

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILLNo. **1045** Session of
2013

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

SENATOR WHITE, BANKING AND INSURANCE, AS AMENDED,
OCTOBER 22, 2013

AN ACT

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

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

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

1 read:

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

5 * * *

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

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

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

15 (i) An agent;

16 (ii) An issuer;

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

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

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

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

1 transactions in securities are isolated transactions incidental
2 to that business; or

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

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

10 * * *

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

12 * * *

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

15 * * *

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

23 "Investment adviser" does not include:

24 (i) A bank;

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

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

1 incidental to the conduct of business as a broker-dealer and
2 does not receive special compensation for the investment advice;

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

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

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

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

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

24 (ix) A federally covered adviser;

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

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

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

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

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

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

11 (B) Manages accounts or portfolios of clients;

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

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

17 (E) Supervises employes who perform any of the foregoing; OR <--

18 (F) RECEIVES COMPENSATION TO SOLICIT, OFFER OR NEGOTIATE FOR
19 THE SALE OF OR FOR SELLING INVESTMENT ADVICE.

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

26 (iii) An investment ~~adviser~~ ADVISER representative may not <--
27 include;

28 (A) individuals who perform only clerical or ministerial
29 acts;

30 (B) an agent whose performance of investment advice is

1 solely incidental to the individual acting as an agent and who
2 does not receive special compensation for investment advisory
3 services; or

4 (C) other individuals that the department determines by
5 regulation.

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

15 * * *

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

27 (s.1) "Securities and Exchange Commission" means the United
28 States Securities and Exchange Commission.

29 (s.2) "Self-regulatory organization" means a national
30 securities exchange registered under the Securities Exchange Act

1 of 1934, a national securities association registered under the
2 Securities Exchange Act of 1934 or Investment Advisors Act of
3 1940, a clearing agency registered under the Securities Exchange
4 Act of 1934, the Municipal Securities Rulemaking Board
5 established under the Securities Exchange Act of 1934 or an
6 organization operating under the authority of the Commodity
7 Futures Trading Commission.

8 (t) "Security" means any note; stock; treasury stock; bond;
9 debenture; evidence of indebtedness; share of beneficial
10 interest in a business trust; certificate of interest or
11 participation in any profit-sharing agreement; collateral trust
12 certificate; preorganization certificate or subscription;
13 transferable share; investment contract; voting trust
14 certificate; certificate of deposit for a security; limited
15 partnership interest; [certificate of interest or participation
16 in an oil, gas or mining title or lease or in payments out of
17 production under such a title or lease;] fractional undivided
18 interest in oil, gas or other mineral rights; put, call,
19 straddle, option or privilege on a security, certificate of
20 deposit of a security or group or index of securities including
21 any interest in the securities or based upon the value of the
22 securities, or any put, call, straddle, option or privilege
23 entered into on a national securities exchange relating to
24 foreign currency; membership interest in a limited liability
25 company of any class or series, including any fractional or
26 other interest in such interest, unless excluded by clause (v);
27 or, in general, any interest or instrument commonly known as [or
28 having the incidents of] a "security"; or any certificate of
29 interest or participation in, temporary or interim certificate
30 for, receipt for, guarantee of, or warrant or right to subscribe

1 to or purchase, any of the foregoing. All of the foregoing are
2 securities whether or not evidenced by written document.

3 "Security" does not include:

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

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

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

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

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

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

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

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

26 * * *

27 Section 2. Section 202 of the act, amended or added December
28 7, 1994 (P.L.869, No.126), November 24, 1998 (P.L.829, No.109)
29 and July 4, 2002 (P.L.721, No.108), is amended to read:

30 Section 202. Exempt Securities.--The following securities

1 are exempted from sections 201 and 211:

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

13 (b) Any security issued or guaranteed by any bank [or
14 savings association and any security the offer, sale, issuance
15 or guarantee of which (i) is subject to regulation by the
16 Interstate Commerce Commission, or (ii) is registered under the
17 Public Utility Holding Company Act of 1935 or the act of May 28,
18 1937 (P.L.1053), known as the "Public Utility Law," or (iii) the
19 issuer of which is regulated as to the issuance or guarantee of
20 such security by a governmental authority of the United States].

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

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

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

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

30 (f) Any security listed, or approved for listing upon notice

1 of issuance, [on the New York, American, or Philadelphia stock
2 exchange or quoted on the National Market System of the Nasdaq
3 Stock Market] ON a national securities exchange described in <--
4 section 18(b)(1) of the Securities Act of 1933 (48 Stat. 74, 15
5 U.S.C. § 77r(b)(1); any other security of the same issuer which
6 is of senior or substantially equal rank; any security called
7 for by subscription rights or warrants so listed[,] or approved
8 [or quoted]; and any warrant or right to purchase or subscribe
9 to any of the foregoing.

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

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

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

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

24 Section 3. Section 203 of the act, amended May 4, 1993
25 (P.L.4, No.4), December 7, 1994 (P.L.869, No.126), November 24,
26 1998 (P.L.829, No.109), July 4, 2002 (P.L.721, No.108) and
27 November 23, 2004 (P.L.918, No.126), is amended to read:

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

30 (a) Any non-issuer transaction except where directly or

1 indirectly for the benefit of an affiliate of the issuer.

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

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

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

1 exemption. A notice in the form prescribed by the [commission]
2 department, signed by an officer of the issuer and stating the
3 name, principal business address of the issuer, proposed use of
4 the proceeds from the sale and such facts as are necessary to
5 establish this exemption shall be filed, together with a copy of
6 any offering literature used in connection with such offer or
7 sale, with the [commission] department not later than the day on
8 which the issuer receives from any person an executed
9 subscription agreement or other contract to purchase the
10 securities being offered or the issuer receives consideration
11 from any person therefor, whichever is earlier.

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

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

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

30 (h) Any offer, but not a sale, of a security for which a

1 registration statement has been filed under the Securities Act
2 of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.) or a notification
3 of exemption from registration pursuant to Regulation A
4 promulgated under section 3(b) of such act (15 U.S.C. § 77c(b))
5 if (i) no stop order or refusal order is in effect and no public
6 proceeding or examination looking toward such an order is
7 pending under the Securities Act of 1933 or this act; and (ii)
8 no such offer is made until after such registration statement,
9 including a prospectus, has been filed with the [commission]
10 department.

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

1 expressing substantial doubt about the issuer's ability to
2 continue as a going concern unless the securities being sold in
3 reliance upon this subsection are the subject of an offering
4 that is being underwritten on a firm commitment basis by a
5 broker-dealer registered under section 301. An exemption under
6 this section shall terminate upon the termination of the
7 effective period of the registration statement under section 5
8 of the Securities Act of 1933. For purposes of this subsection,
9 the [commission] department, by regulation, may define the term
10 "equity security."

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

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

25 (l) Any transaction now or hereafter exempted from section 5
26 of the Securities Act of 1933 by virtue of sections 3(a)(9) or
27 3(a)(10) thereof.

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

30 (n) Any transaction pursuant to an offer of securities to

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

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

1 distributed to the security holders of each party to the
2 transaction prior to the vote or solicitation of written consent
3 and the filing fee specified in section 602(b.1) is paid.

4 (o.1) Any transaction incident to a vote by security
5 holders, or written consent of some or all security holders in
6 lieu of the vote, pursuant to the articles of incorporation or
7 the applicable corporation statute or other statute governing
8 the person, or pursuant to a partnership agreement, a
9 declaration of trust, trust indenture or an agreement among
10 security holders on a merger, consolidation, sale of assets in
11 consideration, in whole or in part, of the issuance of
12 securities of another person, reclassification of securities or
13 reorganization involving the exchange of securities, in whole or
14 in part, for the securities of another person if each of the
15 parties to a transaction described in this section is a bank
16 holding company registered under the Bank Holding Company Act of
17 1956 (70 Stat. 133, 12 U.S.C. § 1841) and subject to the
18 supervision of the Board of Governors of the Federal Reserve
19 System.

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

28 (1) The issuer files a notice with the [commission]
29 department in the form prescribed by the [commission] department
30 not later than five business days before the issuer receives

1 from any person an executed subscription agreement or other
2 contract to purchase the securities being offered or the issuer
3 receives consideration from any person therefor, whichever is
4 earlier. The notice filed with the [commission] department shall
5 be accompanied by a copy of a disclosure document and any
6 offering literature to be used in connection with an offer or
7 sale of securities under this section.

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

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

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

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

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

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

4 (8) The issuer complies with regulations of the [commission]
5 department with respect to trust indentures and the use of an
6 offering document.

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

17 (r) Any transaction or class of transactions as to which the
18 [commission] department by regulation or order finds that
19 registration is not necessary or appropriate for the protection
20 of investors. As a condition of the availability of an exemption
21 granted or established under this section, the [commission]
22 department may require compliance with the provisions of section
23 207(m)(2) and the rules and regulations promulgated thereunder.

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

29 (i) The issuer files a notice in the form prescribed by rule
30 of the [commission] department, together with a copy of any

1 offering document or literature proposed to be used in
2 connection with such offer and sale, with the [commission]
3 department not later than the day on which the issuer receives
4 from any person an executed subscription agreement or other
5 contract to purchase the securities being offered or the issuer
6 receives consideration from any person therefor, whichever is
7 earlier;

8 (ii) The issuer pays the filing fee specified in section
9 602(b.1);

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

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

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

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

30 (B) Been convicted of any criminal offense in connection

1 with the offer, purchase or sale of a security or involving
2 fraud or deceit;

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

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

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

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

28 (t) Any offer and any sale resulting from such offer where
29 the securities being offered, whether in or outside of this
30 State, will be sold only to accredited investors as that term is

1 defined in the rules and regulations of the Securities and
2 Exchange Commission if:

3 (i) The securities are sold in good faith reliance that the
4 offering would qualify for an exemption from registration under
5 section 5 of the Securities Act of 1933 (15 U.S.C. § 77e),
6 pursuant to section 3(a)(11) of the Securities Act of 1933 (15
7 U.S.C. § 77c(a)(11)) or the regulations adopted by the
8 Securities and Exchange Commission under section 3(b) of the
9 Securities Act of 1933 (15 U.S.C. § 77c(b)), except an offering
10 under Rule 505 of Regulation D promulgated by the Securities and
11 Exchange Commission under section 3(b) of the Securities Act of
12 1933 (15 U.S.C. § 77c(b));

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

22 (iii) The issuer pays the filing fee specified in section
23 602(b.1);

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

29 (v) Neither the issuer nor a predecessor of the issuer;
30 affiliated issuer; officer, director or general partner of the

1 issuer; promoter of the issuer presently connected with the
2 issuer in any capacity; beneficial owner of ten per cent or more
3 of any class of equity securities of the issuer; underwriter of
4 the securities to be offered under this subsection or any
5 partner, director or officer of such underwriter has within five
6 years of filing a notice pursuant to subparagraph (i):

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

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

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

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

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

27 The provisions of this subparagraph shall not apply if the party
28 subject to a disqualification described in clause (A), (B), (C),
29 (D) or (E) is licensed or registered to conduct securities-
30 related business in the state in which the order, judgment or

1 decree creating the disqualification was entered against such
2 party; the state securities administrator or the court of
3 regulatory authority that entered the order judgment or decree
4 waives the disqualification prior to the first offer being made
5 in this State under this subsection; or the issuer establishes
6 that it did not know and, in the exercise of reasonable care
7 based on a factual inquiry, could not have known that a
8 disqualification existed under this subparagraph;

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

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

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

30 (ix) The issuer is not an investment company as defined in

1 the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.);
2 [and]

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

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

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

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

29 Section 204. Exemption Proceedings.--(a) The [commission]
30 department may by regulation as to any type of security or

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

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

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

22 Section 205. Registration by Coordination.--(a)
23 Registration by coordination may be used for any offering for
24 which a registration statement has been filed under the
25 Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.) or
26 for any proposed sale pursuant to Regulation A promulgated under
27 the exemption contained in section 3(b) of such act (15 U.S.C. §
28 77c(b)) provided, except in the case of open-end or closed-end
29 investment company, face amount certificate company or unit
30 investment trust, as such persons are classified in the

1 Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1
2 et seq.), such registration statement or notification of
3 proposed sale has not become effective.

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

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

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

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

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

26 (c) A registration statement or notification of any proposed
27 sale filed under this section automatically [become] becomes
28 effective at the moment the Federal registration statement or
29 notification becomes effective if (i) no stop order is in effect
30 in this State and no proceeding is pending under section 208;

1 and (ii) the registration statement or notification has been on
2 file with the [commission] department for at least ten days.

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

26 (e) If the Federal registration statement becomes effective
27 before all the conditions in this section are satisfied and they
28 are not waived, the registration statement automatically becomes
29 effective as soon as all the conditions are satisfied. If the
30 registrant advises the [commission] department of the date when

1 the Federal registration statement is expected to become
2 effective, the [commission] department shall promptly advise the
3 registrant [by telephone or telegram, at the registrant's
4 expense] in a manner determined by the department, whether all
5 the conditions are satisfied and whether it then contemplates
6 the institution of a proceeding under section 208; but this
7 advice by the [commission] department does not preclude the
8 institution of such a proceeding at any time.

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

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

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

16 * * *

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

30 (17) such additional information as the [commission]

1 department requires by regulation or order.

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

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

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

28 Section 7. Section 207 of the act, amended December 7, 1994
29 (P.L.869, No.126), November 24, 1998 (P.L.829, No.109), and July
30 4, 2002 (P.L.721, No.108), is amended to read:

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

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

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

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

28 (e) The [commission] department may by regulation or order
29 require as a condition of registration by qualification or as a
30 condition of registration by coordination (if more than sixty-

1 six and two-thirds per cent of the issue of securities part or
2 all of which is to be registered by coordination is to be sold
3 in Pennsylvania) that a report by an accountant, engineer,
4 appraiser or other professional person be filed. The
5 [commission] department may also designate one of its employes
6 to make an examination of the business and records of an issuer
7 of securities for which a registration statement has been filed
8 by qualification.

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

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

1 a depository solely because of location in another state.

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

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

18 (j.1) A registration by coordination is effective for one
19 year from its effective date. The effectiveness of a
20 registration by coordination may be extended beyond the initial
21 one-year effectiveness period in increments of one-year periods
22 up to a maximum of three years from the initial effectiveness
23 date, provided that the security is being offered or distributed
24 in a nonexempted transaction by or for the account of the issuer
25 or other person on whose behalf the offering is being made, or
26 by any underwriter or broker-dealer who is still offering part
27 of an unsold allotment or subscription taken by him as a
28 participant in the distribution and the [commission] department
29 has been notified of such continued offering and the period
30 thereof. [A registration by qualification is effective for one

1 year from its effective date. The fact that a registration
2 statement has been effective in this State with respect to any
3 security does not permit sales of securities of the same class
4 by the issuer or an affiliate of the issuer if such person did
5 not file the registration statement, unless a separate
6 registration statement is filed and declared effective with
7 respect thereto, or an exemption from registration is available.
8 A registration statement may not be withdrawn after its
9 effective date if any of the securities registered have been
10 sold in this State, unless permitted by regulation or order of
11 the commission. No registration statement is effective during
12 the time a stop order is in effect under section 208.]

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

26 (k) During the effective period of a registration statement,
27 the [commission] department may by regulation require the person
28 who filed the registration statement to file reports with the
29 [commission] department, not more often than quarterly, to keep
30 reasonably current the information contained in the registration

1 statement and to disclose the progress of the offering;
2 provided, however, that no person need comply with any such
3 regulation of the [commission] department if such person files
4 with the [commission] department copies of all reports such
5 person is required to file with the Securities and Exchange
6 Commission and if such reports are filed in a timely manner. If
7 any of the securities registered have been sold in the State,
8 the [commission] department may by regulation extend the period
9 for filing the reports for an additional term not exceeding two
10 years from the date the registration became effective or the
11 date of its last amendment or extension.

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

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

1 offering of securities in this State after the registration of
2 such securities has become effective under this act.

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

15 (n) For purposes of coordinating the provisions of this act
16 with uniform procedures to facilitate electronic filings of
17 registration statements and notice filings, including, without
18 limitation, by a securities registration depository, the
19 [commission] department, by regulation, may adopt appropriate
20 procedures or forms or waive or modify any provision of section
21 205 or 206 or this section. The [commission] department, by
22 regulation, also may prescribe methods for accepting electronic
23 or digital signatures on forms to be filed electronically with
24 the [commission] department.

25 Section 8. Section 208 of the act, amended November 24, 1998
26 (P.L.829, No.109), July 4, 2002 (P.L.721, No.108) and November
27 23, 2004 (P.L.928, No.131), is amended to read:

28 Section 208. Denial, Suspension, and Revocation of
29 Registrations.--(a) The [commission] department may issue a
30 stop order denying effectiveness to, or suspending or revoking

1 the effectiveness of, any registration statement if it finds
2 that the order is in the public interest and that:

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

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

22 (iii) The securities are the subject of an administrative
23 stop order or similar order or a permanent or temporary
24 injunction of any court of competent jurisdiction entered under
25 any other Federal or State act applicable to the offering, but
26 the [commission] department may not institute a proceeding
27 against an effective registration statement under this section
28 more than one year from the date of the order or injunction
29 relied on, and it may not enter an order under this section on
30 the basis of an order or injunction entered under any other

1 state act unless that order or injunction was based on facts
2 which would currently constitute a ground for a stop order under
3 this act;

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

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

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

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

21 (viii) In the case of an offering of debt securities, the
22 offering involves an excessive debt-to-equity ratio or the
23 issuer, at the time it filed an application under section 205 or
24 206, had received an auditor's report for the immediately
25 preceding fiscal year expressing substantial doubt about the
26 issuer's ability to continue as a going concern;

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

1 entity or person; or

2 (x) The issuer has loaned money to an officer, director or
3 general partner of the issuer or a person who legally or
4 beneficially owns five per cent or more of a class of equity
5 securities of the issuer or any affiliate of such person which
6 moneys have not been repaid to the issuer prior to effectiveness
7 of the registration statement under this act, except that this
8 provision shall not apply to loans described in section 13(k)(2)
9 or (3) of the Securities Exchange Act of 1934 (48 Stat. 881, 15
10 U.S.C. § 78(m)(2) or(3).

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

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

30 Section 9. Sections 209 and 210 of the act, amended November

1 24, 1998 (P.L.829, No.109), are amended to read:

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

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

27 (c) Except open-end and closed-end investment companies,
28 face amount certificate companies and unit investment trusts, as
29 such persons are classified in the Investment Company Act of
30 1940, every issuer registering securities for sale in this State

1 under section 206 shall file an annual report with the
2 [commission] department, no earlier than three hundred sixty-
3 five days and no later than four hundred twenty days from the
4 effective date of the registration, setting forth the total
5 amount of securities sold in this State during the effective
6 period of the registration statement.

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

1 [commission] department. An application under this section shall
2 not be granted unless the applicable oversale assessment
3 prescribed by section 602.1(d) has been paid.

4 Section 10. Section 211 of the act, added or amended
5 November 24, 1998 (P.L.829, No.109) and July 4, 2002 (P.L.721,
6 No.108), is amended to read:

7 Section 211. Federally Covered Securities.--(a) With
8 respect to any security that is a covered security under section
9 18(b)(2) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. §
10 77r(b)(2)), the following shall apply:

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

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

27 (ii) After the initial offer of such federally covered
28 security in this State, all documents that are part of an
29 amendment to a Federal registration statement filed with the
30 Securities and Exchange Commission under the Securities Act of

1 1933 or, as an alternative thereto, a notice form adopted by the
2 [commission] department, which shall be filed concurrently with
3 the [commission] department.

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

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

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

1 and, if applicable, the correct assessment unless another date
2 is requested in writing by the issuer in the notice filing made
3 with the [commission] department.

4 (b) With respect to any security that is a covered security
5 under section [18(b)(4)(D)] 18(b)(4)(E) of the Securities Act of
6 1933 (48 Stat. 74, 15 U.S.C. [§ 77r(b)(4)(D)] § 77r(b)(4)(E)),
7 an issuer shall file a notice with the [commission] department
8 on Form D promulgated by the Securities and Exchange Commission
9 [and effective as of September 1, 1996,] not later than fifteen
10 calendar days after the first sale of such federally covered
11 security occurs in this State, together with the filing fee
12 specified in section 602(b.1).

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

28 ~~(B.1) (1) WITH RESPECT TO ANY SECURITY THAT IS A COVERED~~ <--
29 ~~SECURITY UNDER SECTION 18(B)(4)(C) OF THE SECURITIES ACT OF~~
30 ~~1933, THE ISSUER SHALL FILE WITH THE DEPARTMENT A COPY OF THE~~

1 DOCUMENT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION
2 PURSUANT TO SECTION 4A(B) OF THE SECURITIES ACT OF 1933 WHERE:

3 (I) THE PRINCIPAL PLACE OF BUSINESS, AS THAT TERM IS DEFINED
4 IN THE RULES AND REGULATIONS OF THE SECURITIES AND EXCHANGE
5 COMMISSION, IS IN THIS STATE; OR

6 (II) PURCHASERS OF 50% OR MORE OF THE SECURITIES SOLD BY THE
7 ISSUER PURSUANT TO AN OFFERING MADE IN RELIANCE ON SECTION 18(B)
8 (4) (C) OF THE SECURITIES ACT OF 1933 ARE RESIDENTS OF THIS
9 STATE.

10 (2) THE DOCUMENT REQUIRED UNDER PARAGRAPH (1) SHALL BE FILED
11 WHEN THE ISSUER FILES THE DOCUMENT WITH THE SECURITIES AND
12 EXCHANGE COMMISSION WITH RESPECT TO PARAGRAPH (1) (I) AND WITHIN
13 15 DAYS OF WHEN IT BECOMES AWARE OF THE FACTS UNDER PARAGRAPH
14 (1) (II).

15 (3) THERE SHALL BE NO FEE FOR MAKING THE FILING WITH THE
16 DEPARTMENT.

17 (c) (1) The [commission] department may issue a stop order
18 suspending the offer or sale of a security described in
19 [subsection (a) or (b)] subsection (a), (b) or (b.1) upon
20 finding that:

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

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

25 (2) A stop order under this section may be issued summarily
26 without notice or hearing. Upon issuance of a summary order, the
27 [commission] department shall promptly provide the order to the
28 person against whom it is issued. The order shall contain
29 findings of fact and conclusions of law and include a notice
30 affording the person an opportunity for a hearing under section

1 607(a). No person shall be considered to have violated section
2 201 solely by reason of an order entered under this section for
3 an offer or sale effected after the entry of an order under this
4 section if the person sustains the burden of proof that the
5 person did not know and in the exercise of reasonable care could
6 not have known of the order.

7 (e) A failure to file or timely file documents with the
8 department or a failure to pay or timely pay a filing fee as
9 required by this section may not create any cause of action for
10 civil liability on the part of any person under section 502 or
11 503.

12 Section 11. Section 301 of the act, amended November 24,
13 1998 (P.L.829, No.109), is amended to read:

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

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

19 (b) It is unlawful for any broker-dealer or issuer to employ
20 an agent to represent him in this State unless the agent is
21 registered under this act. The registration of an agent is not
22 effective during any period when he is not associated with a
23 specified broker-dealer registered under this act or a specified
24 issuer. No agent shall at any time represent more than one
25 broker-dealer or issuer, except that where affiliated
26 organizations are registered broker-dealers, an agent may
27 represent one or more of such organizations. When an agent
28 begins or terminates [a connection] an affiliation with a
29 broker-dealer or issuer, or [begins or terminates those] engages
30 in activities which make him an agent, the agent as well as the

1 broker-dealer or issuer shall promptly notify the [commission]
2 department. The [commission] department may adopt a temporary
3 registration procedure to permit agents to change employers
4 without suspension of their registrations hereunder.

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

12 (c.1) The following apply:

13 (1) It is unlawful for any:

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

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

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

1 [commission] department.

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

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

17 (e) Every registration or notice filing expires on December
18 31 of each year unless renewed. No registration or notice filing
19 is effective after its expiration, unless a renewal application
20 has been timely filed, and expiration of a registration for
21 which no renewal application has been filed is deemed an
22 application for withdrawal under section 305(f).

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

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

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

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

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

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

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

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

24 (d) An investment adviser who does not have a place of
25 business in this State that is registered or exempt from
26 registration under the securities act of the state in which the
27 person has his principal place of business and during the
28 preceding twelve-month period has had not more than five clients
29 who are residents of this State exclusive of other investment
30 advisers, federally covered advisers, broker-dealers or

1 institutional investors.

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

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

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

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

15 (2) Securities involved in a transaction exempted by section
16 203(c), (g), (k), (l) or (m); or

17 (3) Securities which are covered securities under section
18 18(b)(1) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. §
19 77r(b)(1)).

20 (e.2) A person that comes within the exclusion described in
21 section 4(b)(1) and (2) of the Securities Act of 1933 (48 Stat.
22 74, 15 U.S.C. § 77d(b)).

23 (e.3) A funding portal, as that term is defined in § 3(a)
24 (80) of the Securities Exchange Act of 1934 (48 Stat. 881, 15
25 U.S.C. § 78c(a)(80)), that is registered as a funding portal
26 with the Securities and Exchange Commission and has its
27 principal place of business (as, AS such term is defined by <--
28 rules of the Securities and Exchange Commission), in this <--
29 State. Such THE funding portal, however, shall be subject to the <--
30 provisions of Sections SECTIONS 304(d) and 510(f) of the act. <--

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

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

8 (i) Except as provided by clause (iii), any broker-dealer,
9 agent, investment adviser or investment adviser representative
10 may obtain an initial or renewal license by filing an
11 application with the [commission] department. The application
12 shall contain such information, and in such detail, as the
13 [commission] department by rule requires concerning the
14 applicant's form and place of organization, proposed method of
15 doing business, and financial condition, the qualifications and
16 experience of the applicant, including, in the case of a broker-
17 dealer or investment adviser, the qualifications and experience
18 of any partner, officer, director, or affiliate, or a person
19 occupying a similar status or performing similar functions any
20 injunction or administrative order or conviction referred to in
21 section 305(a)(ii), information about affiliates or predecessors
22 of the applicant, and any other matters which the [commission]
23 department determines are relevant to the application. If a
24 broker-dealer, agent, investment adviser or investment adviser
25 representative seeks to obtain an initial or renewal license
26 and, in connection therewith, requests a waiver of any
27 requirement imposed under this section or section 304 or any
28 regulation promulgated thereunder, the [commission] department
29 in granting the waiver may impose conditions on or limit the
30 scope of the initial or renewal license.

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

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

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

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

24 (C) Meets the definition of any person described in section
25 102(j)(i) through (viii), (x) or (xi), except a federally
26 covered adviser that is also a broker-dealer registered under
27 section 301, that has an individual employed by or associated
28 with such person who meets the definition of investment adviser
29 representative in section 102(j.1)(ii).

30 (b) A registered broker-dealer or investment adviser may

1 file an application for registration of a successor, whether or
2 not the successor is then in existence, for the unexpired
3 portion of the registrant's term. A federally covered adviser
4 may file a notice filing for a successor, whether or not the
5 successor is then in existence, for the unexpired portion of the
6 notice period. There shall be no filing fee.

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

16 (d) The [commission] department may by regulation require a
17 minimum capital for registered broker-dealers subject to the
18 limitations of section 15 of the Securities Exchange Act of 1934
19 (48 Stat. 881, 15 U.S.C. § 78o) and establish minimum financial
20 requirements for investment advisers subject to the limitations
21 of section 222 of the Investment Advisers Act of 1940 (54 Stat.
22 847, 15 U.S.C. § 80b-18a). The [commission] department may
23 classify broker-dealers for purposes of such requirements and
24 may establish different requirements for those investment
25 advisers who maintain custody of clients' funds or securities or
26 who have discretionary authority over same and those investment
27 advisers who do not.

28 (e) The [commission] department may by regulation require
29 surety bonds to be posted by any broker-dealer, investment
30 adviser, and any issuer who employs agents subject to

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

22 Section 13. Section 304 of the act, amended November 24,
23 1998 (P.L.829, No.109), is amended to read:

24 Section 304. Post-registration Provisions.--(a) Every
25 registered broker-dealer and investment adviser shall make and
26 keep all accounts, correspondence, memoranda, papers, books and
27 other records which the [commission] department by regulation
28 prescribes, except as provided by section 15 of the Securities
29 Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78o) in the case
30 of a broker-dealer and section 222 of the Investment Advisers

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

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

22 (c) If the information contained in any document filed with
23 the [commission] department is or becomes inaccurate or
24 incomplete in any material respect, the registrant or federally
25 covered adviser shall promptly file a correcting amendment if
26 the document is filed with respect to a registrant or when such
27 amendment is required to be filed with the Securities and
28 Exchange Commission if the document is filed with respect to a
29 federally covered adviser.

30 (d) The [commission] department shall make periodic

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

25 (e) The [commission] department may by regulation prohibit
26 unreasonable charges, commissions or other compensation of
27 broker-dealers and investment advisers, provided that any
28 charges, commissions, or other compensation consistent with
29 rates set by a national securities exchange, when applied to
30 transactions on that exchange, or by the Securities and Exchange

1 Commission or national securities association registered under
2 the Securities Exchange Act of 1934, shall not be deemed
3 unreasonable under this section. Any underwriting compensation
4 permitted by a national securities association registered under
5 the Securities Exchange Act of 1934 with respect to the
6 underwriting activities of its members shall not be deemed
7 unreasonable under this section.

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

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

30 Section 14. Section 305 of the act, amended or added June

1 25, 1986 (P.L.256, No.68), December 18, 1990 (P.L.755, No.190),
2 November 24, 1998 (P.L.829, No.109), July 4, 2002 (P.L.721,
3 No.108) and November 23, 2004 (P.L.930, No.132), is amended to
4 read:

5 Section 305. Denial, Suspension, Revocation and Conditioning
6 of Registration.

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

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

21 (ii) Has been: (A) convicted within ten years of the date of
22 the [commission's] department's action of any felony or
23 misdemeanor, or of any substantially equivalent crime by a
24 foreign court of competent jurisdiction, or held liable in a
25 civil action by final judgment of a court and the [commission]
26 department finds that such felony, misdemeanor or civil action:

27 (I) involved the purchase or sale of any security, the taking of
28 a false oath, the making of a false report, bribery, perjury,
29 burglary and any substantially equivalent activity however
30 denominated by the laws of a relevant foreign government or

1 conspiracy to commit any such offense; (II) arose out of the
2 conduct of the business of an issuer, broker-dealer, municipal
3 securities dealer, government securities broker, government
4 securities dealer, investment adviser, bank, insurance company,
5 fiduciary, transfer agent, foreign person performing a function
6 substantially equivalent to any of the foregoing or any entity
7 or person required to be registered under the Commodity Exchange
8 Act (42 Stat. 988, 7 U.S.C. § 1 et seq.) or any substantially
9 equivalent foreign statute or regulation; (III) involved the
10 larceny, theft, robbery, extortion, forgery, counterfeiting,
11 fraudulent concealment, embezzlement, fraudulent conversion or
12 misappropriation of funds or securities or any substantially
13 equivalent activity however denominated by the laws of a
14 relevant foreign government; or (IV) involved the violation of
15 18 U.S.C. § 152 (relating to concealment of assets; false oaths
16 and claims; bribery), 1341 (relating to frauds and swindles),
17 1342 (relating to fictitious name or address) or 1343 (relating
18 to fraud by wire, radio, or television) or Ch. 25 (relating to
19 counterfeiting and forgery) or 47 (relating to fraud and false
20 statements) or a violation of any substantially equivalent
21 foreign statute; or (B) convicted of any other felony; or

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

27 (iv) Is subject to (A) any currently effective order or
28 order entered within the past five years of the Securities and
29 Exchange Commission, the Commodity Futures Trading Commission or
30 the securities administrator of any other state denying

1 registration to or revoking or suspending the registration of
2 such person as a broker-dealer, agent, investment adviser,
3 investment adviser representative, futures commission merchant,
4 commodity pool operator, commodity trading [advisor] adviser or
5 a person associated with a futures commission merchant,
6 commodity pool operator or commodity trading adviser, or (B) any
7 currently effective order of any [national securities
8 association, national securities exchange (as defined in the
9 Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. 78a et
10 seq.)) or self-regulatory organization operating under the
11 authority of the Commodity Futures Trading Commission] self-
12 regulatory organization suspending or expelling such person from
13 membership in such [association, exchange or] self-regulatory
14 organization, or (C) any currently effective cease and desist
15 order or a cease and desist order entered within the past five
16 years by the Securities and Exchange Commission, the Commodity
17 Futures Trading Commission or the securities administrator of
18 any other state and where, in the case of a cease and desist
19 order entered by a state, the cease and desist order contained a
20 finding of a wilful violation of that state's securities law, or
21 (D) a currently effective United States Postal Service fraud
22 order; but the [commission] department may not institute a
23 revocation or suspension proceeding under this subsection on the
24 basis of an order under another state law more than one year
25 after termination of the effectiveness of the order relied on
26 and unless the order was based on facts which would currently
27 constitute grounds for an order under this section; or
28 (v) Has wilfully violated any provision of the Securities
29 Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.), the
30 Securities Exchange Act of 1934, the Trust Indenture Act of 1939

1 (53 Stat. 1149, 15 U.S.C. § 77aaa et seq.), the Investment
2 Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80b-1 et seq.),
3 the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. §
4 80a-1 et seq.), the Commodity Exchange Act, any law of a foreign
5 country governing or regulating any aspect of the business of
6 securities, commodities futures or banking or this act, or of
7 any rule, regulation or order under any of such statutes within
8 the previous ten years; or

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

13 (vii) Has failed reasonably to supervise his agents or
14 employes, if he is a broker-dealer, or his investment adviser
15 representatives or employes, if he is an investment adviser
16 within the previous ten years; or

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

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

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

1 responsibility; or

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

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

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

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

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

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

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

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

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

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

28 (ii) a broker-dealer or investment adviser if a promoter,
29 director, chief executive officer, chief financial officer,
30 chief operations officer, chief legal officer, chief compliance

1 officer or general partner (or person occupying a similar status
2 or performing similar functions) of the applicant held a similar
3 position with another broker-dealer, investment adviser or
4 federally covered adviser which entity pursuant to an award of
5 an arbitration panel is obligated to pay compensation to
6 purchasers of securities and, as of the date the application is
7 filed with the [commission] department, has not paid the awarded
8 compensation to the purchasers in full within the time period
9 specified by the arbitration panel.

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

17 (a.2) The [commission] department, by order, may suspend the
18 registration of a broker-dealer, investment adviser, agent or
19 investment adviser representative if such person is obligated,
20 pursuant to an award of an arbitration panel, to pay
21 compensation to purchasers of securities in this Commonwealth
22 and has not paid the awarded compensation in full and in cash.
23 The [commission] department shall rescind the suspension order
24 prospectively if the person provides credible evidence to the
25 [commission] department that the compensation awarded by the
26 arbitration panel has been paid in full and in cash to
27 purchasers of securities in this Commonwealth. Rescission of a
28 suspension order issued under this section shall reinstate the
29 person as a registrant in the same category held at the time the
30 suspension order was issued but only if:

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

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

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

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

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

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

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

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

30 (v) The [commission] department shall consider that an

1 investment adviser is not necessarily qualified solely on the
2 basis of experience as a broker-dealer or agent. When it finds
3 that an applicant for initial or renewal registration as a
4 broker-dealer is not qualified as an investment adviser, it may
5 by order condition the applicant's registration as a broker-
6 dealer upon his not transacting business in this State as an
7 investment adviser.

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

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

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

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

9 (f) Withdrawal from the status of a registered broker-
10 dealer, agent, investment adviser or investment adviser
11 representative becomes effective on the thirtieth day after
12 receipt of an application to withdraw, or within such shorter
13 period as the [commission] department determines, unless a
14 revocation or suspension proceeding is pending before the
15 [commission] department when the application is filed or a
16 proceeding to revoke or suspend or to impose conditions upon the
17 withdrawal is instituted before the [commission] department
18 within thirty days after the withdrawal application is filed. If
19 a proceeding is so pending or instituted, withdrawal becomes
20 effective at such time and upon such conditions as the
21 [commission] department by order determines. If no proceeding is
22 so pending or instituted and withdrawal automatically becomes
23 effective, the commission may institute a revocation or
24 suspension proceeding under subsections (a)(i), (v), (vi),
25 (vii), (viii), (ix), (xii) and (xiii) within one year after
26 withdrawal became effective and enter a revocation or suspension
27 order as of the last date on which the registration was in
28 effect.

29 (g) No order may be entered under this section except under
30 subsection (d) without appropriate prior notice to the applicant

1 or registrant as well as the employer or prospective employer if
2 the applicant or registrant is an agent or associated person,
3 opportunity for hearing and written findings of fact and
4 conclusions of law. In cases of denial orders, such findings and
5 conclusions shall be provided only if requested by the
6 applicant.

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

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

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

27 (b) No issuer (except for a broker-dealer registered
28 hereunder) shall employ any person as an agent hereunder if such
29 issuer knew, or in the exercise of reasonable care should have
30 known, that such person has at any time within the twelve

1 previous months participated in this State as an agent, officer
2 or director of another issuer in the sale of securities of that
3 issuer, which securities were registered under section 205 or
4 206.

5 Section 16. Section 404 of the act, amended November 24,
6 1998 (P.L.829, No.109) and November 23, 2004 (P.L.924, No.128),
7 is amended to read:

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

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

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

19 (3) Acting as principal for his own account, knowingly to
20 sell any security to or purchase any security from a client, or,
21 acting as broker for a person other than such client, knowingly
22 to effect any sale or purchase of any security for the account
23 of such client, without disclosing to such client in writing
24 before the completion of the transaction the capacity in which
25 he is acting and obtaining the consent of the client to such
26 transaction. The prohibitions of this paragraph shall not apply
27 to any transaction with a customer of a broker-dealer if such
28 broker-dealer is not acting as an investment adviser in relation
29 to such transaction.

30 (4) To engage in any act, practice, or course of business

1 which is fraudulent, deceptive, or manipulative.

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

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

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

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

30 (c) The prohibitions of this section shall apply to

1 federally covered advisers and other persons excluded from the
2 definition of investment adviser under section 102(j)(i) through
3 (viii), (x) and (xi) only to the extent that the prohibited
4 conduct involves fraud or deceit.

5 Section 17. Section 407 of the act, amended November 24,
6 1998 (P.L.829, No.109), is amended to read:

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

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

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

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

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

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

26 (b) No action shall be maintained to enforce any liability
27 created under section 502 (or section 503 in so far as it
28 relates to that section) unless brought before the expiration of
29 two years after the violation upon which it is based or the
30 expiration of one year after the plaintiff receives actual

1 notice or upon the exercise of reasonable diligence should have
2 known of the facts constituting such violation, whichever shall
3 first expire.

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

9 (d) No purchaser may commence an action under section 501,
10 502 or 503 if, before suit is commenced, the purchaser has
11 received a written offer: (i) stating the respect in which
12 liability under such section may have arisen and fairly advising
13 the purchaser of his rights; offering to repurchase the security
14 for cash, payable on delivery of the security, equal to the
15 consideration paid, together with interest at the legal rate
16 from the date of payment, less the amount of any income or
17 distributions, in cash or in kind, received thereon or, if the
18 purchaser no longer owns the security, offering to pay the
19 purchaser upon acceptance of the offer an amount in cash equal
20 to the damages computed in accordance with section 501(a); and
21 (ii) stating that the offer may be accepted by the purchaser at
22 any time within a specified period of not less than thirty days
23 after the date of receipt thereof, or such shorter period as the
24 [commission] department may by rule prescribe; and the purchaser
25 has failed to accept such offer in writing within the specified
26 period. The limitations on a purchaser commencing an action
27 under this subsection shall not apply if the purchaser has
28 accepted an offer to repurchase made under this subsection
29 within the time period specified under this subsection and has
30 complied with all the terms of this subsection but has not

1 received the cash payment specified by this subsection within
2 ninety days of the date of acceptance of the offer to
3 repurchase. For purposes of this subsection, the term "cash"
4 shall mean legal tender of the United States, a certified or
5 cashier's check drawn upon a bank as that term is defined in
6 section 102(d), a United States Postal Service money order or a
7 money order issued by a person licensed by the department to
8 conduct such business.

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

25 (f) Offers under subsection (d) or (e) of this section 504
26 shall be in the form and contain the information the
27 [commission] department by rule prescribes. Every offer under
28 this subsection shall be delivered to the offeree personally or
29 sent by certified mail addressed to him at his last known
30 address. If an offer is not performed in accordance with its

1 terms, suit by the offeree under section 501, 502 or 503, shall
2 be permitted without regard to subsections (d) and (e) of this
3 section 504.

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

8 Section 509. Right of [Commission] Department to Bring
9 Actions for Injunction and Equitable Relief; Class Actions;
10 Contempt of [Commission] Department Orders.--(a) Whenever it
11 appears to the [commission] department that any person has
12 engaged or is about to engage in any act or practice
13 constituting a violation of any provision of this act or any
14 rule or order hereunder, it may in its discretion bring an
15 action in the name of the people of the Commonwealth of
16 Pennsylvania in the Commonwealth Court or in any of the several
17 courts of common pleas to enjoin, through a preliminary or
18 permanent injunction, temporary restraining order or writ of
19 mandamus, the acts or practices or to enforce compliance with
20 this act or any rule or order hereunder. The [commission]
21 department also may seek and the court upon proper showing shall
22 grant such other ancillary and equitable relief as the facts
23 warrant, including, without limitation, appointment of a
24 receiver, temporary receiver or conservator of the defendant's
25 assets, a freeze of the defendant's assets, obtaining of an
26 accounting, orders of rescission, orders of restitution, orders
27 of disgorgement or other relief as may be appropriate in the
28 public interest. The court shall not require the [commission]
29 department to meet the criteria for an equitable injunction in
30 order for the court to grant an injunction, restraining order or

1 writ of mandamus. The court shall not require the [commission]
2 department to post a bond.

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

13 (c) Any person violating any (i) stop order issued under
14 section 208, (ii) cease advertising order issued under section
15 606(c), (iii) cease and desist order issued under section
16 606(c.1), (iv) order of the [commission] department requiring a
17 rescission pursuant to section 513, (v) order of the
18 [commission] department imposing any bar described in section
19 512, (vi) order of the [commission] department requiring return
20 of sales compensation under section 514(a) or (vii) any order of
21 the [commission] department imposing an administrative
22 assessment under section 602.1(b) or (c) from which no appeal of
23 such an order has been taken pursuant to section 607(d) of the
24 act or which has been sustained on appeal, or which has been
25 appealed but where no supersedeas has been granted for the
26 period during which the order has been violated, shall be deemed
27 to be in contempt of such order. Upon petition and certification
28 of such order by the [commission] department, the Commonwealth
29 Court or any of the courts of common pleas if it finds after
30 hearing or otherwise that the person is not in compliance with

1 the order shall adjudge the person in contempt of the order and
2 shall assess such civil penalties of an amount not less than
3 five thousand dollars (\$5,000) nor greater than fifteen thousand
4 dollars (\$15,000) per violation and grant such equitable relief
5 as it may deem appropriate.

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

22 Section 20. Section 510 of the act, amended November 24,
23 1998 (P.L.829, No.109) and July 4, 2002 (P.L.721, No.108), is
24 amended to read:

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

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

1 act or in the prescribing of rules and forms hereunder;

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

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

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

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

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

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

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

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

30 (ii) The Attorney General may petition the Commonwealth

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

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

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

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

26 (e) At the request of the securities regulatory authority of
27 another jurisdiction, the [commission] department may provide
28 assistance if the requesting authority states that it is
29 conducting an investigation which it deems necessary to
30 determine whether a person has violated, is violating or is

1 about to violate laws or rules relating to securities matters
2 that the requesting authority administers or enforces. The
3 [commission] department may, in its sole discretion, conduct
4 such investigation and use the powers conferred under this
5 section as the [commission] department deems necessary to
6 collect information and evidence pertinent to the request for
7 assistance. The assistance may be provided without regard to
8 whether the facts stated in the request would constitute a
9 violation of this act or the laws of this Commonwealth. In
10 deciding whether to provide such assistance, the [commission]
11 department shall consider whether:

12 (i) the requesting authority is permitted and has agreed to
13 provide reciprocal assistance in securities matters to the
14 [commission] department; and

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

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

27 Section 21. Section 511 of the act, amended November 23,
28 2004 (P.L.930, No.132), is amended to read:

29 Section 511. Criminal Penalties.--(a) Except as provided in
30 this section, a person who wilfully violates any material

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

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

21 (c) (1) A person who wilfully violates section 401, 408 or
22 409 commits a felony of the first degree and may be fined not
23 more than five million dollars (\$5,000,000) or imprisoned for
24 not more than twenty years, or both, if one of the conditions
25 specified in paragraph (2) or (3) is met, and not more than ten
26 million dollars (\$10,000,000) or imprisoned for not more than
27 twenty years, or both, if both of the conditions specified in
28 paragraphs (2) and (3) are met. In addition to a fine or
29 imprisonment, or both, the person may be sentenced to make
30 restitution.

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

4 (i) a criminal felony conviction;

5 (ii) an injunction issued by any court of competent
6 jurisdiction; or

7 (iii) an order of the Securities and Exchange Commission,
8 the Commodity Futures Trading Commission, the securities,
9 banking or insurance regulator of another state, a Federal
10 banking regulator or the securities, banking or insurance
11 regulatory authority of another country which found that the
12 person wilfully violated any provision of the Federal or State
13 securities, banking, insurance or commodities laws or the
14 securities, commodities, insurance or banking laws of that
15 country.

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

18 (d) A person who knowingly alters, destroys, shreds,
19 mutilates, conceals, covers up, falsifies or makes a false entry
20 in any record, document or tangible object with the intent to
21 impede, obstruct or influence an investigation by the
22 [commission] department under section 510 or an examination
23 under section 304(d) commits a felony of the second degree and
24 may be fined not more than five hundred thousand dollars
25 (\$500,000) or imprisoned for not more than ten years, or both.

26 (e) A person who knowingly alters, destroys, shreds,
27 mutilates or conceals a record, document or other object or
28 attempts to do so with the intent to impair its integrity or
29 availability for use in a proceeding before the [commission]
30 department or in a proceeding brought by the [commission]

1 department or otherwise obstructs, influences or impedes such
2 proceedings or attempts to do so commits a felony of the second
3 degree and may be fined not more than five hundred thousand
4 dollars (\$500,000) or imprisoned for not more than ten years, or
5 both.

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

14 (g) (1) Each of the acts specified in subsections (a)
15 through (f) shall constitute a separate offense, and a
16 prosecution or conviction for any such offense shall not bar
17 prosecution or conviction for any other offense. No indictment
18 or information may be returned under this act more than five
19 years after the alleged violation.

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

25 (h) The following persons have jurisdiction to investigate
26 violations of this section and institute criminal proceedings
27 for any violation of this section:

28 (1) The district attorney of a county.

29 (2) The Attorney General, in addition to the authority
30 conferred upon the Attorney General by the act of October 15,

1 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys
2 Act." This paragraph includes authority over a series of
3 violations involving more than one county of this Commonwealth
4 or involving any county of this Commonwealth and another state.
5 No person charged with a violation of this section by the
6 Attorney General shall have standing to challenge the authority
7 of the Attorney General to investigate or prosecute the case,
8 and, if any such challenge is made, the challenge shall be
9 dismissed and no relief shall be available in the courts of this
10 Commonwealth to the person making the challenge.

11 (i) No person charged with a violation of this section by
12 the Attorney General shall have standing to challenge the
13 authority of the Attorney General to investigate or prosecute
14 the case, and, if any such challenge is made, the challenge
15 shall be dismissed and no relief shall be available in the
16 courts of this Commonwealth to the person making the challenge.

17 Section 22. Sections 512 and 513 of the act, added November
18 24, 1998 (P.L.829, No.109), are amended to read:

19 Section 512. Statutory Bars.--(a) After giving notice and
20 opportunity for a hearing, the [commission] department, where it
21 has determined that a person wilfully violated this act or any
22 rule or order thereunder or knowingly aided in the act or
23 transaction constituting such violation, may issue an order
24 accompanied by written findings of fact and conclusions of law
25 which bars, conditionally or unconditionally and either
26 permanently or for such period of time as the [commission]
27 department shall determine, such person from:

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

30 (2) Acting as promoter, officer, director or partner of an

1 issuer (or an individual occupying a similar status or
2 performing similar functions) offering or selling securities in
3 this State or of a person who controls or is controlled by such
4 issuer;

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

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

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

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

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

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

27 Section 513. [Commission] Department Orders of Rescission.--
28 After giving notice and opportunity for a hearing, the
29 [commission] department, where it has determined that an issuer
30 wilfully violated section 201 or 401, may issue an order

1 accompanied by written findings of fact and conclusions of law
2 which requires the issuer or any control person of the issuer
3 who knowingly aided in the act or transaction constituting such
4 violation to effect a rescission offer in a manner which the
5 [commission] department by rule or order may prescribe to
6 persons who purchased securities of the issuer in this State
7 involved in the violation. The [commission] department shall not
8 issue an order under this section with respect to any public
9 proceeding which was instituted prior to the date of enactment.

10 Section 23. Section 514 of the act, added July 4, 2002
11 (P.L.721, No.108), is amended to read:

12 Section 514. Return of Sales Compensation.--(a) After
13 giving notice and opportunity for hearing, the [commission]
14 department, where it has determined that a person who
15 represented an issuer in effecting transactions in securities in
16 this Commonwealth while in willful violation of section 301(a)
17 and received compensation in connection with these transactions,
18 may issue an order, accompanied by written findings of fact and
19 conclusions of law, which requires the person to return to
20 purchasers of securities in this Commonwealth, in cash, the
21 amount of compensation received for effecting those securities
22 transactions.

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

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

30 (2) The transactions involved securities which are exempted

1 securities under section 3(a) of the Securities Act of 1933
2 except section 3(a)(4) and (11).

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

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

12 (d) An order issued under this section shall not be deemed
13 conclusive as to the total number of purchasers in this
14 Commonwealth of any particular security or the total dollar
15 amount of sales compensation received by a person for
16 transactions effected in a particular security with purchasers
17 in this Commonwealth for which liability may be imposed under
18 subsection (a).

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

21 Section 515. Temporary Freeze Authority.--(a) Whenever,
22 during the course of a lawful investigation involving possible
23 violations of this act or rule or order issued thereunder by an
24 issuer that is not subject to the reporting requirements of
25 section 13 or 15(d) of the Securities Exchange Act of 1934 (48
26 Stat. 881, 15 U.S.C. §§ 78m and 78o(d)) or any of its directors,
27 officers, partners, controlling persons, agents or employes, it
28 shall appear to the [commission] department that it is likely
29 that the issuer will make extraordinary payments, whether
30 compensation or otherwise, to any such persons, the [commission]

1 department may petition the Commonwealth Court or any court of
2 common pleas for a temporary order requiring the issuer to
3 escrow, subject to court supervision, those payments in an
4 interest-bearing account for forty-five days. A temporary order
5 may be issued and entered under this subsection only after
6 notice and opportunity for hearing unless the court determines
7 that notice and hearing prior to entry of the order would be
8 impracticable or contrary to the public interest.

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

10 (i) become effective immediately;

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

12 (iii) be effective and enforceable for forty-five days
13 unless set aside, limited or suspended by a court of competent
14 jurisdiction and may be extended by the court upon good cause
15 shown for not longer than forty-five additional days, provided
16 that the combined period of the order shall not exceed ninety
17 days.

18 (c) If the issuer or other person described in subsection
19 (a) is charged with a violation of this act or rule or order
20 issued under this act before the expiration of the effective
21 period of a temporary order as set forth in subsection (b),
22 including any applicable extension period, the order shall
23 remain in effect, subject to court approval, until the
24 conclusion of any legal proceedings related thereto, and the
25 affected issuer or other person shall have the right to petition
26 the court for review of the order.

27 (d) If the issuer or other person described in subsection
28 (a) is not charged with a violation of this act or rule or order
29 issued under this act before the expiration of the effective
30 period of a temporary order as set forth in subsection (b),

1 including any applicable extension period, the escrow shall
2 terminate at the expiration of the forty-five-day effective
3 period or the expiration of any extension period, as applicable,
4 and the disputed payments with accrued interest shall be
5 returned to the issuer or other affected person.

6 (e) This section shall not apply to an issuer or director,
7 officer, partner, controlling person, agent or employe of an
8 issuer that has not more than one hundred equity security
9 holders.

10 Section 25. Section 601 of the act, amended December 19,
11 1975 (P.L.601, No.171) and July 4, 2002 (P.L.721, No.108), is
12 amended to read:

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

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

28 (c) It is unlawful for the [commission] department or any of
29 its officers or employes to use for personal benefit any
30 information which is filed with or obtained by the [commission]

1 department and which is not generally available to the public.
2 Nothing in this act authorizes the [commission] department or
3 any of its officers or employes to disclose such confidential
4 information except among themselves or to other securities
5 administrators, regulatory authorities or governmental agencies,
6 or when necessary or appropriate in a proceeding or
7 investigation under this act or any other law of this State.

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

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

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

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

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

25 (i) Documents relating to an investigation conducted under
26 section 510, including, but not limited to, statements made or
27 taken in accordance with section 510(a) or (b) and documents in
28 possession of the [commission] department under section 510(a)

29 (ii).

30 (ii) Documents received in connection with a subpoena issued

1 under section 510.

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

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

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

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

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

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

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

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

29 Section 602. Fees.--(a) The [commission] department shall
30 charge and collect the fees fixed in this section and remit them

1 to the General Fund.

2 (b) (Reserved).

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

4 (i) (Reserved).

5 (ii) Registration statement filings under section
6 205, except as provided in subclause (iv), based upon
7 the maximum aggregate offering price at which such
8 securities are to be offered in this State during the
9 effective period of the registration statement:

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

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

12 (iii) Registration statement filings under section
13 206, except as provided in subclause (iv)..... 500

14 Plus 1/20 of 1% of the maximum
15 aggregate offering price at
16 which such securities are to be
17 offered in this State during
18 the effective period of the
19 registration up to a maximum
20 filing fee of \$3,000.

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

27 Based upon the maximum
28 aggregate offering price at
29 which such securities are to be
30 offered in this State during

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

17 (v) Exemption filings under section 203(o) shall
18 be:..... 350

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

26 (A) Under section 205 or a notice filing under
27 section 211(a)..... 400

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

29 (vii) Filing a notice on SEC Form D under section
30 211(b)..... 525

1	(viii) Filing an application for exemption from	
2	registration under section 203(d) or (s):	
3	(A) Where the maximum aggregate offering price at	
4	which such securities are offered in this State is	
5	less than \$1,000,000.....	150
6	(B) Where the maximum aggregate offering price at	
7	which such securities are offered in this State is	
8	\$1,000,000 or more.....	400
9	(ix) Filing an application for exemption from	
10	registration under section 203(t).....	500
11	(x) Filing an application for exemption from	
12	registration under section 203(p).....	100
13	(b.2) There shall be no refund of any filing fee specified	
14	in subsection (b.1)(vii) through (x).	
15	(c) (Reserved).	
16	(d) (Reserved).	
17	(d.1) Every applicant for an initial or renewal license	
18	under section 301 shall pay a filing fee of three hundred fifty	
19	dollars (\$350) in the case of a broker-dealer, eighty dollars	
20	(\$80) in the case of an agent, two hundred seventy-five dollars	
21	(\$275) in the case of an investment adviser and eighty dollars	
22	(\$80) in the case of an investment adviser representative. The	
23	term of an agent's or associated person's registration hereunder	
24	shall be concurrent with that of his employer, if a broker-	
25	dealer or an investment adviser. When an agent changes	
26	employers, an eighty dollar (\$80) fee shall be paid. When an	
27	investment adviser representative changes employers, an eighty	
28	dollar (\$80) fee shall be paid. When an application is denied or	
29	withdrawn or a registration revoked, the filing fee shall be	
30	retained. A federally covered adviser shall pay an annual notice	

1 filing fee of three hundred fifty dollars (\$350).

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

5 (f) The [commission] department may fix by regulation a
6 reasonable charge for any publication issued under its
7 authority.

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

11 Section 27. Section 602.1 of the act, amended or added May
12 4, 1993 (P.L.4, No.4), December 7, 1994 (P.L.869, No.126),
13 November 24, 1998 (P.L.829, No.109) July 4, 2002 (P.L.721,
14 No.108) and November 23, 2004 (P.L.915, No.125), is amended to
15 read:

16 Section 602.1. Assessments.--(a) (1) Each agent and
17 investment adviser representative, when applying for an initial
18 license under section 301 or changing employers, shall pay a
19 compliance assessment in accordance with the following schedule:
20 [thirty-two dollars (\$32) for the period July 1, 2001, through
21 June 30, 2004, thirty-five dollars (\$35) for the period July 1,
22 2004, through June 30, 2007, thirty-seven dollars (\$37) for the
23 period July 1, 2007, through June 30, 2010, and forty dollars
24 (\$40) thereafter] forty-five dollars (\$45) for the period July
25 1, 2013, through June 30, 2016, fifty dollars (\$50) for the
26 period July 1, 2016, through June 30, 2019, and fifty-five
27 dollars (\$55) thereafter.

28 (2) Each agent and investment adviser representative, when
29 applying for a renewal license under section 301, shall pay a
30 compliance assessment in accordance with the following schedule:

1 [seventeen dollars (\$17) for the period July 1, 2001, through
2 June 30, 2004, twenty (\$20) for the period July 1, 2004, through
3 June 30, 2007, twenty-two dollars (\$22) for the period July 1,
4 2007, through June 30, 2010, and twenty-five (\$25) thereafter]
5 thirty dollars (\$30) for the period July 1, 2013, through June
6 30, 2016, thirty-five dollars (\$35) for the period July 1, 2016,
7 through June 30, 2019, and forty dollars (\$40) thereafter.

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

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

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

1 enactment of this paragraph.

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

17 (c) After giving notice and opportunity for a hearing, the
18 [commission] department may issue an order accompanied by
19 written findings of fact and conclusions of law which imposes an
20 administrative assessment in the amounts provided in paragraph
21 (1) against a broker-dealer, agent, investment adviser or
22 investment adviser representative registered under section 301
23 or an affiliate of any broker-dealer or investment adviser where
24 the [commission] department determines that the person within
25 the previous ten years willfully has violated this act or a rule
26 or order of the [commission] department under this act or has
27 engaged in dishonest or unethical practices in the securities
28 business; has taken unfair advantage of a customer; or has
29 failed reasonably to supervise its agents or employes or against
30 any other person if the [commission] department determines that

1 the person wilfully violated section 301, 401, 404, 406 through
2 409 or 512(d) or a cease and desist order issued by the
3 [commission] department under section 606(c.1).

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

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

24 (ii) In issuing an order against a person for wilful
25 violation of section 401(a) or (c), 404, 406, 408, 409 or 512(d)
26 or for wilful violation of a cease and desist order issued under
27 section 606(c.1), the [commission] department may impose a
28 maximum administrative assessment of up to one hundred thousand
29 dollars (\$100,000) for each act or omission that constitutes a
30 violation of any of those sections. In addition to the foregoing

1 assessment, the [commission] department also may impose a
2 special administrative assessment of up to fifty thousand
3 dollars (\$50,000) for each of the provisions described as
4 follows that the [commission] department determines are
5 applicable:

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

18 (B) The person's ~~†violative†~~ conduct involved individuals <--
19 aged 60 or more.

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

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

9 (iv) In issuing an order against a person, other than a
10 federally covered adviser, for wilful violation of section 301,
11 the [commission] department may impose the following
12 administrative assessments which may be in addition to an
13 administrative assessment imposed under any other provision of
14 this subsection:

15 (A) For a person who at the time of the wilful violation was
16 not registered under section 301, was not registered as a broker
17 or dealer with the United States Securities and Exchange
18 Commission under the Securities Exchange Act of 1934 (48 Stat.
19 881, 15 U.S.C. § 78a et seq.) and was not a member of a national
20 securities association registered under that act, the
21 [commission] department may impose a maximum administrative
22 assessment of up to fifty thousand dollars (\$50,000) for each
23 act or omission which constitutes a violation of section 301.

24 (B) For a person (not an individual) that at the time of the
25 wilful violation was not registered under section 301 but was
26 registered as a broker or dealer with the United States
27 Securities and Exchange Commission under the Securities Exchange
28 Act of 1934 and was a member of a national securities
29 association registered under that act, the [commission]
30 department may impose a maximum administrative assessment of up

1 to fifty thousand dollars (\$50,000) for each act or omission
2 which constitutes a violation of section 301. An assessment
3 imposed under this subclause shall be in addition to any
4 liability a person may have under an order issued under section
5 514.

6 (v) In issuing an order for wilful violation of section
7 301(c.1)(1)(ii) against a person that is a federally covered
8 adviser, the [commission] department may impose the following
9 administrative assessments:

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

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

16 (vi) In issuing an order for a wilful violation of section
17 301(f) against a person that is a federally covered adviser, the
18 [commission] department may impose an administrative assessment
19 of two thousand dollars (\$2,000).

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

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

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

29 (iii) The amount of restitution or compensation that the
30 violator has made and the number of persons in this Commonwealth

1 to whom the restitution or compensation has been made.

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

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

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

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

22 (d) Each application filed with the [commission] department
23 under section 210 by an issuer that has an effective
24 registration statement on file with the department pursuant to
25 section 205 or 206 or an open-end or closed-end investment
26 company, face amount certificate company or unit investment
27 trust, as those persons are classified in the Investment Company
28 Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.), to
29 register securities sold in this State in excess of the
30 aggregate amount of securities registered under section 205 or

1 206 and each amendment to a notice filing submitted relating to
2 securities sold in the State in excess of those included on an
3 earlier notice filing shall include the payment of an oversale
4 assessment which shall be three times an amount which equals the
5 difference between the registration or notice filing fee that
6 would have been payable under section 602(b.1) based upon the
7 total amount of securities sold in this State and the total
8 registration or notice filing fees previously paid to the
9 [commission] department with respect to such registration or
10 notice filing, but in no case shall the oversale assessment be
11 less than three hundred fifty dollars (\$350) or be more than
12 three thousand dollars (\$3,000).

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

20 (1) expenses, including personnel, operating and fixed
21 assets costs, relating to the registration of broker-dealers,
22 agents, investment advisers and [associated persons] INVESTMENT <--
23 ADVISER REPRESENTATIVES under section 301 and the conduct of
24 examinations of broker-dealers and investment [advisors]
25 advisers registered under section 301 and other compliance-
26 related activities of the [commission] department;

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

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

5 (4) nonpersonnel expenses related to conducting enforcement-
6 related activities of the [commission] department; and
7 thereafter,

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

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

12 Section 603. Administrative Files.--(a) A document is filed
13 when it is received by the [commission] department or by any
14 other person which the [commission] department by regulation or
15 order may designate.

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

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

27 (1) Upon proper showing of the registrant or issuer, the
28 [commission] department may order certain filings or parts of
29 filings nonpublic.

30 (2) The [commission] department, by rule or order, may deem

1 certain categories of information filed with the [commission]
2 department as nonpublic.

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

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

19 Section 29. Sections 604 and 605 of the act are amended to
20 read:

21 Section 604. Interpretive Opinions of [Commission]
22 Department.--The [commission] department in its discretion may
23 honor requests from interested persons for interpretive opinions
24 and may make such opinions available to the public under section
25 603(c).

26 Section 605. Commissioners and [Commission] Department
27 Employees; Relationship with Licensed Persons or Qualified
28 Organizations.--(a) Neither the commissioners nor any employe,
29 clerk or servant of the [commission] department, during their
30 respective terms of employment, shall be interested as a

1 director, officer, shareholder, member, partner, agent, or
2 employe of any person who, during the period of such official's
3 or employe's association with the [commission] department, (i)
4 was licensed or applied for license as a broker-dealer, agent
5 [or], investment adviser or investment adviser representative
6 under this act, or (ii) applied for or secured the registration
7 of securities under this act.

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

14 (c) Nothing contained in subsection (a) shall prohibit the
15 holding or purchasing of any securities by any commissioner if:
16 either (i) the commissioner, together with his spouse, minor
17 children and parents or other relatives who are members of his
18 household, owns less than one-tenth of one per cent of any class
19 of outstanding securities of any issuer described in subsection
20 (a) (ii); or (ii) such security is held or purchased through a
21 management account or trust administered by a bank or trust
22 company authorized to do business in this State which has sole
23 investment discretion regarding the holding, purchase and sale
24 of securities, and (A) the commissioner did not, directly or
25 indirectly, advise, counsel, command or suggest the holding,
26 purchase or sale of any such security or furnish any information
27 relating to any such security to such bank or trust company, and
28 (B) such account or trust does not at any time have more than
29 ten per cent of its total assets invested in the securities of
30 any one issuer or hold more than five per cent of the

1 outstanding shares or units of any class of securities of any
2 one issuer. Each commissioner shall report to the Governor not
3 less often than quarterly all holdings, purchases, and sales of
4 securities by him, which reports shall be retained by the
5 Governor's office as public documents.

6 Section 30. Sections 606 and 607 of the act, amended July 4,
7 2002 (P.L.721, No.108), are amended to read:

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

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

22 (c) No person shall publish in this State any advertisement
23 concerning any security (other than advertisements relating to
24 federally covered securities, tombstone advertisements permitted
25 under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a
26 et seq.) and the Investment Company Act of 1940 (54 Stat. 789,
27 15 U.S.C. § 80a-1 et seq.) and the rules and regulations
28 promulgated thereunder) except in accordance with such rules as
29 the [commission] department may promulgate from time to time. No
30 person shall publish any advertisement concerning any security

1 in this State after the [commission] department issues a cease
2 advertising order in which it finds that the advertisement
3 contained an untrue statement of a material fact or omitted to
4 state a material fact necessary in order to make the statements
5 made, in the light of the circumstances under which they were
6 made, not misleading. The order may be issued summarily without
7 notice or hearing. Upon issuance of a summary order, the
8 [commission] department shall promptly provide the order to the
9 person against whom it is issued. The order shall contain
10 findings of fact and conclusions of law and include a notice
11 affording the person an opportunity for a hearing under section
12 607(a).

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

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

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

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

4 (2) The department may permit the payment to be made using
5 any medium, including telephone, facsimile transmission, wire
6 transmission, electronic mail, Internet site or any other method
7 related to any transmission mechanism, including the Internet.

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

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

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

10 (c) Hearings and rehearings shall be public.

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

19 (e) All administrative proceedings conducted by the
20 department pursuant to this act shall be subject to the
21 requirements of 2 Pa.C.S. (relating to administrative law and
22 procedure). For purposes of this subsection, the term
23 "administrative proceeding" means any proceeding other than a
24 judicial proceeding, the outcome of which is required to be
25 based on a record or documentation prescribed by law, or in
26 which law or regulation is particularized in application to a
27 person subject to this act. The provisions of this subsection
28 shall supplement and not repeal or limit requirements of 2
29 Pa.C.S.

30 Section 31. Section 609 of the act, amended November 24,

1 1998 (P.L.829, No.109) and July 4, 2002 (P.L.721, No.108), is
2 amended to read:

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

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

29 (c) Subject to the limitations of the Securities Act of 1933
30 (48 Stat. 74, 15 U.S.C. § 77a et seq.), the Securities Exchange

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

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

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

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

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

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

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

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

28 Section 703.1. Securities Regulation Account.--(a) The
29 Securities Regulation Account is established as a restricted
30 account within the General Fund.

1 (b) The Securities Regulation Account shall be funded from
2 the following sources:

3 (1) For the fiscal year in which the Securities Regulation
4 Account is established, the auction rate securities settlement
5 funds received by the former Pennsylvania Securities Commission
6 shall be deposited into the account.

7 (2) For each fiscal year following the fiscal year in which
8 the account was established, the amount approved under
9 subsection (d) shall be transferred from the General Fund to the
10 Securities Regulation Account until it reaches a balance of
11 \$12.5 million.

12 (c) The moneys in the Securities Regulation Account are
13 appropriated to the department for the following administrative
14 and operating costs:

15 (1) Special initiatives or strategic regulatory needs or
16 developments.

17 (2) Investor and entrepreneurial education and outreach
18 programs.

19 (3) Unanticipated or adverse industry circumstances that
20 require enhanced investor protection activities.

21 (d) The department shall annually submit to the Governor,
22 for approval or disapproval, an estimate, based on the
23 department's assessment of prevailing economic and regulatory
24 conditions, of the amount of the assessments, fees and
25 administrative penalties generated from section 602.1(b) and (c)
26 and deposited in the General Fund to be transferred from the
27 General Fund to the Securities Regulation Account.

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