

JAN 25 2006

A BILL FOR AN ACT

RELATING TO THE UNIFORM SECURITIES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 UNIFORM SECURITIES ACT

6 PART I. GENERAL PROVISIONS

7 § -101 **Short title.** This chapter shall be known and may
8 be cited as the Uniform Securities Act.

9 § -102 **Definitions.** As used in this chapter, unless the
10 context otherwise requires:

11 "Agent" means an individual, other than a broker-dealer,
12 who represents a broker-dealer in effecting or attempting to
13 effect purchases or sales of securities or represents an issuer
14 in effecting or attempting to effect purchases or sales of the
15 issuer's securities. A partner, officer, or director of a
16 broker-dealer or issuer, or an individual having a similar
17 status or performing similar functions, is an agent only if the
18 individual otherwise falls within this definition. The



1 definition shall not include an individual excluded by rule
2 adopted or order issued under this chapter.

3 "Bank" means:

4 (1) A banking institution organized under the laws of the
5 United States;

6 (2) A member bank of the Federal Reserve System;

7 (3) Any other banking institution, whether incorporated or
8 not, doing business under the laws of a state or of

9 the United States, a substantial portion of the
10 business of which consists of receiving deposits or

11 exercising fiduciary powers similar to those permitted
12 to be exercised by national banks under the authority

13 of the Comptroller of the Currency pursuant to section
14 1 of Public Law 87-722 (12 U.S.C. 92a), and which is

15 supervised and examined by a state or federal agency
16 having supervision over banks, and which is not

17 operated for the purpose of evading this chapter; or
18 (4) A receiver, conservator, or other liquidating agent of

19 any institution or firm included in paragraph (1),
20 (2), or (3).



1 "Broker-dealer" means a person engaged in the business of
2 effecting transactions in securities for the accounts of others
3 or for the person's own account. The term shall not include:

- 4 (1) An agent;
- 5 (2) An issuer;
- 6 (3) A depository institution;
- 7 (4) Any person licensed as a real estate broker or real
8 estate salesperson under the laws of this State while
9 effecting transactions in a security exempted by
10 sections 202(24) and 202(25);
- 11 (5) An international banking institution; or
- 12 (6) A person excluded by rule adopted or order issued
13 under this chapter.

14 "Commissioner" means the commissioner of securities of this
15 State.

16 "Depository institution" means:

- 17 (1) A bank; or
- 18 (2) A savings institution, trust company, credit union, or
19 similar institution that is organized or chartered
20 under the laws of a state or of the United States,
21 authorized to receive deposits, and supervised and
22 examined by an official or agency of a state or the



1 United States if its deposits or share accounts are
2 insured to the maximum amount authorized by statute by
3 the Federal Deposit Insurance Corporation, the
4 National Credit Union Share Insurance Fund, or a
5 successor authorized by federal law. The term shall
6 not include:

- 7 (A) An insurance company or other organization
- 8 primarily engaged in the business of insurance;
- 9 (B) A Morris Plan bank; or
- 10 (C) An industrial loan company.

11 "Director" means the director of commerce and consumer
12 affairs.

13 "Federal covered investment adviser" means a person
14 registered under the Investment Advisers Act of 1940.

15 "Federal covered security" means a security that is, or
16 upon completion of a transaction will be, a covered security
17 under section 18(b) of the Securities Act of 1933 (15 U.S.C.
18 77r(b)), or rules or regulations adopted pursuant to that
19 provision.

20 "Filing" means the receipt of a record required under this
21 chapter by the commissioner or a designee of the commissioner.



1 "Fraud", "deceit", and "defraud" are not limited to common
2 law deceit.

3 "Guaranteed" means guaranteed as to payment of all
4 principal and all interest.

5 "Institutional investor" means any of the following,
6 whether acting for itself or for others in a fiduciary capacity:

- 7 (1) A depository institution or international banking
8 institution;
- 9 (2) An insurance company;
- 10 (3) A separate account of an insurance company;
- 11 (4) An investment company as defined in the Investment
12 Company Act of 1940;
- 13 (5) A broker-dealer registered under the Securities
14 Exchange Act of 1934;
- 15 (6) An employee pension, profit-sharing, or benefit plan
16 if the plan has total assets in excess of \$10,000,000
17 or its investment decisions are made by a named
18 fiduciary, as defined in the Employee Retirement
19 Income Security Act of 1974, that is a broker-dealer
20 registered under the Securities Exchange Act of 1934,
21 an investment adviser registered or exempt from
22 registration under the Investment Advisers Act of

1 1940, an investment adviser registered under this
2 chapter, a depository institution, or an insurance
3 company;

4 (7) A plan established and maintained by a state, a
5 political subdivision of a state, or an agency or
6 instrumentality of a state or a political subdivision
7 of a state for the benefit of its employees, if the
8 plan has total assets in excess of \$10,000,000 or its
9 investment decisions are made by a duly designated
10 public official or by a named fiduciary, as defined in
11 the Employee Retirement Income Security Act of 1974,
12 that is a broker-dealer registered under the
13 Securities Exchange Act of 1934, an investment adviser
14 registered or exempt from registration under the
15 Investment Advisers Act of 1940, an investment adviser
16 registered under this chapter, a depository
17 institution, or an insurance company;

18 (8) A trust, if it has total assets in excess of
19 \$10,000,000, its trustee is a depository institution,
20 and its participants are exclusively plans of the
21 types identified in paragraph (6) or (7), regardless
22 of the size of their assets, except a trust that



- 1 includes as participants self-directed individual
2 retirement accounts or similar self-directed plans;
- 3 (9) An organization described in section 501(c)(3) of the
4 Internal Revenue Code (26 U.S.C. 501(c)(3)),
5 corporation, Massachusetts trust or similar business
6 trust, limited liability company, or partnership, not
7 formed for the specific purpose of acquiring the
8 securities offered, with total assets in excess of
9 \$10,000,000;
- 10 (10) A small business investment company licensed by the
11 Small Business Administration under section 301(c) of
12 the Small Business Investment Act of 1958 (15 U.S.C.
13 681(c)) with total assets in excess of \$10,000,000;
- 14 (11) A private business development company as defined in
15 section 202(a)(22) of the Investment Advisers Act of
16 1940 (15 U.S.C. 80b-2(a)(22)) with total assets in
17 excess of \$10,000,000;
- 18 (12) A federal covered investment adviser acting for its
19 own account;
- 20 (13) A "qualified institutional buyer" as defined in Rule
21 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted
22 under the Securities Act of 1933 (17 C.F.R. 230.144A);



1 (14) A "major U.S. institutional investor" as defined in
2 Rule 15a-6(b)(4)(i) adopted under the Securities
3 Exchange Act of 1934 (17 C.F.R. 240.15a-6);

4 (15) Any other person, other than an individual, of
5 institutional character with total assets in excess of
6 \$10,000,000, not organized for the specific purpose of
7 evading this chapter; or

8 (16) Any other person specified by rule adopted or order
9 issued under this chapter.

10 "Insurance company" means a company organized as an
11 insurance company whose primary business is writing insurance or
12 reinsuring risks underwritten by insurance companies and which
13 is subject to supervision by the insurance commissioner or a
14 similar official or agency of a state.

15 "Insured" means insured as to payment of all principal and
16 all interest.

17 "International banking institution" means an international
18 financial institution of which the United States is a member and
19 whose securities are exempt from registration under the
20 Securities Act of 1933.

21 "Investment adviser" means a person that, for compensation,
22 engages in the business of advising others, either directly or



1 through publications or writings, as to the value of securities
2 or the advisability of investing in, purchasing, or selling
3 securities or that, for compensation and as a part of a regular
4 business, issues or promulgates analyses or reports concerning
5 securities. The term includes a financial planner or other
6 person that, as an integral component of other financially
7 related services, provides investment advice to others for
8 compensation as part of a business or that holds itself out as
9 providing investment advice to others for compensation. The
10 term shall not include:

- 11 (1) An investment adviser representative;
- 12 (2) A lawyer, accountant, engineer, or teacher whose
13 performance of investment advice is solely incidental
14 to the practice of the person's profession;
- 15 (3) A broker-dealer or its agents whose performance of
16 investment advice is solely incidental to the conduct
17 of business as a broker-dealer and that does not
18 receive special compensation for the investment
19 advice;
- 20 (4) A publisher of a bona fide newspaper, news magazine,
21 or business or financial publication of general and
22 regular circulation;



- 1 (5) A federal covered investment adviser;
- 2 (6) A bank or savings institution;
- 3 (7) Any other person that is excluded by the Investment
4 Advisers Act of 1940 from the definition of investment
5 adviser; or
- 6 (8) Any other person excluded by rule adopted or order
7 issued under this chapter.

8 "Investment adviser representative" means an individual
9 employed by or associated with an investment adviser or federal
10 covered investment adviser and who makes any recommendations or
11 otherwise gives investment advice regarding securities, manages
12 accounts or portfolios of clients, determines which
13 recommendation or advice regarding securities should be given,
14 provides investment advice or holds oneself out as providing
15 investment advice, receives compensation to solicit, offer, or
16 negotiate for the sale of or for selling investment advice, or
17 supervises employees who perform any of the foregoing. The term
18 shall not include an individual who:

- 19 (1) Performs only clerical or ministerial acts;
- 20 (2) Is an agent whose performance of investment advice is
21 solely incidental to the individual acting as an agent



1 and who does not receive special compensation for
2 investment advisory services;

3 (3) Is employed by or associated with a federal covered
4 investment adviser, unless the individual has a "place
5 of business" in this State as that term is defined by
6 rule adopted under section 203A of the Investment
7 Advisers Act of 1940 (15 U.S.C. 80b-3a) and is:

8 (A) An "investment adviser representative" as that
9 term is defined by rule adopted under section
10 203A of the Investment Advisers Act of 1940 (15
11 U.S.C. 80b-3a); or

12 (B) Not a "supervised person" as that term is defined
13 in section 202(a)(25) of the Investment Advisers
14 Act of 1940 (15 U.S.C. 80b-2(a)(25)); or

15 (4) Is excluded by rule adopted or order issued under this
16 chapter.

17 "Issuer" means a person that issues or proposes to issue a
18 security, subject to the following:

19 (1) The issuer of a voting trust certificate, collateral
20 trust certificate, certificate of deposit for a
21 security, or share in an investment company without a
22 board of directors or individuals performing similar

1 functions is the person performing the acts and
2 assuming the duties of a depositor or manager pursuant
3 to the trust or other agreement or instrument under
4 which the security is issued;

5 (2) The issuer of an equipment trust certificate or
6 similar security serving the same purpose is the
7 person by which the property is or will be used or to
8 which the property or equipment is or will be leased
9 or conditionally sold or that is otherwise
10 contractually responsible for assuring payment of the
11 certificate; and

12 (3) The issuer of a fractional undivided interest in an
13 oil, gas, or other mineral lease or in payments out of
14 production under a lease, right, or royalty is the
15 owner of an interest in the lease or in payments out
16 of production under a lease, right, or royalty,
17 whether whole or fractional, that creates fractional
18 interests for the purpose of sale.

19 "Nonissuer transaction" or "nonissuer distribution" means a
20 transaction or distribution not directly for the benefit of the
21 issuer.

1 "Offer to purchase" includes an attempt or offer to obtain,
2 or solicitation of an offer to sell, a security or interest in a
3 security for value. The term shall not include a tender offer
4 that is subject to section 14(d) of the Securities Exchange Act
5 of 1934 (15 U.S.C. 78n(d)).

6 "Person" means an individual; corporation; business trust;
7 estate; trust; partnership; limited liability company;
8 association; joint venture; government; governmental
9 subdivision, agency, or instrumentality; public corporation; or
10 any other legal or commercial entity.

11 "Place of business" of a broker-dealer, an investment
12 adviser, or a federal covered investment adviser means:

13 (1) An office at which the broker-dealer, investment
14 adviser, or federal covered investment adviser
15 regularly provides brokerage or investment advice or
16 solicits, meets with, or otherwise communicates with
17 customers or clients; or

18 (2) Any other location that is held out to the general
19 public as a location at which the broker-dealer,
20 investment adviser, or federal covered investment
21 adviser provides brokerage or investment advice or



1 solicits, meets with, or otherwise communicates with
2 customers or clients.

3 "Predecessor act" means chapter 485, Hawaii Revised
4 Statutes.

5 "Price amendment" means the amendment to a registration
6 statement filed under the Securities Act of 1933 or, if an
7 amendment is not filed, the prospectus or prospectus supplement
8 filed under the Securities Act of 1933 that includes a statement
9 of the offering price, underwriting and selling discounts or
10 commissions, amount of proceeds, conversion rates, call prices,
11 and other matters dependent upon the offering price.

12 "Principal place of business" of a broker-dealer or an
13 investment adviser means the executive office of the
14 broker-dealer or investment adviser from which the officers,
15 partners, or managers of the broker-dealer or investment adviser
16 direct, control, and coordinate the activities of the
17 broker-dealer or investment adviser.

18 "Record" except in the phrases "of record", "official
19 record", and "public record", means information that is
20 inscribed on a tangible medium or that is stored in an
21 electronic or other medium and is retrievable in perceivable
22 form.



1 "Sale" includes every contract of sale, contract to sell,
2 or disposition of, a security or interest in a security for
3 value; and "offer to sell" includes every attempt or offer to
4 dispose of, or solicitation of an offer to purchase, a security
5 or interest in a security for value. Both terms include:

- 6 (1) A security given or delivered with, or as a bonus on
7 account of, a purchase of securities or any other
8 thing constituting part of the subject of the
9 purchase, and having been offered and sold for value;
- 10 (2) A gift of assessable stock involving an offer and
11 sale; and
- 12 (3) A sale or offer of a warrant or right to purchase or
13 subscribe to another security of the same or another
14 issuer and a sale or offer of a security that gives
15 the holder a present or future right or privilege to
16 convert the security into another security of the same
17 or another issuer, including an offer of the other
18 security.

19 "Securities and Exchange Commission" means the United
20 States Securities and Exchange Commission.

21 "Security" means a note; stock; treasury stock; security
22 future; bond; debenture; evidence of indebtedness; certificate

1 of interest or participation in a profit-sharing agreement;
2 collateral trust certificate; preorganization certificate or
3 subscription; transferable share; investment contract; voting
4 trust certificate; certificate of deposit for a security;
5 fractional undivided interest in oil, gas, or other mineral
6 rights; put, call, straddle, option, or privilege on a security,
7 certificate of deposit, or group or index of securities,
8 including an interest therein or based on the value thereof;
9 put, call, straddle, option, or privilege entered into on a
10 national securities exchange relating to foreign currency; in
11 general, an interest or instrument commonly known as a
12 "security"; or a certificate of interest or participation in,
13 temporary or interim certificate for, receipt for, guarantee of,
14 or warrant or right to subscribe to or purchase, any of the
15 foregoing. The term:

- 16 (1) Includes both a certificated and an uncertificated
17 security;
- 18 (2) Does not include an insurance or endowment policy or
19 annuity contract under which an insurance company
20 promises to pay a fixed sum of money either in a lump
21 sum or periodically for life or other specified
22 period;



- 1 (3) Does not include a variable annuity contract;
- 2 (4) Does not include an interest in a contributory or
- 3 noncontributory pension or welfare plan subject to the
- 4 Employee Retirement Income Security Act of 1974;
- 5 (5) Includes any contractual or quasi-contractual
- 6 arrangement pursuant to which:
 - 7 (A) A person furnishes value, other than services, to
 - 8 an offeror;
 - 9 (B) A portion of that value is subjected to the risk
 - 10 of the offeror's enterprise;
 - 11 (C) The furnishing of that value is induced by the
 - 12 representations of an offeror which gives rise to
 - 13 a reasonable understanding that a valuable
 - 14 benefit will accrue to the offeree as a result of
 - 15 the operation of the enterprise; and
 - 16 (D) The offeree does not intend to be actively
 - 17 involved in the management of the enterprise in a
 - 18 meaningful way;
 - 19 and
- 20 (6) Includes as an "investment contract", among other
- 21 contracts, an interest in a limited partnership and a



1 limited liability company and an investment in a
2 viatical settlement or similar agreement.

3 "Self-regulatory organization" means a national securities
4 exchange registered under the Securities Exchange Act of 1934, a
5 national securities association of broker-dealers registered
6 under the Securities Exchange Act of 1934, a clearing agency
7 registered under the Securities Exchange Act of 1934, or the
8 Municipal Securities Rulemaking Board established under the
9 Securities Exchange Act of 1934.

10 "Sign" means, with present intent to authenticate or adopt
11 a record:

- 12 (1) To execute or adopt a tangible symbol; or
13 (2) To attach or logically associate with the record an
14 electronic symbol, sound, or process.

15 "State" means a state of the United States, the District of
16 Columbia, Puerto Rico, the United States Virgin Islands, or any
17 territory or insular possession subject to the jurisdiction of
18 the United States.

19 § -103 **References to federal statutes.** "Securities Act
20 of 1933" (15 U.S.C. 77a et seq.), "Securities Exchange Act of
21 1934" (15 U.S.C. 78a et seq.), "Public Utility Holding Company
22 Act of 1935" (15 U.S.C. 79 et seq.), "Investment Company Act of



1 1940" (15 U.S.C. 80a-1 et seq.), "Investment Advisers Act of
2 1940" (15 U.S.C. 80b-1 et seq.), "Employee Retirement Income
3 Security Act of 1974" (29 U.S.C. 1001 et seq.), "National
4 Housing Act" (12 U.S.C. 1701 et seq.), "Commodity Exchange Act"
5 (7 U.S.C. 1 et seq.), "Internal Revenue Code" (26 U.S.C. 1 et
6 seq.), "Securities Investor Protection Act of 1970" (15 U.S.C.
7 78aaa et seq.), "Securities Litigation Uniform Standards Act of
8 1998" (112 Stat. 3227), "Small Business Investment Act of 1958"
9 (15 U.S.C. 661 et seq.), "National Securities Markets
10 Improvement Act of 1996" (Pub. L. No. 104-290, 110 Stat. 3416
11 (1996)), and "Electronic Signatures in Global and National
12 Commerce Act" (15 U.S.C. 7001 et seq.) mean those statutes and
13 the rules and regulations adopted under those statutes, as in
14 effect on the date of enactment of this chapter, or as later
15 amended.

16 § **-104 References to federal agencies.** A reference in
17 this chapter to an agency or department of the United States is
18 also a reference to a successor agency or department.

19 § **-105 Electronic records and signatures.** This chapter
20 modifies, limits, and supersedes the federal Electronic
21 Signatures in Global and National Commerce Act, but does not
22 modify, limit, or supersede section 101(c) of that act (15



1 U.S.C. 7001(c)) or authorize electronic delivery of any of the
 2 notices described in section 103(b) of that act (15 U.S.C.
 3 7003(b)). This chapter authorizes the filing of records and
 4 signatures, when specified by provisions of this chapter or by a
 5 rule adopted or order issued under this chapter, in a manner
 6 consistent with section 104(a) of that act (15 U.S.C. 7004(a)).

7 **PART II. EXEMPTIONS FROM REGISTRATION OF SECURITIES**

8 § -201 **Exempt securities.** The following securities are
 9 exempt from the requirements of sections -301 to -305 and
 10 -504:

- 11 (1) A security, including a revenue obligation or a
 12 separate security as defined in Rule 131 (17 C.F.R.
 13 230.131) adopted under the Securities Act of 1933,
 14 issued, insured, or guaranteed by the United States;
 15 by a state; by a political subdivision of a state; by
 16 a public authority, agency, or instrumentality of one
 17 or more states; by a political subdivision of more
 18 than one state; or by a person controlled or
 19 supervised by and acting as an instrumentality of the
 20 United States under authority granted by Congress; or
 21 a certificate of deposit for any of the foregoing;



1 (2) A security issued, insured, or guaranteed by a foreign
2 government with which the United States maintains
3 diplomatic relations, or any of its political
4 subdivisions, if the security is recognized as a valid
5 obligation by the issuer, insurer, or guarantor;

6 (3) A security issued by and representing or that will
7 represent an interest in or a direct obligation of, or
8 be guaranteed by:

9 (A) An international banking institution;

10 (B) A bank organized under the law of the United
11 States, or any bank, savings institution or trust
12 company organized and supervised under the laws
13 of any state or territory or any investment
14 certificate issued by a financial services loan
15 company duly licensed under the financial
16 services loan law of the State; any savings and
17 loan association or any building and loan or
18 similar association organized under the laws of
19 any state or territory and authorized to do
20 business in this State; any banking institution
21 organized under the laws of the United States; a
22 member bank of the Federal Reserve System; or a



1 depository institution a substantial portion of
2 its business consists or will consist of
3 receiving deposits or share accounts that are
4 insured to the maximum amount authorized by
5 statute by the Federal Deposit Insurance
6 Corporation, the National Credit Union Share
7 Insurance Fund, or a successor authorized by
8 federal law or exercising fiduciary powers that
9 are similar to those permitted for national banks
10 under the authority of the Comptroller of
11 Currency pursuant to section 1 of Public Law
12 87-722 (12 U.S.C. 92a); or

13 (C) Any other depository institution, unless by rule
14 or order, the commissioner proceeds under section
15 -204;

16 (4) A security issued by and representing an interest in,
17 or a debt of, or insured or guaranteed by, an
18 insurance company authorized to do business in this
19 State;

20 (5) A security issued or guaranteed by a railroad, other
21 common carrier, public utility, or public utility
22 holding company that is:



- 1 (A) Regulated in respect to its rates and charges by
- 2 the United States or a state;
- 3 (B) Regulated in respect to the issuance or guarantee
- 4 of the security by the United States, a state,
- 5 Canada, or a Canadian province or territory; or
- 6 (C) A public utility holding company registered under
- 7 the Public Utility Holding Company Act of 1935 or
- 8 a subsidiary of a registered holding company
- 9 within the meaning of that act;
- 10 (6) A federal covered security specified in section
- 11 18(b)(1) of the Securities Act of 1933 (15 U.S.C.
- 12 77r(b)(1)) or by rule adopted under that provision, or
- 13 a security listed or approved for listing on any
- 14 exchange registered or exempted under the Securities
- 15 Exchange Act of 1934 or on another securities market
- 16 specified by rule under this chapter (including any
- 17 security of the same issuer which is of senior or
- 18 substantially equal rank, any security called for by
- 19 subscription rights or warrants so listed or approved,
- 20 or any warrant or right to purchase or subscribe for
- 21 any of the foregoing); a put or a call option
- 22 contract; a warrant; a subscription right on or with



1 respect to such securities; an option or similar
2 derivative security on a security or an index of
3 securities or foreign currencies issued by a clearing
4 agency registered under the Securities Exchange Act of
5 1934 and listed or designated for trading on a
6 national securities exchange, a facility of a national
7 securities exchange, or a facility of a national
8 securities association registered under the Securities
9 Exchange Act of 1934 or an offer or sale, of the
10 underlying security in connection with the offer,
11 sale, or exercise of an option or other security that
12 was exempt when the option or other security was
13 written or issued; or an option or a derivative
14 security designated by the Securities and Exchange
15 Commission under section 9(b) of the Securities
16 Exchange Act of 1934 (15 U.S.C. 78i(b));

- 17 (7) A security issued by a person organized and operated
18 exclusively for religious, educational, benevolent,
19 fraternal, charitable, social, athletic, or
20 reformatory purposes, or as a chamber of commerce, and
21 not for pecuniary profit, where no part of the net
22 earnings inures to the benefit of a private

1 stockholder or other person, or a security of a
2 company that is excluded from the definition of an
3 investment company under section 3(c)(10)(B) of the
4 Investment Company Act of 1940 (15 U.S.C.
5 80a-3(c)(10)(B)); except that with respect to the
6 offer or sale of a note, bond, debenture, or other
7 evidence of indebtedness issued by such a person, a
8 rule may be adopted under this chapter limiting the
9 availability of this exemption by classifying
10 securities, persons, and transactions, imposing
11 different requirements for different classes,
12 specifying with respect to subparagraph (B), the scope
13 of the exemption and the grounds for denial or
14 suspension, and requiring an issuer to:

15 (A) File a notice specifying the material terms of
16 the proposed offer or sale and copies of any
17 proposed sales and advertising literature to be
18 used and provide that the exemption becomes
19 effective if the commissioner does not disallow
20 the exemption within the period established by
21 the rule;



1 (B) File a request for exemption authorization for
2 which a rule under this chapter may specify the
3 scope of the exemption, the requirement of an
4 offering statement, the filing of sales and
5 advertising literature, the filing of consent to
6 service of process under section -610, and
7 grounds for denial or suspension of the
8 exemption; or

9 (C) Register under section -303;

10 (8) A member's or owner's interest in, or a retention
11 certificate or like security given in lieu of a cash
12 patronage dividend issued by, a cooperative organized
13 and operated as a nonprofit membership cooperative
14 under the cooperative laws of a state, but not a
15 member's or owner's interest, retention certificate,
16 or like security sold to persons other than bona fide
17 members of the cooperative; except any cooperative
18 association membership stock, membership certificates
19 or shares, or membership capital, pursuant to section
20 421C-36 and chapters 421 and 421C; and

21 (9) An equipment trust certificate with respect to
22 equipment leased or conditionally sold to a person, if



1 any security issued by the person would be exempt
2 under this section or would be a federal covered
3 security under section 18(b)(1) of the Securities Act
4 of 1933 (15 U.S.C. 77r(b)(1)); or

5 (10) Any security for which a registration statement has
6 been filed under the Securities Act of 1933; provided
7 that no sale shall be made until the registration
8 statement has become effective.

9 § -202 **Exempt transactions.** (a) The following
10 transactions are exempt from the requirements of sections
11 -301 to -305 and -504:

12 (1) An isolated nonissuer transaction, whether or not
13 effected by or through a broker-dealer;

14 (2) A nonissuer transaction by or through a broker-dealer
15 registered, or exempt from registration under this
16 chapter, and a resale transaction by a sponsor of a
17 unit investment trust registered under the Investment
18 Company Act of 1940, in a security of a class that has
19 been outstanding in the hands of the public for at
20 least ninety days, if, at the date of the transaction:

21 (A) The issuer of the security is engaged in
22 business, the issuer is not in the organizational



1 stage or in bankruptcy or receivership, and the
2 issuer is not a blank check, blind pool, or shell
3 company that has no specific business plan or
4 purpose or has indicated that its primary
5 business plan is to engage in a merger or
6 combination of the business with, or an
7 acquisition of, an unidentified person;

8 (B) The security is sold at a price reasonably
9 related to its current market price;

10 (C) The security does not constitute the whole or
11 part of an unsold allotment to, or a subscription
12 or participation by, the broker-dealer as an
13 underwriter of the security or a redistribution;

14 (D) A nationally recognized securities manual or its
15 electronic equivalent designated by rule adopted
16 or order issued under this chapter or a record
17 filed with the Securities and Exchange Commission
18 that is publicly available and contains:

19 (i) A description of the business and operations
20 of the issuer;

1 securities exchange registered under section
2 6 of the Securities Exchange Act of 1934 or
3 designated for trading on the National
4 Association of Securities Dealers' Automated
5 Quotation System;

6 (ii) The issuer of the security is a unit
7 investment trust registered under the
8 Investment Company Act of 1940;

9 (iii) The issuer of the security, including its
10 predecessors, has been engaged in continuous
11 business for at least three years; or

12 (iv) The issuer of the security has total assets
13 of at least \$2,000,000 based on an audited
14 balance sheet as of a date within eighteen
15 months before the date of the transaction
16 or, in the case of a reorganization or
17 merger when the parties to the
18 reorganization or merger each had such an
19 audited balance sheet, a pro forma balance
20 sheet for the combined organization;

21 (3) A nonissuer transaction by or through a broker-dealer
22 registered or exempt from registration under this



1 chapter in a security of a foreign issuer that is a
2 margin security defined in regulations or rules
3 adopted by the Board of Governors of the Federal
4 Reserve System;

5 (4) A nonissuer transaction by or through a broker-dealer
6 registered or exempt from registration under this
7 chapter in an outstanding security if the guarantor of
8 the security files reports with the Securities and
9 Exchange Commission under the reporting requirements
10 of section 13 or 15(d) of the Securities Exchange Act
11 of 1934 (15 U.S.C. 78m or 78o(d));

12 (5) A nonissuer transaction by or through a broker-dealer
13 registered or exempt from registration under this
14 chapter in a security that:

15 (A) Is rated at the time of the transaction by a
16 nationally recognized statistical rating
17 organization in one of its four highest rating
18 categories; or

19 (B) Has a fixed maturity or a fixed interest or
20 dividend, if:

21 (i) A default has not occurred during the
22 current fiscal year or within the three



1 previous fiscal years or during the
2 existence of the issuer and any predecessor
3 if less than three fiscal years, in the
4 payment of principal, interest, or dividends
5 on the security; and

6 (ii) The issuer is engaged in business, is not in
7 the organizational stage or in bankruptcy or
8 receivership, and is not and has not been
9 within the previous twelve months a blank
10 check, blind pool, or shell company that has
11 no specific business plan or purpose or has
12 indicated that its primary business plan is
13 to engage in a merger or combination of the
14 business with, or an acquisition of, an
15 unidentified person;

16 (6) A nonissuer transaction by or through a broker-dealer
17 registered or exempt from registration under this
18 chapter effecting an unsolicited order or offer to
19 purchase;

20 (7) A nonissuer transaction executed by a bona fide
21 pledgee without the purpose of evading this chapter;

- 1 (8) A nonissuer transaction by a federal covered
2 investment adviser with investments under management
3 in excess of \$100,000,000, acting in the exercise of
4 discretionary authority in a signed record for the
5 account of others;
- 6 (9) A transaction between the issuer or other person on
7 whose behalf the offering is made and an underwriter,
8 or among underwriters;
- 9 (10) A transaction in a note, bond, debenture, or other
10 evidence of indebtedness secured by a mortgage or
11 other security agreement if:
 - 12 (A) The note, bond, debenture, or other evidence of
13 indebtedness is offered and sold with the
14 mortgage or other security agreement as a unit;
 - 15 (B) A general solicitation or general advertisement
16 of the transaction is not made; and
 - 17 (C) A commission or other remuneration is not paid or
18 given, directly or indirectly, to a person not
19 registered under this chapter as a broker-dealer
20 or as an agent;
- 21 (11) A transaction by an executor, administrator of an
22 estate, personal representative, sheriff, marshal,



1 receiver, trustee in bankruptcy, guardian, or
2 conservator;

3 (12) A sale or offer to sell to:

4 (A) An institutional investor;

5 (B) A federal covered investment adviser; or

6 (C) Any other person exempted by rule adopted or
7 order issued under this chapter;

8 (13) Any transaction pursuant to a sale or an offer to sell
9 securities of an issuer, if the transaction is part of
10 an issue in which:

11 (A) There are no more than twenty-five purchasers
12 (other than those designated in paragraph (12)),
13 wherever located, during any twelve consecutive
14 months;

15 (B) The issuer reasonably believes that all
16 purchasers (other than those designated in
17 paragraph (12)), wherever located, are purchasing
18 for investment purposes and not with the view to,
19 or for sales in connection with, a distribution
20 of the security. The purchase shall be presumed
21 to be made with a view to distribute and not to
22 invest if any resale of a security sold in



1 reliance on this exemption is within twelve
2 months of sale, except a resale pursuant to a
3 registration statement effective under section
4 -301, or to an accredited investor pursuant to
5 an exemption available under this chapter;

6 (C) No commission, discount, or other remuneration is
7 paid or given, directly or indirectly, to a
8 person, other than a broker-dealer or agent
9 registered under this chapter, for soliciting a
10 prospective purchaser in this State; and

11 (D) The securities of the issuer are not offered or
12 sold by general solicitation or any general
13 advertisement or other advertising medium;

14 (14) A transaction under an offer to existing security
15 holders of the issuer, including persons that at the
16 date of the transaction are holders of convertible
17 securities, options, or warrants, if a commission or
18 other remuneration, other than a standby commission,
19 is not paid or given, directly or indirectly, for
20 soliciting a security holder in this State;

- 1 (15) (A) A transaction involving the offer or sale of a
2 security by an issuer to an accredited investor
3 that meets the following requirements:
- 4 (i) The issuer reasonably believes that the sale
5 is to persons who are accredited investors;
 - 6 (ii) The issuer is not in the development stage,
7 without specific business plan or purpose;
 - 8 (iii) The issuer has not indicated that the
9 issuer's business plan is to engage in a
10 merger or acquisition with an unidentified
11 company or companies, or other entity or
12 person; and
 - 13 (iv) The issuer reasonably believes that all
14 purchasers are purchasing for investment
15 purposes and not with the view to, or for
16 sales in connection with, a distribution of
17 the security. The purchase shall be
18 presumed to be made with a view to
19 distribute and not to invest if any resale
20 of a security sold in reliance on this
21 exemption is within twelve months of sale,
22 except a resale pursuant to a registration



1 statement effective under section -301,
2 or to an accredited investor pursuant to an
3 exemption available under this chapter;

4 (B) The exemption under this paragraph shall not
5 apply to an issuer if the issuer; any affiliated
6 issuer; any beneficial owner of ten per cent or
7 more of any class of the issuer's equity
8 securities; any issuer's predecessor, director,
9 officer, general partner, or promoter presently
10 connected in any capacity with the issuer; and
11 any underwriter or partner, director, or officer
12 of the underwriter of the securities to be
13 offered:

14 (i) Within the last five years has filed a
15 registration statement that is the subject
16 of a currently effective registration stop
17 order entered by any state securities
18 administrator or the Securities and Exchange
19 Commission;

20 (ii) Within the last five years has been
21 convicted of any criminal offense in
22 connection with the offer, purchase, or sale



1 of any security, or involving fraud or
2 deceit;

3 (iii) Is currently subject to any state or federal
4 administrative enforcement order or judgment
5 entered within the last five years, finding
6 fraud or deceit in connection with the
7 purchase or sale of any security; or

8 (iv) Is currently subject to any order, judgment,
9 or decree of any court of competent
10 jurisdiction, entered within the last five
11 years, temporarily, preliminarily, or
12 permanently restraining or enjoining such
13 party from engaging in or continuing to
14 engage in any conduct or practice involving
15 fraud or deceit in connection with the
16 purchase or sale of any security;

17 (C) Subparagraph (B) shall not apply if:

18 (i) The party subject to the disqualification is
19 licensed or registered to conduct
20 securities-related business in the state in
21 which the order, judgment, or decree

1 creating the disqualification was entered
2 against such party;

3 (ii) Before the first offer under this exemption,
4 the commissioner, or the court or regulatory
5 authority that entered the order, judgment,
6 or decree waives the disqualifications; or

7 (iii) The issuer establishes that the issuer did
8 not know and in the exercise of reasonable
9 care, based on a factual inquiry, could not
10 have known that a disqualification existed
11 under this paragraph;

12 and

13 (D) An issuer claiming the exemption under this
14 paragraph, within fifteen days after the first
15 sale in this State, shall file with the
16 commissioner a notice of transaction, a consent
17 to service of process, a copy of the offering
18 circular or similar document provided to the
19 accredited investor and a \$200 filing fee.

20 For the purposes of this paragraph, "accredited investor"
21 shall have the same meaning as provided in Rule 501(a) adopted
22 under the Securities Act of 1933 (17 C.F.R 230.501(a));



1 (16) An offer to sell, but not a sale, of a security not
2 exempt from registration under the Securities Act of
3 1933 if:

4 (A) A registration or offering statement or similar
5 record as required under the Securities Act of
6 1933 has been filed, but is not effective, or the
7 offer is made in compliance with Rule 165 adopted
8 under the Securities Act of 1933 (17 C.F.R.
9 230.165); and

10 (B) A stop order of which the offeror is aware has
11 not been issued against the offeror by the
12 commissioner or the Securities and Exchange
13 Commission, and an audit, inspection, or
14 proceeding that is public and that may culminate
15 in a stop order is not known by the offeror to be
16 pending;

17 (17) An offer to sell, but not a sale, of a security exempt
18 from registration under the Securities Act of 1933 if:

19 (A) A registration statement has been filed under
20 this chapter, but is not effective;

21 (B) A solicitation of interest is provided in a
22 record to offerees in compliance with a rule



1 adopted by the commissioner under this chapter;

2 and

3 (C) A stop order of which the offeror is aware has
4 not been issued by the commissioner under this
5 chapter and an audit, inspection, or proceeding
6 that may culminate in a stop order is not known
7 by the offeror to be pending;

8 (18) A transaction involving the distribution of the
9 securities of an issuer to the security holders of
10 another person in connection with a merger,
11 consolidation, exchange of securities, sale of assets,
12 or other reorganization to which the issuer, or its
13 parent or subsidiary and the other person, or its
14 parent or subsidiary, are parties;

15 (19) A rescission offer, sale, or purchase under section
16 -510;

17 (20) An offer or sale of a security to a person not a
18 resident of this State and not present in this State
19 if the offer or sale does not constitute a violation
20 of the laws of the state or foreign jurisdiction in
21 which the offeree or purchaser is present and is not

1 part of an unlawful plan or scheme to evade this
2 chapter;

3 (21) Employees' stock purchase, savings, option, profit-
4 sharing, pension, or similar employees' benefit plan,
5 including any securities, plan interests, and
6 guarantees issued under a compensatory benefit plan or
7 compensation contract, contained in a record,
8 established by the issuer, its parents, its
9 majority-owned subsidiaries, or the majority-owned
10 subsidiaries of the issuer's parent for the
11 participation of their employees, including offers or
12 sales of such securities to:

13 (A) Directors; general partners; trustees, if the
14 issuer is a business trust; officers;
15 consultants; and advisors;

16 (B) Family members who acquire the securities from
17 those persons through gifts or domestic relations
18 orders;

19 (C) Former employees, directors, general partners,
20 trustees, officers, consultants, and advisors if
21 those individuals were employed by or providing



1 services to the issuer when the securities were
2 offered; and

3 (D) Insurance agents who are exclusive insurance
4 agents of the issuer, or the issuer's
5 subsidiaries or parents, or who derive more than
6 fifty per cent of their annual income from those
7 organizations;

8 (22) A transaction involving:

9 (A) A stock dividend or equivalent equity
10 distribution, whether or not the corporation or
11 other business organization distributing the
12 dividend or equivalent equity distribution is the
13 issuer, if nothing of value is given by
14 stockholders or other equity holders for the
15 dividend or equivalent equity distribution other
16 than the surrender of a right to a cash or
17 property dividend if each stockholder or other
18 equity holder may elect to take the dividend or
19 equivalent equity distribution in cash, property,
20 or stock;

21 (B) An act incident to a judicially approved
22 reorganization in which a security is issued in



1 exchange for one or more outstanding securities,
2 claims, or property interests, or partly in such
3 exchange and partly for cash; or

4 (C) The solicitation of tenders of securities by an
5 offeror in a tender offer in compliance with Rule
6 162 adopted under the Securities Act of 1933 (17
7 C.F.R. 230.162);

8 (23) A nonissuer transaction in an outstanding security by
9 or through a broker-dealer registered or exempt from
10 registration under this chapter, if the issuer is a
11 reporting issuer in a foreign jurisdiction designated
12 by this paragraph or by rule adopted or order issued
13 under this chapter; has been subject to continuous
14 reporting requirements in the foreign jurisdiction for
15 not less than one hundred eighty days before the
16 transaction; and the security is listed on the foreign
17 jurisdiction's securities exchange that has been
18 designated by this paragraph or by rule adopted or
19 order issued under this chapter, or is a security of
20 the same issuer that is of senior or substantially
21 equal rank to the listed security or is a warrant or
22 right to purchase or subscribe to any of the



1 foregoing. For purposes of this paragraph, Canada,
2 together with its provinces and territories, is a
3 designated foreign jurisdiction and the Toronto Stock
4 Exchange, Inc., is a designated securities exchange.
5 After an administrative hearing in accordance with
6 chapter 91, the commissioner, by rule adopted or order
7 issued under this chapter, may revoke the designation
8 of a securities exchange under this paragraph, if the
9 commissioner finds that revocation is necessary or
10 appropriate in the public interest and for the
11 protection of investors;

12 (24) Any offer or sale by or through a real estate broker
13 or real estate salesperson licensed under the laws of
14 this State, of a security issued on or after
15 July 1, 1961, by a corporation organized under the
16 laws of this State, the holder of which is entitled
17 solely by reason of the holder's ownership thereof, to
18 occupy for dwelling purposes a house, or an apartment
19 in a building, owned or leased by such corporation;
20 provided that the issuer of the security shall apply
21 for the exemption to the commissioner on such form and
22 containing such information as the commissioner may

1 prescribe. If the commissioner finds that the
2 business applicant's proposed plan and the proposed
3 issuance of securities are fair, just, and equitable,
4 that the applicant intends to transact its business
5 fairly and honestly, and that the securities that the
6 applicant proposes to issue and the method to be used
7 by the applicant in issuing or disposing of the
8 securities will not, in the opinion of the
9 commissioner, work a fraud upon the purchaser thereof,
10 the commissioner shall issue to the applicant a permit
11 authorizing the applicant to issue and dispose of the
12 securities in this State in the manner provided herein
13 and in such amounts and for such consideration as the
14 commissioner may provide in the permit. Otherwise,
15 the commissioner shall deny the application and refuse
16 the permit and notify the applicant of the decision in
17 writing, subject to appeal as provided in section
18 -609. In any permit issued under this paragraph,
19 the commissioner may require the deposit in escrow or
20 impoundment of any or all securities, the proceeds
21 from the sale thereof, approval of advertising
22 material, and any of the conditions as set forth in



1 transaction specified in the rules and regulations
2 thereunder.

3 (b) With respect to the exemption under paragraph (a)13:

4 (1) The exemption shall not apply to an issuer if the
5 issuer; any affiliated issuer; any beneficial owner of
6 ten per cent or more of any class of the issuer's
7 equity securities; any issuer's predecessor, director,
8 officer, general partner, or promoter presently
9 connected in any capacity with the issuer; and any
10 underwriter or partner, director, or officer of the
11 underwriter of the securities to be offered:

12 (A) Within the last five years has filed a
13 registration statement that is the subject of a
14 currently effective registration stop order
15 entered by any state securities administrator or
16 the United States Securities and Exchange
17 Commission;

18 (B) Within the last five years has been convicted of
19 any criminal offense in connection with the
20 offer, purchase, or sale of any security, or
21 involving fraud or deceit;



1 (C) Is currently subject to any state or federal
2 administrative enforcement order or judgment
3 entered within the last five years, finding fraud
4 or deceit in connection with the purchase or sale
5 of any security; or

6 (D) Is currently subject to any order, judgment, or
7 decree of any court of competent jurisdiction,
8 entered within the last five years, temporarily,
9 preliminarily, or permanently restraining or
10 enjoining such party from engaging in or
11 continuing to engage in any conduct or practice
12 involving fraud or deceit in connection with the
13 purchase or sale of any security;

14 and

15 (2) Paragraph (1) shall not apply if:

16 (A) The party subject to the disqualification is
17 licensed or registered to conduct securities-
18 related business in the state in which the order,
19 judgment, or decree creating the disqualification
20 was entered against such party;

21 (B) Before the first offer under this exemption, the
22 commissioner, or the court or regulatory

1 authority that entered the order, judgment, or
2 decree waives the disqualifications; or
3 (C) The issuer establishes that the issuer did not
4 know and in the exercise of reasonable care,
5 based on a factual inquiry, could not have known
6 that a disqualification existed under this
7 paragraph.

8 § -203 **Additional exemptions and waivers.** A rule
9 adopted or order issued under this chapter may exempt a
10 security, transaction, or offer; a rule under this chapter may
11 exempt a class of securities, transactions, or offers from any
12 or all of the requirements of sections -301 to -305 and
13 -504; and an order under this chapter may waive, in whole or
14 in part, any or all of the conditions for an exemption or offer
15 under sections -201 and -202.

16 § -204 **Denial, suspension, revocation, condition, or**
17 **limitation of exemptions.** Except with respect to a federal
18 covered security or a transaction involving a federal covered
19 security, an order under this chapter may deny, suspend
20 application of, condition, limit, or revoke an exemption created
21 under section -201(3)(C), -201(7), -201(8), or -202,
22 or an exemption or waiver created under section -203 with



1 Securities Act of 1933 and a consent to service
2 of process complying with section -610 signed
3 by the issuer; or

4 (B) After the initial offer of the federal covered
5 security in this State, all records that are part
6 of an amendment to a federal registration
7 statement filed with the Securities and Exchange
8 Commission under the Securities Act of 1933;

9 and

10 (2) Report. To the extent necessary or appropriate to
11 compute fees, the commissioner may by rule or order
12 require a report of the value of the federal covered
13 securities sold or offered to persons present in this
14 State, if the sales data are not included in records
15 filed with the Securities and Exchange Commission, and
16 payment of a fee of \$50.

17 (b) The fee for an initial notice filing for investment
18 company securities shall be \$200 per portfolio or series.

19 (c) A notice filing under subsection (a) is effective for
20 one year commencing on the later of the notice filing or the
21 effectiveness of the offering filed with the Securities and
22 Exchange Commission. On or before expiration, the issuer may



1 renew a notice filing by filing a copy of those records filed by
2 the issuer with the Securities and Exchange Commission that are
3 required by rule or order under this chapter to be filed and by
4 paying a renewal fee of \$50. A previously filed consent to
5 service of process complying with section -610 may be
6 incorporated by reference in a renewal. A renewed notice filing
7 becomes effective upon the expiration of the filing being
8 renewed.

9 (d) With respect to a security that is a federal covered
10 security under section 18(b)(4)(D) of the Securities Act of 1933
11 (15 U.S.C. 77r(b)(4)(D)), a rule adopted under this chapter may
12 require a notice filing by or on behalf of an issuer to include
13 a copy of Form D, including the Appendix, as promulgated by the
14 Securities and Exchange Commission, and a consent to service of
15 process complying with section -610 signed by the issuer not
16 later than fifteen days after the first sale of the federal
17 covered security in this State, and the payment of a fee of
18 \$200.

19 (e) Except with respect to a federal security under
20 section 18(b)(1) of the Securities Act of 1933 (15 U.S.C.
21 77r(b)(1)), if the commissioner finds that there is a failure to
22 comply with a notice or fee requirement of this section, the



1 commissioner may issue a stop order suspending the offer and
2 sale of a federal covered security in this State. If the
3 deficiency is corrected, the stop order is void as of the time
4 of its issuance and no penalty may be imposed by the
5 commissioner.

6 § -303 **Securities registration by qualification.**

7 (a) A security may be registered by qualification under
8 this section.

9 (b) A registration statement under this section shall
10 contain the information or records specified in section -304,
11 a consent to service of process complying with section -610,
12 and, if required by rule adopted or order issued under this
13 chapter, the following information or records:

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



- 1 (2) With respect to each director and officer of the
2 issuer, and other person having a similar status or
3 performing similar functions, the person's name,
4 address, and principal occupation for the previous
5 five years; the amount of securities of the issuer
6 held by the person as of the thirtieth day before the
7 filing of the registration statement; the amount of
8 the securities covered by the registration statement
9 to which the person has indicated an intention to
10 subscribe; and a description of any material interest
11 of the person in any material transaction with the
12 issuer or a significant subsidiary effected within the
13 previous three years or proposed to be effected;
- 14 (3) With respect to persons covered by paragraph (2), the
15 aggregate sum of the remuneration paid to those
16 persons during the previous twelve months and
17 estimated to be paid during the next twelve months,
18 directly or indirectly, by the issuer, and all
19 predecessors, parents, subsidiaries, and affiliates of
20 the issuer;
- 21 (4) With respect to a person owning of record or owning
22 beneficially, if known, ten per cent or more of the

1 outstanding shares of any class of equity security of
2 the issuer, the information specified in paragraph (2)
3 other than the person's occupation;

4 (5) With respect to a promoter, if the issuer was
5 organized within the previous three years, the
6 information or records specified in paragraph (2), any
7 amount paid to the promoter within that period or
8 intended to be paid to the promoter, and the
9 consideration for the payment;

10 (6) With respect to a person on whose behalf any part of
11 the offering is to be made in a nonissuer
12 distribution, the person's name and address; the
13 amount of securities of the issuer held by the person
14 as of the date of the filing of the registration
15 statement; a description of any material interest of
16 the person in any material transaction with the issuer
17 or any significant subsidiary effected within the
18 previous three years or proposed to be effected; and a
19 statement of the reasons for making the offering;

20 (7) The capitalization and long-term debt, on both a
21 current and pro forma basis, of the issuer and any
22 significant subsidiary, including a description of



1 each security outstanding or being registered or
2 otherwise offered, and a statement of the amount and
3 kind of consideration, whether in the form of cash,
4 physical assets, services, patents, goodwill, or
5 anything else of value, for which the issuer or any
6 subsidiary has issued its securities within the
7 previous two years or is obligated to issue its
8 securities;

9 (8) The kind and amount of securities to be offered; the
10 proposed offering price or the method by which it is
11 to be computed; any variation at which a proportion of
12 the offering is to be made to a person or class of
13 persons other than the underwriters, with a
14 specification of the person or class; the basis on
15 which the offering is to be made if otherwise than for
16 cash; the estimated aggregate underwriting and selling
17 discounts or commissions and finders' fees, including
18 separately cash, securities, contracts, or anything
19 else of value to accrue to the underwriters or finders
20 in connection with the offering or, if the selling
21 discounts or commissions are variable, the basis of
22 determining them and their maximum and minimum



1 amounts; the estimated amounts of other selling
2 expenses, including legal, engineering, and accounting
3 charges; the name and address of each underwriter and
4 each recipient of a finder's fee; a copy of any
5 underwriting or selling group agreement under which
6 the distribution is to be made or the proposed form of
7 any such agreement whose terms have not yet been
8 determined; and a description of the plan of
9 distribution of any securities that are to be offered
10 otherwise than through an underwriter;

- 11 (9) The estimated monetary proceeds to be received by the
12 issuer from the offering; the purposes for which the
13 proceeds are to be used by the issuer; the estimated
14 amount to be used for each purpose; the order or
15 priority in which the proceeds will be used for the
16 purposes stated; the amounts of any funds to be raised
17 from other sources to achieve the purposes stated; the
18 sources of the funds; and, if a part of the proceeds
19 is to be used to acquire property, including goodwill,
20 otherwise than in the ordinary course of business, the
21 names and addresses of the vendors, the purchase
22 price, the names of any persons that have received



1 commissions in connection with the acquisition, and
2 the amounts of the commissions and other expenses in
3 connection with the acquisition, including the cost of
4 borrowing money to finance the acquisition;

5 (10) A description of any stock options or other security
6 options outstanding, or to be created in connection
7 with the offering, and the amount of those options
8 held or to be held by each person required to be named
9 in paragraph (2), (4), (5), (6), or (8) and by any
10 person that holds or will hold ten per cent or more in
11 the aggregate of those options;

12 (11) The dates of, parties to, and general effect concisely
13 stated of each managerial or other material contract
14 made or to be made otherwise than in the ordinary
15 course of business to be performed in whole or in part
16 at or after the filing of the registration statement
17 or that was made within the previous two years, and a
18 copy of the contract;

19 (12) A description of any pending litigation, action, or
20 proceeding to which the issuer is a party and that
21 materially affects its business or assets, and any



1 litigation, action, or proceeding known to be
2 contemplated by governmental authorities;

3 (13) A copy of any prospectus, pamphlet, circular, form
4 letter, advertisement, or other sales literature
5 intended as of the effective date to be used in
6 connection with the offering and any solicitation of
7 interest used in compliance with section -
8 202(17)(B); provided that the prospectus required for
9 registration by qualification under paragraph (13) may
10 be satisfied by the Small Corporate Offerings
11 Registration Form (Form U-7) adopted by the North
12 American Securities Administrators Association;
13 provided further that all of the qualifications in the
14 instructions for use of the form are fulfilled;

15 (14) A specimen or copy of the security being registered,
16 unless the security is uncertificated; a copy of the
17 issuer's articles of incorporation and bylaws or their
18 substantial equivalents, in effect; and a copy of any
19 indenture or other instrument covering the security to
20 be registered;

21 (15) A signed or conformed copy of an opinion of counsel
22 concerning the legality of the security being

1 registered, with an English translation if it is in a
2 language other than English, which states whether the
3 security when sold will be validly issued, fully paid,
4 and nonassessable and, if a debt security, a binding
5 obligation of the issuer;

6 (16) A signed or conformed copy of a consent of any
7 accountant, engineer, appraiser, or other person whose
8 profession gives authority for a statement made by the
9 person, if the person is named as having prepared or
10 certified a report or valuation, other than an
11 official record, that is public, which is used in
12 connection with the registration statement;

13 (17) A balance sheet of the issuer as of a date within four
14 months before the filing of the registration
15 statement; a statement of income and a statement of
16 cash flows for each of the three fiscal years
17 preceding the date of the balance sheet and for any
18 period between the close of the immediately previous
19 fiscal year and the date of the balance sheet, or for
20 the period of the issuer's and any predecessor's
21 existence if less than three years; and, if any part
22 of the proceeds of the offering is to be applied to

1 the purchase of a business, the financial statements
2 that would be required if that business were the
3 registrant; and

4 (18) Any additional information or records required by rule
5 adopted or order issued under this chapter;

6 (c) A registration statement under this section becomes
7 effective forty-five days, or any shorter period provided by
8 rule adopted or order issued under this chapter, after the date
9 the registration statement or the last amendment other than a
10 price amendment is filed, if:

11 (1) A stop order is not in effect and a proceeding is not
12 pending under section -305;

13 (2) The commissioner has not issued an order under section
14 -305 delaying effectiveness; or

15 (3) The applicant or registrant has not requested that
16 effectiveness be delayed.

17 (d) The commissioner may delay effectiveness once for not
18 more than ninety days if the commissioner determines the
19 registration statement is not complete in all material respects
20 and promptly notifies the applicant or registrant of that
21 determination. The commissioner may also delay effectiveness
22 for a further period of not more than thirty days if the



1 commissioner determines that the delay is necessary or
2 appropriate.

3 (e) A rule adopted or order issued under this chapter may
4 require as a condition of registration under this section that a
5 prospectus containing a specified part of the information or
6 record specified in subsection (b) be sent or given to each
7 person to which an offer is made, before or concurrently, with
8 the earliest of:

9 (1) The first offer made in a record to the person
10 otherwise than by means of a public advertisement, by
11 or for the account of the issuer or another person on
12 whose behalf the offering is being made or by an
13 underwriter or broker-dealer that is offering part of
14 an unsold allotment or subscription taken by the
15 person as a participant in the distribution;

16 (2) The confirmation of a sale made by or for the account
17 of the person;

18 (3) Payment pursuant to a sale under paragraph (2); or

19 (4) Delivery of the security pursuant to a sale under
20 paragraph (2).

21 **§ -304 Securities registration filings.** (a) A
22 registration statement may be filed by the issuer, a person on

1 whose behalf the offering is to be made, or a broker-dealer
2 registered under this chapter.

3 (b) A person filing a registration statement shall pay a
4 filing fee of one-tenth of one per cent of the aggregate
5 offering price of the securities to be offered in the State with
6 a minimum fee of \$250 and a maximum fee of \$2,500.

7 (c) A registration statement filed under section -303
8 shall specify:

9 (1) The amount of securities to be offered in this State;

10 (2) The states in which a registration statement or
11 similar record in connection with the offering has
12 been or is to be filed; and

13 (3) Any adverse order, judgment, or decree issued in
14 connection with the offering by a state securities
15 regulator, the Securities and Exchange Commission, or
16 any court.

17 (d) A record filed under this chapter or the predecessor
18 act within five years preceding the filing of a registration
19 statement may be incorporated by reference in the registration
20 statement to the extent that the record is currently accurate.

21 (e) In the case of a nonissuer distribution, information
22 or a record may not be required under subsection (i) or section



1 -303, unless it is known to the person filing the
2 registration statement or to the person on whose behalf the
3 distribution is to be made or unless it can be furnished by
4 those persons without unreasonable effort or expense.

5 (f) A rule adopted or order issued under this chapter may
6 require as a condition of registration that a security issued
7 within the previous five years or to be issued to a promoter for
8 a consideration substantially less than the public offering
9 price or to a person for a consideration other than cash be
10 deposited in escrow; and that the proceeds from the sale of the
11 registered security in this State be impounded until the issuer
12 receives a specified amount from the sale of the security either
13 in this State or elsewhere. The conditions of any escrow or
14 impoundment required under this subsection may be established by
15 rule adopted or order issued under this chapter, but the
16 commissioner may not reject a depository institution solely
17 because of its location in another state.

18 (g) A rule adopted or order issued under this chapter may
19 require as a condition of registration that a security
20 registered under this chapter be sold only on a specified form
21 of subscription or sale contract and that a signed or conformed
22 copy of each contract be filed under this chapter or preserved

1 for a period specified by the rule or order, which may not be
2 longer than five years.

3 (h) Except while a stop order is in effect under section
4 -305, a registration statement is effective for one year
5 after its effective date, or for any longer period designated in
6 an order under this chapter during which the security is being
7 offered or distributed in a nonexempted transaction by or for
8 the account of the issuer or other person on whose behalf the
9 offering is being made or by an underwriter or broker-dealer
10 that is still offering part of an unsold allotment or
11 subscription taken as a participant in the distribution. For
12 the purposes of a nonissuer transaction, all outstanding
13 securities of the same class identified in the registration
14 statement as a security registered under this chapter are
15 considered to be registered while the registration statement is
16 effective. If any securities of the same class are outstanding,
17 a registration statement may not be withdrawn until one year
18 after its effective date. A registration statement may be
19 withdrawn only with the approval of the commissioner.

20 (i) While a registration statement is effective, a rule
21 adopted or order issued under this chapter may require the
22 person that filed the registration statement to file reports,



1 not more often than quarterly, to keep the information or other
2 record in the registration statement reasonably current and to
3 disclose the progress of the offering.

4 (j) A registration statement shall be amended after its
5 effective date if there are material changes in information or
6 documents in the registration statement, or if there is an
7 increase in the aggregate amount of securities offered or sold
8 in this State. The posteffective amendment becomes effective
9 when the commissioner provides written notice that the amendment
10 has been accepted. If a posteffective amendment is made to
11 increase the number of securities specified to be offered or
12 sold, the person filing the amendment shall pay a registration
13 fee based upon the increase in such price calculated in
14 accordance with the rate and fee specified in subsection (b).
15 If a posteffective amendment for registration of additional
16 securities and payment of additional fees is not filed in a
17 timely manner, there shall be no penalty assessed if the
18 amendment is filed and the additional registration fee is paid
19 within one year after the date the additional securities are
20 sold in this State.

21 § -305 Denial, suspension, and revocation of securities
22 registration. (a) The commissioner may issue a stop order

1 denying effectiveness to, or suspending or revoking the
2 effectiveness of, a registration statement if the commissioner
3 finds that the order is in the public interest and that:

4 (1) The registration statement as of its effective date or
5 before the effective date in the case of an order
6 denying effectiveness, an amendment under section
7 -304(j) as of its effective date, or a report under
8 section -304(i), is incomplete in a material
9 respect or contains a statement that, in the light of
10 the circumstances under which it was made, was false
11 or misleading with respect to a material fact;

12 (2) This chapter, or a rule adopted or order issued under
13 this chapter, or a condition imposed under this
14 chapter has been wilfully violated in connection with
15 the offering by the person filing the registration
16 statement; by the issuer, a partner, officer, or
17 director of the issuer or a person having a similar
18 status or performing a similar function; by a promoter
19 of the issuer; or by a person directly or indirectly
20 controlling or controlled by the issuer, but only if
21 the person filing the registration statement is



1 directly or indirectly controlled by or acting for the
2 issuer, by an underwriter;

3 (3) The security registered or sought to be registered is
4 the subject of a permanent or temporary injunction of
5 a court of competent jurisdiction or an administrative
6 stop order or similar order issued under any federal,
7 foreign, or state law other than this chapter
8 applicable to the offering; provided that the
9 commissioner may not institute a proceeding against an
10 effective registration statement under this paragraph:

11 (A) More than one year after the date of the order or
12 injunction on which it is based; or

13 (B) On the basis of an order or injunction issued
14 under the securities act of another state unless
15 the order or injunction was based on conduct that
16 would constitute, as of the date of the order, a
17 ground for a stop order under this section;

18 (4) The issuer's enterprise or method of business includes
19 or would include activities that are unlawful where
20 performed;



1 (5) The applicant or registrant has not paid the filing
2 fee; provided that the commissioner shall void the
3 order if the deficiency is corrected; or

4 (6) The offering:

5 (A) Will work or tend to work a fraud upon
6 purchasers;

7 (B) Has been or would be made with unreasonable
8 amounts of underwriters' and sellers' discounts,
9 commissions, or other compensation, or promoters'
10 profits or participations, or unreasonable
11 amounts or kinds of options; or

12 (C) Is being made on terms that are unfair, unjust,
13 or inequitable.

14 (b) The commissioner may not institute a stop order
15 proceeding against an effective registration statement on the
16 basis of conduct or a transaction known to the commissioner when
17 the registration statement became effective unless the
18 proceeding is instituted within thirty days after the
19 registration statement became effective.

20 (c) The commissioner may summarily revoke, deny, postpone,
21 or suspend the effectiveness of a registration statement pending
22 final determination of an administrative proceeding. Upon the



1 issuance of the order, the commissioner shall promptly notify
2 each person specified in subsection (d) that the order has been
3 issued, the reasons for the revocation, denial, postponement, or
4 suspension, and that within fifteen days after the receipt of a
5 request in a record from the person, the matter will be
6 scheduled for a hearing. If a hearing is not requested and none
7 is ordered by the commissioner within thirty days after the date
8 of service of the order, the order becomes final. If a hearing
9 is requested or ordered, the commissioner, after notice of and
10 opportunity for hearing for each person subject to the order,
11 may modify or vacate the order or extend the order until final
12 determination. During the pendency of any hearing requested
13 under this subsection, the order shall remain in effect unless
14 vacated or modified by the commissioner; provided that any
15 penalty shall not take effect until the final order is issued.

16 (d) A stop order shall not be issued under this section
17 without:

18 (1) Appropriate notice to the applicant or registrant, the
19 issuer, and the person on whose behalf the securities
20 are to be or have been offered;

21 (2) An opportunity for hearing; and

1 (3) Findings of fact and conclusions of law in a record in
2 accordance with chapter 91.

3 (e) The commissioner may modify or vacate a stop order
4 issued under this section if the commissioner finds that the
5 conditions that caused its issuance have changed or that it is
6 necessary or appropriate in the public interest or for the
7 protection of investors. The modification or vacation shall not
8 be subject to a hearing or chapter 91.

9 § -306 **Waiver and modification.** The commissioner, in
10 the commissioner's sole discretion, may waive or modify, in
11 whole or in part, any or all of the requirements of sections
12 -302 and -303(b) or the requirement of any information or
13 record in a registration statement or in a periodic report filed
14 pursuant to section -304(i).

15 **PART IV. BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS,**
16 **INVESTMENT ADVISER REPRESENTATIVES, AND**
17 **FEDERAL COVERED INVESTMENT ADVISERS**

18 § -401 **Broker-dealer registration requirement and**
19 **exemptions.** (a) It is unlawful for a person to transact
20 business in this State as a broker-dealer unless the person is
21 registered under this chapter as a broker-dealer or is exempt

1 from registration as a broker-dealer under subsection (b) or
2 (d).

3 (b) The following persons are exempt from the registration
4 requirement of subsection (a):

5 (1) A broker-dealer without a place of business in this
6 State if its only transactions effected in this State
7 are with:

8 (A) The issuer of the securities involved in the
9 transactions;

10 (B) A broker-dealer registered as a broker-dealer
11 under this chapter or not required to be
12 registered as a broker-dealer under this chapter;

13 (C) An institutional investor;

14 (D) A nonaffiliated federal covered investment
15 adviser with investments under management in
16 excess of \$100,000,000 acting for the account of
17 others pursuant to discretionary authority in a
18 signed record;

19 (E) A bona fide preexisting customer whose principal
20 place of residence is not in this State and the
21 person is registered as a broker-dealer under the
22 Securities Exchange Act of 1934, or not required



1 to be registered under the Securities Exchange
2 Act of 1934, and is registered under the
3 securities act of the state in which the customer
4 maintains a principal place of residence;

5 (F) A bona fide preexisting customer whose principal
6 place of residence is in this State but was not
7 present in this State when the customer
8 relationship was established, if:

9 (i) The broker-dealer is registered under the
10 Securities Exchange Act of 1934, or not
11 required to be registered under the
12 Securities Exchange Act of 1934 and is
13 registered under the securities laws of the
14 state in which the customer relationship was
15 established and where the customer had
16 maintained a principal place of residence;
17 and

18 (ii) Within forty-five days after the customer's
19 first transaction in this State, the person
20 files an application for registration as a
21 broker-dealer in this State and a further
22 transaction is not effected more than the



1 earlier of seventy-five days after the date
2 on which the application is filed, or the
3 date on which the commissioner notifies the
4 person that the commissioner has denied the
5 application for registration or has stayed
6 the pendency of the application for good
7 cause;

8 (G) Not more than three customers in this State
9 during the previous twelve months, in addition to
10 those customers specified in subparagraphs (A) to
11 (F) and (H), if the broker-dealer is registered
12 under the Securities Exchange Act of 1934, or not
13 required to be registered under the Securities
14 Exchange Act of 1934, and is registered under the
15 securities act of the state in which the
16 broker-dealer has its principal place of
17 business; or

18 (H) Any other person exempted by rule adopted or
19 order issued under this chapter;

20 and

21 (2) A person that deals solely in United States government
22 securities and is supervised as a dealer in government

1 securities by the Board of Governors of the Federal
2 Reserve System, the Comptroller of the Currency, the
3 Federal Deposit Insurance Corporation, or the Office
4 of Thrift Supervision.

5 (c) It is unlawful for a broker-dealer, or for an issuer
6 engaged in offering, offering to purchase, purchasing, or
7 selling securities in this State, directly or indirectly, to
8 employ or associate with an individual to engage in an activity
9 related to securities transactions in this State if the
10 registration of the individual is suspended or revoked or the
11 individual is barred from employment or association with a
12 broker-dealer, an issuer, an investment adviser, or a federal
13 covered investment adviser by an order of the commissioner under
14 this chapter, the Securities and Exchange Commission, or a
15 self-regulatory organization. A broker-dealer or issuer does
16 not violate this subsection if the broker-dealer or issuer did
17 not know and in the exercise of reasonable care could not have
18 known, of the suspension, revocation, or bar. Upon request from
19 a broker-dealer or issuer and for good cause, an order under
20 this chapter may modify or waive, in whole or in part, the
21 application of the prohibitions of this subsection to the
22 broker-dealer.



1 (d) A broker-dealer that is registered in Canada and has
2 no office or other physical presence in this State may effect
3 transactions in securities with or for, or attempt to effect the
4 purchase or sale of any securities by an individual who is a
5 resident of Canada, and:

6 (1) Only effects or attempts to effect transactions in
7 securities with or through the issuers of securities
8 involved in the transactions, broker-dealers, banks,
9 savings institutions, trust companies, insurance
10 companies, investment companies (as defined in the
11 Investment Company Act of 1940), pension or
12 profit-sharing trusts, or other financial institutions
13 or institutional buyers, whether acting for themselves
14 or as trustees; with or for a person from Canada who
15 is present temporarily in this State and with whom a
16 bona fide business relationship existed before the
17 person entered this State; or with or for a person
18 from Canada who is present in this State, whose
19 transactions are in a self-directed tax advantaged
20 retirement plan in Canada of which the person is the
21 holder or contributor;

1 relationship before the individual entered the
2 United States;

3 (B) An individual from any other foreign jurisdiction
4 who is present in this State and whose
5 transactions are in a self-directed tax
6 advantaged retirement plan of which the
7 individual is the holder or contributor in that
8 foreign jurisdiction; or

9 (C) An individual who is present in this State, with
10 whom the broker-dealer customer relationship
11 arose while the individual was temporarily or
12 permanently resident in the other foreign
13 jurisdiction.

14 An agent who represents a broker-dealer that is exempt
15 under this subsection may effect transactions in securities or
16 attempt to effect the purchase or sale of securities in this
17 State as permitted for a broker-dealer described in this
18 subsection.

19 **§ -402 Agent registration requirement and exemptions.**

20 (a) It is unlawful for an individual to transact business in
21 this State as an agent unless the individual is registered under



1 this chapter as an agent or is exempt from registration as an
2 agent under subsection (b).

3 (b) The following individuals are exempt from the
4 registration requirement of subsection (a):

5 (1) An individual who represents a broker-dealer in
6 effecting transactions in this State limited to those
7 described in section 15(h)(2) of the Securities
8 Exchange Act of 1934 (15 U.S.C. 78(o)(2));

9 (2) An individual who represents a broker-dealer that is
10 exempt under section -401(b) or -401(d);

11 (3) An individual who represents an issuer with respect to
12 an offer or sale of the issuer's own securities or
13 those of the issuer's parent company or any of the
14 issuer's subsidiaries, and who is not compensated in
15 connection with the individual's participation by the
16 payment of commissions or other remuneration based,
17 directly or indirectly, on transactions in those
18 securities;

19 (4) An individual who represents an issuer and who effects
20 transactions in the issuer's securities exempted by
21 section -202, other than section -202(11) and
22 (14);



- 1 (5) An individual who represents an issuer that effects
2 transactions solely in federal covered securities of
3 the issuer; provided that an individual who effects
4 transactions in a federal covered security under
5 section 18(b)(3) or 18(b)(4)(D) of the Securities Act
6 of 1933 (15 U.S.C. 77r(b)(3) or 77r(b)(4)(D)) is not
7 exempt if the individual is compensated in connection
8 with the agent's participation by the payment of
9 commissions or other remuneration based, directly or
10 indirectly, on transactions in those securities;
- 11 (6) An individual who represents a broker-dealer
12 registered in this State under section -401(a) or
13 exempt from registration under section -401(b) in
14 the offer and sale of securities for an account of a
15 nonaffiliated federal covered investment adviser with
16 investments under management in excess of \$100,000,000
17 acting for the account of others pursuant to
18 discretionary authority in a signed record;
- 19 (7) An individual who represents an issuer in connection
20 with the purchase of the issuer's own securities;



1 (8) An individual who represents an issuer and who
2 restricts participation to performing clerical or
3 ministerial acts; or

4 (9) Any other individual exempted by rule adopted or order
5 issued under this chapter.

6 (c) The registration of an agent is effective only while
7 the agent is employed by or associated with a broker-dealer
8 registered under this chapter or an issuer that is offering,
9 selling, or purchasing its securities in this State.

10 (d) It is unlawful for a broker-dealer, or an issuer
11 engaged in offering, selling, or purchasing securities in this
12 State, to employ or associate with an agent who transacts
13 business in this State on behalf of broker-dealers or issuers
14 unless the agent is registered under subsection (a) or exempt
15 from registration under subsection (b).

16 (e) If an individual acts as an agent for more than one
17 broker-dealer or one issuer at a time, the broker-dealers and
18 issuers for which the agent acts shall be jointly and severally
19 liable for the acts of the agent unless otherwise agreed to
20 between the agent, broker-dealers, and issuers.

21 § -403 Investment adviser registration requirement and
22 exemptions. (a) It is unlawful for a person to transact



1 business in this State as an investment adviser unless the
2 person is registered under this chapter as an investment adviser
3 or is exempt from registration as an investment adviser under
4 subsection (b).

5 (b) The following persons are exempt from the registration
6 requirement of subsection (a):

7 (1) A person without a place of business in this State
8 that is registered under the securities act of the
9 state in which the person has its principal place of
10 business if its only clients in this State are:

11 (A) Federal covered investment advisers, investment
12 advisers registered under this chapter, or
13 broker-dealers registered under this chapter;

14 (B) Institutional investors;

15 (C) Bona fide preexisting clients whose principal
16 places of residence are not in this State if the
17 investment adviser is registered under the
18 securities act of the state in which the clients
19 maintain principal places of residence; or

20 (D) Any other client exempted by rule adopted or
21 order issued under this chapter;



1 (2) A person without a place of business in this State if
2 the person has had, during the preceding twelve
3 months, not more than five clients that are residents
4 of this State in addition to those specified under
5 paragraph (1); or

6 (3) Any other person exempted by rule adopted or order
7 issued under this chapter.

8 (c) It is unlawful for an investment adviser, directly or
9 indirectly, to employ or associate with an individual to engage
10 in an activity related to investment advice in this State if the
11 registration of the individual is suspended or revoked or the
12 individual is barred from employment or association with an
13 investment adviser, federal covered investment adviser, or
14 broker-dealer by an order under this chapter, the Securities and
15 Exchange Commission, or a self-regulatory organization, unless
16 the investment adviser did not know, and in the exercise of
17 reasonable care could not have known, of the suspension,
18 revocation, or bar. Upon request from the investment adviser
19 and for good cause, the commissioner, by order, may waive, in
20 whole or in part, the application of the prohibitions of this
21 subsection to the investment adviser.



1 (d) It is unlawful for an investment adviser to employ or
2 associate with an individual required to be registered under
3 this chapter as an investment adviser representative who
4 transacts business in this State on behalf of the investment
5 adviser unless the individual is registered under section
6 -404(a) or is exempt from registration under section
7 -404(b).

8 § -404 Investment adviser representative registration
9 requirement and exemptions. (a) It is unlawful for an
10 individual to transact business in this State as an investment
11 adviser representative unless the individual is registered under
12 this chapter as an investment adviser representative or is
13 exempt from registration as an investment adviser representative
14 under subsection (b).

15 (b) The following individuals are exempt from the
16 registration requirement of subsection (a):

17 (1) An individual who is employed by or associated with an
18 investment adviser that is exempt from registration
19 under section -403(b) or a federal covered
20 investment adviser that is excluded from the notice
21 filing requirements of section -405; or



1 (2) Any other individual exempted by rule adopted or order
2 issued under this chapter.

3 (c) The registration of an investment adviser
4 representative is effective only while the investment adviser
5 representative is employed by or associated with an investment
6 adviser registered under this chapter or a federal covered
7 investment adviser that has made or is required to make a notice
8 filing under section -405.

9 (d) If an individual transacts business as an investment
10 adviser representative for more than one investment adviser or
11 federal covered investment adviser, the investment advisers and
12 federal covered investment advisers shall be jointly and
13 severally liable for the business transactions of the investor
14 adviser representative unless otherwise agreed to between the
15 investment adviser representative, investment-advisers, and
16 federal covered investment adviser.

17 (e) It is unlawful for an individual acting as an
18 investment adviser representative, directly or indirectly, to
19 conduct business in this State on behalf of an investment
20 adviser or a federal covered investment adviser if the
21 registration of the individual as an investment adviser
22 representative is suspended or revoked or the individual is

1 barred from employment or association with an investment adviser
2 or a federal covered investment adviser by an order under this
3 chapter, the Securities and Exchange Commission, or a
4 self-regulatory organization. Upon request from a federal
5 covered investment adviser and for good cause, the commissioner,
6 by order issued, may waive, in whole or in part, the application
7 of the requirements of this subsection to the federal covered
8 investment adviser.

9 **§ -405 Federal covered investment adviser notice filing**
10 **requirement.** (a) Except with respect to a federal covered
11 investment adviser described in subsection (b), it is unlawful
12 for a federal covered investment adviser to transact business in
13 this State as a federal covered investment adviser unless the
14 federal covered investment adviser complies with subsection (c).

15 (b) The following federal covered investment advisers are
16 not required to comply with subsection (c):

17 (1) A federal covered investment adviser without a place
18 of business in this State if its only clients in this
19 State are:

20 (A) Federal covered investment advisers, investment
21 advisers registered under this chapter, and
22 broker-dealers registered under this chapter;



- 1 (B) Institutional investors;
- 2 (C) Bona fide preexisting clients whose principal
- 3 places of residence are not in this State; or
- 4 (D) Other clients specified by rule adopted or order
- 5 issued under this chapter;

6 (2) A federal covered investment adviser without a place
7 of business in this State if the person has had,
8 during the preceding twelve months, not more than five
9 clients that are residents of this State in addition
10 to those specified under paragraph (1); or

11 (3) Any other person excluded by rule adopted or order
12 issued under this chapter.

13 (c) A person acting as a federal covered investment
14 adviser not excluded under subsection (b) shall file a notice on
15 a form designated by the commissioner, a consent to service of
16 process complying with section -610, and records that have
17 been filed with the Securities and Exchange Commission under the
18 Investment Advisers Act of 1940, as required by rule adopted or
19 order issued under this chapter, and pay the fees specified in
20 section -410(e).

21 (d) The notice under subsection (c) becomes effective upon
22 its filing.

1 § -406 **Registration by broker-dealer, agent, investment**
2 **adviser, and investment adviser representative.** (a) A person
3 shall register as a broker-dealer, agent, investment adviser, or
4 investment adviser representative by filing an application and a
5 consent to service of process complying with section -610,
6 and paying the fee specified in section -410 and any
7 reasonable fees charged by the commissioner for processing the
8 filing. The application shall contain:

- 9 (1) The information required for the filing of a uniform
10 application; and
11 (2) Upon request by the commissioner, any other financial
12 or other information that the commissioner determines
13 is appropriate.

14 (b) If the information or record contained in an
15 application filed under subsection (a) is or becomes inaccurate
16 or incomplete in a material respect, the registrant shall
17 promptly file a correcting amendment.

18 (c) If an order is not in effect and a proceeding is not
19 pending under section -412, registration becomes effective at
20 noon on the forty-fifth day after a completed application is
21 filed, unless the registration is denied or the commissioner has
22 given written notice of deficiencies that are unresolved. A



1 rule adopted or order issued under this chapter may set an
2 earlier effective date or may defer the effective date until
3 noon on the forty-fifth day after the filing of any amendment
4 completing the application.

5 (d) A registration is effective until midnight on
6 December 31 of the year for which the application for
7 registration is filed. Unless an order is in effect under
8 section -412, a registration may be automatically renewed
9 each year by filing records that are required by rule adopted or
10 order issued under this chapter to be filed, by paying the fee
11 specified in section -410, and by paying costs charged by the
12 commissioner for processing the filings.

13 (e) A rule adopted or order issued under this chapter may
14 impose other conditions, not inconsistent with the National
15 Securities Markets Improvement Act of 1996. An order issued
16 under this chapter may waive, in whole or in part, specific
17 requirements in connection with registration as are in the
18 public interest and for the protection of investors.

19 **§ -407 Succession and change in registration of**
20 **broker-dealer or investment adviser.** (a) A broker-dealer or
21 investment adviser may succeed to the current registration of
22 another broker-dealer or investment adviser or a notice filing



1 of a federal covered investment adviser, and a federal covered
2 investment adviser may succeed to the current registration of an
3 investment adviser or notice filing of another federal covered
4 investment adviser, by filing as a successor an application for
5 registration pursuant to section -401 or -403 or a notice
6 pursuant to section -405 for the unexpired portion of the
7 current registration or notice filing.

8 (b) A broker-dealer or investment adviser that changes its
9 form of organization or state of incorporation or organization
10 may continue its registration by filing an amendment to its
11 registration if the change does not involve a material change in
12 its financial condition or management. The amendment becomes
13 effective when filed or on a date designated by the registrant
14 in its filing. The new organization shall be a successor to the
15 original registrant for the purposes of this chapter. If there
16 is a material change in financial condition or management, the
17 broker-dealer or investment adviser shall file a new application
18 for registration. A predecessor registered under this chapter
19 shall stop conducting its securities business other than winding
20 down transactions and shall file for withdrawal of broker-dealer
21 or investment adviser registration within forty-five days after
22 filing its amendment to effect succession.



1 (c) A broker-dealer or investment adviser that changes its
2 name may continue its registration by filing an amendment to its
3 registration statement and providing any other information that
4 the commissioner determines is appropriate by rule adopted or
5 order issued under this chapter. The amendment becomes
6 effective when filed or on a date designated by the registrant.

7 (d) A change of control of a broker-dealer or investment
8 adviser may be made in accordance with a rule adopted or order
9 issued under this chapter.

10 § -408 **Termination of employment or association of agent**
11 **and investment adviser representative; transfer of employment or**

12 **association.** (a) If an agent registered under this chapter
13 terminates employment or association with a broker-dealer or
14 issuer; or if an investment adviser representative registered
15 under this chapter terminates employment or association with an
16 investment adviser or federal covered investment adviser; or if
17 either registrant terminates activities that require
18 registration as an agent or investment adviser representative,
19 the broker-dealer, issuer, investment adviser, or federal
20 covered investment adviser shall promptly file a notice of
21 termination with the commissioner. If the registrant learns
22 that the broker-dealer, issuer, investment adviser, or federal



1 covered investment adviser has not filed the notice, the
2 registrant shall promptly notify the broker-dealer, issuer,
3 investment adviser or federal covered investment adviser, to do
4 so.

5 (b) If an agent registered under this chapter terminates
6 employment or association with a broker-dealer registered under
7 this chapter and begins employment or association with another
8 broker-dealer registered under this chapter; or if an investment
9 adviser representative registered under this chapter terminates
10 employment or association with an investment adviser registered
11 under this chapter or a federal covered investment adviser that
12 has filed a notice under section -405 and begins employment
13 by or association with another investment adviser registered
14 under this chapter or a federal covered investment adviser that
15 has filed a notice under section -405; then upon the filing
16 by or on behalf of the registrant, within thirty days after the
17 termination, of an application for registration that complies
18 with the requirement of section -406(a) and payment of the
19 filing fee required under section -410, the registration of
20 the agent or investment adviser representative shall be:

21 (1) Immediately effective as of the date of the completed
22 filing, if the agent's Central Registration Depository



1 record or successor record or the investment adviser
2 representative's Investment Adviser Registration
3 Depository record or successor record does not contain
4 any new or amended disciplinary actions or proceedings
5 within the previous twelve months; or

6 (2) Temporarily effective as of the date of the completed
7 filing, if the agent's Central Registration Depository
8 record or successor record or the investment adviser
9 representative's Investment Adviser Registration
10 Depository record or successor record contains any new
11 or amended disciplinary actions or proceedings within
12 the preceding twelve months.

13 (c) The commissioner may withdraw a temporary registration
14 if there are or were grounds for discipline as specified in
15 section -412 and the commissioner does so within thirty days
16 after the filing of the application. If the commissioner does
17 not withdraw the temporary registration within the thirty day
18 period, registration becomes automatically effective on the
19 thirty-first day after filing.

20 (d) The commissioner may prevent the effectiveness of a
21 transfer of an agent or investment adviser representative under



1 subsection (b) (1) or (2) based on the public interest and the
2 protection of investors.

3 (e) If the commissioner determines that a registrant or
4 applicant for registration is no longer in existence or has
5 ceased to act as a broker-dealer, agent, investment adviser, or
6 investment adviser representative, or is the subject of an
7 adjudication of incapacity or is subject to the control of a
8 committee, conservator, or guardian, or cannot reasonably be
9 located, a rule adopted or order issued under this chapter may
10 require the registration be canceled or terminated or the
11 application denied. The commissioner may reinstate a canceled
12 or terminated registration, with or without hearing, and may
13 make the registration retroactive.

14 **§ -409 Withdrawal of registration of broker-dealer,**
15 **agent, investment adviser, and investment adviser**
16 **representative.** The withdrawal of registration by a
17 broker-dealer, agent, investment adviser, or investment adviser
18 representative becomes effective ninety days after the filing of
19 the application to withdraw or within any shorter period as
20 provided by rule adopted or order issued under this chapter
21 unless a revocation or suspension proceeding is pending when the
22 application is filed. If a revocation or suspension proceeding



1 is pending, withdrawal becomes effective when and upon such
2 conditions as required by rule adopted or order issued under
3 this chapter. The commissioner may institute a revocation or
4 suspension proceeding under section -412 within two years
5 after the withdrawal became effective and issue a revocation or
6 suspension order as of the last date on which registration was
7 effective.

8 **§ -410 Filing fees.** (a) A person shall pay a fee of
9 \$200 when initially filing an application for registration as a
10 broker-dealer and a fee of \$200 when filing a renewal of
11 registration as a broker-dealer.

12 (b) The fee for an individual is \$50 when filing an
13 application for registration as an agent, a fee of \$50 when
14 filing a renewal of registration as an agent, and a fee of \$50
15 when filing for a transfer of registration as an agent.

16 (c) A person shall pay a fee of \$100 when filing an
17 application for registration as an investment adviser and a fee
18 of \$100 when filing a renewal of registration as an investment
19 adviser.

20 (d) The fee for an individual is \$50 when filing an
21 application for registration as an investment adviser
22 representative, a fee of \$50 when filing a renewal of



1 registration as an investment adviser representative, and a fee
2 of \$50 when filing for a transfer of registration as an
3 investment adviser representative.

4 (e) A federal covered investment adviser required to file
5 a notice under section -405 shall pay an annual fee of \$100.

6 (f) A person required to pay a fee under this section may
7 transmit the fee through or to a designee of the commissioner as
8 provided in a rule adopted or order issued under this chapter.

9 (g) The fee for copies of documents filed in the office of
10 the commissioner shall be 25 cents per page.

11 **§ -411 Postregistration requirements.** (a) Subject to
12 section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C.
13 78o(h)) or section 222 of the Investment Advisers Act of 1940
14 (15 U.S.C. 80b-22), a rule adopted or order issued under this
15 chapter may establish minimum financial requirements for
16 broker-dealers registered or required to be registered under
17 this chapter and investment advisers registered or required to
18 be registered under this chapter.

19 (b) Subject to section 15(h) of the Securities Exchange
20 Act of 1934 (15 U.S.C. 78o(h)) or section 222(b) of the
21 Investment Advisers Act of 1940 (15 U.S.C. 80b-22), a
22 broker-dealer registered or required to be registered under this



1 Securities Exchange Act of 1934 (15 U.S.C. 78q(a)) if
2 they are readily accessible to the commissioner; and
3 (3) Investment adviser records required to be maintained
4 under paragraph (1) may be maintained in any form of
5 data storage required by rule adopted or order issued
6 under this chapter.

7 (d) The records of a broker-dealer registered or required
8 to be registered under this chapter and of an investment adviser
9 registered or required to be registered under this chapter are
10 subject to such reasonable periodic, special, or other audits or
11 inspections by a representative of the commissioner, within or
12 without this State, as the commissioner considers necessary or
13 appropriate in the public interest and for the protection of
14 investors. An audit or inspection may be made at any time and
15 without prior notice. The commissioner may copy, and remove for
16 audit or inspection copies of, all records the commissioner
17 reasonably considers necessary or appropriate to conduct the
18 audit or inspection. The commissioner may assess a reasonable
19 charge for conducting an audit or inspection under this
20 subsection.

21 (e) Subject to section 15(h) of the Securities Exchange
22 Act of 1934 (15 U.S.C. 78o(h)) or section 222 of the Investment



1 Advisers Act of 1940 (15 U.S.C. 80b-22), a rule adopted or order
2 issued under this chapter may require a broker-dealer or
3 investment adviser that has custody of or discretionary
4 authority over funds or securities of a customer or client to
5 obtain insurance or post a bond or other satisfactory form of
6 security. The commissioner may determine the requirements of
7 the insurance, bond, or other satisfactory form of security.
8 The insurance, bond, or other satisfactory form of security
9 shall permit an action by a person to enforce any liability on
10 the insurance, bond, or other satisfactory form of security if
11 instituted within the time limitations in section -509(j)(2).

12 (f) Subject to section 15(h) of the Securities Exchange
13 Act of 1934 (15 U.S.C. 78o(h)) or section 222 of the Investment
14 Advisers Act of 1940 (15 U.S.C. 80b-22), an agent may not have
15 custody of funds or securities of a customer except under the
16 supervision of a broker-dealer and an investment adviser
17 representative may not have custody of funds or securities of a
18 client except under the supervision of an investment adviser or
19 a federal covered investment adviser. A rule adopted or order
20 issued under this chapter may prohibit, limit, or impose
21 conditions on a broker-dealer regarding custody of funds or



1 securities of a customer, and on an investment adviser regarding
2 custody of securities or funds of a client.

3 (g) Except as otherwise provided in this subsection, the
4 commissioner may by rule adopted or order issued under this
5 chapter require a minimum capital requirement for registered
6 broker-dealers, which shall not be less than \$5,000 in the case
7 of broker-dealers, and prescribe a ratio between net capital and
8 aggregate indebtedness; provided that this subsection shall not
9 apply to any broker-dealer that is registered under the
10 Securities Exchange Act of 1934. The commissioner may by rule
11 adopted or order issued under this chapter require a net worth
12 requirement which shall not be less than \$5,000 for investment
13 advisers; provided that this subsection shall not apply to any
14 investment adviser that maintains its principal place of
15 business in a state other than this State, and the investment
16 adviser is registered in the state where it maintains its
17 principal place of business and is in compliance with that
18 state's net worth or net capital requirements, if any.

19 (h) With respect to an investment adviser registered or
20 required to be registered under this chapter, a rule adopted or
21 order issued under this chapter may require that information or
22 records be furnished or disseminated to clients or prospective



1 clients in this State as necessary or appropriate in the public
2 interest and for the protection of investors and advisory
3 clients.

4 (i) A rule adopted or order issued under this chapter may
5 require an individual registered under sections -402 or
6 -404 to participate in a continuing education program
7 approved by the Securities and Exchange Commission and
8 administered by a self-regulatory organization or, in the
9 absence of such a program, a rule adopted or order issued under
10 this chapter may require continuing education for an individual
11 registered under section -404.

12 **§ -412 Denial, revocation, suspension, withdrawal,**
13 **restriction, condition, or limitation of registration.** (a) If
14 the commissioner finds that it is in the public interest and
15 subsection (d) authorizes the action, the commissioner, under
16 this chapter may deny an application, or may condition or limit
17 the registration of an applicant to be a broker-dealer, agent,
18 investment adviser, or investment adviser representative, and,
19 if the applicant is a broker-dealer or investment adviser, of a
20 partner, officer, director, or person having a similar status or
21 performing similar functions, or a person directly or indirectly
22 in control, of the broker-dealer or investment adviser.



1 (b) If the commissioner finds that it is in the public
2 interest and subsection (d) authorizes the action, the
3 commissioner, under this chapter may revoke, suspend, condition,
4 or limit the registration of a registrant and, if the registrant
5 is a broker-dealer or investment adviser, of a partner, officer,
6 director, or person having a similar status or performing
7 similar functions, or a person directly or indirectly in
8 control, of the broker-dealer or investment adviser; provided
9 that the commissioner shall not:

10 (1) Institute a revocation or suspension proceeding under
11 this subsection based on an order issued under a law
12 of another state that is reported to the commissioner
13 or a designee of the commissioner more than one year
14 after the date of the order on which it is based; or

15 (2) Under subsection (d)(5)(A) or (B), issue an order on
16 the basis of an order issued under the securities act
17 of another state unless the other order was based on
18 conduct for which subsection (d) would authorize the
19 action had the conduct occurred in this State.

20 (c) If the commissioner finds that it is in the public
21 interest and subsection (d)(1), (2), (3), (4), (5), (6), (7),
22 (8), (9), (10), (12), (13), (14), or (15), authorizes the



1 action, the commissioner, under this chapter may censure, impose
2 a bar, or impose a civil penalty in an amount not to exceed a
3 maximum of \$100,000 for each violation on a registrant, and, if
4 the registrant is a broker-dealer or investment adviser, on a
5 partner, officer, director, or person having a similar status or
6 performing similar functions, or on a person directly or
7 indirectly in control, of the broker-dealer or investment
8 adviser.

9 (d) A person may be disciplined under subsections (a) to
10 (c) if the person:

11 (1) Has filed an application for registration in this
12 State under this chapter or the predecessor act within
13 the previous ten years which as of the effective date
14 of registration or as of any date after filing in the
15 case of an order denying effectiveness, was incomplete
16 in any material respect or contained a statement that,
17 in light of the circumstances under which it was made,
18 was false or misleading with respect to a material
19 fact;

20 (2) Wilfully violated or wilfully failed to comply with
21 this chapter or the predecessor act or a rule adopted

1 or order issued under this chapter or the predecessor
2 act within the previous ten years;

3 (3) Has been convicted of any felony, or within the
4 previous ten years has been convicted of a
5 misdemeanor, involving a security, a commodity future
6 or option contract, or an aspect of a business
7 involving securities, commodities, investments,
8 franchises, insurance, banking, or finance;

9 (4) Is enjoined or restrained by a court of competent
10 jurisdiction in an action instituted by the
11 commissioner under this chapter or the predecessor
12 act, a state, the Securities and Exchange Commission,
13 or the United States from engaging in or continuing an
14 act, practice, or course of business involving an
15 aspect of a business involving securities,
16 commodities, investments, franchises, insurance,
17 banking, or finance;

18 (5) Is the subject of an order, issued after notice and
19 opportunity for hearing by:

20 (A) The securities or other financial services
21 regulator of a state or the Securities and
22 Exchange Commission or other federal agency



- 1 denying, revoking, barring, or suspending
2 registration as a broker-dealer, agent,
3 investment adviser, federal covered investment
4 adviser, or investment adviser representative;
- 5 (B) The securities regulator of a state or the
6 Securities and Exchange Commission against a
7 broker-dealer, agent, investment adviser,
8 investment adviser representative, or federal
9 covered investment adviser;
- 10 (C) The Securities and Exchange Commission or a
11 self-regulatory organization suspending or
12 expelling the registrant from membership in the
13 self-regulatory organization;
- 14 (D) A court adjudicating a United States Postal
15 Service fraud order;
- 16 (E) The insurance regulator of a state denying,
17 suspending, or revoking registration as an
18 insurance agent; or
- 19 (F) A depository institution or financial services
20 regulator suspending or barring the person from
21 the depository institution or other financial
22 services business;

- 1 (6) Is the subject of an adjudication or determination,
2 after notice and opportunity for hearing, by the
3 Securities and Exchange Commission, the Commodity
4 Futures Trading Commission; the Federal Trade
5 Commission; a federal depository institution
6 regulator, or a depository institution, insurance, or
7 other financial services regulator of a state that the
8 person willfully violated the Securities Act of 1933,
9 the Securities Exchange Act of 1934, the Investment
10 Advisers Act of 1940, the Investment Company Act of
11 1940, or the Commodity Exchange Act, the securities or
12 commodities law of a state, or a federal or state law
13 under which a business involving investments,
14 franchises, insurance, banking, or finance is
15 regulated;
- 16 (7) Is insolvent, either because the person's liabilities
17 exceed the person's assets or because the person
18 cannot meet the person's obligations as they mature;
19 provided that the commissioner may not enter an order
20 against an applicant or registrant under this
21 paragraph without a finding of insolvency as to the
22 applicant or registrant;



- 1 (8) Refuses to allow or otherwise impedes the commissioner
2 from conducting an audit or inspection under section
3 -411(d) or refuses access to a registrant's office
4 to conduct an audit or inspection under section
5 -411(d);
- 6 (9) Has failed to reasonably supervise an agent,
7 investment adviser representative, or other
8 individual, if the agent, investment adviser
9 representative, or other individual was subject to the
10 person's supervision and committed a violation of this
11 chapter or the predecessor act or a rule adopted or
12 order issued under this chapter or the predecessor act
13 within the previous ten years of the violation;
- 14 (10) Has not paid the proper filing fee within thirty days
15 after having been notified by the commissioner of a
16 deficiency; provided that the commissioner shall
17 vacate an order under this paragraph when the
18 deficiency is corrected;
- 19 (11) After notice and opportunity for a hearing, has been
20 found within the previous ten years:
- 21 (A) By a court of competent jurisdiction to have
22 wilfully violated the laws of a foreign



1 jurisdiction under which the business of
2 securities, commodities, investment, franchises,
3 insurance, banking, or finance is regulated;

4 (B) To have been the subject of an order of a
5 securities regulator of a foreign jurisdiction
6 denying, revoking, or suspending the right to
7 engage in the business of securities as a
8 broker-dealer, agent, investment adviser,
9 investment adviser representative, or other
10 similar person; or

11 (C) To have been suspended or expelled from
12 membership by or participation in a securities
13 exchange or securities association operating
14 under the securities laws of a foreign
15 jurisdiction;

16 (12) Is the subject of a cease and desist order issued by
17 the Securities and Exchange Commission or issued under
18 the securities, commodities, investment, franchise,
19 banking, finance, or insurance laws of a state;

20 (13) Has engaged in dishonest or unethical practices in the
21 securities, commodities, investment, franchise,

1 banking, finance, or insurance business within the
2 previous ten years;

3 (14) Has demonstrated unworthiness to transact the business
4 of broker-dealer, investment adviser, agent, or
5 investment adviser representative;

6 (15) Has not complied with an order of child support or has
7 failed to comply with a subpoena or warrant relating
8 to a paternity or child support order pursuant to
9 chapter 576D; or

10 (16) Is not qualified on the basis of factors such as
11 training, experience, and knowledge of the securities
12 business; provided that in the case of an application
13 by an agent for a broker-dealer that is a member of a
14 self-regulatory organization or by an individual for
15 registration as an investment adviser representative,
16 a denial order may not be based on this paragraph if
17 the individual has successfully completed all
18 examinations required by subsection (e). The
19 commissioner may require an applicant for registration
20 under section -402 or -404 who has not been
21 registered in a state within the two years preceding



1 the filing of an application in this State to
2 successfully complete an examination.

3 (e) A rule adopted or order issued under this chapter may
4 require that an examination, including an examination developed
5 or approved by an organization of securities regulators, be
6 successfully completed by a class of individuals or all
7 individuals in order to be registered under this chapter. An
8 order issued under this chapter may waive, in whole or in part,
9 an examination as to an individual and a rule adopted under this
10 chapter may waive, in whole or in part, an examination as to a
11 class of individuals if the commissioner determines that the
12 examination is not necessary or appropriate in the public
13 interest and for the protection of investors.

14 (f) The commissioner may suspend or deny an application
15 summarily; restrict, condition, limit, or suspend a
16 registration; or censure, bar, or impose a civil penalty on a
17 registrant before final determination of an administrative
18 proceeding. Upon the issuance of an order, the commissioner
19 shall promptly notify each person subject to the order that the
20 order has been issued, the reasons for the action, and that
21 within fifteen days after the receipt of a request in a record
22 from the person the matter will be scheduled for a hearing. If



1 a hearing is not requested and none is ordered by the
2 commissioner within thirty days after the date of service of the
3 order, the order shall become final by operation of law. If a
4 hearing is requested or ordered, the commissioner, after notice
5 of and opportunity for hearing to each person subject to the
6 order, may modify or vacate the order or extend the order until
7 a final determination is made. During the pendency of any
8 hearing requested under this subsection, the order shall remain
9 in effect unless vacated or modified by the commissioner;
10 provided that any penalty shall not take effect until the final
11 order is issued.

12 (g) An order issued under this section, except under
13 subsection (f), shall include:

- 14 (1) Appropriate notice to the applicant or registrant;
- 15 (2) Opportunity for hearing; and
- 16 (3) Findings of fact and conclusions of law in accordance
17 with chapter 91.

18 (h) A person that controls, directly or indirectly, a
19 person not in compliance with this section may be disciplined by
20 order of the commissioner under subsections (a) to (c) to the
21 same extent as the noncomplying person, unless the controlling
22 person did not know, and in the exercise of reasonable care



1 could not have known, of the existence of conduct that is a
2 ground for discipline under this section.

3 (i) The commissioner may not institute a proceeding under
4 subsection -412(a), - (b), or - (c) based solely on
5 material facts actually known by the commissioner unless an
6 investigation or the proceeding is instituted within one year
7 after the commissioner actually acquires knowledge of the
8 material facts.

9 **PART V. FRAUD AND LIABILITIES**

10 § -501 **General fraud.** (a) It shall be unlawful for a
11 person, in connection with the offer, sale, or purchase of a
12 security, directly or indirectly:

- 13 (1) To employ a device, scheme, or artifice to defraud;
14 (2) To make an untrue statement of a material fact or to
15 fail to state a material fact necessary in order to
16 make the statements made, in light of the
17 circumstances under which they were made, not
18 misleading;
19 (3) To engage in an act, practice, or course of business
20 that operates or would operate as a fraud or deceit
21 upon another person;

- 1 (4) To issue, circulate, or publish any prospectus,
2 circular, advertisement, printed matter, document,
3 pamphlet, leaflet, or other literature (in this
4 chapter collectively referred to as "advertising
5 matter"), which contains an untrue statement or a
6 material fact or fails to state a material fact
7 necessary to make the statements therein made, in
8 light of the circumstances under which they are made,
9 not misleading;
- 10 (5) To issue, circulate, or publish any advertising matter
11 or make any written representation, unless the name of
12 the person issuing, circulating, publishing, or making
13 the same and the fact that the person is issuing,
14 circulating, or making the same shall be clearly
15 indicated thereon;
- 16 (6) To make any statement or representation or issue,
17 circulate, or publish any advertising matter
18 containing any statement, to the effect that the
19 security has been in any way approved or endorsed by
20 the commissioner; or
- 21 (7) To issue, circulate, or publish any advertising matter
22 unless a copy thereof has been previously filed with



1 the office of the commissioner, or unless the
2 commissioner has by rule adopted or order issued under
3 this chapter exempted the filing of any advertising
4 material.

5 (b) Subsections (a)(5) and (7) shall not apply to any
6 advertising matter that is covered by section 18(a) of the
7 Securities Act of 1933 (15 U.S.C. 77), and that relates to or is
8 used in connection with the offer or sale of a federal covered
9 security.

10 § -502 Prohibited conduct in providing investment

11 **advice.** (a) It shall be unlawful for a person that advises
12 others for compensation, either directly or indirectly or
13 through publications or writings, as to the value of securities
14 or the advisability of investing in, purchasing, or selling
15 securities, or that, for compensation and as part of a regular
16 business, issues or promulgates analyses or reports relating to
17 securities:

- 18 (1) To employ a device, scheme, or artifice to defraud
19 another person; or
20 (2) To engage in an act, practice, or course of business
21 that operates or would operate as a fraud or deceit
22 upon another person.



1 (b) It shall be unlawful for any investment adviser to
2 enter into, extend, or renew any investment advisory contract,
3 if the contract, in writing:

4 (1) Provides for compensation to the investment adviser on
5 the basis of a share of capital gains upon or capital
6 appreciation of the funds or any portion of the funds
7 of the client;

8 (2) Fails to provide that no assignment, as defined in
9 section 202(a)(1) of the Investment Advisers Act of
10 1940, of the contract shall be made by the investment
11 adviser without the consent of the other party to the
12 contract; or

13 (3) Fails to provide that the investment adviser, if a
14 partnership, will notify the other party to the
15 contract of any change in the membership of the
16 partnership within a reasonable time after the change.

17 (c) Notwithstanding subsection (b)(1), an investment
18 adviser may enter into, extend, or renew an investment advisory
19 contract that:

20 (1) Provides for compensation based upon the total value
21 of a fund averaged over a definite period, or as of
22 definite dates, or taken as of a definite date; or

- 1 (2) Provides for compensation to the investment adviser on
2 the basis of a share of capital gains or capital
3 appreciation of the funds of the client; provided that
4 the conditions and requirements as defined and set
5 forth in Rule 205-3 under the Investment Company Act
6 of 1940 (17 C.F.R. 275.205-3) shall be met; and
7 provided further that before entering into the
8 advisory contract, and in addition to the requirements
9 of Form ADV, the investment adviser shall disclose in
10 writing to the client or the client's independent
11 agent all material information concerning the proposed
12 advisory arrangement, including the following:
- 13 (A) That the fee arrangement may create an incentive
14 for the investment adviser to make investments
15 that are riskier or more speculative than would
16 be the case in the absence of a performance-based
17 fee;
- 18 (B) Where relevant, that the investment adviser may
19 receive increased compensation with regard to
20 unrealized appreciation as well as realized gains
21 in the client's account;

1 (C) The periods that will be used to measure
2 investment performance throughout the contract
3 and their significance in the computation of the
4 fee;

5 (D) The nature of any index that will be used as a
6 comparative measure of investment performance,
7 the significance of the index, and the reason the
8 investment adviser believes that the index is
9 appropriate; and

10 (E) Where the investment adviser's compensation is
11 based in part on the unrealized appreciation of
12 securities for which market quotations are not
13 readily available within the meaning of Rule
14 2a-4(a)(1) under the Investment Company Act of
15 1940 (17 C.F.R. 270.2a-4(a)(1)), how the
16 securities will be valued and the extent to which
17 the valuation will be independently determined.

18 (d) It shall be unlawful for any investment adviser or
19 investment adviser representative to:

20 (1) Fail to disclose to the client in a separate
21 disclosure statement the capacity in which the
22 investment adviser and investment adviser



1 representative are acting and the compensation to be
2 received in situations in which:

3 (A) The investment adviser is acting as principal for
4 the investment adviser's own account and
5 knowingly sells any security to or purchases any
6 security from a client for whom the investment
7 adviser is acting as investment adviser; or

8 (B) The investment adviser is acting as a
9 broker-dealer for a person other than the client
10 and knowingly effects any sale or purchase of
11 securities, real estate, insurance contracts,
12 annuities contracts, or any types of real or
13 personal property for the account of the client;

14 and

15 (2) Fail to provide the disclosure statement described in
16 paragraph (1) and obtain the written consent of the
17 client to the transactions described in the disclosure
18 statement prior to the closing of the transactions.

19 (e) A rule adopted or order issued under this chapter may
20 define an act, practice, or course of business of an investment
21 adviser or an investment adviser representative, other than a
22 supervised person of a federal covered investment adviser, as

1 fraudulent, deceptive, or manipulative, and prescribe means
2 reasonably designed to prevent investment advisers and
3 investment adviser representatives, other than supervised
4 persons of a federal covered investment adviser, from engaging
5 in acts, practices, and courses of business that are fraudulent,
6 deceptive, or manipulative.

7 (f) A rule adopted or order issued under this chapter may
8 specify the contents of an investment advisory contract entered
9 into, extended, or renewed by an investment adviser.

10 (g) It shall be unlawful for any investment adviser to use
11 any scheme, device, or artifice to circumvent or attempt to
12 circumvent the prohibitions or limitations in subsection (b).

13 (h) Nothing in this section shall be deemed to relieve any
14 person of any fiduciary or other obligation to which such person
15 may be subject under any law.

16 § -503 **Evidentiary burden.** (a) In a civil action or
17 administrative proceeding under this chapter, a person claiming
18 an exemption, exception, preemption, or exclusion shall have the
19 burden to prove the applicability of the claim.

20 (b) In a criminal proceeding under this chapter, a person
21 claiming an exemption, exception, preemption, or exclusion shall
22 have the burden of going forward with evidence of the claim.



1 § **-504 Filing of sales and advertising literature.** (a)

2 Except as otherwise provided in subsection (b) and
3 section -501(7), a rule adopted or order issued under this
4 chapter may require the filing of a prospectus, pamphlet,
5 circular, form letter, advertisement, sales literature, or other
6 advertising record relating to a security or investment advice,
7 addressed or intended for distribution to prospective investors,
8 including clients or prospective clients of a person registered
9 or required to be registered as an investment adviser under this
10 chapter.

11 (b) This section shall not apply to sales and advertising
12 literature specified in subsection (a) that relate to a federal
13 covered security, a federal covered investment adviser, or a
14 security or transaction exempted by section -201, -202, or
15 -203, except as required pursuant to section -201(7).

16 § **-505 Misleading filings.** It shall be unlawful for a
17 person to make or cause to be made, in a record that is used in
18 an action or proceeding or filed under this chapter, a statement
19 that, at the time and in light of the circumstances under which
20 it is made, is false or misleading in a material respect, or, in
21 connection with the statement, to fail to state a material fact



1 necessary to make the statement made, in light of the
2 circumstances under which it was made, not false or misleading.

3 **§ -506 Misrepresentations concerning registration or**
4 **exemption.** (a) The filing of an application for registration,
5 a registration statement, a notice filing under this chapter,
6 the registration of a person, the notice filing by a person, or
7 the registration of a security under this chapter shall not
8 constitute a finding by the commissioner that the record filed
9 under this chapter is true, complete, and not misleading.

10 (b) The filing or registration or the availability of an
11 exemption, exception, preemption, or exclusion for a security or
12 a transaction does not mean that the commissioner has passed
13 upon the merits or qualifications of, or recommended or given
14 approval to, a person, security, or transaction.

15 (c) It shall be unlawful to make, or cause to be made, to
16 a purchaser, customer, client, or prospective customer or
17 client, a representation that is inconsistent with this section.

18 **§ -507 Qualified immunity.** A broker-dealer, agent,
19 investment adviser, federal covered investment adviser, or
20 investment adviser representative shall not be liable to another
21 broker-dealer, agent, investment adviser, federal covered
22 investment adviser, or investment adviser representative for



1 defamation relating to a statement that is contained in a record
2 required by or filed with the commissioner or a designee of the
3 commissioner, the Securities and Exchange Commission, or a
4 self-regulatory organization, unless the person knew, or should
5 have known at the time that the statement was made, that it was
6 false in a material respect or the person acted in reckless
7 disregard of the statement's truth or falsity.

8 **§ -508 Criminal penalties.** (a) Whoever violates this
9 chapter shall be punished as follows:

- 10 (1) An offense in which the total value of all money and
11 anything else of value paid by or lost by the victims
12 pursuant to the same scheme, plan, or representations,
13 or to the same entity, amounts to under \$5,000 shall
14 be a class C felony;
- 15 (2) An offense in which the total value of all money and
16 anything else of value paid by or lost by the victims
17 pursuant to the same scheme, plan, or representations,
18 or to the same entity, amounts to \$5,000 but less than
19 \$100,000 shall be a class B felony; and
- 20 (3) An offense in which the total value of all money and
21 anything else of value paid or lost by the victims
22 pursuant to the same scheme, plan, or representations,

1 or to the same entity, amounts to \$100,000 or more
2 shall be a class A felony.

3 In addition to the above, whoever violates this chapter shall
4 forfeit to the State any interest or property the person has
5 acquired or maintained in violation of this chapter and any
6 interest in, security of, claim against, or property or
7 contractual right of any kind affording a source of influence
8 over any enterprise which the person has established, operated,
9 controlled, conducted, or participated in the conduct of, in
10 violation of this chapter.

11 (b) The value of all money and anything else of value paid
12 or lost by various victims pursuant to the same scheme, plan, or
13 representations or to the same entity may be aggregated in
14 determining the class or grade of the offense.

15 (c) Upon conviction of a person under this chapter, the
16 circuit court shall authorize the county attorney or prosecutor,
17 or the attorney general, to seize all property or other interest
18 declared forfeited under this chapter upon such terms and
19 conditions as the court shall deem proper. The State shall
20 dispose of all property or other interest seized under this
21 chapter as soon as feasible making due provision for the rights
22 of innocent persons. If a property right or other interest is



1 not exercisable or transferable for value by the State, it shall
2 not revert to the convicted person and the commissioner shall
3 dispose of the property as deemed proper by the commissioner.

4 (d) Notwithstanding any other law to the contrary, a
5 person convicted of a felony under this chapter who has a prior
6 conviction for a felony under this chapter or a prior conviction
7 for a crime which would constitute a felony under this chapter
8 shall be sentenced to a mandatory minimum period of imprisonment
9 of one year without possibility of parole. Nothing in this
10 subsection shall be construed to in any way limit the maximum
11 term of imprisonment imposed pursuant to chapter 706.

12 (e) Notwithstanding any other law to the contrary, the
13 following period of limitations shall apply to prosecutions for
14 felony violations of this chapter:

15 (1) Prosecution for a felony under this chapter shall be
16 commenced within five years after the offense is
17 committed; and

18 (2) If the period prescribed in paragraph (1) has expired,
19 prosecution for a felony under this chapter may be
20 commenced within two years after the discovery of the
21 offense by an aggrieved party who is not a party to



1 the offense, but in no event more than seven years
2 after the offense is committed.

3 (f) The attorney general or the proper county attorney or
4 prosecutor, may institute criminal proceedings with or without a
5 referral from the commissioner under this chapter.

6 (g) This chapter shall not limit the power of the State to
7 punish a person for conduct that constitutes a crime under other
8 laws of the State.

9 **§ -509 Civil liability.** (a) Enforcement of civil
10 liability under this section shall be subject to the Securities
11 Litigation Uniform Standards Act of 1998.

12 (b) A person is liable to the purchaser if the person
13 sells a security in violation of section -301 or, by means of
14 an untrue statement of a material fact or an omission of a
15 material fact necessary in order to make the statement made, in
16 light of the circumstances under which it is made, not
17 misleading, the purchaser not knowing the untruth or omission
18 and the seller not sustaining the burden of proof that the
19 seller did not know and, in the exercise of reasonable care,
20 could not have known of the untruth or omission. An action
21 under this subsection shall be governed by the following:

1 (1) The purchaser may maintain an action to recover the
2 consideration paid for the security, less the amount
3 of any income received on the security, and interest
4 at the legal rate of interest, from the date of the
5 purchase, costs, and reasonable attorney's fees
6 determined by the court, upon the tender of the
7 security, or for actual damages as provided in
8 paragraph (3);

9 (2) The tender referred to in paragraph (1) may be made
10 any time before entry of judgment. Tender requires
11 only notice in a record of ownership of the security
12 and willingness to exchange the security for the
13 amount specified. A purchaser that no longer owns the
14 security may recover actual damages as provided in
15 paragraph (3); and

16 (3) Actual damages in an action arising under this
17 subsection are the amount that would be recoverable
18 upon a tender less the value of the security when the
19 purchaser disposed of it, and interest at the legal
20 rate of interest, from the date of the purchase,
21 costs, and reasonable attorney's fees determined by
22 the court.



1 (c) A person shall be liable to the seller if the person
2 buys a security by means of an untrue statement of a material
3 fact or omission of a material fact necessary in order to make
4 the statement made, in light of the circumstances under which it
5 is made, not misleading, the seller not knowing of the untruth
6 or omission, and the purchaser not sustaining the burden of
7 proof that the purchaser did not know, and in the exercise of
8 reasonable care, could not have known of the untruth or
9 omission. An action under this subsection shall be governed by
10 the following:

- 11 (1) The seller may maintain an action to recover the
12 security, and any income received on the security,
13 costs, and reasonable attorney's fees determined by
14 the court, upon the tender of the purchase price, or
15 for actual damages as provided in paragraph (3);
- 16 (2) The tender referred to in paragraph (1) may be made
17 any time before entry of judgment. Tender requires
18 only notice in a record of the present ability to pay
19 the amount tendered and willingness to take delivery
20 of the security for the amount specified. If the
21 purchaser no longer owns the security, the seller may

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1 recover actual damages as provided in paragraph (3);
2 and

3 (3) Actual damages in an action arising under this
4 subsection are the difference between the price at
5 which the security was sold and the value the security
6 would have had at the time of the sale in the absence
7 of the purchaser's conduct causing liability, and
8 interest at the legal rate of interest, from the date
9 of the sale of the security, costs, and reasonable
10 attorney's fees determined by the court.

11 (d) A person acting as a broker-dealer or agent that sells
12 or buys a security in violation of section -401(a),
13 -402(a), or -506 shall be liable to the customer. The
14 customer, if a purchaser, may maintain an action for recovery of
15 actual damages as specified in subsection (b), or, if a seller,
16 for a remedy as specified in subsection (c).

17 (e) A person acting as an investment adviser or investment
18 adviser representative that provides investment advice for
19 compensation in violation of section -403(a), -404(a), or
20 -506 shall be liable to the client. The client may maintain
21 an action to recover the consideration paid for the advice,
22 interest at the legal rate of interest, from the date of

1 payment, costs, and reasonable attorney's fees determined by the
2 court.

3 (f) A person that receives directly or indirectly any
4 consideration for providing investment advice to another person
5 and that employs a device, scheme, or artifice to defraud the
6 other person or engages in an act, practice, or course of
7 business that operates or would operate as a fraud or deceit on
8 the other person, shall be liable to the other person. An
9 action under this subsection shall be governed by the following:

10 (1) The person defrauded may maintain an action to recover
11 the consideration paid for the advice and the amount
12 of any actual damages caused by the fraudulent
13 conduct, interest at the legal rate of interest from
14 the date of the fraudulent conduct, costs, and
15 reasonable attorney's fees determined by the court,
16 less the amount of any income received as a result of
17 the fraudulent conduct; and

18 (2) This subsection shall not apply to a broker-dealer or
19 its agents if the investment advice provided is solely
20 incidental to transacting business as a broker-dealer
21 and no special compensation is received for the
22 investment advice.



1 (g) The following persons are liable jointly and severally
2 with and to the same extent as persons liable under subsections
3 (b) to (f):

4 (1) A person that directly or indirectly controls a person
5 liable under subsections (b) to (f), unless the
6 controlling person sustains the burden of proof that
7 the person did not know, and in the exercise of
8 reasonable care could not have known, of the existence
9 of conduct by reason of which the liability is alleged
10 to exist;

11 (2) An individual who is a managing partner, executive
12 officer, or director of a person liable under
13 subsections (b) to (f), including an individual having
14 a similar status or performing similar functions,
15 unless the individual sustains the burden of proof
16 that the individual did not know and, in the exercise
17 of reasonable care could not have known, of the
18 existence of conduct by reason of which the liability
19 is alleged to exist;

20 (3) An individual who is an employee of or associated with
21 a person liable under subsections (b) to (f) and who
22 materially aids the conduct giving rise to the

1 liability, unless the individual sustains the burden
2 of proof that the individual did not know and, in the
3 exercise of reasonable care could not have known, of
4 the existence of conduct by reason of which the
5 liability is alleged to exist; and

6 (4) A person that is a broker-dealer, agent, investment
7 adviser, or investment adviser representative that
8 materially aids the conduct giving rise to the
9 liability under subsections (b) to (f), unless the
10 person sustains the burden of proof that the person
11 did not know and, in the exercise of reasonable care
12 could not have known, of the existence of conduct by
13 reason of which liability is alleged to exist.

14 (h) Person liable under this section has a right of
15 contribution as in cases of contract against any other person
16 liable under this section for the same conduct.

17 (i) A cause of action under this section survives the
18 death of an individual who might have been a plaintiff or
19 defendant.

20 (j) A person may not obtain relief:

21 (1) Under subsection (b) for violation of section -301,
22 or under subsection (d) or (e), unless the action is



1 instituted within one year after the violation

2 occurred; or

3 (2) Under subsection (b), other than for violation of
4 section -301, or under subsection (c) or (f),
5 unless the action is instituted within the earlier of
6 two years after discovery of the facts constituting
7 the violation or five years after the violation.

8 (k) A person that has made, or has engaged in the
9 performance of, a contract in violation of this chapter or a
10 rule adopted or order issued under this chapter, or that has
11 acquired a purported right under the contract with knowledge of
12 conduct by reason of which its making or performance was in
13 violation of this chapter, may not base an action on the
14 contract.

15 (l) A condition, stipulation, or provision binding a
16 person purchasing or selling a security or receiving investment
17 advice to waive compliance with this chapter or a rule adopted
18 or order issued under this chapter is void.

19 (m) The rights and remedies provided by this chapter are
20 in addition to any other rights or remedies that may exist.



1 less the amount of any income received on the
2 security; or, if the purchaser no longer owns the
3 security, an offer to pay the purchaser upon
4 acceptance of the offer damages in an amount that
5 would be recoverable upon a tender, less the
6 value of the security when the purchaser disposed
7 of it, and interest at the legal rate of
8 interest, from the date of the purchase in cash
9 equal to the damages computed in the manner
10 provided in this subsection;

11 (C) If the basis for relief under this section may
12 have been a violation of section -509(c), an
13 offer to tender the security, on payment by the
14 seller of an amount equal to the purchase price
15 paid, less income received on the security by the
16 purchaser and interest at the legal rate of
17 interest, from the date of the sale; or if the
18 purchaser no longer owns the security, an offer
19 to pay the seller upon acceptance of the offer,
20 in cash, damages in the amount of the difference
21 between the price at which the security was
22 purchased and the value the security would have



1 had at the time of the purchase in the absence of
2 the purchaser's conduct that may have caused
3 liability and interest at the legal rate of
4 interest, from the date of the sale;

5 (D) If the basis for relief under this section may
6 have been a violation of section -509(d); and
7 if the customer is a purchaser, an offer to pay
8 as specified in subparagraph (B); or, if the
9 customer is a seller, an offer to tender or to
10 pay as specified in subparagraph (C);

11 (E) If the basis for relief under this section may
12 have been a violation of section -509(e), an
13 offer to reimburse in cash the consideration paid
14 for the advice and interest at the legal rate of
15 interest, from the date of payment; or

16 (F) If the basis for relief under this section may
17 have been a violation of section -509(f), an
18 offer to reimburse in cash the consideration paid
19 for the advice, the amount of any actual damages
20 that may have been caused by the conduct, and
21 interest at the legal rate of interest, from the
22 date of the violation causing the loss;



1 (2) The offer under paragraph (1) states that it must be
2 accepted by the purchaser, seller, or recipient of
3 investment advice within thirty days after the date of
4 its receipt by the purchaser, seller, or recipient of
5 investment advice or any shorter period, of not less
6 than three days, that the commissioner, by order,
7 specifies;

8 (3) The offeror has the present ability to pay the amount
9 offered or to tender the security under paragraph (1);

10 (4) The offer under paragraph (1) is delivered to the
11 purchaser, seller, or recipient of investment advice,
12 or sent in a manner that ensures receipt by the
13 purchaser, seller, or recipient of investment advice;
14 and

15 (5) The purchaser, seller, or recipient of investment
16 advice that accepts the offer under paragraph (1) in a
17 record within the period specified under paragraph (2)
18 is paid in accordance with the terms of the offer.

19 **PART VI. ADMINISTRATION AND JUDICIAL REVIEW**

20 § -601 **Commissioner of securities.** (a) The
21 administration of this chapter shall be vested in the
22 commissioner. The director, with the approval of the governor,



1 shall appoint the commissioner who shall not be subject to
2 chapter 76. The commissioner shall hold the commissioner's
3 office at the pleasure of the director and shall be responsible
4 for the performance of the duties imposed under this chapter.

5 (b) The commissioner shall employ from time to time such
6 other officers, deputies, attorneys, clerks, and employees, as
7 are necessary for the administration of this chapter. They
8 shall perform such duties as the commissioner assigns to them,
9 and their compensation, and the compensation of the deputies
10 herein provided for, shall be fixed by the commissioner with the
11 approval of the governor, subject to chapter 76. The
12 commissioner, deputies, or any person appointed or employed by
13 the commissioner under this subsection shall be paid, in
14 addition to their salary or compensation when required to travel
15 on official duties, the transportation cost, board, lodging, and
16 other traveling expenses necessary and actually incurred by each
17 of them in the performance of the duties required by this
18 chapter or performed by the direction of the commissioner.

19 (c) Notwithstanding any other law to the contrary, the
20 commissioner, by contract, may retain the services of attorneys
21 for the enforcement of this chapter. The attorneys shall serve
22 at the pleasure of the commissioner. At the option of the



1 commissioner, attorneys retained by contract under this
2 subsection may be compensated on a fixed-price basis, an hourly
3 rate basis, with or without a fixed cap, or through a contingent
4 fee arrangement to be specified in the contract and payable out
5 of all sums the attorney recovers for the State by judgment,
6 order, or settlement.

7 (d) Upon the filing of the application for registration of
8 securities as provided in section -302 or -303, the
9 applicant, in writing, may request that the registration be
10 reviewed by a private consultant and, when requested, the
11 commissioner may contract with private consultants for such
12 review. The cost of the review shall be borne by the applicant;
13 provided that upon payment of the cost of review, the applicant
14 shall be reimbursed one-half of the respective filing fee.

15 (e) The governor shall cause the commissioner to be
16 furnished with such quarters, stationery, furniture, office
17 equipment, and other supplies as may be necessary for the
18 efficient execution of the functions vested in the commissioner
19 by this chapter.

20 (f) The commissioner shall report to the governor annually
21 upon a date as the governor shall establish. The report shall
22 contain an account of the work of the commissioner during the



1 period covered and data and information deemed necessary or
2 appropriate.

3 (g) The commissioner may develop and implement investor
4 education initiatives to inform the public about investing in
5 securities, with particular emphasis on the prevention and
6 detection of securities fraud. In developing and implementing
7 these initiatives, the commissioner may collaborate with public
8 and nonprofit organizations with an interest in investor
9 education. The commissioner may accept a grant or donation from
10 a person that is not affiliated with the securities industry or
11 from a nonprofit organization, regardless of whether the
12 organization is affiliated with the securities industry, to
13 develop and implement investor education initiatives.

14 (h) It shall be unlawful for the commissioner or an
15 officer, employee, or designee of the commissioner to use for
16 personal benefit or the benefit of others records or other
17 information obtained by or filed with the commissioner that are
18 not public under section -607(b). This chapter does not
19 authorize the commissioner or an officer, employee, or designee
20 of the commissioner to disclose the record or information,
21 except in accordance with section -602, -607(c), or
22 -608.



1 § -602 Investigations and subpoenas. (a) The

2 commissioner may:

3 (1) Conduct public or private investigations within or
4 outside of this State which the commissioner considers
5 necessary or appropriate to determine whether a person
6 has violated, is violating, or is about to violate
7 this chapter or a rule adopted or order issued under
8 this chapter, or to aid in the enforcement of this
9 chapter or in the adoption of rules and forms under
10 this chapter;

11 (2) Require or permit a person to testify, file a
12 statement, or produce a record, under oath or
13 otherwise as the commissioner determines, as to all
14 the facts and circumstances concerning a matter to be
15 investigated or about which an action or proceeding is
16 to be instituted; and

17 (3) Publish a record concerning an action, proceeding, or
18 an investigation under, or a violation of, this
19 chapter or a rule adopted or order issued under this
20 chapter if the commissioner determines it is necessary
21 or appropriate in the public interest and for the
22 protection of investors.

1 (b) For the purpose of an investigation under this
2 chapter, the commissioner or its designee may administer oaths
3 and affirmations, subpoena witnesses, seek compulsion of
4 attendance, take evidence, require the filing of statements, and
5 require the production of any records that the commissioner
6 considers relevant or material to the investigation.

7 (c) If a person does not appear or refuses to testify,
8 file a statement, produce records, or otherwise does not obey a
9 subpoena as required by the commissioner under this chapter, the
10 commissioner may apply to a court of competent jurisdiction to
11 enforce compliance. The court may:

- 12 (1) Hold the person in contempt;
- 13 (2) Order the person to appear before the commissioner;
- 14 (3) Order the person to testify about the matter under
15 investigation or in question;
- 16 (4) Order the production of records;
- 17 (5) Grant injunctive relief, including restricting or
18 prohibiting the offer or sale of securities or the
19 providing of investment advice;
- 20 (6) Impose a civil penalty not greater than \$100,000 for
21 each violation; and
- 22 (7) Grant any other necessary or appropriate relief.



1 (d) This section shall not preclude a person from applying
2 to a court of competent jurisdiction for relief from a request
3 to appear, testify, file a statement, produce records, or obey a
4 subpoena.

5 (e) An individual shall not be excused from attending,
6 testifying, filing a statement, producing a record or other
7 evidence, or obeying a subpoena of the commissioner under this
8 chapter or in an action or proceeding instituted by the
9 commissioner under this chapter on the ground that the required
10 testimony, statement, record, or other evidence, directly or
11 indirectly, may tend to incriminate the individual or subject
12 the individual to a criminal fine, penalty, or forfeiture. If
13 the individual refuses to testify, file a statement, or produce
14 a record or other evidence on the basis of the individual's
15 privilege against self-incrimination, the commissioner may apply
16 to a court of competent jurisdiction to compel the testimony,
17 the filing of the statement, the production of the record, or
18 the giving of other evidence. The testimony, record, or other
19 evidence compelled under such an order may not be used, directly
20 or indirectly, against the individual in a criminal case, except
21 in a prosecution for perjury or contempt or otherwise failing to
22 comply with the order.



1 (f) At the request of the securities regulator of another
2 state or a foreign jurisdiction, the commissioner may provide
3 assistance if the requesting regulator states that it is
4 conducting an investigation to determine whether a person has
5 violated, is violating, or is about to violate a law or rule of
6 the other state or foreign jurisdiction relating to securities
7 matters that the requesting regulator administers or enforces.
8 The commissioner may provide the assistance by using the
9 authority to investigate and the powers conferred by this
10 chapter as the commissioner determines is necessary or
11 appropriate. The assistance may be provided without regard to
12 whether the conduct described in the request would also
13 constitute a violation of this chapter or other law of this
14 State if occurring in this State. In deciding whether to
15 provide the assistance, the commissioner may consider whether
16 the requesting regulator is permitted and has agreed to provide
17 assistance reciprocally within its state or foreign jurisdiction
18 to the commissioner when requested; whether compliance with the
19 request would violate or prejudice the public policy of this
20 State; and the availability of resources and employees of the
21 commissioner to carry out the request for assistance.

1 (g) The commissioner shall, in its discretion, cooperate,
2 coordinate, consult, and, subject to section -607, share
3 records and information with the securities regulator of another
4 state, a foreign jurisdiction, the Securities and Exchange
5 Commission, the Department of Justice, the Commodity Futures
6 Trading Commission, the Federal Trade Commission, the Securities
7 Investor Protection Corporation, a self-regulatory organization,
8 a national or international organization of securities
9 regulators, a federal or state banking and insurance regulator,
10 and any other governmental law enforcement agency among the
11 federal government, self-regulatory organizations, states, and
12 foreign governments. Chapter 92F shall apply to records and
13 information.

14 § -603 **Civil enforcement.** (a) If the commissioner
15 believes that a person has engaged, is engaging, or is about to
16 engage in an act, practice, or course of business constituting a
17 violation of this chapter or a rule adopted or order issued
18 under this chapter or that a person has, is, or is about to
19 engage in an act, practice, or course of business that
20 materially aids a violation of this chapter or a rule adopted or
21 order issued under this chapter, the commissioner may maintain
22 an action in a court of competent jurisdiction to enjoin the



1 act, practice, or course of business, and to enforce compliance
2 with this chapter or a rule adopted or order issued under this
3 chapter.

4 (b) In an action under this section and on a proper
5 showing, the court may:

6 (1) Issue a permanent or temporary injunction, restraining
7 order, or declaratory judgment;

8 (2) Order other appropriate or ancillary relief, which may
9 include:

10 (A) An asset freeze, accounting, writ of attachment,
11 writ of general or specific execution, and
12 appointment of a receiver or conservator, that
13 may be the commissioner, for the defendant or the
14 defendant's assets;

15 (B) Ordering the commissioner to take charge and
16 control of a defendant's property, including
17 investment accounts and accounts in a depository
18 institution, rents, and profits; to collect
19 debts; and to acquire and dispose of property;

20 (C) Imposing a civil penalty up to \$100,000 for a
21 single violation;



1 (D) Ordering rescission, restitution, or disgorgement
2 directed to a person that has engaged in an act,
3 practice, or course of business constituting a
4 violation of this chapter or the predecessor act
5 or a rule adopted or order issued under this
6 chapter or the predecessor act; and

7 (E) The payment of prejudgment and postjudgment
8 interest;

9 (3) Order the payment of costs and reasonable attorney's
10 fees; and

11 (4) Order such other relief as the court considers
12 appropriate.

13 (c) The commissioner shall not be required to post a bond
14 in an action or proceeding under this chapter.

15 (d) In an action under this section, the commissioner may
16 apply for and on due showing be entitled to have issued by the
17 court, a subpoena requiring forthwith the appearance of any
18 defendant and the defendant's employees, salespersons, or agents
19 and the production of documents, books, and records as may
20 appear necessary for the hearing of such petition to testify and
21 give evidence concerning the acts or conduct or things
22 complained of in the application for the injunction.



1 § -604 **Administrative enforcement.** (a) If the
2 commissioner determines that a person has engaged, is engaging,
3 or is about to engage in an act, practice, or course of business
4 constituting a violation of this chapter or a rule adopted or
5 order issued under this chapter or that a person has materially
6 aided, is materially aiding, or is about to materially aid an
7 act, practice, or course of business constituting a violation of
8 this chapter or a rule adopted or order issued under this
9 chapter, the commissioner may:

- 10 (1) Issue an order directing the person to cease and
11 desist from engaging in the act, practice, or course
12 of business or to take other action necessary or
13 appropriate to comply with this chapter;
14 (2) Issue an order denying, suspending, revoking, or
15 conditioning the exemptions for a broker-dealer under
16 section -401(b)(1)(D) or (F), or for an investment
17 adviser under section -403(b)(1)(C); or
18 (3) Issue an order under section -204.

19 (b) An order under subsection (a) shall be effective on
20 the date of issuance. Upon issuance of the order, the
21 commissioner shall promptly serve each person subject to the
22 order with a copy of the order. The order shall include a



1 statement of any civil penalty or costs of investigation the
2 commissioner will seek, a statement of the reasons for the
3 order, and notice that, within fifteen days after receipt of a
4 request in a record from the person, the matter shall be
5 scheduled for a hearing in accordance with chapter 91. The
6 order may include rescission, restitution, or disgorgement
7 directed to a person that has engaged in an act, practice, or
8 course of business constituting a violation of this chapter or
9 the predecessor act or a rule adopted or order issued under this
10 chapter or the predecessor act. If a person subject to the
11 order does not request a hearing and none is ordered by the
12 commissioner within thirty days after the date of service of the
13 order, the order, including the imposition of a civil penalty or
14 requirement for payment of the costs of investigation sought in
15 a statement in the order, becomes final as to that person by
16 operation of law. If a hearing is requested or ordered, the
17 commissioner, after notice of and opportunity for hearing to
18 each person subject to the order, may modify or vacate the order
19 or extend it until a final determination is made. During the
20 pendency of any hearing requested under this subsection, the
21 cease and desist order shall remain in effect unless vacated or



1 modified by the commissioner; provided that any penalty shall
2 not take effect until the final order is issued.

3 (c) If a hearing is requested or ordered pursuant to
4 subsection (b), a hearing shall be held pursuant to chapter 91.
5 A final order may not be issued unless the commissioner makes
6 findings of fact and conclusions of law in a record in
7 accordance with chapter 91. The final order may make final,
8 vacate, or modify the order issued under subsection (a).

9 (d) In a final order under subsection (c), the
10 commissioner may impose a civil penalty of not more than
11 \$100,000 for each violation. The order may include rescission,
12 restitution, or disgorgement directed to a person that has
13 engaged in an act, practice, or course of business constituting
14 a violation of this chapter or the predecessor act or a rule
15 adopted or order issued under this chapter or the predecessor
16 act.

17 (e) In a final order, the commissioner may charge the
18 actual cost of an investigation or proceeding for a violation of
19 this chapter or a rule adopted or order issued under this
20 chapter.

21 (f) If a petition for judicial review of a final order is
22 not filed in accordance with section -609, the commissioner



1 may file a certified copy of the final order with the clerk of a
2 court of competent jurisdiction. The order so filed has the
3 same effect as a judgment of the court and may be recorded,
4 enforced, or satisfied in the same manner as a judgment of the
5 court.

6 (g) If a person does not comply with an order under this
7 section, the commissioner may petition a court of competent
8 jurisdiction to enforce the order. If the court finds, after
9 service and opportunity for hearing, that the person was not in
10 compliance with the commissioner's order, the court may find the
11 person in civil contempt of the order. The court may impose a
12 further civil penalty against the person for contempt in an
13 amount not to exceed \$2,000 for each violation and may grant any
14 other relief the court determines is just and proper in the
15 circumstances.

16 § -605 **Venue.** Any action brought by the commissioner
17 under this chapter may be brought in any circuit in the State at
18 the commissioner's discretion. Any other action under this
19 chapter shall be brought in the circuit of the plaintiff's
20 residence or in the circuit in which the commissioner has the
21 commissioner's office.



1 § -606 Rules, forms, orders, interpretive opinions, and
2 hearings. (a) The commissioner may adopt, amend, and repeal,
3 pursuant to chapter 91, such rules as may be necessary to carry
4 out the purposes of this chapter. Notwithstanding this
5 subsection, the commissioner may adopt, amend, and repeal forms
6 and orders necessary to implement this chapter without regard to
7 chapter 91. No form or order shall be adopted, amended, or
8 repealed without regard to chapter 91, unless the commissioner
9 finds that the action is in the public interest, necessary or
10 appropriate for the protection of investors, and consistent with
11 the purposes of this chapter.

12 (b) Subject to section 15(h) of the Securities Exchange
13 Act (15 U.S.C. 780) and section 222 of the Investment Advisers
14 Act of 1940 (15 U.S.C. 806-18a), the commissioner may require
15 that a financial statement filed under this chapter be prepared
16 in accordance with generally accepted accounting principles in
17 the United States and comply with other requirements specified
18 by rule adopted or order issued under this chapter. A rule
19 adopted or order issued under this chapter may establish:

20 (1) Subject to section 15(h) of the Securities Exchange
21 Act (15 U.S.C. 780) and section 222 of the Investment
22 Advisors Act of 1940 (15 U.S.C. 806-18a), the form and



1 content of financial statements required under this
2 chapter;

3 (2) Whether unconsolidated financial statements must be
4 filed; and

5 (3) Whether required financial statements must be audited
6 by an independent certified public accountant.

7 (c) The commissioner may provide interpretative opinions
8 or issue determinations that the commissioner will not institute
9 a proceeding or an action under this chapter against a specified
10 person for engaging in a specified act, practice, or course of
11 business if the determination is consistent with this chapter.
12 A rule adopted or order issued under this chapter may establish
13 a reasonable charge for interpretative opinions or
14 determinations that the commissioner will not institute an
15 action or a proceeding under this chapter.

16 (d) A hearing in an administrative proceeding under this
17 chapter shall be conducted in public unless the commissioner for
18 good cause consistent with this chapter determines that the
19 hearing will not be so conducted.

20 § -607 **Administrative files and opinions.** (a) The
21 commissioner shall maintain, or designate a person to maintain,
22 a register of applications for registration of securities;



1 registration statements; notice filings; applications for
2 registration of broker-dealers, agents, investment advisers, and
3 investment adviser representatives; notice filings by federal
4 covered investment advisers that are or have been effective
5 under this chapter or the predecessor act; notices of claims of
6 exemption from registration or notice filing requirements
7 contained in a record; orders issued under this chapter or the
8 predecessor act; and interpretative opinions or no action
9 determinations issued under this chapter.

10 (b) The commissioner shall make all rules, forms,
11 interpretative opinions, and orders available to the public in
12 accordance with chapter 92F.

13 (c) The commissioner shall furnish a copy of a record that
14 is a public record or a certification that the public record
15 does not exist to a person that so requests in accordance with
16 chapter 92F. A copy of the record certified or a certificate by
17 the commissioner of a record's nonexistence is prima facie
18 evidence of a record or its nonexistence.

19 § -608 **Public records; confidentiality.** (a) Except as
20 otherwise provided in subsection (b) or chapter 92F, records
21 obtained by the commissioner or filed under this chapter,
22 including a record contained in or filed with a registration



1 statement, application, notice filing, or report, are public
2 records and are available for public examination.

3 (b) The following records are not public records and are
4 not available for public examination under subsection (a):

5 (1) A record obtained by the commissioner in connection
6 with an audit or inspection under section -411(d)
7 or an investigation under section -602;

8 (2) A part of a record filed in connection with a
9 registration statement under sections -301 and
10 -303 to -305, or a record under section
11 -411(c) that contains trade secrets or confidential
12 information if the person filing the registration
13 statement or report has asserted a claim of
14 confidentiality or privilege that is authorized by
15 law;

16 (3) A record that is not required to be provided to the
17 commissioner or filed under this chapter and is
18 provided to the commissioner only on the condition
19 that the record will not be subject to public
20 examination or disclosure;

21 (4) A nonpublic record received from a person specified in
22 section -602(g);

1 (5) Any social security number, residential address unless
2 used as a business address, and residential telephone
3 number unless used as a business telephone number,
4 contained in a record that is filed; and

5 (6) A record obtained by the commissioner through a
6 designee of the commissioner that a rule or order
7 under this chapter determines has been:

8 (A) Expunged from the commissioner's records by the
9 designee; or

10 (B) Determined to be nonpublic or nondisclosable by
11 that designee if the commissioner finds the
12 determination to be in the public interest and
13 for the protection of investors.

14 (c) If disclosure is for the purpose of a civil,
15 administrative, or criminal investigation, action, or proceeding
16 or to a person specified in section -602(g), the commissioner
17 may disclose a record obtained in connection with an audit or
18 inspection under section -411(d) or a record obtained in
19 connection with an investigation under section -602.

20 **§ -609 Appeals to court, first circuit; time; bonds;**

21 **costs; decree; further appeal.** (a) An appeal may be taken by

22 any aggrieved person from any final order of the commissioner to



1 the circuit court of the first circuit in the manner provided in
2 chapter 91. The appellant shall execute a bond in the penal sum
3 of \$1,000 to the State, with sufficient surety, to be approved
4 by the commissioner or the court, conditioned upon the faithful
5 prosecution of the appeal to final judgment, and the payment of
6 all such costs as shall be adjudged against the appellant.

7 (b) The appeal shall be conducted without a jury and
8 confined to the record, and it may be given precedence by the
9 court over other matters pending in the court.

10 (c) If the order of the commissioner is reversed the court
11 shall by its mandate specifically direct the commissioner as to
12 the commissioner's further action in the matter, including the
13 making and entering of any order or orders in connection
14 therewith, and the conditions, limitations, or restrictions to
15 be therein contained; provided that the commissioner shall not
16 thereby be barred from thereafter revoking or altering the order
17 for any proper cause which may thereafter accrue or be
18 discovered.

19 (d) If the order is affirmed, the appellant shall not be
20 barred after thirty days from filing a new application; provided
21 the application is not otherwise barred or limited.



1 (e) The appeal shall not in anyway suspend the operation
2 of the order appealed from during the pendency of the appeal
3 unless upon proper order of the commissioner or the court.

4 (f) An appeal may be taken from the decree of the circuit
5 court to the supreme court.

6 § -610 **Service of process.** (a) A consent to service of
7 process complying with this section shall be signed and filed in
8 the form required by a rule or order under this chapter. A
9 consent appointing the commissioner the person's agent for
10 service of process in a noncriminal action or proceeding against
11 the person, or the person's successor or personal representative
12 under this chapter or a rule adopted or order issued under this
13 chapter after the consent is filed, has the same force and
14 validity as if the service were made personally on the person
15 filing the consent. A person that has filed a consent complying
16 with this subsection in connection with a previous application
17 for registration or notice filing need not file an additional
18 consent.

19 (b) If a person, including a nonresident of this State,
20 engages in an act, practice, or course of business prohibited or
21 made actionable by this chapter or a rule adopted or order
22 issued under this chapter and the person has not filed a consent



1 to service of process under subsection (a), the act, practice,
2 or course of business constitutes the appointment of the
3 commissioner as the person's agent for service of process in a
4 noncriminal action or proceeding against the person or the
5 person's successor or personal representative.

6 (c) Service under subsection (a) or (b) may be made by
7 providing a copy of the process to the office of the
8 commissioner; provided that it shall not be effective unless:

- 9 (1) The plaintiff, which may be the commissioner, promptly
10 sends notice of the service and a copy of the process,
11 return receipt requested, to the defendant or
12 respondent at the address set forth in the consent to
13 service of process or, if a consent to service of
14 process has not been filed, at the last known address,
15 or takes other reasonable steps to give notice; and
16 (2) The plaintiff files an affidavit of compliance with
17 this subsection in the action or proceeding on or
18 before the return day of the process, if any, or
19 within the time that the court, or the commissioner in
20 a proceeding before the commissioner, allows.

1 (d) Service pursuant to subsection (c) may be used in a
2 proceeding before the commissioner or by the commissioner in a
3 civil action in which the commissioner is the moving party.

4 (e) If process is served under subsection (c), the court,
5 or the commissioner in a proceeding before the commissioner,
6 shall order continuances as are necessary or appropriate to
7 afford the defendant or respondent reasonable opportunity to
8 defend.

9 (f) If any process or pleadings mentioned in this chapter
10 are served upon the commissioner, it shall be by duplicate
11 copies, one of which shall be filed in the office of the
12 commissioner and another immediately forwarded by the
13 commissioner by registered mail to the principal office of the
14 issuer against which the process or pleadings are directed.

15 **PART VII. TRANSITION**

16 **§ -701 Application of act to existing proceeding and**
17 **existing rights and duties.** (a) The predecessor act
18 exclusively governs all actions or proceedings that are pending
19 on the effective date of this chapter or may be instituted on
20 the basis of conduct occurring before the effective date of this
21 chapter; provided that a civil action may not be maintained to
22 enforce any liability under the predecessor act unless



1 instituted within any period of limitation that applied when the
2 cause of action accrued or within five years after the effective
3 date of this chapter, whichever is earlier.

4 (b) All effective registrations under the predecessor act,
5 all administrative orders relating to the registrations, rules,
6 statements of policy, interpretative opinions, declaratory
7 rulings, no-action determinations, and conditions imposed on the
8 registrations under the predecessor act shall remain in effect
9 for the period that they would have remained in effect if this
10 chapter had not been enacted. The registration orders, rules,
11 statements, opinions, rulings, determinations, and conditions,
12 shall be deemed to have been filed, issued, or imposed under
13 this chapter, but shall be exclusively governed by the
14 predecessor act."

15 SECTION 2. Chapter 485, Hawaii Revised Statutes, is
16 repealed.

17 SECTION 3. Section 26-9, Hawaii Revised Statutes, is
18 amended by amending subsection (o) to read as follows:

19 "(o) Every person licensed under any chapter within the
20 jurisdiction of the department of commerce and consumer affairs
21 and every person licensed subject to chapter [485] _____ shall
22 pay upon issuance of a license, permit, certificate, or



1 registration a fee and a subsequent annual fee to be determined
2 by the director and adjusted from time to time to ensure that
3 the proceeds, together with all other fines, income, and
4 penalties collected under this section, do not surpass the
5 annual operating costs of conducting compliance resolution
6 activities required under this section. The fees may be
7 collected biennially or pursuant to rules adopted under chapter
8 91, and shall be deposited into the special fund established
9 under this subsection. Every filing pursuant to chapter 514E or
10 section [~~485-6(15)~~] -202(26) shall be assessed, upon initial
11 filing and at each renewal period in which a renewal is
12 required, a fee that shall be prescribed by rules adopted under
13 chapter 91, and that shall be deposited into the special fund
14 established under this subsection. Any unpaid fee shall be paid
15 by the licensed person, upon application for renewal,
16 restoration, reactivation, or reinstatement of a license, and by
17 the person responsible for the renewal, restoration,
18 reactivation, or reinstatement of a license, upon the
19 application for renewal, restoration, reactivation, or
20 reinstatement of the license. If the fees are not paid, the
21 director may deny renewal, restoration, reactivation, or
22 reinstatement of the license. The director may establish,



1 increase, decrease, or repeal the fees when necessary pursuant
2 to rules adopted under chapter 91. The director may also
3 increase or decrease the fees pursuant to section 92-28.

4 There is created in the state treasury a special fund to be
5 known as the compliance resolution fund to be expended by the
6 director's designated representatives as provided by this
7 subsection. Notwithstanding any law to the contrary, all
8 revenues, fees, and fines collected by the department shall be
9 deposited into the compliance resolution fund. Unencumbered
10 balances existing on June 30, 1999, in the cable television fund
11 under chapter 440G, the division of consumer advocacy fund under
12 chapter 269, the financial institution examiners' revolving
13 fund, section 412:2-109, the special handling fund, section
14 414-13, and unencumbered balances existing on June 30, 2002, in
15 the insurance regulation fund, section 431:2-215, shall be
16 deposited into the compliance resolution fund. This provision
17 shall not apply to the drivers education fund underwriters fee,
18 section 431:10C-115, insurance premium taxes and revenues,
19 revenues of the workers' compensation special compensation fund,
20 section 386-151, the captive insurance administrative fund,
21 section 431:19-101.8, the insurance commissioner's education and
22 training fund, section 431:2-214, the medical malpractice



1 patients' compensation fund as administered under section 5 of
2 Act 232, Session Laws of Hawaii 1984, and fees collected for
3 deposit in the office of consumer protection restitution fund,
4 section 487-14, the real estate appraisers fund, section 466K-1,
5 the real estate recovery fund, section 467-16, the real estate
6 education fund, section 467-19, the contractors recovery fund,
7 section 444-26, the contractors education fund, section 444-29,
8 and the condominium management education fund, section 514A-131.
9 Any law to the contrary notwithstanding, the director may use
10 the moneys in the fund to employ, without regard to chapter 76,
11 hearings officers, investigators, attorneys, accountants, and
12 other necessary personnel to implement this subsection. Any law
13 to the contrary notwithstanding, the moneys in the fund shall be
14 used to fund the operations of the department. The moneys in
15 the fund may be used to train personnel as the director deems
16 necessary and for any other activity related to compliance
17 resolution.

18 As used in this subsection, unless otherwise required by
19 the context, "compliance resolution" means a determination of
20 whether:



1 (1) Any licensee or applicant under any chapter subject to
2 the jurisdiction of the department of commerce and
3 consumer affairs has complied with that chapter;

4 (2) Any person subject to chapter ~~[485]~~ _____ has complied
5 with that chapter;

6 (3) Any person submitting any filing required by chapter
7 514E or section ~~[485-6(15)]~~ _____-202(26) has complied
8 with chapter 514E or section ~~[485-6(15)]~~ _____-202(26);
9 or

10 (4) Any person has complied with the prohibitions against
11 unfair and deceptive acts or practices in trade or
12 commerce;

13 and includes work involved in or supporting the above functions,
14 licensing, or registration of individuals or companies regulated
15 by the department, consumer protection, and other activities of
16 the department.

17 The director shall prepare and submit an annual report to
18 the governor and the legislature on the use of the compliance
19 resolution fund. The report shall describe expenditures made
20 from the fund including non-payroll operating expenses."

21 SECTION 4. Section 26-14.6, Hawaii Revised Statutes, is
22 amended by amending subsection (f) to read as follows:



1 "(f) Effective July 1, 1990, the functions, authority, and
2 obligations, together with the limitations imposed thereon and
3 the privileges and immunities conferred thereby, exercised by a
4 "sheriff", "sheriffs", a "sheriff's deputy", "sheriff's
5 deputies", a "deputy sheriff", "deputy sheriffs", or a "deputy",
6 under sections 21-8, 47-18, 88-51, 105-4, 134-11, 134-51,
7 183D-11, 187A-14, 201G-55, 201G-74, 231-25, 281-108, 281-111,
8 286-52, 286-52.5, 321-1, 322-6, 325-9, 325-80, 353-11, 383-71,
9 438-5, 445-37, 482E-4, [~~485-6~~] -202, 501-42, 501-171,
10 501-218, 521-78, 578-4, 584-6, 587-33, 603-29, 604-6.2, 606-14,
11 607-2, 607-4, 607-8, 633-8, 634-11, 634-12, 634-21, 634-22,
12 651-33, 651-37, 651-51, 654-2, 655-2, 657-13, 660-16, 666-11,
13 666-21, 803-23, 803-34, 803-35, 804-14, 804-18, 804-41, 805-1,
14 806-71, and 832-23 shall be exercised to the same extent by the
15 department of public safety."

16 SECTION 5. Section 92-28, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§92-28 State service fees; increase or decrease of.** Any
19 law to the contrary notwithstanding, the fees or other nontax
20 revenues assessed or charged by any board, commission, or other
21 governmental agency may be increased or decreased by the body in
22 an amount not to exceed fifty per cent of the statutorily



1 assessed fee or nontax revenue, [~~in order~~] to maintain a
2 reasonable relation between the revenues derived from such fee
3 or nontax revenue and the cost or value of services rendered,
4 comparability among fees imposed by the State, or any other
5 purpose which it may deem necessary and reasonable; provided
6 that:

- 7 (1) The authority to increase or decrease fees or nontax
8 revenues shall be subject to the approval of the
9 governor and extend only to the following: chapters
10 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189,
11 231, 269, 271, 321, 338, 373, 412, 414, 414D, 415A,
12 417E, 419, 421, 421C, 421H, 421I, 425, 425E, 428, 431,
13 438, 439, 440, 442, 447, 448, 452, 453, 455, 456, 457,
14 458, 459, 460, 461, 463, 464, 466, 467, 469, 471, 482,
15 482E, [~~485~~] _____, 501, 502, 505, 572, 574, and 846
16 (part II);
- 17 (2) The authority to increase or decrease fees or nontax
18 revenues under the chapters listed in paragraph (1)
19 that are established by the department of commerce and
20 consumer affairs shall apply to fees or nontax
21 revenues established by statute or rule;



1 (3) The authority to increase or decrease fees or nontax
2 revenues established by the University of Hawaii under
3 chapters 304, 305, 306, and 308 shall be subject to
4 the approval of the board of regents; provided that
5 the board's approval of any increase or decrease in
6 tuition for regular credit courses shall be preceded
7 by an open public meeting held during or prior to the
8 semester preceding the semester to which the tuition
9 applies;

10 (4) This section shall not apply to judicial fees as may
11 be set by any chapter cited in this section;

12 (5) The authority to increase or decrease fees or nontax
13 revenues pursuant to this section shall be exempt from
14 the public notice and public hearing requirements of
15 chapter 91; and

16 (6) Fees for copies of proposed and final rules and public
17 notices of proposed rulemaking actions under chapter
18 91 shall not exceed 10 cents a page, as required by
19 section 91-2.5."

20 SECTION 6. Section 303-2, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:

1 "(a) The department of education and the University of
2 Hawaii, on behalf of any employee of the respective
3 institutions, may enter into a written agreement with any
4 employee to purchase for the employee:

- 5 (1) An annuity contract under section 403(b) of the
6 Internal Revenue Code of 1986, as amended, from an
7 insurer who holds a certificate of authority under
8 section 431:3-201 or certificate of registration of
9 dealer in securities under chapter [~~485~~], _____, or
10 both, and who complies with the requirements
11 established by the respective institution and agrees
12 to abide by the terms, conditions, rules, or
13 regulations of the respective institution; or
14 (2) An annuity contract qualified under section 401(k) of
15 the Internal Revenue Code of 1986, as amended, which
16 provides a nationwide retirement trust for a group of
17 college or university football coaches who, due to the
18 nature of their jobs, change employers frequently."

19 SECTION 7. Section 412:3-210, Hawaii Revised Statutes, is
20 amended by amending subsections (b) and (c) to read as follows:

21 "(b) An application under this section may be filed before
22 or after the applicant's articles of incorporation and bylaws

1 have been approved by the commissioner; provided that the
2 applicant in organization and the proposed financial institution
3 shall not solicit subscriptions for capital stock until the
4 articles of incorporation and bylaws of the proposed financial
5 institution shall have been approved by the commissioner. An
6 applicant in organization seeking approval of a capital stock
7 solicitation shall pay a fee established by the commissioner
8 pursuant to section 412:2-105, and shall file an application
9 which contains the following:

- 10 (1) Information regarding the solicitation plan by which
11 the applicant in organization and the proposed
12 financial institution proposes to conduct the
13 solicitation of subscribers;
- 14 (2) Information regarding the classes of shares,
15 respective quantities of shares for each class, and
16 the subscription price of each class of stock;
- 17 (3) A specimen subscription contract or purchase
18 agreement, suitability certificates and other related
19 documents to be executed by subscribers;
- 20 (4) Any underwriting agreement or other agreement for the
21 purchase or distribution of the capital stock;



- 1 (5) Any escrow agreements or other agreement for the
- 2 holding of the purchase proceeds of the capital stock;
- 3 (6) Proposed advertising materials;
- 4 (7) If the offer and sale of the capital stock is subject
- 5 to the Securities Act of 1933 and regulations
- 6 thereunder, a copy of the registration statement most
- 7 recently filed with the federal Securities and
- 8 Exchange Commission or any other notices or other
- 9 filings in lieu of registration required or permitted
- 10 by that Act or regulation and any subsequent
- 11 amendments thereto;
- 12 (8) If the offer and sale of the capital stock is subject
- 13 to chapter [4857] _____, a copy of the registration or
- 14 qualification statement most recently filed with the
- 15 commissioner of securities and any subsequent
- 16 amendments thereto;
- 17 (9) If the offer and sale of the capital stock is not
- 18 subject to the Securities Act of 1933 or chapter
- 19 [4857] _____, whether exempted by law or regulation
- 20 or otherwise, a copy of the most recent version of any
- 21 prospectus, offering memorandum, offering circular, or
- 22 other offering document proposed to be delivered to



1 prospective subscribers to the capital stock, and any
2 subsequent amendments thereto; and
3 (10) Any other information that the commissioner may
4 require.

5 (c) Upon being satisfied that the application for approval
6 of the capital stock solicitation is complete and that the
7 solicitation will not affect the safety or soundness of the
8 proposed financial institution or harm the public interest, the
9 commissioner shall approve the application. The approval shall
10 not constitute a determination that the applicant has complied
11 with chapter [485] _____ or any other state or federal law."

12 SECTION 8. Section 412:5-205.7, Hawaii Revised Statutes,
13 is amended to read as follows:

14 1. By amending subsections (a) and (b) to read:

15 "(a) With the prior written approval of the commissioner,
16 and subject to the limitations set forth in this section and to
17 any conditions the commissioner may impose, any bank organized
18 under the laws of the State, at the discretion of its board of
19 directors, either directly in any department or division of the
20 bank or through a subsidiary or affiliate of the bank, may
21 engage in the following securities activities and in any related
22 or incidental activity, within the State:



- 1 (1) Sale or purchase of any security on the order of and
2 for the account of customers, either alone or in
3 conjunction with the rendering of investment advice to
4 customers, through the operations, respectively, of a
5 discount or full service brokerage;
- 6 (2) Organization, sponsorship, operation, control, and
7 distribution of one or more investment companies, as
8 defined in section 3 of the Investment Company Act of
9 1940 (15 U.S.C. 80a-3) or in the laws of the
10 jurisdiction in which [†]the[‡] investment company
11 operates;
- 12 (3) Provision of portfolio advice to customers;
- 13 (4) Provision of investment and financial advice to
14 government agencies; and
- 15 (5) Service as dealer-manager or financial advisor to
16 corporations, partnerships, or other persons,
17 including but not limited to[‡] the provision of
18 valuation advice and opinions with respect to sales or
19 purchases of assets, corporate restructurings,
20 issuances of securities, mergers, and other
21 acquisitions.



1 The exercise of authority conferred in this subsection
2 shall be governed by and comply with chapter [485] _____ and
3 any securities administrative rules adopted under chapter [485-]
4 _____. Administration of chapter [485] _____ and any
5 securities administrative rules shall be vested with the
6 commissioner of securities.

7 (b) With the prior written approval of the commissioner,
8 and subject to the limitations set forth in this section and to
9 any conditions the commissioner may impose, any bank organized
10 under the laws of the State, at the discretion of its board of
11 directors, either directly in any department or division of the
12 bank or through a subsidiary or affiliate thereof, may engage in
13 the following securities activities and in any related or
14 incidental activities, in any place outside this State,
15 including any other state of the United States, dependencies or
16 insular possession of the United States, or any foreign
17 countries:

18 (1) Sale or purchase of any security, as defined under
19 applicable law, on the order of and for the account of
20 customers, either alone or in conjunction with the
21 rendering of investment advice to customers, through



- 1 the operations, respectively, of a discount or full
2 service brokerage;
- 3 (2) Organization, sponsorship, operation, control, and
4 distribution of one or more investment companies, as
5 defined in section 3 of the Investment Company Act of
6 1940 (15 U.S.C. 80a-3) or as otherwise defined under
7 applicable law;
- 8 (3) Provision of portfolio advice to customers;
- 9 (4) Provision of investment and financial advice to
10 government agencies; and
- 11 (5) Service as dealer-manager or financial advisor to
12 corporations, partnerships, or other persons,
13 including but not limited to, the provision of
14 valuation advice and opinions with respect to sales or
15 purchases of assets, corporate restructurings,
16 issuances of securities, mergers, and other
17 acquisitions.

18 The exercise of authority conferred in this subsection
19 shall be governed by and comply with chapter [485] _____ and any
20 securities rules adopted under chapter [485] _____ or the laws
21 and administrative rules of the state, dependency, insular

1 possession, or foreign country applicable to the conduct of such
2 securities activities within that jurisdiction."

3 2. By amending subsection (d) as to read:

4 (d) Upon receipt of the commissioner's approval under this
5 section, the bank or its subsidiary or affiliate shall obtain
6 any necessary approvals required under chapter [485] _____ and
7 any securities administrative rules adopted under chapter [485]
8 _____, or the applicable securities and banking laws of the
9 jurisdiction in which it will be conducting its securities
10 activities."

11 SECTION 9. Section 412:10-502, Hawaii Revised Statutes, is
12 amended by amending subsection (e) to read as follows:

13 "(e) To the extent specified herein, a credit union may
14 invest its own assets in securities that are rated within the
15 four highest grades by a nationally-recognized rating service
16 and which represent ownership of one or more promissory notes,
17 certificates of interest, or participation in such notes, or
18 which are secured by one or more promissory notes, certificates
19 of interest, or participation in such notes, which notes:

20 (1) Are directly secured by a first lien on residential
21 real estate or a residential manufactured home as
22 defined under Title 42 of the United States Code,

1 whether or not such manufactured home is considered
2 real or personal property under state law; and
3 (2) Were originated by a credit union, insurance company,
4 or similar institution which is supervised and
5 examined by a federal or state authority, or by a
6 mortgagee approved by the Secretary of Housing and
7 Urban Development. Notes secured by a lien on a
8 manufactured home may also originate from a credit
9 union approved for insurance by the Secretary of
10 Housing and Urban Development. The total amount
11 invested in such securities by a credit union shall
12 not exceed twenty per cent of its capital and surplus.

13 The term "securities" in this [+]subsection[+] shall have the
14 same meaning as given in chapter [~~485-~~] _____."

15 SECTION 10. Section 417E-1, Hawaii Revised Statutes, is
16 amended by amending the definition of "commissioner" to read as
17 follows:

18 "Commissioner" means the commissioner of securities as
19 provided for in chapter [~~485-~~] _____."

20 SECTION 11. Section 417E-5, Hawaii Revised Statutes, is
21 amended by amending subsection (e) to read as follows:

1 "(e) No offeror shall make a take-over offer or acquire
 2 any equity securities in this State pursuant to the take-over
 3 offer, at any time when any proceeding by the commissioner is
 4 pending against the offeror alleging a violation of any
 5 provision of this chapter or chapter [485-] _____."

6 SECTION 12. Section 417E-6, Hawaii Revised Statutes, is
 7 amended by amending subsection (a) to read as follows:

8 "(a) In administering this chapter, the commissioner may
 9 exercise all powers granted to the commissioner under chapter
 10 [485-] _____, which are not inconsistent with this chapter."

11 SECTION 13. Section 417E-11, Hawaii Revised Statutes, is
 12 amended to read as follows:

13 "**§417E-11 Application of securities law.** All of the
 14 provisions of chapter [485] _____ [~~which~~] that are not in
 15 conflict with this chapter shall apply to any take-over offer
 16 involving a target company in this State."

17 SECTION 14. Section 421C-36, Hawaii Revised Statutes, is
 18 amended to read as follows:

19 "**[+]§421C-36[+] Exemption of voting stock from**
 20 **registration.** Membership stock or membership certificates under
 21 section 421C-3(a), or share or membership capital of any
 22 association organized under or existing prior to passage of this



1 chapter shall be included as exempt securities under section
2 [~~485-4.~~] -201."

3 SECTION 15. Section 431:4-113, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§431:4-113 Organization solicitor's license.**

6 Solicitation for sale of securities to members of the public
7 under a solicitation permit shall be made only by individuals
8 registered therefor pursuant to chapter [~~485.~~] ."

9 SECTION 16. Section 514E-19, Hawaii Revised Statutes, is
10 amended by amending subsection (c) to read as follows:

11 "(c) A time share interest in any time share plan which
12 satisfies the escrow and blanket lien protection requirements of
13 this chapter shall not be deemed a risk capital security under
14 chapter [~~485.~~] , and the offer or sale of a time share
15 interest therein shall not be deemed the offer or sale of a
16 security."

17 SECTION 17. Section 806-83, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) Criminal charges may be instituted by written
20 information for a felony when the charge is a class C felony
21 under section 19-3.5 (voter fraud); section 128D-10 (knowing
22 releases); [~~section~~] sections [~~+~~]132D-14(a)(1), (2)(A), and



1 (3) [+], (penalties for failure to comply with requirements of
2 sections 132D-7, 132D-10 and 132D-16); section 134-6 (carrying
3 or use of firearm in the commission of a separate felony);
4 section 134-7(a) and (b) (ownership or possession prohibited);
5 section 134-8 (prohibited ownership); section 134-9 (licenses to
6 carry); section 134-17(a) (relating to false information or
7 evidence concerning psychiatric or criminal history); section
8 134-51 (deadly weapons); section 134-52 (switchblade knives);
9 section 134-53 (butterfly knives); section 188-23 (possession or
10 use of explosives, electrofishing devices, and poisonous
11 substances in state waters prohibited); section 231-34 (attempt
12 to evade or defeat tax); section 231-36 (false and fraudulent
13 statements); section 245-37 (sale or purchase of packages of
14 cigarettes without stamps); section 245-38 (vending unstamped
15 cigarettes); section 245-51 (sale of export cigarettes
16 prohibited); section 245-52 (alteration of packaging
17 prohibited); section 291C-12.5 (accidents involving substantial
18 bodily injury); section 291E-61.5 (habitually operating a
19 vehicle under the influence of an intoxicant); section 329-41
20 (prohibited acts B); section 329-42 (prohibited acts C); section
21 329-43.5 (prohibited acts related to drug paraphernalia);
22 section 329C-2 (manufacture, distribution, or possession with



1 intent to distribute an imitation controlled substance to a
2 person under eighteen years of age); section 346-34(d)(2) and
3 (e) (fraud involving food stamps or coupons with a value
4 exceeding \$300); section 346-43.5 (medical assistance fraud);
5 section 383-141 (falsely obtaining benefits); section 431:10C-
6 307.7 (insurance fraud); section 482D-7 (violation of fineness
7 standards and stamping requirements); section [~~485-8~~
8 ~~(registration of securities);~~] -301 (registration of
9 securities); section [~~485-14 (registration of dealers,~~
10 ~~investment advisers, salespersons, and investment adviser~~
11 ~~representatives);~~] 401 (registration of broker-dealers); section
12 -402 (registration of agents); section -403 (registration
13 of investment advisors); section -404 (registration of
14 investment advisor representatives); section -405
15 (registration of federal covered investment advisors); section
16 [~~485-25 (fraudulent and other prohibited practices);~~] -501
17 (general fraud); section -502 (prohibited conduct in
18 providing investment advice); section 707-703 (negligent
19 homicide in the second degree); section 707-705 (negligent
20 injury in the first degree); section 707-711 (assault in the
21 second degree); section 707-713 (reckless endangering in the
22 first degree); section 707-721 (unlawful imprisonment in the



1 first degree); section 707-726 (custodial interference in the
2 first degree); section 707-757 (electronic enticement of a child
3 in the second degree); section 707-766 (extortion in the second
4 degree); section 708-811 (burglary in the second degree);
5 section 708-821 (criminal property damage in the second degree);
6 section 708-831 (theft in the second degree); section 708-833.5
7 (shoplifting); section 708-835.5 (theft of livestock); section
8 708-836 (unauthorized control of propelled vehicle); section
9 708-836.5 (unauthorized entry into motor vehicle); section 708-
10 839.5 (theft of utility services); section 708-839.8 (identity
11 theft in the third degree); section 708-852 (forgery in the
12 second degree); section 708-854 (criminal possession of a
13 forgery device); section 708-858 (suppressing a testamentary or
14 recordable instrument); section 708-875 (trademark
15 counterfeiting); section 708-891.5 (computer fraud in the second
16 degree); section 708-892.5 (computer damage in the second
17 degree); section 708-895.6 (unauthorized computer access in the
18 second degree); section 708-8100 (fraudulent use of a credit
19 card); section 708-8102 (theft/forgery of credit cards); section
20 708-8103 (credit card fraud by a provider of goods or services);
21 section 708-8104 (possession of unauthorized credit card
22 machinery or incomplete cards); section 708-8200 (cable



1 television service fraud in the first degree); section 708-8202
2 (telecommunication service fraud in the first degree); section
3 709-903.5 (endangering the welfare of a minor in the first
4 degree); [+]section[+] 709-906 (abuse of family or household
5 members); section 710-1016.3 (obtaining a government-issued
6 identification document under false pretenses in the first
7 degree); section 710-1016.6 (impersonating a law enforcement
8 officer in the first degree); section 710-1017.5 (sale or
9 manufacture of deceptive identification document); section
10 710-1018 (securing the proceeds of an offense); section 710-1021
11 (escape in the second degree); section 710-1023 (promoting
12 prison contraband in the second degree); section 710-1024 (bail
13 jumping in the first degree); section 710-1029 (hindering
14 prosecution in the first degree); section 710-1060 (perjury);
15 section 710-1072.5 (obstruction of justice); section 711-1103
16 (riot); section 711-1109.3 (cruelty to animals/fighting dogs);
17 section 711-1110.9 (violation of privacy in the first degree);
18 section 711-1112 (interference with the operator of a public
19 transit vehicle); section 712-1221 (promoting gambling in the
20 first degree); section 712-1222.5 (promoting gambling aboard
21 ships); section 712-1224 (possession of gambling records in the
22 first degree); section 712-1243 (promoting a dangerous drug in



SB 2453

Report Title:

Uniform Securities Act

Description:

Adopts the 2002 Uniform Securities Act and makes conforming amendments.

