

No. 284

AN ACT

HB 1970

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

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

PART I  
SHORT TITLE; DEFINITIONS

Section 101. Short Title.—This act shall be known and may be cited as the “Pennsylvania Securities Act of 1972.”

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

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

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

(c) “Agent” means any individual, other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. “Agent” does not include an individual who represents an issuer in effecting transactions in securities exempted by section 202 or in effecting transactions exempted by section 203 and does not include an individual who has no place of business in this State if he effects transactions in this State exclusively with broker-dealers. An officer, director, or partner or employe of a broker-dealer or issuer, or an individual occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition and receives compensation directly or indirectly related to purchases or sales of securities.

(d) “Bank” means any bank, banking and trust company, savings bank, trust company or private bank, as defined in the Banking Code of 1965, act of November 30, 1965 (P.L.847), or any savings and loan association, as defined in the Savings Association Code of 1967, act of December 14, 1967 (P.L.746), or any successor statutes thereto, or any banking institution, trust company or savings and loan institution organized under the laws of the United States, or of any state, territory or the District of Columbia, or a receiver, conservator or other liquidating agent of any of the foregoing.

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

- (i) An agent;
- (ii) An issuer;
- (iii) A bank, when effecting transactions for its own account or for the account of another under section 302 (c);
- (iv) An executor, administrator, guardian, conservator or pledgee;
- (v) A person who has no place of business in this State if he effects transactions in this State exclusively with or through (A) the issuers of the securities involved in the transactions, (B) broker-dealers or institutional investors;
- (vi) A person licensed as a real estate broker or agent under the Real Estate Brokers License Act of one thousand nine hundred and twenty-nine, act of May 1, 1929 (P.L.1216), as amended, and whose transactions in securities are isolated transactions incidental to that business;
- (vii) A person whose dealings in securities are limited to transactions exempt by section 203 (j); or
- (viii) Other persons not within the intent of this subsection whom the commission by regulation designates.

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

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

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

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

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

- (i) A bank;
- (ii) A lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of his profession;
- (iii) A broker-dealer registered under this act without the imposition of the condition referred to in section 305 (b) (v);
- (iv) A publisher of any bona fide newspaper, news magazine or business or financial publication of general, regular and paid circulation

which is not solely engaged in the rendering of investment advice; and the agents and servants thereof in the performance of their regular duties on behalf of such publication;

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

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

(vii) Any person who during the course of the preceding twelve months has had fewer than five clients and who does not hold himself out generally to the public as an investment adviser.

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

(k) "Institutional investor" means any bank, insurance company, pension or profit-sharing plan or trust, investment company, as defined in the Investment Company Act of 1940, other financial institution or any person, other than an individual, which controls any of the foregoing, the Federal Government, State or any agency or political subdivision thereof or any other person so designated by regulation of the commission.

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

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

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

(o) "Promoter" includes (i) any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer; and (ii) any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, ten per cent or more of any class of securities of the issuer or ten per cent or more of the proceeds from the sale of any class of securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this clause if such person does not otherwise take part in founding and organizing the enterprise.

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

(q) "Reporting company" means any person which has been required to file, and has filed, all required periodic reports with the Securities and Exchange Commission and has filed all annual reports, if any, which it is required to file (i) for at least ninety days prior to the time of application of this definition for persons filing pursuant to the provisions of section 13 or 15 (d) of the Securities Exchange Act of 1934; or (ii) for at least one hundred eighty days prior to the time of application of this definition with respect to persons filing pursuant to the provisions of section 30 of the Investment Company Act of 1940, or for whom there is publicly available the information concerning such person which is specified in clauses (1) through (14) inclusive, and clause (16) of paragraph (a) (4) of Rule 15 c2-11 adopted under the Securities Exchange Act of 1934, or if the person is an insurance company the information specified in section 12 (g) (2) (G) (i) of that act. Information shall also be deemed "publicly available" under this section if it has been filed in such places or with such persons as the commission may specify by regulation.

(r) (i) "Sale" or "sell" includes every sale, disposition or exchange, and every contract of sale of, or contract to sell, a security or interest in a security for value or any issuance of securities pursuant to any merger, consolidation, sale of assets or other corporate reorganization, involving the exchange of securities, in whole or in part, for the securities of any other person.

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

(iii) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute

part of the subject of the purchase and to have been offered and sold for value.

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

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

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

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

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

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

(t) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; share of beneficial interest in a business trust; certificate of interest or participation in any profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; limited partnership interest; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as or having the incidents of a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. All of the foregoing are securities whether or not evidenced by written document. "Security" does not include: (i) any beneficial interest in any voluntary inter vivos trust which is not created for the purpose of carrying on any business, or (ii) any beneficial interest in any testamentary trust, or (iii) any insurance or endowment policy or annuity contract under which an insurance

company admitted in this State promises to pay a sum of money (whether or not based upon the investment performance of a segregated fund) either in a lump sum or periodically for life or some other specified period, or (iv) any certificate issued under section 809 of The Insurance Company Law of 1921, act of May 17, 1921 (P.L.682), as amended.

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

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

## PART II REGISTRATION OF SECURITIES

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

Section 202. Exempt Securities.—The following securities are exempted from section 201:

(a) Any security issued or guaranteed by the United States, any state or Canadian Province, any political subdivision of a state or Canadian Province, foreign government with which the United States currently maintains diplomatic relations, or any agency or corporate or other instrumentality of any of the foregoing, or any certificate of deposit for any of the foregoing, provided that if the issuer or guarantor is a foreign government other than Canada or an instrumentality of a foreign government other than Canada, such security or certificate of deposit therefor is recognized as a valid obligation by the issuer or guarantor thereof or its or their successors.

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

(c) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date after issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal, except where such paper is proposed to be sold or offered to the

public in units of less than five thousand dollars (\$5,000) to any single person.

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

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

(f) Any security listed, or approved for listing upon notice of issuance, on the New York, American, or Philadelphia-Baltimore-Washington stock exchange or any other securities exchange or quoted on any national quotation service designated by regulation of the commission and any security which satisfies the margin requirements of the Board of Governors of the Federal Reserve System under Regulation T and any supplement or any successor regulation thereto; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed, approved or quoted; and any warrant or right to purchase or subscribe to any of the foregoing.

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

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

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

Section 203. Exempt Transactions.—The following transactions are exempted from section 201:

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

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

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

(d) Any sales by an issuer to not more than twenty-five persons in this State during a period of twelve consecutive months if (i) the issuer shall obtain the written agreement of each such person not to sell the security within twelve months after the date of purchase; (ii) no public media advertisement is used or mass mailing made in connection with soliciting such sales; and (iii) no cash or securities is given or paid, directly or indirectly, to any promoter in connection therewith. Purchasers of securities registered under this act or sold in reliance upon an exemption under this act other than this subsection (d) or subsection (f) shall not be included in computing the twenty-five persons for purposes of this exemption. A notice in the form prescribed by the commission, signed by the officers or directors of the issuer under oath and stating the name, principal business address of the issuer, proposed use of the proceeds from the sale and such facts as are necessary to establish this exemption shall be filed, together with a copy of any offering literature used in connection with such offer or sale, with the commission not later than the day on which the securities are first issued or the issuer first receives consideration from any person therefor, whichever is earlier.

(e) Any offer to not more than fifty persons during a period of twelve consecutive months if no sales result from such offer or if sales resulting from such offer are exempt by reason of subsection (d) hereof. This subsection shall not be applicable to offers made pursuant to any other subsection of this section 203, except subsections (d) and (f).

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

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

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

(i) Any sale of a security registered under section 5 of the Securities Act of 1933 or exempt from registration under section 3 (b) of such act if:



(i) a copy of any final prospectus or final offering circular utilized or proposed to be utilized in connection therewith is mailed to the commission within two business days after such prospectus or offering circular is filed with the Securities and Exchange Commission; (ii) the filing fee specified in section 602 (b) is paid with respect to such offering; (iii) the issuer of the security is a reporting company; and (iv) no stop order or refusal order is in effect and no public proceeding or investigation looking toward such an order is pending under the Securities Act of 1933 or this act. As a condition of the continuing effectiveness of this exemption, copies of any post-effective amendment or sticker to such prospectus or offering circular must be mailed to the commission within two business days after the same is filed with the Securities and Exchange Commission.

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

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

(l) Any transaction now or hereafter exempted from section 5 of the Securities Act of 1933 by virtue of sections 3 (a) (9) or 3 (a) (10) thereof; provided, however, that the commission be given notice of any hearing referred to in section 3 (a) (10).

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

(n) Any transaction pursuant to an offer of securities to existing security holders of the issuer or of a corporation which, prior to the commencement of the offer, owned substantially all of the voting stock of the issuer or was organized for the purpose of the offer by persons in control of the issuer, if no commission or other remuneration other than a standby commission is paid or given directly or indirectly for soliciting any security holder in this State, and if the issuer first files a notice specifying the terms of the offer and all other information which the commission by regulation requires, and the commission does not by order disallow the exemption within five days. "Security holders" include persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance.

(o) Any transaction incident to a vote by security holders (or written consent of some or all security holders in lieu of such vote) pursuant to the articles of incorporation or the applicable corporation statute or other statute governing such person, or pursuant to a partnership agreement, a declaration of trust, trust indenture or any agreement among security holders on a merger, consolidation, sale of assets in consideration, in whole or part, of the issuance of securities of another person, reclassification of

securities, or reorganization involving the exchange of securities, in whole or in part, for the securities of any other person if, but only if: (i) one party to such transaction is required or permitted to file proxy materials pursuant to section 14 (a) of the Securities Exchange Act of 1934 or section 20 of the Investment Company Act of 1940 and does file such materials with the commission at least ten days prior to a meeting of security holders called for the purpose of approving such transaction; and such proxy materials are distributed to the security holders of each party to such transaction; or (ii) such materials as may be specified by regulation of the commission are prepared in connection with the proposed transaction and, after review by the commission, distributed to the security holders of each party to the transaction; provided, however, that clause (i) and (ii) of this subsection and section 602 (c) shall not be applicable to any party to a transaction where not more than twenty-five per cent of the security holders of such party are residents of this State.

(p) Any offer or sale of an evidence of indebtedness of an issuer either: organized exclusively for educational, benevolent, fraternal, religious, charitable, social, athletic or reformatory purposes and not for pecuniary profit, if no part of the net earnings of the issuer inures to the benefit of any private shareholder or individual; or organized as a chamber of commerce or trade or professional association if there has been filed with the commission a notice identifying the security and the basis of its qualification under this exemption together with such further information as the commission may by regulation require, and if the commission does not by order disallow the exemption within ten days or such shorter period as it may permit. The security qualifies under this exemption: if (i) the issuer and any predecessor have not defaulted within the current fiscal year and the three preceding fiscal years in any fixed interest or principal obligation; and (ii) the issuer complies with regulations of the commission with respect to trust indentures and the use of a prospectus; and (iii) the securities proposed to be sold are secured by a mortgage or deed of trust upon land and buildings, which mortgage or deed of trust is or will become a first lien at or prior to the issuance of such evidences of indebtedness, or provision satisfactory to the commission is made for escrowing the proceeds from their sale until such first lien is established, and the total amount of such securities does not exceed seventy-five per cent of the then fair market value of the land and buildings included in such mortgage or deed of trust, less the amount of any unpaid special assessment taxes. This exemption shall not apply to the securities of any nonprofit organization if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the organization or operation of such nonprofit organization.

(q) Any bona fide distribution in partial or total liquidation of a person, whether or not the assets being distributed include securities of any other person and whether or not wholly or partially in exchange for the

securities of the person making the distribution, and any stock split and any stock dividend, where the corporation distributing the dividend is not the issuer, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend in lieu of the stock and if the dividend is issued pro rata by class; provided, however, in the case of a distribution or dividend by a corporation not the issuer, such corporation shall file with the commission, ten days prior to the intended date of the distribution or dividend, a statement containing the facts and circumstances surrounding the distribution or dividend.

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

Section 204. Exemption Proceedings.—(a) The commission may by regulation as to any type of security or transaction, or by order in a particular case, as to any security or transaction increase the number of purchasers or offerees permitted, or waive the conditions in either of sections 202 or 203.

(b) The commission may by order deny or revoke any exemption specified in section 202 or 203 with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the commission may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the commission shall promptly notify all interested parties that it has been entered and reasons therefor and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commission, the order will remain in effect until it is modified or vacated by the commission. If a hearing is requested or ordered, the commission, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this section may operate retroactively. No person may be considered to have violated section 201 by reason of any offer or sale effected after the entry of an order under this section if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

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

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

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

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

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

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

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

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

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

requirements of this subsection as to notice and post-effective amendment, the stop order shall be vacated as of the time of its entry. The commission may by regulation or order waive any of the conditions specified in subsection (b) or (c).

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

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

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

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

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

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

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

(5) with respect to every promoter if the issuer was organized within

the past three years: the information specified in clause (2), any amount paid to him within that period or intended to be paid to him, and the consideration for any such payment;

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

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

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

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

other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

(g) The commission may by regulation or order require as a condition of registration that any security issued within the past two years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; or that the proceeds from the sale of the registered security in this State be escrowed until the issuer receives a specified amount from the sale of the security either in this State or elsewhere; or it may impose both such requirements: Provided, however, That this subsection (g) shall not apply to any security registered by coordination if the issuer has been in existence for more than three years: And provided further, That with respect to securities registered by coordination no escrow hereunder shall be required to extend beyond three years. The commission may by regulation or order determine the conditions of any escrow required hereunder, but may not reject a depository solely because of location in another state.

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

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

(j) A registration statement is effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the

issuer or other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, provided that the commission has been notified of such continued offering and the period thereof. Any such extension of the offering period for securities registered by qualification shall be subject to regulations established by the commission. The fact that a registration statement has been effective in this State with respect to any security does not permit sales of securities of the same class by the issuer or an affiliate of the issuer if such person did not file the registration statement, unless a separate registration statement is filed and declared effective with respect thereto, or an exemption from registration is available. A registration statement may not be withdrawn after its effective date if any of the securities registered have been sold in this State, unless permitted by regulation or order of the commission. No registration statement is effective during the time a stop order is in effect under section 208.

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

(l) A registration statement relating to any continuous offering of securities may be amended after its effective date so as to increase the specified amount of securities proposed to be offered. The amendment becomes effective when the commission so orders.

(m) Each person who accepts an offer to purchase securities registered by qualification directly from an issuer or an affiliate of an issuer shall have the right to withdraw his acceptance without incurring any liability to the seller, underwriter (if any) or any other person, within two business days after he receives a prospectus relating to the offering (which is not materially different from the final prospectus relating to such offering) and a notice explaining the provisions of this subsection. As used herein, the term "final prospectus" shall mean the document prepared in accordance with such regulations as the commission may provide, to be used by the seller in connection with an offering of securities in this State after the registration of such securities has become effective under this act. Each person who accepts an offer to purchase securities exempted

from registration by section 203 (d), (f), (p) or (r), directly from an issuer or affiliate of an issuer shall have the right to withdraw his acceptance without incurring any liability to the seller, underwriter (if any) or any other person, within two business days after he enters into a binding contract of purchase, or makes any payment for the securities being offered or the exemption becomes effective, whichever is later.

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

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

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

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

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

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

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

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

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

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

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

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

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

### PART III REGISTRATION OF BROKER-DEALERS, AGENTS AND INVESTMENT ADVISERS

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

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

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

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

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

(e) Every registration expires two years from its effective date unless renewed. The commission by regulation may prepare an initial schedule for registration renewals so that subsequent renewals of registrations effective on or after April 1, 1972 may be staggered. For this purpose the commission may adjust the registration fee proportionately. No registration is effective after its expiration, unless a renewal application has been timely filed, and expiration of a registration for which no renewal application has been filed is deemed an application for withdrawal under section 305 (f).

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

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

direct offers to sell or buy into this State in any manner to persons other than broker-dealers, institutional investors or governmental agencies and other instrumentalities designated by regulation of the commission, or to more than five other customers in this State, whether or not the offeror or any of the offerees is then present in this State.

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

(c) A bank not registered as a broker-dealer under this act executing orders for the purchase or sale of securities for the account of the purchaser or seller thereof.

(d) A person registered under the Investment Advisers Act of 1940, who has not previously had any certificate denied or revoked under this act or any predecessor statute, if (i) his only clients in this State are other investment advisers, broker-dealers, institutional investors or governmental agencies and other instrumentalities designated by regulation of the commission, or (ii) during any period of twelve consecutive months he does not direct business communications into this State in any manner to more than five clients other than those specified in clause (i) above, whether or not he or any of the persons to whom the communications are directed is then present in this State.

(e) Any bona fide officer, director, partner or employe of an issuer, or an individual occupying similar status or performing similar functions, if such person does not receive any compensation, directly or indirectly, for his activities on behalf of an issuer in connection with any security or transaction except those exempted under section 202 or 203.

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

Section 303. Registration Procedure.—(a) (i) A broker-dealer, agent, or investment adviser may obtain an initial or renewal license by filing with the commission an application together with a consent to service of process pursuant to section 701. The application shall contain such information, and in such detail, as the commission by rule requires concerning the applicant's form and place of organization, proposed method of doing business, and financial condition, the qualifications and experience of the applicant, including, in the case of a broker-dealer or investment adviser, the qualifications and experience of any partner, officer, director, or affiliate, or a person occupying a similar status or performing similar functions any injunction or administrative order or conviction referred to in section 305 (a) (ii), information about affiliates or predecessors of the applicant, and any other matters which the commission determines are relevant to the application.

(ii) If no denial order is in effect and no proceeding is pending under

section 305, the registration becomes effective on the thirtieth day after the filing of the application therefor or any material amendment thereto, or on such earlier date as the commission may order. The commission is directed to cooperate with other securities administrators and regulatory authorities to simplify and coordinate registration, application and renewal procedures.

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

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

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

(e) The commission may by regulation require surety bonds to be posted by any broker-dealer, investment adviser, and any issuer who employs agents in connection with any security or transaction not exempted by section 202 or 203 in an amount not exceeding ten thousand dollars (\$10,000), and all bonds required shall provide for suit thereon by injured customers, clients or purchasers, but no bond may be required of any registered broker-dealer or investment adviser whose net capital exceeds the amount prescribed in this section 303 or by regulation for this purpose. Such bond, unless cancelled as provided herein, shall be in effect during the entire period that a registration is in effect. Every bond shall contain a provision that such bond is not cancellable, except on thirty-days prior written notice to the person by whom the bond was posted and the commission, provided that such cancellation shall not affect any liability incurred or accrued prior to the effective date of such cancellation.

Section 304. Post-registration Provisions.—(a) Every registered broker-dealer and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books and other records which the commission by regulation prescribes. All records required shall be

preserved for three years unless the commission by regulation prescribes otherwise for particular types of records. All required records shall be kept within this State or shall, at the request of the commission, be made available at any time for examination by it either in the principal office of the registrant or by production of exact copies thereof in this State.

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

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

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

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

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

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

Section 305. Denial, Suspension and Revocation of Registration.—(a) The commission may, by order, deny, suspend, or revoke any registration or may censure any registrant if it finds that such order is in the public



interest and that such registrant or applicant, or in the case of any broker-dealer or investment adviser, any affiliate thereof, whether prior or subsequent to becoming associated with such person:

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

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

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

(iv) Is subject to any currently effective order or order entered within the past five years of the Securities and Exchange Commission or the securities administrator of any other state denying registration to or revoking or suspending the registration of such person as a broker-dealer, agent or investment adviser or is subject to any currently effective order of any national securities association or national securities exchange (as defined in the Securities Exchange Act of 1934) suspending or expelling such person from membership in such association or exchange, or is the subject of a currently effective United States Postal Service fraud order; but the commission may not institute a revocation or suspension proceeding under this subsection on the basis of an order under another state law more than one year after termination of the effectiveness of the order relied on and unless the order was based on facts which would currently constitute grounds for an order under this section; or

(v) Has wilfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the

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

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

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

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

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

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

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

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

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

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

(i) The commission may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than (A) the

broker-dealer himself if he is an individual, or (B) an agent of the broker-dealer.

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

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

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

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

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

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

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

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

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

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

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

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

#### PART IV FRAUDULENT AND PROHIBITED PRACTICES

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

- (a) To employ any device, scheme or artifice to defraud;
- (b) To make any untrue statement of a material fact or to omit to state

a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

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

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

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

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

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

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

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

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

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

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

(b) To engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

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

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

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

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

Section 405. Contract Requirements.—It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

(1) that the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(2) that no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

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

Clause (1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date, or in any other manner permitted by the Investment Advisers Act of 1940, and the rules and regulations promulgated thereunder or any contract for the rendering of investment advisory services to an institutional investor. "Assignment," as used in clause (2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

Section 406. Inside Information.—It is unlawful for an issuer or any person who is an officer, director, or affiliate of an issuer or any other person whose relationship to the issuer gives him access, directly or indirectly, to material information about the issuer not generally available to the public, to purchase or sell any security of the issuer in this State at

a time when he knows material information about the issuer gained from such relationship, which information (a) would significantly affect the market price of that security; (b) is not generally available to the public; and (c) he knows is not intended to be so available, unless he has reason to believe that the person selling to or buying from him is also in possession of the information.

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

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

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

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

## PART V ENFORCEMENT

Section 501. Civil Liabilities.—(a) Any person who: (i) offers or sells a security in violation of section 407 (c) or at any time when such person has committed a material violation of section 301, or any regulation relating to either section 301 or 407 (c), or any order under this act of which he has notice; or (ii) offers or sells a security in violation of sections 401, 403, 404 or otherwise by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are

made, not misleading, the purchaser not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know and in the exercise of reasonable care could not have known of the untruth or omission, shall be liable to the person purchasing the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, less the amount of any income or distributions, in cash or in kind, received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition. Tender shall require only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable.

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

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

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



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

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

Section 503. Joint and Several Liability; Contribution; Corporation's Right of Indemnification.—(a) Every affiliate of a person liable under section 501 or 502, every partner, principal executive officer or director of such person, every person occupying a similar status or performing similar functions, every employe of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the act or transaction constituting the violation, are also liable jointly and severally with and to the same extent as such person, unless the person liable hereunder proves that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

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

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

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

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

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

(e) No seller may commence an action under section 501, 502 or 503 if, before suit is commenced, the seller has received a written offer: (i) stating the respect in which liability under such section may have arisen

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

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

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

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

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

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

Section 509. Right of Commission to Bring Action; Class Actions.—(a) Whenever it appears to the commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, it may in its discretion bring an action in the name of the people of the Commonwealth of Pennsylvania in the Commonwealth Court or in any of the several courts of common pleas of Pennsylvania to enjoin the acts or practices or to enforce compliance with this act or any rule or order hereunder. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandamus shall be granted, and a receiver or conservator

may be appointed for the defendant or the defendant's assets. The court may not require the commission to post a bond.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 511. Criminal Penalties.—Any person who wilfully violates any material provision of this act, except section 407 (a), or any rule under this act, or any order of which he has notice, or who violates section 407 (a) knowing that the statement made was false or misleading in any material respect, may be fined not more than five thousand dollars (\$5,000) or imprisoned not more than five years, or both. Each of the acts

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

## PART VI ADMINISTRATION

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

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

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

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

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

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

(b) The filing fees for sales of securities under this act shall be as follows:

(1) one hundred dollars (\$100) for exemption filings under section 203 (i), except as provided in clause (4) below;

(2) two hundred fifty dollars (\$250) for every registration statement filed under section 205, except as provided in clause (4) below;

(3) one hundred dollars (\$100) plus one-twentieth of one per cent of the maximum aggregate offering price at which such securities are offered in this State for every registration statement filed under section 206, except that the maximum filing fee shall be one thousand dollars (\$1,000);

(4) in the case of an offering of securities by an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such terms are defined in the Investment Company Act of 1940, the filing fee shall be the same as specified in clause (3) above; and

(5) when a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under section 208, the commission shall retain one hundred dollars (\$100) from the filing fee.

(c) The fee for filing an application for exemption from registration under section 203 (o) (ii) shall be two hundred fifty dollars (\$250). There shall be no filing fee for an application under section 203 (o) (i).

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

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

(f) The fee for any examination, audit, or investigation is the actual amount of all salary costs and other compensation paid to the persons making the examination, audit, or investigation, plus the actual amount of expenses reasonably incurred in the performance of the work. Such fee shall only be payable by a registrant, applicant for registration, issuer or other person in connection with an investigation by the commission where such person has been found guilty of a violation of the provisions of this act.

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

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

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

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

(c) The information contained in or filed with any registration statement, application or report shall be made available to the public in accordance with regulations prescribed by the commission; provided that, upon proper showing of the registrant or issuer, the commission shall treat certain filings as confidential.

(d) The commission upon request shall furnish to any person, at a reasonable charge, photostatic or other copies, certified under seal of the commission if certification is requested, of any entry in the register or any order or other document made available to the public under subsection (c) above.

Section 604. Interpretive Opinions of Commission.—The commission in its discretion may honor requests from interested persons for interpretive opinions and may make such opinions available to the public under section 603 (c).

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

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

(c) Nothing contained in subsection (a) shall prohibit the holding or purchasing of any securities by any commissioner if: either (i) the commissioner, together with his spouse, minor children and parents or other relatives who are members of his household, owns less than one-tenth of one per cent of any class of outstanding securities of any issuer described in subsection (a) (ii); or (ii) such security is held or purchased through a management account or trust administered by a bank or trust company authorized to do business in this State which has sole investment discretion regarding the holding, purchase and sale of securities, and (A)



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

Section 606. Miscellaneous Powers of Commission.—(a) The commission may, by regulation, require any issuer of securities registered under this act or exempted from registration under section 203 (d), (o), or (q), which issuer is not a reporting company, to distribute financial information to its shareholders at least annually.

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

(c) No person shall publish in this State any advertisement concerning any security (other than tombstone advertisements permitted under the Securities Act of 1933 and the Investment Company Act of 1940 and the rules and regulations promulgated thereunder) except in accordance with such rules as the commission may promulgate from time to time. No person shall publish any advertisement concerning any security in this State after the commission finds that the advertisement contains any statement that is false or misleading or omits to make any statement necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading and so notifies the person in writing. Such notification may be given summarily without notice or hearing. At any time after the issuance of a notification under this section, the person desiring to use the advertisement may request in writing that the order be rescinded. Upon the receipt of such a written request, the matter shall be set down for hearing to commence within thirty days after such receipt unless the person making the request consents to a later date. After such hearing, the commission shall determine whether to affirm and continue or to rescind such order.

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

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

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

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

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

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

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

Section 609. Regulations, Forms and Orders.—(a) The commission may make, amend and rescind any regulations, forms and orders that are

necessary to carry out this act, including regulations and forms governing registration statements, applications and reports, and defining any terms, whether or not used in this act, insofar as the definitions are not inconsistent with this act. All regulations of the commission (other than those relating solely to its internal administration) shall be of general application and future effect and shall be made, amended or rescinded in accordance with the act of June 4, 1945 (P.L.1388), known as the "Administrative Agency Law," and the act of July 31, 1968 (P.L.240), known as the "Commonwealth Documents Law," and no regulation shall be effective until a public hearing is held thereon or until thirty days after the regulation is published pursuant to such "Commonwealth Documents Law." For the purpose of rules and forms, the commission may classify securities, persons and matters within its jurisdiction, and prescribe different requirements for different classes. The commission may, in its discretion, waive any requirement of any regulation or form in situations where, in its opinion, such requirement is not necessary in the public interest or for the protection of investors.

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

(c) The commission may by regulation or order prescribe the kind, form and content of financial statements required under this act, the fiscal or other periods and dates for such statements, the circumstances under which consolidated or other combining financial statements shall be filed, or other requirements it deems necessary for financial statement presentation purposes, and whether any required financial statements shall be certified by independent public or certified accountants in good standing with this State. All financial statements shall be prepared reflecting conformity with generally accepted accounting principles consistently applied, unless variance therefrom is disclosed in an acceptable manner, and shall reflect pertinent disclosures by financial notes or other form, where required for that data in compliance with pronouncements by recognized authoritative accounting bodies or if applicable, by governmental agencies, and unless otherwise permitted by regulation or order.

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

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

Section 610. Destruction of Documents and Records.—The

commission may make such regulations with respect to record retention as it may deem appropriate and desirable, consistent with law.

## PART VII GENERAL PROVISIONS

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

(b) When any person, including any nonresident of this State, engages in conduct prohibited or made actionable by this act or any regulation or order hereunder, and he has not filed a consent to service of process under subsection (a) and personal jurisdiction over him cannot otherwise be obtained in this State, that conduct shall be considered equivalent to his appointment of the secretary of the commission to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which arises out of that conduct and which is brought under this act or any regulation or order hereunder, with the same validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the commission, but it is not effective unless the plaintiff, who may be the commission in a suit, action or proceeding instituted by it, promptly sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice; and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process or within such time as the court allows.

(c) When process is served under this section the court, or the

commission in a proceeding before it, shall order such continuance as is necessary to afford the defendant or respondent reasonable opportunity to defend.

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

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

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

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

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

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

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

(b) No civil suit or action may be maintained to enforce any liability under prior law unless brought within any period of limitation which applied when the cause of action accrued.

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

(d) Prior law applies in respect of any offer or sale made within six months after the effective date of this act pursuant to an offering begun in good faith before its effective date on the basis of an exemption available under prior law.

(e) Judicial review of all administrative orders as to which review proceedings have not been instituted by the effective date of this act are governed by section 607, except that no review proceeding may be instituted unless the petition is filed within any period of limitation which applied to a review proceeding when the order was entered and in any event within sixty days after the effective date of this act.

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

APPROVED—The 5th day of December, A. D. 1972.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 284.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive, flowing style with a large initial "C" and a prominent "T".

*Secretary of the Commonwealth*