

49:3-49
LEGISLATIVE HISTORY CHECKLIST

4/8/88

NJSA: 49:3-49 et al

(Governmental securities-- register
in default-- prohibit blind pools)

LAWS OF: 1987

CHAPTER: 301

Bill No: S2920

Sponsor(s): Feldman and Russo

Date Introduced: January 13, 1987

Committee: **Assembly:** Financial Institutions

Senate: Labor, Industry and Professions

Amended during passage: Yes Amendments during passage denoted
by asterisks.

Date of Passage: **Assembly:** September 10, 1987

Senate: May 18, 1987

Date of Approval: November 4, 1987

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: **Assembly** Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: Yes

Hearings: No

See newspaper clipping-- attached

"Kean enacts safeguards on penny stock pools, Legislation closes a loophole in the Uniform Securities Law, 11-6-87 Star Ledger.

"Penny stock often barred by New Jersey, 12-9-87 Star Ledger

(Over)

See also newspaper clipping file, "New Jersey - Securities - 1982-- " in New Jersey Reference Department.

974.90 New Jersey. Legislature. Assembly. Banking and Insurance Committee.
B218 Committee meeting to conduct a study of the trading of "penny stock" . . .
1985a February 20, 1985. Newark, 1985.

[OFFICIAL COPY REPRINT]

SENATE, No. 2920**STATE OF NEW JERSEY**

INTRODUCED JANUARY 13, 1987

By Senators FELDMAN and RUSSO

Referred to Committee on Labor, Industry and Professions

AN ACT concerning certain securities issuers or guarantors and disclosure requirements and amending P. L. 1967, c. 93.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
 2 *of New Jersey:*

1 1. Section 2 of P. L. 1967, c. 93 (C. 49:3-49) is amended to
 2 read as follows:

3 2. When used in this act, unless the context otherwise requires:

4 (a) "Bureau" means the agency designated in section 19(a);

5 (b) "Agent" means any individual other than a broker-dealer,
 6 who represents a broker-dealer or issuer in effecting or attempt-
 7 ing to effect purchases or sales of securities. "Agent" does not
 8 include an individual who represents an issuer in (1) effecting
 9 transactions in a security exempted by subdivision (1), (2), (3),
 10 or (11) of section 3(a); (2) effecting transactions exempted by
 11 section 3(b); or (3) effecting transactions with existing employees,
 12 partners, or directors of the issuer if no commission or other
 13 remuneration is paid or given directly or indirectly for soliciting
 14 any person in this State. A partner, officer, or director of a broker-
 15 dealer or issuer, or a person occupying a similar status or per-
 16 forming similar functions, is an agent only if he otherwise comes
 17 within this definition;

18 (c) "Broker-dealer" means any person engaged in the business
 19 of effecting or attempting to effect transactions in securities for
 20 the accounts of others or for his own account. "Broker-dealer"
 21 does not include (1) an agent, (2) an issuer, (3) a person who
 22 effects transactions in this State **[exclusively]** *exclusively* in

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
 is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted April 27, 1987.

23 securities described in subdivisions (1) and (2) of section 3(a),
24 (4) a bank, savings institution, or trust company, or (5) a person
25 who (i) effects transactions in this State exclusively with or
26 through (A) the issuers of the securities involved in the trans-
27 actions, (B) other broker-dealers or (C) banks, savings institu-
28 tions, trust companies, insurance companies, investment companies
29 as defined in the Investment Company Act of 1940, pension or
30 profit-sharing trusts, or other financial institutions or institutional
31 buyers, whether acting for themselves or as trustees, or (ii) during
32 any period of 12 consecutive months does not direct more than
33 15 offers to sell or to buy into this State in any manner to persons
34 other than those specified in paragraph (c)(5)(i), whether or not
35 the offeror or any of the offerees is then present in this State;

36 (d) "Capital" shall mean net capital, as defined and adjusted
37 under the formula established by the Securities and Exchange
38 Commission in Rule 15c3-1, made pursuant to the "Securities
39 Exchange Act of 1934," prescribing a minimum permissible ratio
40 of aggregate indebtedness to net capital as such formula presently
41 exists or as it may hereafter be amended;

42 (e) "Fraud," in addition to the usual construction placed on
43 it and accepted in courts of law and equity, shall include the fol-
44 lowing, provided, however, that any promise, representation, mis-
45 representation or omission be made with knowledge and with
46 intent to deceive and results in a detriment to the purchaser:

47 (1) Any misrepresentation by word, conduct or in any manner
48 of any material fact, either present or past, and any omission to
49 disclose any such fact;

50 (2) Any promise or representation as to the future which is
51 beyond reasonable expectation or is unwarranted by existing cir-
52 cumstances;

53 (3) The gaining of, or attempt to gain, directly or indirectly,
54 through a trade in any security, a commission, fee or gross profit
55 so large and exorbitant as to be unconscionable and unreasonable;

56 (4) Generally any course of conduct or business which is cal-
57 culated or put forward with intent to deceive the public or the
58 purchaser of any security as to the nature of any transaction or
59 the value of such security;

60 (5) Any artifice, agreement, device or scheme to obtain
61 money, profit or property by any of the means herein set forth or
62 otherwise prohibited by this law;

63 (f) "Guaranteed" means guaranteed as to payment of prin-
64 cipal, interest or dividends;

65 (g) "Investment advisor" means any person who, for compen-
66 sation, engages in the business of advising others, either directly
67 or through publications or writings, as to the value of securities
68 or as to the advisability of investing in, purchasing or selling
69 securities, or who, for compensation and as a part of a regular
70 business, issues or promulgates analyses or reports concerning
71 securities. "Investment advisor" does not include (1) a bank,
72 savings institution, or trust company; (2) a lawyer, accountant,
73 engineer, or teacher whose performance of these services is solely
74 incidental to the practice of his profession; (3) a broker-dealer
75 registered under this law; (4) a publisher of any bona fide news-
76 paper, news magazine, or business or financial publication of
77 general, regular, and paid circulation; (5) a person whose advice,
78 analyses, or reports relate only to securities exempted by section 3,
79 paragraph (a) (1) and (2); (6) a person who has no place of
80 business in this State if (a) his only clients in this State are other
81 investment advisors, broker-dealers, banks, savings institutions,
82 trust companies, insurance companies, investment companies as
83 defined in the "Investment Company Act of 1940," pension or
84 profit-sharing trusts, or other financial institutions or institutional
85 buyers, whether acting for themselves or as trustees, or (b) during
86 any period of 12 consecutive months he does not direct business
87 communications into this State in any manner to more than five
88 clients other than those specified in subparagraph (6) (a) of this
89 paragraph, whether or not he or any of the persons to whom the
90 communications are directed is then present in this State; or
91 (7) such other persons not otherwise within the intent of this para-
92 graph (g) as the bureau chief may by rule or order designate;

93 (h) "Issuer" means any person who issues or proposes to issue
94 any security, except that (1) with respect to certificates of deposit,
95 voting-trust certificates, or collateral-trust certificates, or with
96 respect to certificates of interest or shares in an unincorporated
97 investment trust not having a board of directors (or persons per-
98 forming similar functions) or of the fixed, restricted management,
99 or unit type, the term "issuer" means the person or persons per-
100 forming the acts and assuming the duties of depositor or manager
101 pursuant to the provisions of the trust or other agreement or
102 instrument under which the security is issued; and (2) with respect
103 to certificates of interest in oil, gas, or mining titles or leases,
104 there is not considered to be any "issuer";

105 (i) "Person" means an individual, a corporation, a partnership,
106 an association, a joint-stock company, a trust where the interests

107 of the beneficiaries are evidenced by a security, an unincorporated
108 organization, a government, or a political subdivision of a gov-
109 ernment;

110 (j) (1) "Sale" or "sell" includes every contract of sale of,
111 contract to sell, or disposition of, a security or interest in a
112 security for value;

113 (2) "Offer" or "offer to sell" includes every attempt or offer
114 to dispose of, or solicitation of an offer to buy, a security or
115 interest in a security for value;

116 (3) Any security given or delivered with, or as a bonus on
117 account of, any purchase of securities or any other thing is con-
118 sidered to constitute part of the subject of the purchase and to
119 have been offered and sold for value;

120 (4) A purported gift of assessable stock is considered to in-
121 volve an offer and sale;

122 (5) Every sale or offer of a warrant or right to purchase or
123 subscribe to another security of the same or another issuer, as
124 well as every sale or offer of a security which gives the holder a
125 present or future right or privilege to convert into another se-
126 curity of the same or another issuer, is considered to include an
127 offer of the other security;

128 (6) The terms defined in this paragraph (j) do not include
129 (a) any bona fide pledge or loan; (b) any stock dividend, whether
130 the corporation distributing the dividend is the issuer of the stock
131 or not, if nothing of value is given by stockholders for the dividend
132 other than the surrender of a right to a cash or property dividend
133 when each stockholder may elect to take the dividend in cash or
134 property or in stock; (c) any act incident to a class vote by stock-
135 holders, pursuant to the certificate of incorporation or the appli-
136 cable corporation statute, on a merger, consolidation, reclassifica-
137 tion of securities, or sale of corporate assets in consideration of the
138 issuance of securities of another corporation; or (d) any act inci-
139 dent to a judicially approved reorganization in which a security is
140 issued in exchange for one or more outstanding securities, claims,
141 or property interests, or partly in such exchange and partly for
142 cash;

143 (k) "Savings institutions" shall mean any savings and loan
144 association or building and loan association operating pursuant
145 to the "Savings and Loan Act (1963)[.]," P. L. 1963, c. 144 (C.
146 17:12B-2 et seq.), and any federal savings and loan association
147 and any association organized under the laws of any state whose
148 accounts are insured by the Federal Savings and Loan Insurance

149 Corporation and who are subject to supervision and examination
 150 by the Federal Home Loan Bank Board, and any credit union
 151 licensed and supervised under "The Credit Union Act of 1984,"
 152 P. L. 1984, c. 171 (C. 17:13-79 et al.) or licensed and supervised
 153 by the National Credit Union Administration;

154 (l) "Securities Act of 1933," 48 Stat. 74[.], (15 U. S. C. § 77a et
 155 seq.); "Securities Exchange Act of 1934," 48 Stat. 881[.], (15
 156 U. S. C. § 78a et seq.); "Public Utility Holding Company Act of
 157 1935," 49 Stat. 838[.], (15 U. S. C. § 79 et seq.); "Investment *Ad-
 158 visors]* *Advisers* Act of 1940," 54 Stat. 857[.], (15 U. S. C.
 159 § 80b-1 et seq.); and "Investment Company Act of 1940," 54 Stat.
 160 847[.], (15 U. S. C. § 80a-1 et seq.)[.]; mean the federal statutes of
 161 those names as amended or supplemented before or after the
 162 effective date of this act;

163 (m) "Security" means any note; stock[.]; treasury stock;
 164 bond; debenture; evidence of indebtedness; certificate of interest
 165 or participation in any profit-sharing agreement, including but
 166 not limited to certificates of interest or participation in real or
 167 personal property; collateral-trust certificate; preorganization cer-
 168 tificate or subscription; transferable share; investment contract;
 169 voting-trust certificate; certificate of deposit for a security; cer-
 170 tificate of interest in an oil, gas or mining title or lease; or, in
 171 general, any interest or instrument commonly known as a "se-
 172 curity," or any certificate of interest or participation in, tem-
 173 porary or interim certificate for, guarantee of, or warrant or right
 174 to subscribe to or purchase, any of the foregoing. "Security" does
 175 not include any insurance or endowment policy or annuity con-
 176 tract under which an insurance company promises to pay a fixed
 177 or variable number of dollars either in a lump sum or periodically
 178 for life or some other specified period;

179 (n) "State" means any state, territory, or possession of the
 180 United States, as well as the District of Columbia and Puerto
 181 Rico;

182 (o) "Nonissuer" means secondary trading not involving the
 183 issuer of the securities or any person in a control [relationship]
 184 relationship with the [insurer] issuer;

185 (p) "Accredited investor" means any person who comes within
 186 any of the following categories, or who the issuer reasonably
 187 believes comes within any of the following categories, at the time
 188 of the sale of the security to that person:

189 (1) Any bank, savings institution, trust company, insurance
 190 company, investment company as defined in the "Investment

191 Company Act of 1940," pension or profit-sharing trust, or other
 192 financial institution or institutional buyer, or to a broker-dealer,
 193 whether the purchaser is acting for itself or in some fiduciary
 194 capacity;

195 (2) Any private business development company as defined in
 196 section 202(a) (22) of the "Investment **[Advisers]** ***[Advisors]***
 197 **Advisers** Act of 1940;"

198 (3) Any organization described in section 501(c)(3) of the
 199 Internal Revenue Code, with total assets in excess of \$5,000,000.00;

200 (4) Any director, executive officer, or general partner of the
 201 issuer of the securities being offered or sold, or any director,
 202 executive officer, or general partner of a general partner of that
 203 issuer;

204 (5) Any person who purchases at least \$150,000.00 of the se-
 205 curities being offered, where the purchaser's total purchase price
 206 does not exceed 20% of the purchaser's net worth at the time
 207 of sale, or joint net worth with that person's spouse, for one
 208 or any combination of the following: (i) cash, (ii) securities
 209 for which market quotations are readily available, (iii) an uncon-
 210 ditional obligation to pay cash or securities for which market
 211 quotations are readily available, which obligation is to be dis-
 212 charged within five years of the sale of the securities to the pur-
 213 chaser, or (iv) the cancellation of any indebtedness owed by the
 214 issuer of the purchaser;

215 (6) Any natural person whose individual net worth, or joint
 216 net worth with that person's spouse, at the time of his purchase
 217 exceeds \$1,000,000.00; and

218 (7) Any natural person who had an individual income in excess
 219 of \$200,000.00 in each of the two most recent years and who
 220 reasonably expects an income in excess of \$200,000.00 in the
 221 current year.

222 The bureau chief may rule, or order, waive or modify the
 223 conditions in this subsection (p) and shall interpret and apply
 224 this subsection (p) so as to **[effectutate]** *effectuate* greater uni-
 225 formity and coordination in federal-state securities registration
 226 exemptions;

227 (q) "Direct participation security" means a security which
 228 provides for flow-through tax consequences (tax shelter), regard-
 229 less of the structure of the legal entity or vehicle for distribution,
 230 including, but not limited to, a security representing an interest in
 231 gas, oil, real estate, agricultural property, cattle, a **[condomini-**
 232 **mum]** *condominium*, or **[subchapter s]** *Subchapter S* corporate

233 offerings and all other securities of a similar nature, regardless
 234 of the industry represented by the security, or any combination
 235 thereof. Excluded from this definition are real estate investment
 236 **[trust]** trusts, tax qualified pension and profit-sharing plans
 237 pursuant to sections 401 and 403(a) of the Internal Revenue Code
 238 and individual retirement plans under section 408 of the In-
 239 ternal Revenue Code, tax sheltered annuities pursuant to the
 240 provisions of section 403(b) of the Internal Revenue Code and
 241 any company including separate accounts registered pursuant to
 242 the Investment Company Act of 1940.

243 (r) "*Blind pool*"*, in addition to the usual construction placed on
 244 it,* means an offering of securities***[**, including but not limited to,
 245 one**]*** in which the prospectus discloses no specific purpose to
 246 which the proceeds of the offering will be put, or does not state
 247 with specificity assets to be purchased, projects to be undertaken,
 248 or business to be conducted with at least 65% of the proceeds of
 249 the offering.

1 2. Section 3 of P. L. 1967, c. 93 (C. 49:3-50) is amended to
 2 read as follows:

3 3. (a) The following securities are **[exempted]** ***[exempt]***
 4 *exempted* from the provisions of sections 13 and 16 of this act:

5 (1) Any security (including a revenue obligation) issued or
 6 guaranteed by the United States, any state, any political subdivi-
 7 sion of a state, or any agency or corporate or other instrumen-
 8 tality of one or more of the foregoing; or any certificate of deposit
 9 for any of the foregoing, *provided that the issuer or guarantor*
 10 *is not in default as to principal or interest with respect to an*
 11 *obligation issued by the issuer or a successor of the issuer or, an*
 12 *obligation guaranteed by the guarantor or a successor to the*
 13 *guarantor;*

14 (2) Any security issued or guaranteed by Canada, any Canadian
 15 province, any political subdivision of any such province, any
 16 agency or corporate or other instrumentality of one or more of
 17 the foregoing, or any other foreign government with which the
 18 United States currently maintains diplomatic relations, if the
 19 security is recognized as a valid obligation by the issuer or
 20 guarantor;

21 (3) Any security issued by and representing an interest in or a
 22 debt of, or guaranteed by, any bank, savings institution, or trust
 23 company organized and supervised under the laws of any state
 24 or under the laws of the United States;

25 (4) Any security issued by and representing an interest in or a
 26 debt of, or guaranteed by, any State or Federal Savings and

27 Loan Association, or any building and loan or similar association
28 organized under the laws of any state and authorized to do busi-
29 ness in this State;

30 (5) Any security issued by and representing an interest in or
31 a debt of, or guaranteed by, any [issuance] *insurance* company
32 organized under the laws of any state and authorized to do busi-
33 ness in this State;

34 (6) Any security issued or guaranteed by any Federal Credit
35 Union or any credit union, industrial loan association, or sim-
36 ilar association organized and supervised under the laws of this
37 State;

38 (7) Any security issued or guaranteed by any railroad, other
39 common carrier, public utility, or holding company which is (A)
40 subject to the jurisdiction of the Interstate Commerce Commis-
41 sion; (B) a registered holding company under the Public Utility
42 Holding Company Act of 1935 or a subsidiary of such a company
43 within the meaning of that act; (C) regulated in respect to its
44 rates and charges by a governmental authority of the United
45 States or any state; or (D) regulated in respect of the issuance or
46 guarantee of the security by a governmental authority of the
47 United States, any state, Canada or any Canadian province; ;

48 (8) Any security listed or approved for listing upon notice of
49 issuance on the New York Stock Exchange or the American Stock
50 Exchange, and such other exchanges as the bureau chief may from
51 time to time designate by rule or order; any security designated or
52 approved for designation upon notice of issuance as a National
53 Market System security on the National Association of Securities
54 Dealers' Automated Quotation System or any other national quota-
55 tion system as the bureau chief from time to time may designate
56 by rule or order; any other security of the same issuer which is of
57 senior or substantially equal rank; any security called for by
58 subscription rights or warrants so listed or approved; or any
59 warrant or right to purchase or subscribe to any of the foregoing;

60 (9) Any security issued by a person organized and operated
61 exclusively for religious, educational, benevolent, fraternal, chari-
62 table or reformatory purposes and not for pecuniary profit, and
63 no part of the net earnings of which inures to the benefit of any
64 person, private stockholder, or individual;

65 (10) Any commercial paper which arises out of a current trans-
66 action or the proceeds of which have been or are to be used for
67 current transactions, and which evidences an obligation to pay
68 cash within 12 months of the date of issuance, exclusive of days

69 of grace, or any renewal of such paper which is likewise limited,
70 or any guarantee of such paper or of any such renewal;

71 (11) Any investment contract issued in connection with an em-
72 ployees' or professional stock purchase, savings, pension, profit-
73 sharing, retirement or similar benefit plan if the bureau chief is
74 notified in writing 30 days before the inception of the plan or,
75 with respect to plans which are in effect on the effective date of
76 this act, within 60 days thereafter (or within 30 days before they
77 are reopened if they are closed on the effective date of this act);

78 (12) Any security issued by an issuer registered as an open-end
79 management investment company or unit investment trust pur-
80 suant to section 8 of the "Investment Company Act of 1940~~[,]~~"
81 (15 U. S. C. § 80a-8), if:

82 (a) The issuer is advised by an investment advisor that is
83 a depository institution exempt from registration under the
84 "Investment ~~["Advisors"]~~ *Advisers* Act of 1940" or that is
85 currently registered as an investment advisor, and has been
86 registered, or is affiliated with an advisor that has been regis-
87 tered, as an investment advisor under the "Investment ~~["Ad-~~
88 ~~visors"]~~ *Advisers* Act of 1940" for at least three years
89 immediately before an offer or sale of the security; and has
90 acted, or is affiliated with an investment advisor that has acted,
91 as investment advisor to one or more registered investment
92 companies or unit investment trusts for at least three years
93 immediately before an offer or sale of the security; or

94 (b) The issuer has a principal sponsor that has at all times
95 throughout three years before an offer or sale of the security
96 been the principal sponsor for one or more registered invest-
97 ment companies or unit investment trusts, the aggregate total
98 assets of which have exceeded \$100,000,000.00.

99 For the purposes of this paragraph (12), and notwithstanding
100 subsection (g) of section 2 of P. L. 1967, c. 93 (C. 49:3-49), "in-
101 vestment advisor" shall have the same meaning that it has pur-
102 suant to the "Investment ~~["Advisors"]~~ *Advisers* Act of 1940."
103 For the purposes of this paragraph (12), an investment advisor is
104 affiliated with another investment advisor if it controls, is controlled
105 by, or is under common control with the other advisor. For the
106 purposes of this paragraph (12), "sponsor" of a unit investment
107 trust means the person primarily responsible for the organization
108 of the unit investment trust or who has continuing responsibilities
109 for the administration of the affairs of the unit investment trust
110 other than the trustee or custodian. "Sponsor" includes the deposi-
111 tor of the unit investment trust.

112 (b) The following transactions are **[exempted]** ***[exempt]***
113 **exempted** from the provisions of sections 13 and 16 of this act:

114 (1) Any isolated nonissuer transaction, whether effected through
115 a broker-dealer or not;

116 (2) Any nonissuer transaction of an outstanding security if
117 (A) a recognized securities manual contains the names of the
118 issuer's officers and directors, a balance sheet of the issuer as of
119 a date within 18 months, and a profit and loss statement for either
120 the fiscal year preceding that date or the most recent year of
121 operation, or (B) the security has a fixed maturity or a fixed
122 interest or dividend provision and there has been no default dur-
123 ing the current fiscal year or within the three preceding fiscal
124 years, or during the existence of the issuer and any predecessors,
125 if less than three years, in the payment of principal, interest, or
126 dividends on the security;

127 (3) Any nonissuer transaction effected by or through a regis-
128 tered broker-dealer pursuant to an unsolicited order or offer to
129 buy; but the bureau chief may by rule require that the customer
130 acknowledge upon a form prescribed by the bureau chief that
131 the sale was unsolicited, and that a signed copy of each such form
132 be preserved by the broker-dealer for a specified period;

133 (4) Any transaction between the issuer or other person on
134 whose behalf the offering is made and an underwriter, or among
135 underwriters;

136 (5) Any transaction on a bond or other evidence of indebted-
137 ness secured by a real or chattel mortgage or deed of trust, or by
138 an agreement for the sale of real estate or chattels, if the entire
139 mortgage, deed of trust, or agreement, together with all the bonds
140 or other evidences of indebtedness secured thereby, is offered
141 and sold as a single unit;

142 (6) Any transaction by an executor, administrator, sheriff,
143 marshal, receiver, trustee in bankruptcy, guardian, or conservator;

144 (7) Any transaction executed by a bona fide pledgee without
145 any purpose of evading this act;

146 (8) Any offer or sale to a bank, savings institution, trust com-
147 pany, insurance company, investment company as defined in the
148 "Investment Company Act of 1940," pension or profit-sharing
149 trust, or other financial institution or institutional buyer, or to
150 a broker-dealer, whether the purchaser is acting for itself or in
151 some fiduciary capacity;

152 (9) Any transaction pursuant to an offer directed by the offeror
153 to not more than 10 persons (other than those designated in para-

154 graph (b)(8)) in this State during any period of 12 consecutive
155 months, whether or not the offeror or any of the offerees is then
156 present in this State, if (i) the seller reasonably believes that all
157 buyers are purchasing for investment, and (ii) no commission
158 or other remuneration is paid or given directly or indirectly for
159 soliciting any prospective buyer in this State; but the bureau
160 chief may by rule or order, as to any transaction, withdraw or
161 further condition this exemption, or increase or decrease the
162 number of offerees permitted, or waive the conditions in subdivi-
163 sions (i) and (ii);

164 (10) Any offer or sale of a preorganization certificate or sub-
165 scription if (i) no commission or other remuneration is paid or
166 given directly or indirectly for soliciting any prospective sub-
167 scriber, (ii) the number of subscribers does not exceed 10, and
168 (iii) no payment is made by any subscriber;

169 (11) Any transaction pursuant to an offer to existing security
170 holders of the issuer, including persons who at the time of the
171 transaction are holders of convertible securities, nontransferable
172 warrants, or transferable warrants exercisable within not more
173 than 90 days of their issuance, if (i) no commission or other re-
174 munerated (other than a standby commission) is paid or given
175 directly or indirectly for soliciting any security holder in this
176 State, or (ii) the issuer first files a notice specifying the terms of
177 the offer and the bureau chief does not by order disallow the
178 exception within the next five full business days;

179 (12) Any nonpublic transaction by or on behalf of an issuer if
180 (i) the issuer has reasonable grounds to believe and, after making
181 reasonable inquiry, believes, immediately prior to making any sale,
182 that there are no more than 35 purchasers of the issue in this State
183 during any period of 12 consecutive months and that each pur-
184 chaser either alone or with his representative has the knowledge
185 and experience in financial and business matters that he is or they
186 are capable of evaluating the merits and risks of the prospective
187 investment; (ii) a written offering statement or prospectus is
188 furnished to each offeree, which provides the offeree with sub-
189 stantially the same information as is required by section 14(b) of
190 P. L. 1967, c. 93 (C. 49:3-61); and (iii) a report of the offering
191 is filed with the bureau within 30 days of the completion date of
192 the offering, setting forth the name and address of the issuer,
193 the total amount of the securities sold under this subsection (12),
194 the price at which the securities were sold, the total number of
195 purchasers of the securities, and the names and addresses of the

196 purchasers of the securities, indicating the number and amount of
 197 the securities each purchased. The fee for filing the report with
 198 the bureau shall be \$250.00. The information [on] in the report
 199 of sale shall be deemed confidential and shall not be disclosed to
 200 the public except by order of the court or in court proceedings.
 201 In calculating the number of purchasers permitted under this
 202 paragraph, accredited investors shall be excluded[;].

203 (c) The bureau chief may by order deny or revoke any exemp-
 204 tion specified in paragraph (9), (10) or (11) of subsection (a)
 205 or in subsection (b) with respect to a specific security or trans-
 206 action. No such order may be entered without appropriate proir
 207 notice to all interested parties, opportunity for hearing, and
 208 written findings of fact and conclusions of law, except that the
 209 bureau chief may by order summarily deny or revoke any of the
 210 specified exemptions pending final determination of any pro-
 211 ceeding under this subsection. Upon the entry of a summary order,
 212 the bureau chief shall promptly notify all interested parties
 213 that it has been entered and of the reasons therefor and that
 214 within 15 days of the receipt of a written request the matter will
 215 be set down for hearing. The order will remain in effect until
 216 it is modified or vacated upon notice to all interested parties
 217 by the bureau chief. No order under this subsection may operate
 218 retroactively[;].

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

1 3. Section 17 of P. L. 1967, c. 93 (C. 49:3-64) is amended to
 2 read as follows:

3 17. (a) The bureau chief may issue a stop order denying
 4 effectiveness to, or suspending or revoking the effectiveness of,
 5 any registration statement if he finds (1) that the order is in the
 6 public interest and (2) that

7 (i) The registration statement, as of its effective date or as of
 8 any earlier date in the case of an order denying effectiveness, or
 9 any amendment under section 15(i) of this act as of its effective
 10 date, or any report under section 15(h) of this act, is incomplete
 11 in any material respect or contains any statement which was, in
 12 the light of the circumstances under which it was made, false or
 13 misleading with respect to any material fact; or

14 (ii) Any provision of the "Uniform Securities Law (1967)" as
 15 amended or supplemented or any rule, order, or condition law-
 16 fully imposed thereunder has been willfully violated, in connection

17 with the offering by (A) the person filing the registration state-
 18 ment, (B) the issuer, any partner, officer, or director of the issuer,
 19 any person occupying a similar status or performing similar
 20 functions, or any person directly or indirectly controlling or con-
 21 trolled by the issuer, or (C) any underwriter; or

22 (iii) The security registered or sought to be registered is the
 23 subject of an administrative stop order or similar order or a
 24 permanent or temporary injunction of any court of competent
 25 jurisdiction entered under any other federal, foreign or State act
 26 applicable to the offering; but (A) the bureau chief may not insti-
 27 tute a proceeding against an effective registration statement under
 28 this subsection more than one year from the date of the order or
 29 injunction relied on, and (B) he may not enter an order under this
 30 subsection on the basis of an order or injunction entered under
 31 any other State act unless that order or injunction was based on
 32 facts which would currently constitute a ground for a stop order
 33 under this section; or

34 (iv) The issuer's enterprise or method of business includes or
 35 would necessarily include activities which are illegal where per-
 36 formed; or

37 (v) (Deleted by amendment; P. L. 1985, c. 405);

38 (vi) (Deleted by amendment; P. L. 1985, c. 405);

39 (vii) The applicant or registrant has failed to pay the proper
 40 filing fee but he shall vacate any such order when the deficiency
 41 has been corrected; **[or]**

42 (viii) **[the]** *The* issuer, any partner, officer or director of the
 43 issuer, any person occupying a similar status or performing sim-
 44 ilar functions, or any person directly or indirectly controlling or
 45 controlled by the issuer, or any broker-dealer or other person in-
 46 volved directly or indirectly in the offering **(A)** has been con-
 47 victed of any crime of embezzlement under state, federal or foreign
 48 law or any crime involving any theft, forgery or fraudulent prac-
 49 tices in regard to any state, federal or foreign securities, banking,
 50 insurance, or commodities trading laws or anti-fraud laws*; *(B) is*
 50A *permanently or temporarily enjoined by any court of competent*
 50B *jurisdiction from engaging in or continuing any conduct or practice*
 50C *involving any aspect of the securities business; (C) is the subject*
 50D *of an effective order of the bureau chief denying, suspending, or*
 50E *revoking securities registration, registration as a broker-dealer,*
 50F *agent, or investment advisor; (D) is the subject of an order*
 50G *entered within the past five years by the securities administrator*
 50H *of any other state or by the Securities and Exchange Commission*
 50I *denying or revoking securities registration, registration as a*

50J broker-dealer, agent, or investment advisor, or the substantial
 50K equivalent of those terms as defined in the "Uniform Securities
 50L Law (1967)," P. L. 1967, c. 93 (C. 49:3-48 et seq.), or is the subject
 50M of an order of the Securities and Exchange Commission suspending
 50N or expelling him from a national securities exchange or national
 50O securities association registered under the "Securities Exchange
 50P Act of 1934" (15 U. S. C. § 78a et seq.), or is the subject of a United
 50Q States Postal Service fraud order, except the bureau chief may not
 50R institute a revocation or suspension proceeding pursuant to this
 50S subparagraph (D) of this subparagraph more than one year
 50T from the date of the order relied on and he may not enter an order
 50U pursuant to this subparagraph (D) of this subparagraph on
 50V the basis of an order under another state act unless that order was
 50W based on facts which would currently constitute a ground for an
 50X order under the "Uniform Securities Law (1967)," P. L. 1967, c. 93
 50Y (C. 49:3-48 et seq.); (E) has engaged in dishonest or unethical
 50Z practices in the securities business; or (F) is insolvent, either in
 50AA the sense that liabilities exceed assets or in the sense that obliga-
 50BB tions cannot be met as they mature*; or

51 (ix) The offering is a blind pool.

52 (b) The bureau chief may not institute an administrative stop
 53 order proceeding against any effective registration statement on
 54 the basis of a fact or transaction known to him when the regis-
 55 tration statement became effective, unless the proceeding is insti-
 56 tuted within the next 30 days.

57 (c) The bureau chief may by order summarily postpone or
 58 suspend the effectiveness of the registration statement pending
 59 final determination of any proceeding instituted pursuant to this
 60 section. Upon entry of such an order, the bureau chief shall
 61 promptly notify each person specified in subsection (d) that it has
 62 been entered and of the reasons therefor and that within 15 days
 63 after the receipt of a written request the matter will be set down
 64 for hearing. If no hearing is requested, the order will remain in
 65 effect until it is modified or vacated by the bureau chief upon
 66 notice to the parties specified in subsection (d).

67 (d) No stop order may be entered pursuant to this section,
 68 except as provided in subsection (c), without (1) appropriate
 69 prior notice to the applicant or registrant, the issuer, and the
 70 person on whose behalf the [securities] securities are to be offered,
 71 (2) opportunity for hearing, and (3) written findings of fact and
 72 and conclusions of law.

73 (e) The bureau chief may vacate or modify a stop order if he
 74 finds that the conditions which prompted its entry have changed.

1 4. This act shall take effect immediately.

BANKING AND FINANCIAL INSTITUTIONS

Requires governmental securities to be registered if in default
and prohibits blind pools.

ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

SENATE, No. 2920

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: JUNE 11, 1987

The Assembly Financial Institutions Committee reports favorably Senate Bill No. 2920 (OCR). This bill amends sections of the "Uniform Securities Law (1967)." The bill modifies the provision of the current law that exempts securities of governmental entities offered or sold in this State from registration with the Bureau of Securities and provides that securities issued or guaranteed by the United States, any state, or other governmental subdivision or agency or any certificate of deposit for any of these entities will be required to be registered with the Bureau of Securities if that issuer or guarantor is in default as to principal or interest.

The bill also provides that the bureau chief may deny, suspend or revoke any registration statement if he finds that the order is in the public interest and the offering is a blind pool. A blind pool is an offering of securities in which the prospectus discloses no specific purpose to which the proceeds of the offering will be put or does not specifically state what assets will be purchased, projects undertaken or business conducted with at least 65% of the proceeds of the offering.

The bill further provides that the bureau chief may deny, suspend or revoke any registration statement if the issuer, any partner, officer or director of the issuer or any broker-dealer involved in the offering is enjoined by any court from engaging in any practice in the securities business; is the subject of an effective order of the bureau chief denying, suspending or revoking securities or broker-dealer registration; is the subject of an order entered within the past five years by the securities administrator of any other state or the Securities and Exchange Commission denying or revoking securities or broker-dealer registration or is the subject of an order of the Securities and Exchange Commission suspending or expelling him from a national securities exchange or national securities association or is the subject of a United States Postal Service fraud order; has engaged in dishonest or unethical practices in the securities business; or is insolvent.

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

SENATE, No. 2920

with Senate committee amendments

STATE OF NEW JERSEY

DATED: APRIL 27, 1987

This bill amends sections of the "Uniform Securities Law (1967)." The bill modifies the provision of the current law that exempts securities of governmental entities offered or sold in this State from registration with the Bureau of Securities and provides that securities issued or guaranteed by the United States, any state, or other governmental subdivision or agency or any certificate of deposit for any of these entities will be required to be registered with the Bureau of Securities if that issuer or guarantor is in default as to principal or interest. The bill also provides that the bureau chief may deny, suspend or revoke any registration statement if he finds that the order is in the public interest and the offering is a blind pool. A blind pool is an offering of securities in which the prospectus discloses no specific purpose to which the proceeds of the offering will be put or does not specifically state what assets will be purchased, projects undertaken or business conducted with at least 65% of the proceeds of the offering.

The committee amended the bill to provide that the bureau chief may deny, suspend or revoke any registration statement if the issuer, any partner, officer or director of the issuer or any broker-dealer involved in the offering is enjoined by any court from engaging in any practice in the securities business; is the subject of an effective order of the bureau chief denying, suspending or revoking securities or broker-dealer registration; is the subject of an order entered within the past five years by the securities administrator of any other state or the Securities and Exchange Commission denying or revoking securities or broker-dealer registration or is the subject of an order of the Securities and Exchange Commission suspending or expelling him from a national securities exchange or national securities association or is the subject of a United States Postal Service fraud order; has engaged in dishonest or unethical practices in the securities business; or is insolvent.