated persons under section 301 and the conduct of examinations of broker-dealers and investments advisers registered under section 301 and other compliance-related activities of the commission;

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

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

(4) Nonpersonnel expenses related to conducting enforcement-related activities of the commission; and thereafter,

(5) Other expenses of the commission necessary to implement the provisions of this act.

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

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

(c) The information contained in or filed with any registration statement, application, notice filing or report shall be made available to the public in accordance with regulations prescribed by the commission; except that the commission may make the following orders or regulations:

(1) Upon proper showing of the registrant or issuer, the commission may order certain filings or parts of filings nonpublic.

(2) The commission, by rule or order, may deem certain categories of information filed with the commission as nonpublic.

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

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

**Section 604. Interpretive Opinions of Commission.**--The commission in its discretion may honor requests from interested persons for interpretive opinions and may make such opinions available to the

public under section 603(c).

**Section 605. Commissioners and Commission Employes; Relationship with Licensed Persons or Qualified Organizations.**--(a) Neither the commissioners nor any employe, clerk or servant of the commission, during their respective terms of employment, shall be interested as a director, officer, shareholder, member, partner, agent, or employe of any person who, during the period of such official's or employe's association with the commission, (i) was licensed or applied for license as a broker-dealer, agent or investment adviser under this act, or (ii) applied for or secured the registration of securities under this act.

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

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

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

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

(c) No person shall publish in this State any advertisement concerning any security (other than advertisements relating to federally covered securities, tombstone advertisements permitted under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.) and the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.) and the rules and regulations promulgated thereunder) except in accordance with such rules as the commission may promulgate from time to time. No person shall publish any advertisement concerning any security in this State after the commission issues a cease advertising order in which it finds that the advertisement contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading . The order may be issued summarily without notice or hearing. Upon issuance of a summary order, the commission shall promptly provide the order to the person against whom it is issued. The order shall contain findings of fact and conclusions of law and include a notice affording the person an opportunity for a hearing under section 607(a).

(c.1) Whenever the commission finds that any person has engaged or is about to engage in any

act or practice constituting a violation of any provision of this act or any rule or order thereunder, the commission may order such person to cease and desist from such act or practice. The order may be issued summarily without notice or hearing. Upon issuance of a summary order, the commission shall promptly provide the order to the person against whom it is issued. The order shall contain findings of fact and conclusions of law and include a notice affording the person an opportunity for a hearing under section 607(a).

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

**Section 607. Hearings and Judicial Review.**--(a) Within thirty days after receipt of a summary order issued under section 204(b), 208(c), 211(c), 305(d), 606(c) or 606(c.1), the person against whom the order was issued and entered may file with the commission a written request for a hearing in respect to any matters determined by the order. Upon receipt of a written request, the matter shall be set down for a hearing to commence within thirty days after receipt of the request unless the person making the request consents to a later date. If the person making the request consents to a later date for the hearing but fails, after notification by first class mail, to the person's last known address in the commission's files, to consent to a hearing date that is within one hundred eighty days of the date the written request for a hearing was filed with the commission under this subsection, the request for a hearing shall be deemed abandoned and the summary order shall be deemed a final order. After hearing, the commission may determine to rescind, modify or vacate the summary order to make it a final order. If no hearing is requested or a request for hearing is filed untimely, the summary order shall be deemed to be a final order.

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

(c) Hearings and rehearings shall be public.

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

**Section 608. Injunction Procedure.**--(608 repealed Apr. 28, 1978, P.L.202, No.53)

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

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

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

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

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

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

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

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

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

**Section 612. Burden of proof.**–(a) In a civil action or administrative proceeding under this act, a person claiming status as a federally covered security or adviser or an exemption, exception or exclusion from a definition has the burden of proving the availability of the status, exemption, exception or exclusion.

(b) In a proceeding for a criminal violation of this act, a person claiming status as a federally covered security or adviser or an exemption, exception or exclusion from a definition has the burden of going forward with evidence of the claim, exemption, exception or exclusion.

# PART VII

# GENERAL PROVISIONS

**Section 701. Service of Process.**--(701 repealed Apr. 28, 1978, P.L.202, No.53)

**Section 702. Scope of Act.**--(a) The provisions of this act concerning sales and offers to sell apply to persons who sell or offer to sell when (i) a sale or offer to sell is made in this State or when (ii) an offer to purchase is made and accepted in this State. The provisions concerning purchases and offers to purchase apply to persons who buy or offer to buy when (i) a purchase or offer to purchase is made in this State or when (ii) an offer to sell is made and accepted in this State.

(b) For the purpose of this section, an offer to sell or to purchase is made in this State, whether or not either party is then present in this State, when the offer originates from this State or is directed by the offeror to this State and received by the offeree in this State; provided, however, for the purpose of section 201 an offer to sell which is not directed to or received by the offeree in this State is not made in this State.

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

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

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

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

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