

No. 1984-52

AN ACT

SB 408

Amending the act of December 5, 1972 (P.L.1280, No.284), entitled "An act relating to securities; prohibiting fraudulent practices in relation thereto; requiring the registration of broker-dealers, agents, investment advisers, and securities; and making uniform the law with reference thereto," reducing the waiting period prior to offering certain investments; exempting certain registered promoters; limiting the forfeit of certain mutual fund fees; reducing the time period for certain registration statements to be on file with the commission; further providing for the effectiveness of certain registration statements and amendments thereto; eliminating certain withdrawals for mutual funds; and further providing for fees to be assessed by the Pennsylvania Securities Commission.

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

Section 1. Section 202(f) and (g) of the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972, are amended to read:

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

* * *

(f) Any security listed, or approved for listing upon notice of issuance, on the New York, American, or **[Philadelphia-Baltimore-Washington] Philadelphia** stock exchange or any other securities exchange or quoted on any national quotation service designated by regulation of the commission and any security (*except securities of an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940*) 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 employe'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 (i) is notified in writing **[thirty] fifteen** days before the commencement of the offering in this State; and (ii) *the filing fee specified in section 602(b)(vii) is paid.*

* * *

Section 2. Section 203(d), (h), (i), (n) and (o) of the act are amended to read:

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

* * *

(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 *as compensation* in connection therewith *unless such compensation is given or paid in connection with a sale made by a broker-dealer registered pursuant to section 301 and any person receiving such compensation is either such broker-dealer or an agent registered pursuant to section 301 of such broker-dealer; and (iv) the filing fee specified in section 602(b)(viii) is paid*. 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.

* * *

(h) Any offer (but not a sale) of a security for which a registration statement has been filed under the Securities Act of 1933 *or a notification of exemption from registration pursuant to Regulation A promulgated under section 3(b) of such act* 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 *pursuant to Regulation A promulgated under section 3 (b) of such act* if: (i) a copy of any final prospectus or final offering circular (*whether in connection with the original registration or exemption under the Securities Act of 1933 or a post-effective amendment thereto*) 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 *applicable* filing fee specified in section **[602 (b)] 602(b)(i)** 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 investi-

gation 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. *An exemption under this section shall terminate upon the termination of the registration statement under section 5 or the exemption from registration pursuant to Regulation A promulgated under section 3(b) of the Securities Act of 1933, except that an exemption under this section for the sale of securities of an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940, shall also terminate twelve months from the date the prospectus described in (i) above is filed with the commission, unless renewed for another twelve-month period by the payment of the fee specified in section 602(b)(iv). Any exemption in effect under this section for the sale of securities of an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940, as of the effective date of this amendatory act, shall also terminate twelve months from the effective date of this amendatory act, unless renewed for another twelve-month period by the payment of the fee specified in section 602(b)(iv). The effectiveness of an exemption or renewal of an exemption under this section for the sale of securities of an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940, shall not be terminated as a result of a post-effective amendment seeking to register an additional amount of securities which becomes effective under the Securities Act of 1933.*

* * *

(n) Any transaction pursuant to an offer of securities to existing *equity* 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,] (i) the issuer; (ii) a corporation which prior to the commencement of the offer owned substantially all of the voting stock of the issuer; or (iii) a corporation which organized the issuer for the purpose of the offer, if no commission or other remuneration other than a standby commission is paid or given directly or indirectly for soliciting any *equity* 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 if the filing fee specified in section 602(b)(ix) is paid and the commission does not by order disallow the exemption within five days. ["Security holders"] "*Equity security holders*" include persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance.

(o) Any transaction incident to a vote by security holders (or written consent of some or all security holders in lieu of such vote) pursuant to the articles of incorporation or the applicable corporation statute or other

statute governing such person, or pursuant to a partnership agreement, a declaration of trust, trust indenture or any agreement among security holders on a merger, consolidation, sale of assets in consideration, in whole or 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 transactions 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 transactions; 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)] (b)(v) shall not be applicable to any party to a transaction where not more than twenty-five percent of the security holders of such party are residents of this State.

* * *

Section 3. Section 205(a) and (c) of the act are amended to read:

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 *Regulation A promulgated under* the exemption contained in section 3(b) of such act [where] *provided, except in the case of open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940*, such registration statement or notification of proposed sale has not become effective.

* * *

(c) (1) *A registration statement filed under this section for the offering of securities by an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940, automatically becomes effective if (i) the Federal registration statement or notification is effective with the Securities and Exchange Commission; (ii) no stop order is in effect in this State and no proceeding is pending under section 208; (iii) the registration statement or a predecessor registration statement has been on file with the commission for at least five days; and (iv) the fee specified in section 602(b)(iv) has been paid.*

(2) [A] *All other registration [statement] statements filed under this section automatically [becomes] become effective at the moment the Federal registration statement or notification becomes effective if (i) no stop order is in effect in this State and no proceeding is pending under section 208; (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.

* * *

Section 4. Section 207(j), (l) and (m) of the act are amended to read:

Section 207. General Registration Provisions.—* * *

(j) **[A registration statement]** *Except with respect to an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940, a registration by coordination 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.] A registration by coordination for an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940, is effective for one year from its effective date. Any registration by coordination which is effective for the sale of securities in this State by an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940, as of the effective date of this amendatory act, shall terminate twelve months from the effective date of this amendatory act. A registration by qualification is effective for one year from its effective date.* The fact that a registration statement has been effective in this State with respect to any security does not permit sales of securities of the same class by the issuer or an affiliate of the issuer if such person did not file the registration statement, unless a separate registration statement is filed and declared effective with respect thereto, or an exemption from registration is available. A registration statement may not be withdrawn after its effective date if any of the securities registered have been sold in this State, unless permitted by regulation or order of the commission. No registration statement is effective during the time a stop order is in effect under section 208. *The effectiveness of a registration statement filed 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, shall not be terminated as a result of a post-effective amendment seeking to register an additional amount of securities which becomes effective under the Securities Act of 1933.*

* * *

(l) **[A]** (1) *Except as provided in paragraph (2), 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 pro-*

posed to be offered *in this State*. The amendment becomes effective *upon the payment of the required filing fee and* when the commission so orders.

(2) *Amendments to a registration statement of an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940, so as to increase the specified amount of securities proposed to be offered in this State are effective upon filing with the commission provided that the aggregate fee specified in section 602(b)(iv) has been paid.*

(m) **[Each]** *Except where such securities are registered under section 5 of the Securities Act of 1933, each person who accepts an offer to purchase securities registered by qualification directly from an issuer or an affiliate of an issuer shall have the right to withdraw his acceptance without incurring any liability to the seller, underwriter (if any) or any other person, within two business days after he receives a prospectus relating to the offering (which is not materially different from the final prospectus relating to such offering) and a notice explaining the provisions of this subsection. As used herein, the term "final prospectus" shall mean the document prepared in accordance with such regulations as the commission may provide, to be used by the seller in connection with an offering of securities in this State after the registration of such securities has become effective under this act. 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.] from the date of receipt by the issuer of his written binding contract of purchase or, in the case of a transaction in which there is no written binding contract of purchase, within two business days after he makes the initial payment for the securities being offered.*

Section 5. Section 209 of the act is amended to read:

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

(b) *Every open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940, filing under section 203(i), 205 or 206 and every issuer registering securities for sale in this State under section 206 shall file an annual report with the commission, no earlier than three hundred*

sixty-five days and no later than four hundred twenty days from the effective date of the registration, exemption or exemption renewal, setting forth the total amount of securities sold in this State during the effective period of the registration statement, exemption or exemption renewal.

Section 6. Section 602 of the act, amended March 25, 1981 (P.L.1, No.1), is amended to read:

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.]

Filing fees for sales of securities:

<i>(i) Exemption filings under section 203(i), except as provided for in subclause (iv).....</i>	<i>\$100</i>
<i>(ii) Registration statement filings under section 205, except as provided in subclause (iv).....</i>	<i>500</i>
<i>(iii) Registration statement filings under section 206, except as provided in subclause (iv).....</i>	<i>350</i>

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

(iv) In the case of registration statement filings under section 205 or 206 or exemption filings under section 203(i) by an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940.

Based upon the maximum aggregate offering price at which

such securities are to be offered in this State during the effective period of the registration, exemption or renewal of the exemption, the fee for (A) \$4,000,000 or less is 1/20 of 1% with a minimum fee of \$350; (B) more than \$4,000,000 but less than \$100,000,000 is the maximum fee payable under (A) plus \$500; (C) \$100,000,000 or more is the maximum fee payable under (A) plus the additional amount due under (B) plus \$500; except that, in the case of a registration statement in which the issuer, pursuant to its articles of incorporation or other governing instruments, is restricted to holding exclusively debt securities of other persons having fixed final maturity dates occurring within 200 days from the initial effective date of the registration statement for the issuer's securities filed under the Securities Act of 1933, the maximum fee payable under the above schedule shall not exceed \$1,250.

If an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940, which has an effective registration under section 205 or 206 elects to convert to an exemption under section 203(i) without extending the effective period of the exemption under section 203(i) beyond the date upon which the registration under section 205 or 206 would have otherwise terminated, there shall be no additional filing fee required.

- (v) *Exemption filings under section 203(o)(ii) shall be:..* 250
- (vi) *When a registration statement is withdrawn before the effective date of a pre-effective stop order is entered under section 208 the amount that the commission shall retain from the filing fee shall be:*
 - (A) *Under section 205.....* 250
 - (B) *Under section 206.....* 175
- (vii) *Filing an application for exemption from registration under section 202(g).....* 25
- (viii) *Filing an application for exemption from registration for an offering of securities to be sold under section 203(d):*

(A) Where the maximum aggregate offering price at which such securities are offered in this State is less than \$100,000..... 25

(B) Where the maximum aggregate offering price at which such securities are offered in this State is \$100,000 or more but less than \$1,000,000..... 100

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

(ix) Filing an application for exemption from registration under section 203(n)..... 25

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

(xi) The fee for filing with the commission any amendment to a registration under section 205 or 206 unless a fee is otherwise required for such filing under this section..... 10

(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).] A registrant, applicant for registration, issuer or other person upon whom the commission has conducted an examination, audit, investigation or prosecution and who has been found guilty of a violation of the provisions of this act shall pay for all the costs incurred in the conduct of such examination, audit, investigation or prosecution. These costs shall include, but are not limited to, the salaries and other compensation paid to clerical, administrative, investigative and legal personnel, plus the actual amount of expenses reasonably incurred by such personnel or the commission in the conduct of such examination, audit, investigation or prosecution.

(d) Every applicant for an initial or renewal license under section 301 shall pay a filing fee of one hundred twenty-five dollars (\$125) in the case of a broker-dealer, twenty-five dollars (\$25) in the case of an agent and one hundred dollars (\$100) 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, a [ten dollar (\$10)] twenty-five dollar (\$25) fee shall be paid. A broker-dealer maintaining any office within this State shall pay an additional filing fee of forty dollars (\$40) 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)] (f) The commission may fix by regulation a reasonable charge for any publication issued under its authority.

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

Section 7. Section 615-A(1) and (2) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, are repealed.

Section 8. (a) The provision of section 1 which amends section 202(f) of the act shall take effect in 90 days.

(b) The remainder of this act shall take effect immediately.

APPROVED—The 9th day of May, A. D. 1984.

DICK THORNBURGH