

49:3-47

LEGISLATIVE HISTORY CHECKLIST

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"Uniform Securities"

NJSA: 49:3-47

LAWS OF: 1997 CHAPTER: 276

BILL NO: A2990

SPONSOR(S): Bateman and Bagger

DATE INTRODUCED: May 22, 1997

COMMITTEE: ASSEMBLY: Financial Institutions

SENATE: Commerce

AMENDED DURING PASSAGE: Yes Amendments during passage denoted  
Third reprint enacted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: June 19, 1997

SENATE: December 18, 1997

DATE OF APPROVAL: December 24, 1997

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes Also attached: statement,  
adopted 12-11-97

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL ~~NOTE~~ ESTIMATE: Yes ~~No~~

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes ~~No~~

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBP:pp

§5  
C. 49:3-52.1  
§14  
C. 49:3-60.1  
§26  
C. 49:3-68.1  
§29  
C. 49:3-70.1  
§34  
REPEALER

P.L. 1997, CHAPTER 276, *approved December 24, 1997*  
Assembly No. 2990 (*Third Reprint*)

1 AN ACT concerning securities and revising various parts of the  
2 statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. Section 30 of P.L.1967, c.93 (C.49:3-47) is amended to read as  
8 follows:

9 30. This act amending and supplementing the "Uniform Securities  
10 Law (1967)" shall be known and may be cited as the "Uniform  
11 Securities Law ~~[(1967)](1997).~~" "Act" as used in this revision means  
12 this 1997 act amending and supplementing the "Uniform Securities  
13 Law (1967)."

14 (cf: P.L.1967, c.93, s.30)

15

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

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

19 (a) "Bureau" means the agency designated in subsection (a) of  
20 section 19 [(a)] of P.L.1967, c.93 (C.49:3-66);

21 (b) "Agent" means any individual other than a broker-dealer, who  
22 represents a broker-dealer or issuer in effecting or attempting to effect  
23 purchases or sales of securities. "Agent" does not include an  
24 individual who represents an issuer in (1) effecting transactions in a  
25 security exempted by [subdivision] paragraph (1), (2), (3), or (11) of  
26 subsection (a) of section 3 [(a)] of P.L.1967, c.93 (C.49:3-50); (2)  
27 effecting transactions exempted by subsection (b) of section 3 [(b)] of  
28 P.L.1967, c.93 (C.49:3-50); [or] (3) effecting transactions with  
29 existing employees, partners, or directors of the issuer, if no  
30 commission or other remuneration is paid or given directly or

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

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly AFI committee amendments adopted June 12, 1997.

<sup>2</sup> Senate SCM committee amendments adopted December 1, 1997.

<sup>3</sup> Senate floor amendments adopted December 11, 1997.

1 indirectly for soliciting any person in this State ; or (4) a broker-dealer  
2 in effecting transactions in this State limited to those transactions  
3 described in paragraph (2) of subsection (h) of section 15 of the  
4 "Securities Exchange Act of 1934," 15 U.S.C. §78o(h)(2); or (5) such  
5 other persons not otherwise within the intent of this subsection (b), as  
6 the bureau chief may by rule or order designate . A partner, officer,  
7 or director of a broker-dealer or issuer, or a person occupying a  
8 similar status or performing similar functions, is an agent only if he  
9 otherwise comes within this definition . The bureau chief may by rule  
10 or order, as to any transaction, waive the requirement of agent  
11 registration. The bureau chief may by rule define classes of persons as  
12 "agents," if those persons are regulated as "agents" by the Securities  
13 and Exchange Commission or any self-regulatory organization  
14 established pursuant to the laws of the United States:

15 (c) "Broker-dealer" means any person engaged in the business of  
16 effecting or attempting to effect transactions in securities for the  
17 accounts of others or for his own account. "Broker-dealer" does not  
18 include (1) an agent, (2) an issuer, (3) a person who effects  
19 transactions in this State exclusively in securities described in  
20 **【subdivisions】 paragraphs (1) and (2) of subsection (a) of section**  
21 **3【(a)】 of P.L.1967, c.93 (C.49:3-50) , (4) a bank, savings institution,**  
22 **or trust company, or (5) a person who 【(i)】 effects transactions in this**  
23 **State exclusively with or through 【(A)】 (i) the issuers of the**  
24 **securities involved in the transactions, 【(B)】 (ii) other broker-dealers**  
25 **【or (C)】 ,(iii) banks, savings institutions, trust companies, insurance**  
26 **companies, investment companies as defined in the 【Investment**  
27 **Company Act of 1940,】 "Investment Company Act of 1940," pension**  
28 **or profit-sharing trusts, or other financial institutions or institutional**  
29 **buyers, whether acting for themselves or as trustees 【, or (ii) during**  
30 **any period of 12 consecutive months does not direct more than 15**  
31 **offers to sell or to buy into this State in any manner to persons other**  
32 **than those specified in paragraph (c)(5)(i), whether or not the offeror**  
33 **or any of the offerees is then present in this State】 or (iv) such other**  
34 **persons not otherwise within the intent of this subsection (c), as the**  
35 **bureau chief may by rule or order designate;**

36 (d) "Capital" shall mean net capital, as defined and adjusted under  
37 the formula established by the Securities and Exchange Commission  
38 in Rule 15c3-1, 17 C.F.R. §240.15c3-1, made pursuant to the  
39 "Securities Exchange Act of 1934," prescribing a minimum permissible  
40 ratio of aggregate indebtedness to net capital as such formula presently  
41 exists or as it may hereafter be amended;

42 (e) "Fraud," "deceit," and "defraud" are not limited to common-law  
43 fraud or deceit. "Fraud," "deceit" and "defraud" in addition to the  
44 usual construction placed on 【it】 these terms and accepted in courts  
45 of law and equity, shall include the following, provided, however, that

1 any promise, representation, misrepresentation or omission be made  
2 with knowledge and with intent to deceive or with reckless disregard  
3 for the truth and results in a detriment to the purchaser or client of an  
4 investment adviser:

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

8 (2) Any promise or representation as to the future which is beyond  
9 reasonable expectation or is unwarranted by existing circumstances;

10 (3) The gaining of, or attempt to gain, directly or indirectly,  
11 through a trade in any security, a commission, fee or gross profit so  
12 large and exorbitant as to be unconscionable **[and]**, unreasonable or  
13 in violation of any law, regulation, rule, order or decision of the  
14 Securities and Exchange Commission, or the bureau chief; or to the  
15 extent that such law, regulation, rule or order directly applies to the  
16 person involved, the gaining of, or attempt to gain, directly or  
17 indirectly, through a trade in any security, a commission, fee or gross  
18 profit so large and exorbitant as to be in violation of any law,  
19 regulation, rule, order or decision of any other state or Canadian  
20 securities administrator, or any self-regulatory organization established  
21 pursuant to the laws of the United States;

22 (4) Generally any course of conduct or business which is calculated  
23 or put forward with intent to deceive the public or the purchaser of  
24 any security or investment advisory services as to the nature of any  
25 transaction or the value of such security;

26 (5) Any artifice, agreement, device or scheme to obtain money,  
27 profit or property by any of the means herein set forth or otherwise  
28 prohibited by **[this law]** this act;

29 (f) "Guaranteed" means guaranteed as to payment of principal,  
30 interest or dividends;

31 (g) (1) "Investment **[advisor]** adviser" means:

32 (i) any person who, for direct or indirect compensation, engages in  
33 the business of advising others, either directly or through publications  
34 or writings, as to the value of securities or as to the advisability of  
35 investing in, purchasing **[or]**, selling or holding securities, or who, for  
36 compensation and as a part of a regular business, issues or  
37 promulgates analyses or reports concerning securities; and

38 (ii) any financial planner and other person who provides investment  
39 advisory services to others for compensation and as part of a business  
40 or who holds himself out as providing investment advisory services to  
41 others for compensation.

42 (2) "Investment **[advisor]** adviser " does not include **[(1)]** :—

43 (i) a bank, savings institution, or trust company <sup>2</sup>**[. when acting on**  
44 **its own account or when exercising trust or fiduciary powers]**<sup>2</sup>;

45 **[(2)]** (ii) a lawyer, accountant, engineer, or teacher whose

1 performance of these services is solely incidental to the practice [of  
2 his] or conduct of the profession and who does not hold himself out  
3 as providing investment advisory or financial planning services, and  
4 who receives no special compensation for those investment advisory  
5 or financial planning services :

6 [(3)] (iii) a broker-dealer registered under this [law] act;

7 [(4)] (iv) a publisher of any bona fide newspaper, news magazine,  
8 or business or financial publication of general, regular, and paid  
9 circulation;

10 [(5)] (v) a person whose advice, analyses, or reports relate only  
11 to securities exempted by paragraphs (1) and (2) of subsection (a) of  
12 section 3 [ , paragraph (a)(1) and (2)] of P.L.1967, c.93 (C.49:3-50):

13 [(6)] (vi) a person [who has no place of business in this State if  
14 (a) his] whose only clients in this State are other investment  
15 [advisors] advisers, any person that is registered as an "investment  
16 adviser" under section 203 of the "Investment Advisers Act of 1940,"  
17 15 U.S.C.§80b-3, or excluded from the definition of an "investment  
18 adviser" under paragraph (11) of subsection (a) of section 202 of the  
19 "Investment Advisers Act of 1940," 15 U.S.C.§80b-2(a)(11) ,  
20 broker-dealers, banks, bank holding companies, savings institutions,  
21 trust companies, insurance companies, investment companies as  
22 defined in the "Investment Company Act of 1940," pension or  
23 profit-sharing trusts, or other financial institutions or institutional  
24 buyers, whether acting for themselves or as trustees [ , or (b) during  
25 any period of 12 consecutive months he does not direct business  
26 communications into this State in any manner to more than five clients  
27 other than those specified in subparagraph (6)(a) of this paragraph,  
28 whether or not he or any of the persons to whom the communications  
29 are directed is then present in this State; or (7)]:

30 (vii) any person that is registered as an "investment adviser" under  
31 section 203 of the "Investment Advisers Act of 1940," 15 U.S.C.§80b-  
32 3, or excluded from the definition of an "investment adviser" under  
33 paragraph (11) of subsection (a) of section 202 of the "Investment  
34 Advisers Act of 1940," 15 U.S.C.§80b-2(a)(11):

35 (viii) an investment adviser representative: or

36 (ix) such other persons not otherwise within the intent of this  
37 [paragraph] subsection (g) as the bureau chief may by rule or order  
38 designate,

39 Subject to applicable federal law, the bureau chief may by rule limit  
40 the exclusions set out in this paragraph (2)<sup>2</sup>, except for those  
41 exclusions provided in subparagraph (i) of paragraph (2)<sup>2</sup>.

42 For purposes of this act, "investment advisory services" means  
43 those services rendered by an "investment adviser" as defined in this  
44 subsection;

45 (h) "Issuer" means any person who issues or proposes to issue any

1 security, except that (1) with respect to certificates of deposit,  
2 voting-trust certificates, or collateral-trust certificates, or with respect  
3 to certificates of interest or shares in an unincorporated investment  
4 trust not having a board of directors (or persons performing similar  
5 functions) or of the fixed, restricted management, or unit type, the  
6 term "issuer" means the person or persons performing the acts and  
7 assuming the duties of depositor or manager pursuant to the provisions  
8 of the trust or other agreement or instrument under which the security  
9 is issued; and (2) with respect to certificates of interest in oil, gas, or  
10 mining titles or leases, there is not considered to be any "issuer";

11 (i) "Person" means an individual, a corporation, a partnership, an  
12 association, a joint-stock company, a trust where the interests of the  
13 beneficiaries are evidenced by a security, an unincorporated  
14 organization, a government, or a political subdivision of a government;

15 (j) (1) "Sale" or "sell" includes every contract of sale of, contract  
16 to sell, or disposition of, a security or interest in a security or  
17 investment advisory services for value;

18 (2) "Offer" or "offer to sell" includes every attempt or offer to  
19 dispose of, or solicitation of any offer to buy, a security or interest in  
20 a security or investment advisory services for value;

21 (3) Any security given or delivered with, or as a bonus on account  
22 of, any purchase of securities or any other thing is considered to  
23 constitute part of the subject of the purchase and to have been offered  
24 and sold for value;

25 (4) A purported gift of assessable stock is considered to involve an  
26 offer and sale;

27 (5) Every sale or offer of a warrant or right to purchase or  
28 subscribe to another security of the same or another issuer, as well as  
29 every sale or offer of a security which gives the holder a present or  
30 future right or privilege to convert into another security of the same  
31 or another issuer, is considered to include an offer of the other  
32 security;

33 (6) The terms defined in this **[paragraph]** subsection (j) do not  
34 include **[(a)]** (i) any bona fide pledge or loan; **[(b)]** (ii) any stock  
35 dividend, whether the corporation distributing the dividend is the  
36 issuer of the stock or not, if nothing of value is given by stockholders  
37 for the dividend other than the surrender of a right to a cash or  
38 property dividend when each stockholder may elect to take the  
39 dividend in cash or property or in stock; **[(c)]** (iii) any act incident to  
40 a class vote by stockholders, pursuant to the certificate of  
41 incorporation or the applicable corporation statute, on a merger,  
42 consolidation, reclassification of securities, or sale of corporate assets  
43 in consideration of the issuance of securities of another corporation;  
44 or **[(d)]** (iv) any act incident to a judicially approved reorganization  
45 in which a security is issued in exchange for one or more outstanding  
46 securities, claims, or property interests, or partly in such exchange and

1 partly for cash;

2 (k) "Savings institutions" shall mean any savings and loan  
3 association or building and loan association operating pursuant to the  
4 "Savings and Loan Act (1963)," P.L.1963, c.144 (C.17:12B-2 et seq.),  
5 and any federal savings and loan association and any association or  
6 credit union organized under the laws of the United States or of any  
7 state whose accounts are insured by **the Federal Savings and Loan**  
8 **Insurance Corporation** and who are subject to supervision and  
9 examination by the Federal Home Loan Bank Board, and any credit  
10 union licensed and supervised under "The Credit Union Act of 1984,"  
11 P.L.1984, c.171 (C.17:13-79 et al.) or licensed and supervised by the  
12 National Credit Union Administration **a federal corporation or**  
13 **agency**;

14 (l) "Securities Act of 1933," **[48 Stat. 74 (15 U.S.C. s. 77a et**  
15 **seq.)]** 15 U.S.C. §77a et seq.; "Securities Exchange Act of 1934,"  
16 **[48 Stat. 881 (15 U.S.C. s. 78a et seq.)]** 15 U.S.C. §78a et seq.;   
17 "Public Utility Holding Company Act of 1935," **[49 Stat. 838 (15**  
18 **U.S.C. s. 79 et seq.)]** 15 U.S.C. §79 et seq.; "Investment Advisers Act  
19 of 1940," **[54 Stat. 857 (15 U.S.C. s. 80b-1 et seq.)]** 15 U.S.C. §80b-1  
20 et seq.; **[and]** "Investment Company Act of 1940," **[54 Stat. 847 (15**  
21 **U.S.C. s. 80a-1 et seq.)]** 15 U.S.C. §80a-1 et seq.; and "Commodity  
22 Exchange Act." 7 U.S.C. §1 et seq. mean the federal statutes of those  
23 names **[as amended or supplemented before or after the effective date**  
24 **of this act]**;

25 (m) "Security" means any note; stock; treasury stock; bond;  
26 debenture; evidence of indebtedness; certificate of interest or  
27 participation in any profit-sharing agreement, including, but not limited  
28 to, certificates of interest or participation in real or personal property;  
29 collateral-trust certificate; preorganization certificate or subscription;  
30 transferable share; investment contract; voting-trust certificate;  
31 certificate of deposit for a security; certificate of interest in an oil, gas  
32 or mining title or lease; or, in general, any interest or instrument  
33 commonly known as a "security," or any certificate of interest or  
34 participation in, temporary or interim certificate for, guarantee of, or  
35 warrant or right to subscribe to or purchase, any of the foregoing **].**  
36 "Security" does not include any insurance or endowment policy or  
37 annuity contract under which an insurance company promises to pay  
38 a fixed or variable number of dollars either in a lump sum or  
39 periodically for life or some other specified period<sup>3</sup>. "Security" does  
40 not include any insurance or endowment policy or annuity contract  
41 under which an insurance company promises to pay a fixed or variable  
42 number of dollars either in a lump sum or periodically for life or some  
43 other specified period<sup>3</sup>;

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

1 (o) "Nonissuer" means secondary trading not involving the issuer  
2 of the securities or any person in a control relationship with the issuer;

3 (p) "Accredited investor" means any person who [comes within  
4 any of the following categories, or who the issuer reasonably believes  
5 comes within any of the following categories, at the time of the sale of  
6 the security to that person:

7 (1) Any bank, savings institution, trust company, insurance  
8 company, investment company as defined in the "Investment Company  
9 Act of 1940," pension or profit-sharing trust, or other financial  
10 institution or institutional buyer, or to a broker-dealer, whether the  
11 purchaser is acting for itself or in some fiduciary capacity;

12 (2) Any private business development company as defined in  
13 section 202(a)(22) of the "Investment Advisers Act of 1940;

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

16 (4) Any director, executive officer, or general partner of the issuer  
17 of the securities being offered or sold, or any director, executive  
18 officer, or general partner of a general partner of that issuer;

19 (5) Any person who purchases at least \$150,000.00 of the  
20 securities being offered, where the purchaser's total purchase price  
21 does not exceed 20% of the purchaser's net worth at the time of sale,  
22 or joint net worth with that person's spouse, for one or any  
23 combination of the following: (i) cash, (ii) securities for which market  
24 quotations are readily available, (iii) an unconditional obligation to pay  
25 cash or securities for which market quotations are readily available,  
26 which obligation is to be discharged within five years of the sale of the  
27 securities to the purchaser, or (iv) the cancellation of any indebtedness  
28 owed by the issuer of the purchaser;

29 (6) Any natural person whose individual net worth, or joint net  
30 worth with that person's spouse, at the time of his purchase exceeds  
31 \$1,000,000.00; and

32 (7) Any natural person who had an individual income in excess of  
33 \$200,000.00 in each of the two most recent years and who reasonably  
34 expects an income in excess of \$200,000.00 in the current year] is an  
35 "accredited investor" as defined by subsection (15) of section 2 of  
36 the "Securities Act of 1933," 15 U.S.C. §77b(15), and 17  
37 C.F.R. §230.215 and §230.501 or any successor rule promulgated  
38 pursuant to that act.

39 The bureau chief may rule, or order, waive or modify the conditions  
40 in this subsection (p) and shall interpret and apply this subsection (p)  
41 so as to effectuate greater uniformity and coordination in federal-state  
42 securities registration exemptions;

43 (q) "Direct participation security" means a security which provides  
44 for flow-through tax consequences (tax shelter), regardless of the  
45 structure of the legal entity or vehicle for distribution, including, but  
46 not limited to, a security representing an interest in gas, oil, real estate,



1 agricultural property, cattle, a condominium, ~~or~~ a Subchapter S  
2 ~~corporate offerings~~ corporation, a limited liability company and all  
3 other securities of a similar nature, regardless of the industry  
4 represented by the security, or any combination thereof. Excluded  
5 from this definition are real estate investment trusts, tax qualified  
6 pension and profit-sharing plans pursuant to sections 401 and 403(a)  
7 of the Internal Revenue Code of 1986, 26 U.S.C. §401 and 403(a),  
8 and individual retirement plans under section 408 of the Internal  
9 Revenue Code of 1986, 26 U.S.C. §408, tax sheltered annuities  
10 pursuant to the provisions of section 403(b) of the Internal Revenue  
11 Code of 1986, 26 U.S.C. §403(b), and any company including separate  
12 accounts registered pursuant to the ~~Investment Company Act of~~  
13 ~~1940;~~ "Investment Company Act of 1940:"

14 (r) "Blind pool"~~,~~ in addition to the usual construction placed on  
15 it,~~]~~ means an offering of securities in which ~~as to 65% or more of the~~  
16 ~~proceeds of the offering,~~ the prospectus discloses no specific purpose  
17 to which the proceeds of the offering will be put, ~~or does not state~~  
18 ~~with specificity~~ or the prospectus discloses no specific assets to be  
19 purchased, projects to be undertaken, or business to be conducted  
20 ~~[with at least 65% of the proceeds of the offering], except for:~~

21 ~~(1) an offering of securities to provide working capital for an~~  
22 ~~operating company (as opposed to a development stage company):~~

23 ~~(2) an offering of securities by an investment company registered~~  
24 ~~under the "Investment Company Act of 1940." including a business~~  
25 ~~development company; or~~

26 ~~(3) an offering of securities by a small business investment~~  
27 ~~company licensed by the Small Business Administration or a business~~  
28 ~~development company within the meaning of the "Investment Advisers~~  
29 ~~Act of 1940:"~~

30 (s) "Investment <sup>2</sup>~~[advisory]~~ adviser<sup>2</sup> representative" means any  
31 person, including, but not limited to, a partner, officer, or director, or  
32 a person occupying a similar status or performing similar functions, or  
33 other individual, except clerical or ministerial personnel, who is  
34 employed by or associated with an investment adviser registered under  
35 this act, or who has a place of business located in this State and is  
36 employed by or associated with a person registered or required to be  
37 registered as an investment adviser under section 203 of the  
38 "Investment Advisers Act of 1940," 15 U.S.C. §80b-3; and who does  
39 any of the following:

40 ~~(1) makes any recommendations or otherwise renders advice~~  
41 ~~regarding securities if the person has direct advisory client contact;~~

42 ~~(2) manages accounts or portfolios of clients;~~

43 ~~(3) determines recommendations or advice regarding securities;~~

44 ~~(4) solicits, offers or negotiates for the sale of or sells investment~~  
45 ~~advisory services; or~~

1       (5) directly supervises any investment <sup>2</sup>[advisory] adviser<sup>2</sup>  
2 representative or the supervisors of those investment <sup>2</sup>[advisory]  
3 adviser<sup>2</sup> representatives. "Investment adviser representative" does not  
4 include a broker-dealer or an agent:

5       (t) "Institutional buyer" includes, but is not limited to, a "qualified  
6 institutional buyer" as defined in SEC Rule 144A, 17 C.F.R.  
7 §230.144A:

8       (u) "Willful" or "willfully" means a person who acts intentionally in  
9 the sense that the person is aware of what he is doing:

10       (v) "Federal covered security" means any security described as a  
11 covered security in subsection (b) of section 18 of the "Securities Act  
12 of 1933," 15 U.S.C. §77r(b).

13 (cf: P.L.1987, c.301, s.1)

14

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

17       3. (a) The following securities are exempted from the provisions  
18 of sections 13 and 16 of [this act P.L.1967, c.93 (C.49:3-60 and 49:3-  
19 63) <sup>1</sup>[and section 14 of this act]<sup>1</sup>:

20       (1) Any security (including a revenue obligation) issued or  
21 guaranteed by the United States, any state, any political subdivision of  
22 a state, or any agency or corporate or other instrumentality of one or  
23 more of the foregoing; or any certificate of deposit for any of the  
24 foregoing **],** provided that the issuer or guarantor is not in default as  
25 to principal or interest with respect to an obligation issued by the  
26 issuer or a successor of the issuer, or an obligation guaranteed by the  
27 guarantor or a successor to the guarantor**];**

28       (2) Any security issued or guaranteed by Canada, any Canadian  
29 province, any political subdivision of any such province, any agency or  
30 corporate or other instrumentality of one or more of the foregoing, or  
31 any other foreign government with which the United States currently  
32 maintains diplomatic relations, if the security is recognized as a valid  
33 obligation by the issuer or guarantor;

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

38       (4) Any security issued by and representing an interest in or a debt  
39 of, or guaranteed by, any **[State or Federal Savings and Loan**  
40 **Association, or any building and loan or similar association organized**  
41 **under the laws of any state and authorized to do business in this State]**  
42 savings institution;

43       (5) Any security issued by and representing an interest in or a debt  
44 of, or guaranteed by, any insurance company organized under the laws  
45 of any state and authorized to do business in this State;

1 (6) **Any security issued or guaranteed by any Federal Credit**  
2 **Union or any credit union, industrial loan association, or similar**  
3 **association organized and supervised under the laws of this State;**

4 ~~(Deleted by amendment, P.L. . . . c. . . .)~~

5 (7) Any security issued or guaranteed by any railroad, other  
6 common carrier, public utility, or holding company which is **[(A)**  
7 **subject to the jurisdiction of the Interstate Commerce Commission;**  
8 **(B)] (i) a registered holding company under the [Public Utility**  
9 **Holding Company Act of 1935] "Public Utility Holding Company Act**  
10 **of 1935"** or a subsidiary of such a company within the meaning of that  
11 **act; [(C)] (ii) regulated in respect to its rates and charges by a**  
12 **governmental authority of the United States or any state; or [(D)] (iii)**  
13 **regulated in respect of the issuance or guarantee of the security by a**  
14 **governmental authority of the United States, any state, Canada or any**  
15 **Canadian province;**

16 (8) Any security listed or approved for listing upon notice of  
17 issuance on the New York Stock Exchange or the American Stock  
18 Exchange, and such other exchanges as the bureau chief may from  
19 time to time designate by rule or order; any security designated or  
20 approved for designation upon notice of issuance as a Nasdaq National  
21 Market **[System] security [on the National Association of Securities**  
22 **Dealers' Automated Quotation System] or any other national**  
23 **quotation system as the bureau chief from time to time may designate**  
24 **by rule or order; any other security of the same issuer which is of**  
25 **senior or substantially equal rank; any security called for by**  
26 **subscription rights or warrants so listed or approved; or any warrant**  
27 **or right to purchase or subscribe to any of the foregoing;**

28 (9) Any security issued by a person organized and operated  
29 exclusively for religious, educational, benevolent, fraternal, charitable  
30 or reformatory purposes and not for pecuniary profit, and no part of  
31 the net earnings of which inures to the benefit of any person, private  
32 stockholder, or individual;

33 (10) Any commercial paper which arises out of a current  
34 transaction or the proceeds of which have been or are to be used for  
35 current transactions, and which evidences an obligation to pay cash  
36 within 12 months of the date of issuance, exclusive of days of grace,  
37 or any renewal of such paper which is likewise limited, or any  
38 guarantee of such paper or of any such renewal;

39 (11) Any investment contract issued in connection with an  
40 employees' or professional stock purchase, savings, pension,  
41 profit-sharing, retirement or similar benefit plan **[if the bureau chief is**  
42 **notified in writing 30 days before the inception of the plan or, with**  
43 **respect to plans which are in effect on the effective date of this act,**  
44 **within 60 days thereafter (or within 30 days before they are reopened**  
45 **if they are closed on the effective date of this act)] and securities**

1 issued pursuant to an employee benefit plan ;

2 (12) [Any security issued by an issuer registered as an open-end  
3 management investment company or unit investment trust pursuant to  
4 section 8 of the "Investment Company Act of 1940" (15 U.S.C.  
5 s.80a-8), if:

6 (a) The issuer is advised by an investment advisor that is a  
7 depository institution exempt from registration under the "Investment  
8 Advisers Act of 1940" or that is currently registered as an investment  
9 advisor, and has been registered, or is affiliated with an advisor that  
10 has been registered, as an investment advisor under the "Investment  
11 Advisers Act of 1940" for at least three years immediately before an  
12 offer or sale of the security; and has acted, or is affiliated with an  
13 investment advisor that has acted, as investment advisor to one or  
14 more registered investment companies or unit investment trusts for at  
15 least three years immediately before an offer or sale of the security; or

16 (b) The issuer has a principal sponsor that has at all times  
17 throughout three years before an offer or sale of the security been the  
18 principal sponsor for one or more registered investment companies or  
19 unit investment trusts, the aggregate total assets of which have  
20 exceeded \$100,000,000.00.

21 For the purposes of this paragraph (12), and notwithstanding  
22 subsection (g) of section 2 of P.L.1967, c.93 (C. 49:3-49), "investment  
23 advisor" shall have the same meaning that it has pursuant to the  
24 "Investment Advisers Act of 1940." For the purposes of this  
25 paragraph (12), an investment advisor is affiliated with another  
26 investment advisor if it controls, is controlled by, or is under common  
27 control with the other advisor. For the purposes of this paragraph  
28 (12), "sponsor" of a unit investment trust means the person primarily  
29 responsible for the organization of the unit investment trust or who has  
30 continuing responsibilities for the administration of the affairs of the  
31 unit investment trust other than the trustee or custodian. "Sponsor"  
32 includes the depositor of the unit investment trust ] The bureau chief  
33 by rule or order, as to a particular security or class of securities, may  
34 adopt a securities exemption (i) that will further the objectives of  
35 compatibility with the exemptions from securities registration  
36 authorized by the "Securities Act of 1933" and uniformity among the  
37 states, or (ii) if the bureau chief determines that the public interest  
38 does not require registration .

39 (b) The following transactions are exempted from the provisions  
40 of sections 13 and 16 of [this act] of P.L.1967, c.93 (C.49:3-60 and  
41 49:3-63) :

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

44 (2) (i) Any nonissuer transaction by a broker-dealer registered  
45 under this act of [an] a security, which has been outstanding [security  
46 if (A) a] in the hands of the public for at least 90 days prior to the

1 transaction and which is sold at a price reasonably related to the  
2 current market price of such securities, provided:

3 (A) the securities are of an issuer for which all reports required to  
4 be filed by section 13 or 15(d) of the "Securities Exchange Act of  
5 1934," 15 U.S.C. §78m or §78o(d) have been filed; or

6 (B) the following information is published in a recognized  
7 securities manual [contains]; the names of the issuer's officers and  
8 directors [,]; a balance sheet of the issuer as of a date [within] not  
9 more than 18 months [,] prior to the date of the sale; and [a] profit  
10 and loss [statement] statements for [either the fiscal year preceding  
11 that date or the most recent year of operation, or (B) the security has  
12 a fixed maturity or a fixed interest or dividend provision and there has  
13 been no default during the current fiscal year or within the three  
14 preceding fiscal years, or during the existence of the issuer and any  
15 predecessors, if less than three years, in the payment of principal,  
16 interest, or dividends on the security] a period of not less than two  
17 years next prior to the date of the balance sheet or for the period of  
18 the issuer's existence as of the date of the balance sheet if the period  
19 of existence is less than two years;

20 (ii) The exemption provided in this paragraph (2) does not apply  
21 if the sale constitutes a distribution and is made for the direct or  
22 indirect benefit of an issuer or controlling persons of that issuer or if  
23 those securities constitute the whole or part of an unsold allotment to,  
24 or subscription by, a broker-dealer as an underwriter of those  
25 securities. This exemption shall not be available for any securities  
26 which have been subject to a bureau stop order pursuant to section 17  
27 of P.L.1967, c.93 (C.49:3-64), or a bureau order of denial of  
28 secondary trading pursuant to subsection (c) of this section ;

29 (iii) Notwithstanding the foregoing, resale transactions by a  
30 sponsor of a unit investment trust registered pursuant to section 8 of  
31 the "Investment Company Act of 1940," 15 U.S.C. §80a-8, shall be  
32 exempt from registration in this State.

33 (3) Any nonissuer transaction effected by or through a registered  
34 broker-dealer pursuant to an unsolicited order or offer to buy; but the  
35 bureau chief may by rule require that the customer acknowledge upon  
36 a form prescribed by the bureau chief that the sale was unsolicited, and  
37 that a signed copy of each such form be preserved by the broker-dealer  
38 for a specified period;

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

41 (5) Any transaction on a bond or other evidence of indebtedness  
42 secured by a real or chattel mortgage or deed of trust, or by an  
43 agreement for the sale of real estate or chattels, if the entire mortgage,  
44 deed of trust, or agreement, together with all the bonds or other  
45 evidences of indebtedness secured thereby, is offered and sold as a  
46 single unit;

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

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

5 (8) Any offer or sale to a bank, savings institution, trust company,  
6 insurance company, investment company as defined in the "Investment  
7 Company Act of 1940," pension or profit-sharing trust, or other  
8 financial institution or institutional buyer, or to a broker-dealer,  
9 whether the purchaser is acting for itself or in some fiduciary capacity;

10 (9) Any transaction **[pursuant to an offer directed by the offeror]**  
11 which results in sales to not more than 10 persons (other than those  
12 persons designated in paragraph **[(b)(8))]** (8) of subsection (b) of this  
13 section in this State during any period of 12 consecutive months,  
14 whether or not the **[offeror]** seller or any of the **[offerees]** buyers is  
15 then present in this State, if (i) the seller reasonably believes that all  
16 buyers are purchasing for investment, and (ii) no commission or other  
17 remuneration is paid or given directly or indirectly for soliciting any  
18 prospective buyer in this State, and (iii) the securities are not offered  
19 or sold by general solicitation or any general advertisement; but the  
20 bureau chief may by rule or order, as to any transaction or class of  
21 transactions, withdraw or further condition this exemption, or increase  
22 or decrease the number of **[offerees]** buyers permitted, or waive the  
23 conditions in **[subdivisions]** subparagraph (i) [and], (ii) or (iii) of this  
24 paragraph;

25 (10) Any offer or sale of a preorganization certificate or  
26 subscription if (i) no commission or other remuneration is paid or  
27 given directly or indirectly for soliciting any prospective subscriber,  
28 (ii) the number of subscribers does not exceed 10, and (iii) no  
29 payment is made by any subscriber;

30 (11) Any transaction pursuant to an offer to existing security  
31 holders of the issuer, including persons who at the time of the  
32 transaction are holders of convertible securities, nontransferable  
33 warrants, or transferable warrants exercisable within not more than 90  
34 days of their issuance, if **[(i)]** no commission or other remuneration  
35 (other than a standby commission) is paid or given directly or  
36 indirectly for soliciting any security holder in this State **[, or (ii) the**  
37 issuer first files a notice specifying the terms of the offer and the  
38 bureau chief does not by order disallow the exception within the next  
39 five full business days**];**

40 (12) Any **[nonpublic]** transaction by or on behalf of an issuer, or  
41 other person, if (i) the **[issuer]** seller has reasonable grounds to  
42 believe and, after making reasonable inquiry, believes, immediately  
43 prior to making any sale, that there are no more than 35 purchasers of  
44 the issue in this State during any period of 12 consecutive months and  
45 that each purchaser, who is not an accredited investor, either alone or

1 with his representative has the knowledge and experience in financial  
2 and business matters that he is or they are capable of evaluating the  
3 merits and risks of the prospective investment; (ii) a written offering  
4 statement or prospectus is furnished to each [offeree, which provides  
5 the offeree with] purchaser who is not an accredited investor  
6 containing substantially the same information as is required by  
7 subsection (b) of section 14[(b)] of P.L.1967, c.93 (C.49:3-61) or any  
8 applicable form of registration under federal law, and provided that if  
9 any purchaser is furnished with a written offering statement or  
10 prospectus, then all purchasers shall be furnished therewith; [and] (iii)  
11 the securities shall not be offered or sold by general solicitation or any  
12 general advertisement; and (iv) a report of the offering is filed with the  
13 bureau [within 30 days of the completion date of the offering] not  
14 later than 15 days after the first sale of those securities in this State .  
15 setting forth the name and address of the issuer, the total amount of  
16 the securities sold under this [subsection] paragraph (12), the price at  
17 which the securities were sold, the total number of purchasers of the  
18 securities, and the names and addresses of the purchasers of the  
19 securities who reside in this State , indicating the number and amount  
20 of the securities each purchased. Supplemental reports shall be filed  
21 promptly after the initial filing with the bureau whenever there are  
22 material changes to the information contained in the initial filing until  
23 the closing of the offering. A final report shall be filed at the closing  
24 of the offering if the information in the final report would be materially  
25 different from the last prior filing. The fee for filing the report with  
26 the bureau shall be [\$250.00] established by regulation of the bureau  
27 chief. The information in the report of sale shall be deemed  
28 confidential and shall not be disclosed to the public except by order of  
29 the court or in court proceedings. In calculating the number of  
30 purchasers permitted under this paragraph, accredited investors shall  
31 be excluded;

32 (13) The bureau chief, by rule or order, as to a particular  
33 transaction or class of transactions, may adopt a transactional  
34 exemption (i) that will further the objectives of compatibility with the  
35 exemptions from securities registration authorized by the "Securities  
36 Act of 1933" and uniformity among the states, or (ii) if the bureau  
37 chief determines that the public interest does not require registration.

38 (c) The bureau chief may by order deny or revoke any exemption  
39 specified in paragraph (9), (10) or (11) of subsection (a) of this section  
40 or in subsection (b) of this section with respect to a specific security  
41 or transaction. These exemptions may be denied or revoked for the  
42 grounds set forth in subsection (k) of section 9, section 11 and section  
43 17 of P.L.1967, c.93 (C.49:3-56, 49:3-58 or 49:3-64). No such order  
44 may be entered without appropriate [prior] notice to all interested  
45 parties, opportunity for hearing, and written findings of fact and  
46 conclusions of law, except that the bureau chief may by order

1 summarily deny or revoke any of the specified exemptions pending  
2 final determination of any proceeding under this subsection. Upon the  
3 entry of a summary order, the bureau chief shall promptly notify all  
4 interested parties that it has been entered and of the reasons therefor  
5 **[and that within 15 days of the receipt of a written request the matter**  
6 **will be set down for hearing].**

7 (1) Upon service of notice of the order issued by the bureau chief,  
8 the respondent shall have up to 15 days to respond to the bureau in the  
9 form of a written answer and written request for a hearing. The  
10 bureau chief shall, within five days of receiving the answer and a  
11 request for a hearing, either transmit the matter to the Office of  
12 Administrative Law for a hearing or schedule a hearing at the bureau.  
13 Orders issued pursuant to this subsection (c) shall be subject to an  
14 application to vacate upon 10 days' notice, and a preliminary hearing  
15 on the order shall be held in any event within 20 days after it is  
16 requested; and the filing of a motion to vacate the order shall toll the  
17 time for filing an answer and written request for a hearing.

18 (2) If a respondent fails to respond by either filing a written answer  
19 and written request for a hearing with the bureau or moving to vacate  
20 an order within the 15 day prescribed period, the respondent shall be  
21 deemed to have waived the opportunity to be heard. The order will  
22 remain in effect until it is modified or vacated upon notice to all  
23 interested parties by the bureau chief. No order under this subsection  
24 may operate retroactively.

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

28 (cf: P.L.1987, c.301, s.2)

29

30 4. Section 4 of P.L.1967, c.93 (C.49:3-51) is amended to read as  
31 follows:

32 4. (a) Sections 5, 8, subsection (a) of section 9[(a)], and sections  
33 13 and 24 of [this act] P.L.1967, c.93 (C.49:3-52, 49:3-55, 49:3-56,  
34 49:3-60 and 49:3-71) apply to persons who sell or offer to sell when  
35 (1) an offer to sell is made in this State, or (2) an offer to buy is made  
36 or accepted in this State;

37 (b) Sections 5, 8 and subsection (a) of section 9[(a)] of P.L.1967,  
38 c.93 (C.49:3-52, 49:3-55 and 49:3-56) apply to persons who buy or  
39 offer to buy when (1) an offer to buy is made in this State, or (2) an  
40 offer to sell is made or accepted in this State;

41 (c) For the purpose of this section, except to the extent the bureau  
42 chief may by rule or order determine, an offer to sell or to buy is made  
43 in this State, whether or not either party is then present in this State,  
44 when the offer (1) originates from this State or (2) is directed by the  
45 offeror to this State and received at the place to which it is directed  
46 (or at any post office in this State in the case of a mailed offer);



1 (d) For the purpose of this section, an offer to buy or to sell is  
2 accepted in this State when acceptance (1) is communicated to the  
3 offeror in this State and (2) has not previously been communicated to  
4 the offeror, orally or in writing, outside this State; and acceptance is  
5 communicated to the offeror in this State, whether or not either party  
6 is then present in this State, when the offeree directs it to the offeror  
7 in this State reasonably believing the offeror to be in this State and it  
8 is received at the place to which it is directed (or at any post office in  
9 this State in the case of a mailed acceptance);

10 (e) ~~【An offer to sell or to buy is not made in this State when (1)~~  
11 ~~the publisher circulates or there is circulated on his behalf in this State~~  
12 ~~any bona fide newspaper or other publication of general, regular, and~~  
13 ~~paid circulation which is not published in this State, or which is~~  
14 ~~published in this State but has had more than 2/3 of its circulation~~  
15 ~~outside this State during the past 12 months, or (2) a radio or~~  
16 ~~television program originating outside this State is received in this~~  
17 ~~State;】 (Deleted by amendment, P.L. . . . c. . . .)~~

18 (f) Sections 6, 8 and subsection (c) of section 9[(c) of P.L.1967,  
19 c.93 (C.49:3-53, 49:3-55 and 49:3-56), so far as investment  
20 **【advisors】** advisers are concerned, apply when any act instrumental in  
21 effecting prohibited conduct is done in this State, whether or not either  
22 party is then present in this State.

23 (cf: P.L.1967, c.93, s.4)

24  
25 5. (New section) (a) Without limiting the general applicability of  
26 section 5 of P.L.1967, c.93 (C.49:3-52), a person may not:

27 (1) quote a fictitious price with respect to a security;

28 (2) effect a transaction in a security which involves no change in the  
29 beneficial ownership of the security for the purpose of creating a false  
30 or misleading appearance of active trading in a security or with respect  
31 to the market for the security;

32 (3) enter an order for the purchase of a security with the knowledge  
33 that an order of substantially the same size and at substantially the  
34 same time and price for the sale of the security has been, or will be,  
35 entered by or for the same, or affiliated, person for the purpose of  
36 creating a false or misleading appearance of active trading in a security  
37 or with respect to the market for the security;

38 (4) enter an order for the sale of a security with knowledge that an  
39 order of substantially the same size and at substantially the same time  
40 and price for the purchase of the security has been, or will be, entered  
41 by or for the same, or affiliated, person for the purposes of creating a  
42 false or misleading appearance of active trading in a security or with  
43 respect to the market for the security; or

44 (5) employ any other deceptive or fraudulent device, scheme, or  
45 artifice to manipulate the market in a security.

46 (b) A transaction effected in compliance with, or conduct that does

1 not violate, the applicable provisions of the "Securities Exchange Act  
2 of 1934" and the rules and regulations of the Securities and Exchange  
3 Commission thereunder is not a violation of subsection (a) of this  
4 section.

5

6 6. Section 6 of P.L.1967, c.93 (C.49:3-53) is amended to read as  
7 follows:

8 6. (a) It shall be unlawful for any person who receives, directly or  
9 indirectly, any **【consideration】** compensation from another person  
10 **【primarily】** for advising the other person as to the value of securities  
11 or their purchase or sale, whether through the issuance of analyses or  
12 reports or otherwise.

13 (1) to employ any device, scheme or artifice to defraud the other  
14 person; **【or】**

15 (2) to engage in any act, practice, or course of business which  
16 operates or would operate as a fraud or deceit upon the other person;  
17 or

18 (3) to engage in dishonest or unethical practices as the bureau chief  
19 may by rule define in a manner consistent with and compatible with the  
20 laws and regulations of the Securities and Exchange Commission, the  
21 self-regulatory organizations, and uniformity with the other states, the  
22 remedies for which shall be civil or administrative only;

23 (b) It shall be unlawful for any **【investment advisor or registered**  
24 **broker-dealer】** person acting as an investment **【advisor】** adviser,  
25 whether required to be registered or not, to enter into, extend, or  
26 renew any investment advisory contract unless it provides in writing

27 (1) **【that the investment advisor shall not be compensated on the**  
28 **basis of a share of capital gains upon or capital appreciation of the**  
29 **funds or any portion of the funds of the client, except as may be**  
30 **authorized by regulations issued by the bureau chief;**

31 **【(2)】** that no assignment of the contract may be made by the  
32 investment **‘【advisor】** adviser’ without the consent of the other party  
33 to the contract; and

34 **【(3)】** **【(2) that the investment 【advisor】 adviser, 【if a partnership】**  
35 **shall notify the other party to the contract of any change in 【the**  
36 **membership of the partnership】** control of the investment adviser  
37 within a reasonable time after the change;

38 (c) It shall be unlawful for any investment adviser required to be  
39 registered or any registered broker-dealer acting as an investment  
40 adviser to enter into, extend, or renew any investment advisory  
41 contract, unless it provides in writing that the investment adviser shall  
42 not be compensated on the basis of a share of capital gains upon or  
43 capital appreciation of the funds or any portion of the funds, of the  
44 client, except as may be authorized by rules issued by the bureau chief;

45 (d) The bureau chief may by rule or order prohibit any investment

1 adviser, except an investment adviser that is registered or not required  
2 to be registered under the "Investment Advisers Act of 1940," from  
3 being compensated on the basis of a share of capital gains upon, or  
4 capital appreciation of the funds, or any portion of the funds, of the  
5 client:

6 (e) **【Paragraph (b)(1)】** Subsection (c) of this section does not  
7 prohibit an investment advisory contract which provides for  
8 compensation based upon the total value of a fund averaged over a  
9 definite period, or as of definite dates or taken as of a definite date.  
10 "Assignment," as used in paragraph **【(b)(2)】** (1) of subsection (b) of  
11 this section, includes any direct or indirect transfer or hypothecation  
12 of an investment advisory contract by the assignor or of a controlling  
13 block of the assignor's outstanding voting securities by a security  
14 holder of the assignor; but, if the investment **【advisor】** adviser is a  
15 partnership, no assignment of an investment advisory contract is  
16 considered to result from the death or withdrawal of a minority of the  
17 members of the investment **【advisor】** adviser having only a minority  
18 interest in the business of the investment **【advisor】** adviser, or from  
19 the admission to the investment **【advisor】** adviser of one or more  
20 members who, after admission, will be only a minority of the members  
21 and will have only a minority interest in the business.

22 (f) It shall be unlawful for any person soliciting advisory clients to  
23 make any untrue statement of a material fact, or omit to state a  
24 material fact necessary to make the statements made, in light of the  
25 circumstances under which they are made, not misleading.

26 (cf: P.L.1987, c.424, s.1)

27  
28 7. Section 7 of P.L.1967, c.93 (C.49:3-54) is amended to read as  
29 follows:

30 7. It is unlawful for any person to make or cause to be made, in any  
31 document filed with the bureau or in any proceeding . investigation or  
32 examination conducted under this **【law】**act , any statement which is,  
33 at the time and in the light of the circumstances under which it is  
34 made, false or misleading in any material respect.

35 (cf: P.L.1967, c.93, s.7)

36  
37 8. Section 8 of P.L.1967, c.93 (C.49:3-55) is amended to read as  
38 follows:

39 8. (a) Neither (1) the fact that an application for registration of  
40 any persons or a registration statement of any security has been filed  
41 nor (2) the fact that a person or security is effectively registered  
42 constitutes a finding by the bureau chief that any document filed under  
43 this act is true, complete, and not misleading. Neither any such fact  
44 nor the fact that an exemption or exception is available for a person,  
45 security or transaction means that the bureau chief has passed in any  
46 way upon the merits or qualifications of, or recommended or given

1 approval to, any person, security, or transaction.

2 (b) It is unlawful to make, or cause to be made, to any prospective  
3 purchaser, customer, or client any representation inconsistent with  
4 【paragraph】 subsection (a) of this section .

5 (cf: P.L.1967, c.93, s.8)

6

7 9. Section 9 of P.L.1967, c.93 (C.49:3-56) is amended to read as  
8 follows"

9 9. (a) It shall be unlawful for any person to act as a broker-dealer,  
10 agent 【or】, investment 【advisor】 adviser or investment adviser  
11 representative in this State unless 【he】 that person is registered or  
12 exempt from registration under this act;

13 (b) A person shall be exempt from registration as a broker-dealer  
14 if, during any period of 12 consecutive months, that person (1) does  
15 not effect more than 15 transactions with persons other than those  
16 specified in paragraph (5) of subsection (c) of section 2 of P.L.1967,  
17 c.93 (C.49:3-49) located within New Jersey; (2) does not effect  
18 transactions in more than five customer accounts of New Jersey  
19 residents; or (3) effects transactions with persons who have no place  
20 of residence in New Jersey and who are temporarily located in the  
21 State; if at the time of the transactions described in paragraph (1), (2)  
22 or (3) of this subsection (b), the broker-dealer has no place of business  
23 in this State and is a member in good standing of a recognized  
24 self-regulatory organization and is registered in the state in which the  
25 broker-dealer is located;

26 (c) Agents who represent broker-dealers in transactions exempt  
27 pursuant to paragraph (1), (2) or (3) of subsection <sup>1</sup>【b.】 (b)<sup>1</sup> of this  
28 section shall be exempt from registration for those transactions if they  
29 are members of a recognized self-regulatory organization and  
30 registered in the state in which they are located at the time of the  
31 transaction;

32 (d) The burden of proving an exemption from registration under  
33 this section shall be on the person claiming the exemption. A person  
34 claiming an exemption from registration under this section shall keep  
35 his books and records open to inspection by the bureau. If the bureau  
36 chief finds it is in the public interest and necessary for the protection  
37 of investors, the bureau chief may deny any exemption specified in  
38 paragraphs (1), (2) or (3) of subsection (b) or in subsection (c) of this  
39 section as to any broker-dealer or agent. The bureau chief may  
40 proceed in summary fashion or otherwise;

41 (e) The bureau chief may identify classes of customers, securities,  
42 transactions and broker-dealers for the purpose of increasing the  
43 number of transactions or accounts available under the exemptions  
44 specified in paragraphs (1), (2) or (3) of subsection (b) or subsection  
45 (c) of this section;

46 (f) The bureau chief may by order identify the self-regulatory

1 organizations recognized under subsections (b) and (c) of this section  
2 and may by rule or order define the conditions under which  
3 non-resident persons are temporarily in New Jersey under paragraph  
4 (3) of subsection (b) of this section:

5 (g) A person shall be exempt from registration as an investment  
6 adviser or from making a notice filing required by section 10 of  
7 P.L.1967, c.93 (C.49:3-57), if:

8 (1) the person has a place of business in this State and during any  
9 period of 12 consecutive months that person does not have more than  
10 five clients, who are residents of this State, other than those specified  
11 in subparagraph (vi) of paragraph (2) of subsection (g) of section 2 of  
12 P.L.1967, c.93 (C.49:3-49); or

13 (2) the person has no place of business in this State, and during any  
14 period of 12 consecutive months that person does not have more than  
15 five clients, who are residents of this State, other than those specified  
16 in subparagraph (vi) of paragraph (2) of subsection (g) of section 2 of  
17 P.L.1967, c.93 (C.49:3-49).

18 The bureau chief may by rule or order determine the availability of  
19 the exemptions provided by this subsection (g), including the waiver  
20 of the conditions in paragraphs (1) and (2) of this subsection.

21 (h) It shall be unlawful for any broker-dealer or issuer to employ  
22 an agent in this State unless the agent is registered. The registration  
23 of an agent is not effective during any period when he is not associated  
24 with a particular broker-dealer registered under this act or a particular  
25 issuer. When an agent begins or terminates a connection with a  
26 broker-dealer or issuer, or begins or terminates those activities which  
27 make him an agent, the agent as well as the broker-dealer or issuer  
28 shall promptly notify the bureau. When an agent terminates his  
29 connection with a particular broker-dealer or issuer, his authorization  
30 to engage in those activities which make him an agent is terminated :

31 **[(c)]** (i) It shall be unlawful for any person to transact business in  
32 this State as an investment **[advisor]** adviser unless (1) he is so  
33 registered under this act, is exempt from registration under this act, or  
34 is excluded from the definition of investment adviser under this act, or  
35 (2) he is registered as a broker-dealer without the imposition of a  
36 condition under paragraph (5) of subsection (b) of section 11 **[,**  
37 paragraph (b)(5)] of P.L.1967, c.93 (C.49:3-58); **[or (3) his only**  
38 clients in this State are investment companies as defined in the  
39 Investment Company Act of 1940 or insurance companies;]

40 (j) It shall be unlawful for any investment adviser required to be  
41 registered pursuant to this section to employ an investment adviser  
42 representative, unless the investment adviser representative is also  
43 registered pursuant to this section. It is unlawful for any person  
44 registered or required to be registered as an investment adviser under  
45 section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. §80b-  
46 3, to employ, supervise, or associate with an investment adviser

1 representative having a place of business located in this State, unless  
2 that investment adviser representative is registered under this act, or  
3 is exempt from registration. The registration of an investment adviser  
4 representative is not effective during any period when the investment  
5 advisor representative is not employed by an investment adviser  
6 registered pursuant to this section or registered under section 203 of  
7 the "Investment Advisers Act of 1940." 15 U.S.C.§80b-3. When an  
8 investment adviser representative described in this subsection begins  
9 or terminates employment with an investment adviser, the investment  
10 advisor and the investment adviser representative shall promptly notify  
11 the bureau chief. When an investment adviser representative  
12 terminates his connection with a particular investment adviser, his  
13 authorization to engage in those activities which make him an  
14 investment adviser representative is terminated:

15 **[(d)]** (k) The bureau chief may summarily bar, [after a hearing]  
16 pending final determination of any proceeding under this subsection ,  
17 any person, who has been convicted of any crime of embezzlement  
18 under state, federal or foreign law or any crime involving any theft,  
19 forgery or fraudulent practices in regard to any state, federal or  
20 foreign securities, banking, insurance, or commodities trading laws or  
21 anti-fraud laws, from being a partner, officer or director of an issuer,  
22 broker-dealer or investment adviser, or from occupying a similar status  
23 or performing a similar function or from directly or indirectly  
24 controlling or being under common control or being controlled by an  
25 issuer, broker-dealer or investment adviser, or from acting as a  
26 broker-dealer, agent or investment [advisor] adviser in this State.  
27 Any person barred by this subsection shall be entitled to request a  
28 hearing by the same procedures as set forth in subsection (c) of section  
29 3 of P.L.1967, c.93 (C.49:3-50):

30 (l) Notwithstanding any other provision of this act, the bureau  
31 chief may bring an administrative or court action pursuant to section  
32 29 of this act, to seek and obtain civil penalties for violations of this  
33 section:

34 **[(e)]** (m) Every registration shall expire **[2 years]** one year from  
35 its effective date unless renewed, except that the bureau chief may by  
36 rule provide that registrations shall all expire on the same date.

37 (n) Except with respect to advisers whose only clients are those  
38 described in subparagraph (vi) of paragraph (2) of subsection (g) of  
39 section 2 of P.L.1967, c.93 (C.49:3-49), it is unlawful for any person  
40 who is registered or required to be registered under section 203 of the  
41 "Investment Advisers Act of 1940." 15 U.S.C.§80b-3, as an  
42 investment adviser to conduct advisory business in this State, unless  
43 that person files those documents filed with the Securities and  
44 Exchange Commission with the bureau chief, as the bureau chief may  
45 by rule or otherwise require, and a fee and consent to service of  
46 process, as the bureau chief, by rule or otherwise, may require.

1       (o) Notwithstanding anything to the contrary in this act, until  
2 October 11, 1999, the bureau chief may require the registration of any  
3 person who is registered or required to be registered as an investment  
4 adviser under section 203 of the "Investment Advisers Act of 1940,"  
5 15 U.S.C. §80b-3, and who has failed to promptly pay the fees required  
6 by subsection (n) of this section after being notified in writing by the  
7 bureau chief of the non-payment or underpayment of those fees. A  
8 person shall be considered to have promptly paid those fees if they are  
9 remitted to the bureau chief within 15 days following that person's  
10 receipt of the written notification from the bureau chief.  
11 (cf: P.L.1985, c.405, s.11)

12  
13       10. Section 10 of P.L.1967, c.93 (C.49:3-57) is amended to read  
14 as follows:

15       10. (a) A broker-dealer, agent, **[or]** investment **[advisor]** adviser  
16 or investment adviser representative may obtain an initial or renewal  
17 registration by filing with the bureau an application together with a  
18 consent to service of process pursuant to subsection (a) of section  
19 26**[(a)]** of P.L.1967, c.93 (C.49:3-73). National Association of  
20 Securities Dealers, Inc. (NASD) member broker-dealers and their  
21 agents shall file their applications for initial or renewal registration  
22 with the Central Registration Depository, or its successor  
23 organization, as appropriate and available. The application shall  
24 contain whatever information the bureau chief by rule requires  
25 concerning such matters as (1) the applicant's form and place of  
26 organization; (2) the applicant's proposed method of doing business;  
27 (3) the qualifications and business history of the applicant; in the case  
28 of a broker-dealer or investment **[advisor]** adviser , the qualifications  
29 and business history of any partner, officer, or director, any person  
30 occupying a similar status or performing similar functions, or any  
31 person directly or indirectly controlling the broker-dealer or  
32 investment **[advisor]** adviser; and, in the case of an investment  
33 **[advisor]** adviser or registered broker-dealer acting as an investment  
34 **[advisor]** adviser, the qualifications and business history of any  
35 employee who is to give investment advice or who is an investment  
36 adviser representative; (4) any injunction or administrative order or  
37 conviction of a crime of the fourth degree or its equivalent in any other  
38 jurisdiction involving a security or any aspect of the securities or  
39 investment advisory business and any conviction of a crime of the first,  
40 second or third degree or its equivalent in any other jurisdiction; **[and]**  
41 (5) the applicant's financial condition; and (6) in the case of an  
42 investment adviser, a copy of any information or brochure used by the  
43 adviser to comply with any rule of the bureau promulgated pursuant  
44 to subsection (b) of section 12 of P.L.1967, c.93 (C.49:3-59). If no  
45 denial, postponement or suspension order is in effect and no  
46 proceeding is pending under section 11 of P.L.1967, c.93 (C.49:3-58),

1 registration becomes effective at noon of the thirtieth day after an  
2 application is filed. The bureau chief may by rule or order specify an  
3 earlier effective date, or he may by order defer the effective date until  
4 the first day of the next calendar month after the thirtieth day after the  
5 filing of the application. The bureau chief may by order defer the  
6 effective date for additional periods, as the applicant shall agree to in  
7 writing. The time limits herein provided shall run anew from the filing  
8 of any amendment **[**. Registration of a broker-dealer automatically  
9 constitutes registration of any agent who is a partner, officer, or  
10 director, or a person occupying a similar status or performing similar  
11 functions**]**;

12 (b) Every applicant for initial or renewal registration for broker-  
13 dealer, agent, investment adviser and investment adviser representative  
14 shall pay **[a]** filing **[**fee of \$500.00 in the case of a broker-dealer, plus  
15 \$10.00 for each partner, officer, director, or principal doing business  
16 in this State; \$60.00 in the case of an agent; \$100.00 in the case of an  
17 investment advisor and \$100.00 in the case of an issuer**]** fees in the  
18 amounts as set by rule of the bureau chief. **[When]** If an application  
19 is denied or withdrawn, the bureau shall retain the fee. Whenever any  
20 supplemental filing is made, for the purpose of keeping current the  
21 information furnished to the bureau chief, **[is made]** there **[shall]** may  
22 be a supplemental filing fee **[of \$5.00]** in an amount set by rule of the  
23 bureau chief;

24 (c) A registered broker-dealer or investment advisor may file an  
25 application for registration of a successor, whether or not the  
26 successor is then in existence, for the unexpired portion of the  
27 registration period. There shall be no filing fee, except as may be  
28 provided by rule of the bureau chief ;

29 (d) **(1)** The bureau chief may by rule require a minimum capital for  
30 registered broker-dealers **[**; provided that the bureau chief shall not in  
31 any case require a minimum capital in excess of \$10,000.00 in the case  
32 of a registered broker-dealer; and provided further that the minimum  
33 capital requirement of a broker-dealer engaged exclusively in the sale  
34 of investment company shares shall not be in excess of \$5,000.00**]** not  
35 to exceed the limitations provided in section 15 of the "Securities  
36 Exchange Act of 1934," 15 U.S.C. §78o. The minimum capital  
37 required for a registered broker-dealer shall be determined by rule of  
38 the bureau chief;

39 **(2)** The bureau chief may by rule establish minimum financial  
40 requirements for investment advisers, not to exceed the limitations  
41 provided in section 222 of the "Investment Advisers Act of 1940," 15  
42 U.S.C. §80b-18a, which may include different requirements for those  
43 investment advisers who maintain custody of or have discretionary  
44 authority over clients' funds or securities and investment advisers who  
45 do not maintain such custody or discretionary authority.



1 (e) The bureau chief may by rule require registered investment  
2 **[advisors]** advisers who have custody of clients' funds or securities to  
3 post bonds in amounts not to exceed the limitations provided in  
4 section 222 of the "Investment Advisers Act of 1940," 15 U.S.C.  
5 §80b-18a and registered broker-dealers to post **[surety]** bonds in  
6 amounts **[up to \$25,000.00]** not to exceed the limitations provided in  
7 section 15 of the "Securities Exchange Act of 1934," 15 U.S.C. §78o.  
8 and may determine their conditions **[**; provided that no such surety  
9 bond shall be required of an investment advisor or a broker-dealer who  
10 has a minimum capital of at least \$25,000.00 or of a broker-dealer  
11 engaged exclusively in the sale of investment company shares who has  
12 a minimum capital of \$5,000.00; except that, notwithstanding the  
13 provisions of this or any other section of this law, the bureau chief may  
14 by rule require registered broker-dealers and investment advisors, if  
15 such registrant or any partner, officer or director, any person  
16 occupying a similar status or performing similar functions, or any  
17 person directly or indirectly controlling such registrant has ever been  
18 convicted of any crime of the fourth degree or its equivalent in any  
19 other jurisdiction involving a security or any aspect of the securities  
20 business, or any crime of the first, second or third degree or its  
21 equivalent in any other jurisdiction, to post surety bonds in amounts  
22 up to \$200,000.00]. Any appropriate deposit of cash or securities  
23 shall be accepted in lieu of any bond so required. Every bond shall  
24 provide for suit thereon by any person who has a cause of action under  
25 section 24 of P.L. 1967, c. 93 (C. 49:3-71). Every bond shall provide  
26 that no suit may be maintained to enforce any liability on the bond  
27 unless brought within two years after the sale or other act upon which  
28 it is based, or within two years of the time when the person aggrieved  
29 knew or should have known of the existence of his cause of action,  
30 whichever is later. The dollar amount of the bonds shall be set by rule  
31 of the bureau chief;

32 (f) (1) The bureau chief may by rule provide for an examination  
33 which may be written or oral or both, to be taken by any class of or all  
34 applicants, as well as persons who represent or will represent an  
35 investment **[advisor]** adviser in doing any of the acts which make him  
36 an investment **[advisor]** adviser;

37 (2) Each applicant for **[such]** broker-dealer, agent, investment  
38 adviser or investment adviser representative who takes an examination  
39 provided pursuant to paragraph (1) of this subsection shall pay  
40 examination fees in the amounts as **[follows: broker-dealer, \$50.00;**  
41 **partner, officer, or director doing business in this State, \$50.00; agent,**  
42 **\$50.00; and investment advisor, \$50.00.** When an application for  
43 examination is denied or withdrawn, the bureau shall retain the fee **]**  
44 set forth by rule of the bureau chief ;

45 (g) (1) Registration as a broker-dealer or agent under this act for

1 the limited purpose of engaging in the business of effecting or  
2 attempting to effect transactions in direct participation securities for  
3 the accounts of others or for his own account shall be permitted. All  
4 the requirements of this act shall apply to these limited registrations;  
5 except that any examination or other evaluation of proficiency or  
6 knowledge required by the bureau for this registration shall be limited  
7 to matters relating to direct participation securities and to the  
8 requirements of laws and regulations applicable to this registrant.

9 (2) Any applicant for a limited registration shall acknowledge in  
10 writing to the bureau prior to registration that he understands (i) the  
11 limitations on the scope of his authority to do business pursuant to this  
12 limited registration; and (ii) that any activity which exceeds the  
13 limitations of the registration shall violate the provisions of this act  
14 and may result in disciplinary action by the bureau, prosecution under  
15 this act or other laws, or civil liability, to the same extent as if he was  
16 not registered under this act.

17 (cf: P.L.1985, c.405, s.5)

18

19 11. Section 11 of P.L.1967, c.93 (C.49:3-58) is amended to read  
20 as follows:

21 11. (a) The bureau chief may by order deny, suspend, or revoke  
22 any registration if he finds :

23 (1) that the order is in the public interest ; and

24 (2) that the applicant or registrant or, in the case of a broker-dealer  
25 or investment ~~adviser~~ **adviser**, any partner, officer, or director, any  
26 person occupying a similar status or performing similar functions, or  
27 any person directly or indirectly controlling the broker-dealer or  
28 investment ~~adviser~~ **adviser**:

29 (i) has filed an application for registration which as of its effective  
30 date, or as of any date after filing in the case of an order denying  
31 effectiveness, was incomplete in any material respect or contained any  
32 statement which was, in the light of the circumstances under which it  
33 was made, false or misleading with respect to any material fact;

34 (ii) has willfully violated or willfully failed to comply with any  
35 provision of this ~~law or a predecessor law~~ **act** or any rule or order  
36 authorized by this ~~law or a predecessor law~~ **act** or has willfully,  
37 materially aided others in such conduct ;

38 (iii) has been convicted of any crime involving a security or any  
39 aspect of the ~~security securities, commodities, banking, insurance or~~  
40 ~~investment advisory~~ business or any crime involving moral turpitude;  
41 however, where the applicant can show by proof satisfactory to the  
42 bureau chief that during the 10-year period preceding the application  
43 he has conducted himself in such a manner as to warrant his  
44 registration consistent with all other provisions of this act, the  
45 conviction shall not be a bar to registration;

46 (iv) is permanently or temporarily enjoined by any court of

1 competent jurisdiction from engaging in or continuing any conduct or  
2 practice involving any aspect of the securities, commodities, banking,  
3 insurance or investment advisory business;

4 (v) is the subject of an effective order of the bureau chief denying,  
5 suspending, or revoking registration as a broker-dealer, agent, **[or]**  
6 investment **[advisor]** adviser, investment adviser representative or  
7 securities offering registrant ;

8 (vi) is the subject of an order entered within the past **[5]** five  
9 years by **[the]** any federal or state securities, commodities, banking,  
10 insurance or investment advisory administrator **[of any other State or**  
11 **by the Securities and Exchange Commission]** or self-regulatory  
12 organization denying or revoking a securities, commodities, banking,  
13 insurance or investment advisory license or registration under federal  
14 or state securities, commodities, banking, insurance or investment  
15 advisory law, including, but not limited to registration as a  
16 broker-dealer, agent, **[or]** investment **[advisor]** adviser, investment  
17 adviser representative or issuer, or the substantial equivalent of those  
18 terms as defined in this act, or is the subject of an order of the  
19 Securities and Exchange Commission, a self-regulatory organization,  
20 the Commodity Futures Trading Commission, an insurance regulator,  
21 or a federal or state banking regulator, suspending or expelling him  
22 from a national securities or commodities exchange or national  
23 securities or commodities association registered under the **[Securities**  
24 **Exchange Act of 1934,]** "Securities Exchange Act of 1934," or the  
25 "Commodity Exchange Act," or from engaging in the banking or  
26 insurance business, or is the subject of a United States Post Office  
27 fraud order; but (A) the bureau chief may not institute a revocation  
28 or suspension proceeding under this **[clause]** subparagraph (vi) more  
29 than **[1 year]** two years from the date of the order relied on and (B)  
30 he may not enter an order under this **[clause]** subparagraph (vi) on the  
31 basis of an order under another **[State]** state act unless that order was  
32 based on facts which would currently constitute a ground for an order  
33 under **[this]** New Jersey law;

34 (vii) has engaged in dishonest or unethical practices in the  
35 securities, commodities, banking, insurance or investment advisory  
36 business, as may be defined by rule of the bureau chief ;

37 (viii) is insolvent, either in the sense that his liabilities exceed his  
38 assets or in the sense that he cannot meet his obligations as they  
39 mature; but the bureau chief may not enter an order against a  
40 broker-dealer or investment **[advisor]** adviser for insolvency without  
41 a finding of insolvency as to the broker-dealer or investment **[advisor]**  
42 adviser;

43 (ix) is not qualified on the basis of such factors as character,  
44 training, experience and knowledge of the **[security]** securities  
45 business, except as otherwise provided in **[paragraph]** subsection (b)

1 of this section:

2 (x) has failed to pass an examination under [subdivision  
3 (b)]subsection (f) of [this] section [11]10 of P.L.1967. 93. (C.49:3-  
4 57) if such an examination has been by rule provided for by the bureau  
5 chief;

6 (xi) has failed reasonably to supervise; his agents if he is a  
7 broker-dealer or issuer; the agents of a broker dealer or issuer for  
8 whom he has supervisory responsibility; or his employees who give  
9 investment advice if he is an investment [advisor] adviser ;

10 (xii) has failed to pay the proper fees, [but the bureau chief shall  
11 vacate any such order when the deficiency has been corrected] as set  
12 by rule of the bureau chief.

13 (b) The following provisions govern the application of  
14 subparagraph (ix) of paragraph (2) of subsection (a)[(2)(ix)] of this  
15 section :

16 (1) The bureau chief may not enter an order against a broker-dealer  
17 on the basis of the lack of qualification of any person other than (i)  
18 the broker-dealer himself if he is an individual or (ii) an agent of the  
19 broker-dealer;

20 (2) The bureau chief may not enter an order against an investment  
21 [advisor] adviser on the basis of the lack of qualification of any  
22 person other than (i) the investment [advisor] adviser himself if he is  
23 an individual or (ii) any other person who represents the investment  
24 [advisor] adviser in doing any of the acts which make him an  
25 investment [advisor] adviser ;

26 (3) The bureau chief may not enter an order solely on the basis of  
27 lack of experience if the applicant or registrant is qualified by training  
28 or knowledge or both;

29 (4) The bureau chief shall consider that an agent who will work  
30 under the supervision of a registered broker-dealer need not have the  
31 same qualifications as a broker-dealer;

32 (5) The bureau chief shall consider that an investment [advisor]  
33 adviser is not necessarily qualified solely on the basis of experience as  
34 a broker-dealer or agent. [When] If he finds that an applicant for  
35 initial or renewal registration as a broker-dealer is not qualified as an  
36 investment [advisor] adviser, he may by order condition the  
37 applicant's registration as a broker-dealer upon his not transacting  
38 business in this State as an investment [advisor] adviser .

39 (c) [(1) When the] The bureau chief [finds that an application for  
40 registration should be denied he] , for good cause shown, may [enter  
41 an] by order [denying such] summarily postpone, suspend, revoke or  
42 deny any registration [; but he] , pending final determination of any  
43 proceeding under this section. Upon entry of the order, the bureau  
44 chief shall promptly notify the applicant or registrant, as well as the  
45 employer or prospective employer if the applicant or registrant is an

1 agent or an investment adviser representative, that the order has been  
2 entered and of the reasons therefor **【and that the matter will be set**  
3 **down for hearing if a written request for such a hearing is filed with**  
4 **the bureau chief within 30 days after receipt of such notice by the**  
5 **applicant. If no hearing is requested the order shall remain in effect**  
6 **until modified or vacated. If a hearing is held the bureau chief shall**  
7 **affirm, vacate or modify the order in accord with the findings at the**  
8 **hearing】.**

9 (1) The bureau chief shall entertain on no less than three days  
10 notice a written application to lift the summary postponement,  
11 suspension or revocation on written application of the applicant or  
12 registrant and in connection therewith may, but need not, hold a  
13 hearing and hear testimony, but shall provide to the applicant or  
14 registrant a written statement of the reasons for the summary  
15 postponement, suspension or revocation.

16 (2) Upon service of notice of the order issued by the bureau chief,  
17 the applicant or registrant shall have up to 15 days to respond to the  
18 bureau in the form of a written answer and written request for a  
19 hearing. The bureau chief shall, within five days of receiving the  
20 answer and a request for a hearing, either transmit the matter to the  
21 Office of Administrative Law for a hearing or schedule a hearing at the  
22 Bureau of Securities. Orders issued pursuant to this subsection to  
23 suspend or revoke any registration shall be subject to an application to  
24 vacate upon 10 days' notice, and a preliminary hearing on the order to  
25 suspend or revoke any registration shall be held in any event within 20  
26 days after it is requested, and the filing of a motion to vacate the order  
27 shall toll the time for filing an answer and written request for a  
28 hearing:

29 (3) If an applicant or registrant fails to respond by filing a written  
30 answer and request for a hearing with the bureau or moving to vacate  
31 an order to suspend or revoke any registration within the 15 day  
32 prescribed period, the registrant shall have waived the opportunity to  
33 be heard and the order shall remain in effect until modified or vacated.

34 **【(2) When the bureau chief finds that a registration should be**  
35 **suspended or revoked he may enter a proposed order to suspend or**  
36 **revoke such registration and he shall promptly notify the registrant, as**  
37 **well as the employer if the registrant is an agent, of the proposed**  
38 **order, of the reasons therefor and that the matter will be set down for**  
39 **hearing if a written request for such hearing is filed with the bureau**  
40 **chief within 10 days after receipt of such notice by the registrant. If**  
41 **no hearing is requested within the specified time the bureau chief shall**  
42 **enter the proposed order as a final order, which shall be effective when**  
43 **entered. If a hearing is held the bureau chief shall withdraw the**  
44 **proposed order or enter a final order in accord with the findings at the**  
45 **hearing, which order shall be effective when entered.】**

46 (d) If the bureau chief finds that any registrant or applicant for

1 registration is no longer in existence or has ceased to do business as  
2 a broker-dealer, agent, **[or]** investment **[advisor]** adviser or  
3 investment adviser representative, or is subject to an adjudication of  
4 mental incompetence or to the control of a committee, conservator, or  
5 guardian, or cannot be located after reasonable search, the bureau  
6 chief may by order summarily revoke or deny the registration or  
7 application;

8 (e) Withdrawal from registration as a broker-dealer, agent, **[or]**  
9 investment **[advisor]** adviser or investment adviser representative  
10 becomes effective 30 days after receipt of an application to withdraw  
11 or within such **[shorter]** other period of time as the bureau chief may  
12 determine by rule or order. The bureau chief may nevertheless  
13 institute a revocation or suspension proceeding under **[paragraph**  
14 **(a)(2)(ii)]** subparagraph (ii) of paragraph (2) of subsection (a) of this  
15 section within **[1 year]** two years after withdrawal becomes effective  
16 and enter a revocation or suspension order as of the last date on which  
17 registration was effective;

18 (f) **[No order may be entered under this section, except under**  
19 **paragraph (c)(1), without (i) appropriate prior notice to the applicant**  
20 **or registrant (as well as the employer or prospective employer if the**  
21 **applicant or registrant is an agent), (ii) opportunity for hearing, and**  
22 **(iii) written findings of fact and conclusions of law;]** (Deleted by  
23 amendment, P.L. . c. .).

24 (g) Every hearing **[before an officer or employee of the bureau]**  
25 which this **[law]** act requires to be held **[before any formal action may**  
26 **be taken by the bureau]** shall **[not]** be **[public without the written**  
27 **consent of all the respondents]** held in accordance with the  
28 "Administrative Procedure Act, " P.L.1968, c.410 (C.52:14B-1 et  
29 seq.) .

30 (cf: P.L.1967, c.93, s.11)

31

32 12. Section 12 of P.L.1967, c.93 (C.49:3-59) is amended to read  
33 as follows:

34 12. (a) **[Every registered broker-dealer shall file with the bureau**  
35 **chief a report of financial condition as of a date within each calendar**  
36 **year within 60 days after the date of such report of financial condition,**  
37 **provided that reports for any 2 consecutive years shall not be as of**  
38 **dates within 4 months of each other. The report of financial condition**  
39 **of a broker-dealer shall be certified by a certified public accountant or**  
40 **a public accountant who shall be in fact independent;]** (Deleted by  
41 amendment, P.L. . c. .)

42 (b) Every registered broker-dealer and investment **[advisor]**  
43 adviser shall make and **[whenever required by rule of the bureau chief**  
44 **shall file with the bureau, such]** keep those accounts, correspondence,  
45 memoranda, papers, books, and other records **[, and accounts]** as the

1 bureau chief by rule prescribes. Such books, records and accounts  
2 shall conform **[insofar as practicable,]** to those prescribed by the  
3 Securities and Exchange Commission. All records and books so  
4 required shall be accessible to the bureau and preserved for 3 years  
5 unless the bureau chief by rule prescribes otherwise **[for all records or**  
6 **for particular types of records]**;

7 (c) With respect to investment advisers, the bureau chief may  
8 require by rule that certain information be furnished or disseminated  
9 as necessary or appropriate in the public interest or for the protection  
10 of investors and investment advisory clients. To the extent determined  
11 by the bureau chief, information furnished to clients or prospective  
12 clients of an investment adviser that would be in compliance with the  
13 "Investment Advisers Act of 1940" and the regulations promulgated  
14 thereunder may be used in whole or partial satisfaction of this  
15 requirement;

16 (d) Every registered broker-dealer and investment adviser shall file  
17 the financial reports the bureau chief prescribes by rule, except that the  
18 bureau chief shall not require a registered broker-dealer to file  
19 financial reports which exceed the limitations provided in section 15  
20 of the "Securities Exchange Act of 1934," 15 U.S.C. §78o;

21 **[(c)] (e)** If the information contained in any document filed with  
22 the bureau is or becomes inaccurate or incomplete in any material  
23 respect, the registrant shall promptly **[make]file** a correcting  
24 **[supplemental filing] amendment** unless notification of the correction  
25 has been given under **[section 9, paragraph (b)] subsection (h) of**  
26 section 9 of P.L.1967, c.93 (C.49:3-56) .

27 (f) All the records referred to in subsection (b) of this section are  
28 subject at any time or from time to time to such reasonable periodic,  
29 special, or other examinations by representatives of the bureau chief,  
30 within or without this State, as the bureau chief deems necessary or  
31 appropriate in the public interest or for the protection of investors.  
32 The bureau chief may cooperate with the securities administrators of  
33 other states, the Securities and Exchange Commission, Commodity  
34 Futures Trading Commission, federal and state banking regulators,  
35 state insurance regulators and any national securities exchange or  
36 national securities association registered under the "Securities  
37 Exchange Act of 1934."

38 (cf: P.L.1967, c.93, s.12)

39

40 13. Section 13 of P.L.1967, c.93 (C.49:3-60) is amended to read  
41 as follows:

42 13. It is unlawful for any security to be offered or sold in this State  
43 unless:

44 (a) The security or transaction is exempt under section 3 of this  
45 **[act] of P.L.1967, c.93 (C.49:3-50);**

- 1 (b) [The security or transaction is not subject to, or is exempt  
 2 from, the registration requirements of the Securities Act of 1933 and  
 3 the rules and regulations thereunder, other than by reason of section  
 4 3(a) or 3(b) of such act and the rules and regulations under said  
 5 section 3(a) or 3(b), and a report of the offering is filed with the  
 6 bureau within 30 days of the completion date of the offering, setting  
 7 forth the name and address of the issuer, the total amount of the  
 8 securities sold, the price at which the securities were sold, the total  
 9 number of purchasers of the securities, and the names and addresses  
 10 of the purchasers of the securities, indicating the number and amount  
 11 of the securities each purchased. The fee for filing the report with the  
 12 bureau shall be \$250.00. The information in the report of sale shall be  
 13 deemed confidential and shall not be disclosed to the public except by  
 14 order of the court or in court proceedings;] (~~Deleted by amendment,~~  
 15 ~~P.L. , c. .~~)
- 16 (c) (~~Deleted by amendment; P.L. 1985, c. 405.~~)
- 17 (d) (~~Deleted by amendment; P.L. 1985, c. 405.~~) [or]
- 18 (e) The security is registered under this act ; or
- 19 (f) It is a federal covered security for which a notice filing and fees  
 20 have been submitted as required by section 14 of this act .  
 21 (cf: P.L.1985, c.405, s.6)

22

23 14. (New section) (a) The bureau chief, by rule or otherwise, may  
 24 require the filing of any or all of the following documents with respect  
 25 to a federal covered security under paragraph (2) of subsection (b) of  
 26 section 18 of the "Securities Act of 1933," 15 U.S.C. §77r(b):

27 (1) Prior to the initial offer of such federal covered security in this  
 28 State, a notice as prescribed by the bureau chief by rule or otherwise  
 29 or all documents that are part of a current federal registration  
 30 statement filed with the Securities and Exchange Commission under  
 31 the "Securities Act of 1933," together with a consent to service of  
 32 process signed by the issuer and with the fee required by section 15 of  
 33 P.L.1967, c.93 (C.49:3-62);

34 (2) After the initial offer of such federal covered security in this  
 35 State, all documents that are part of an amendment to a current federal  
 36 registration statement filed with the Securities and Exchange  
 37 Commission under the "Securities Act of 1933;"

38 (3) To the extent necessary to compute fees, an annual or periodic  
 39 report of the value of such federal covered securities offered or sold  
 40 in this State;

41 (4) A notice setting forth the name and address of the issuer, and  
 42 the name and the dollar amount of the securities issued and the number  
 43 of the securities to be issued;

44 (5) That notice shall be effective on the later of date of its receipt  
 45 by the bureau chief or effectiveness of the offering with the Securities  
 46 and Exchange Commission and shall expire on June 30 of each year,



1 unless renewed prior to expiration by filing an additional notice and  
2 fee, except that the bureau chief may by rule determine that such  
3 notice will automatically remain in effect in the case of unit investment  
4 trusts. A renewal notice shall take effect upon expiration of the notice  
5 filing being renewed. Only one notice and one fee needs to be filed for  
6 multiple portfolios, classes, trusts, or funds that are offered through  
7 one prospectus. In setting fees, the bureau shall take into account  
8 whether the investment company issuing the shares is an open-end  
9 management company or unit investment trust and shall establish  
10 different fees for different types of investment companies. In no event  
11 shall the fee charged in any calendar year for claiming this exemption  
12 exceed the fee charged for registering securities with the bureau under  
13 subsection (b) of section 15 of P.L.1967, c.93 (C.49:3-62).

14 (b) With respect to any security that is a federal covered security  
15 under subparagraph (D) of paragraph (4) of subsection (b) of section  
16 18 of the "Securities Act of 1933," 15 U.S.C. §77r(b)(4)(D), the  
17 bureau chief, by rule or otherwise, may require the issuer to file a  
18 notice on SEC Form D, 17 C.F.R. §239.500, or a successor form, and  
19 a consent to service of process signed by the issuer no later than 15  
20 days after the first sale of that federal covered security in this State,  
21 together with the fee required to be paid pursuant to paragraph (12)  
22 of subsection (b) of section 3 of P.L.1967, c.93 (C.49:3-50);

23 (c) The bureau chief, by rule or otherwise, may require the filing  
24 of any document filed with the Securities and Exchange Commission  
25 under the "Securities Act of 1933" with respect to a federal covered  
26 security under paragraph (3) or (4) of subsection (b) of section 18 of  
27 the "Securities Act of 1933," 15 U.S.C. §77r(b)(3) or (4);

28 (d) The bureau chief may issue a stop order suspending the offer  
29 and sale of a federal covered security, except a federal covered  
30 security under paragraph (1) of subsection (b) of section 18 of the  
31 "Securities Act of 1933," 15 U.S.C. §77r(b)(1), if the bureau chief  
32 finds that (1) the order is in the public interest and (2) there is a failure  
33 to comply with any condition established under this section;

34 (e) The bureau chief, by rule or otherwise, may waive any or all of  
35 the provisions of this section.

36

37 15. Section 14 of P.L.1967, c.93 (C.49:3-61) is amended to read  
38 as follows:

39 14. (a) Subject to the provisions of this section and section 15 of  
40 **【this act】** of P.L.1967, c.93 (C.49:3-62) any security may be  
41 registered by qualification.

42 (b) A registration statement under this section shall contain the  
43 following information and be accompanied by the following  
44 documents:

45 (1) the information specified in subsection (c) of section 15 **【(c)】**  
46 of **【this act】** of P.L.1967, c.93 (C.49:3-62) ;

1 (2) the consent to service of process required by subsection (a) of  
2 section 26 [(a)] of [this act] of P.L.1967, c.93 (C.49:3-73);

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

9 (4) with respect to every director and officer of the issuer, or  
10 person occupying a similar status or performing similar functions: his  
11 name, address, and principal occupation for the past **[5]** five years;  
12 the amount of securities of the issuer held by him as of a specified date  
13 within 30 days of the filing of the registration statement; the amount  
14 of the securities covered by the registration statement to which he has  
15 indicated his intention to subscribe; and a description of any material  
16 interest in any material transaction with the issuer or any significant  
17 subsidiary effected within the past **[3]** three years or proposed to be  
18 effected;

19 (5) with respect to persons covered by **[subsection]** paragraph (4)  
20 of this subsection; the remuneration paid during the past 12 months  
21 and estimated to be paid during the next 12 months, directly or  
22 indirectly, by the issuer (together with all predecessors, parents,  
23 subsidiaries, and affiliates) to all those persons in the aggregate;

24 (6) with respect to any person owning of record, or beneficially if  
25 known, 10% or more of the outstanding shares of any class of equity  
26 security of the issuer: the information specified in **[subsection]**  
27 paragraph (4) of this subsection other than his occupation;

28 (7) with respect to every promoter if the issuer was organized  
29 within the past **[3]** three years: the information specified in  
30 **[subsection]** paragraph (4) of this subsection, any amount paid to him  
31 within the period or intended to be paid to him, and the consideration  
32 for any such payment;

33 (8) with respect to any person on whose behalf any part of the  
34 offering is to be made in a nonissuer transaction: his name and  
35 address; the amount of securities of the issuer held by him as of the  
36 date of the filing of the registration statement; a description of any  
37 material interest in any material transaction with the issuer or any  
38 significant subsidiary effected within the past **[3]** three years or  
39 proposed to be effected; and a statement of his reasons for making  
40 the offering;

41 (9) the capitalization and long-term debt (on both a current and a  
42 pro forma basis) of the issuer and any significant subsidiary, including  
43 a description of each security outstanding or being registered or  
44 otherwise offered, and a statement of the amount and kind of  
45 consideration (whether in the form of cash, physical assets, services,  
46 patents, goodwill, or anything else) for which the issuer or any

1 subsidiary has issued any of its securities within the past **[2] two**  
2 years or is obligated to issue any of its securities;

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

22 (11) the estimated cash proceeds to be received by the issuer from  
23 the offering; the purposes for which the proceeds are to be used by the  
24 issuer; the amount to be used for each purpose; the order or priority  
25 in which the proceeds will be used for the purposes stated; the  
26 amounts of any funds to be raised from other sources to achieve the  
27 purposes stated; the sources of any such funds; and, if any part of the  
28 proceeds is to be used to acquire any property (including goodwill)  
29 otherwise than in the ordinary course of business, the names and  
30 addresses of the vendors, the purchase price, the names of any persons  
31 who have received commissions in connection with the acquisition,  
32 and the amounts of any such commissions and any other expense in  
33 connection with the acquisition (including the cost of borrowing  
34 money to finance the acquisition);

35 (12) a description of any stock options or other security options  
36 outstanding, or to be created in connection with the offering, together  
37 with the amount of any such options held or to be held by every person  
38 required to be named in **[subsections] paragraph** (4), (6), (7), (8), or  
39 (10) of this subsection and by any person who holds or will hold 10%  
40 or more in the aggregate of any such options;

41 (13) the dates of, parties to, and general effect concisely stated of,  
42 every management or other contract of material importance made or  
43 to be made otherwise than in the ordinary course of business if it is to  
44 be performed in whole or in part at or after the filing of the  
45 registration statement or was made within the past **[2] two** years,  
46 together with a copy of every such contract; and a description of any

1 pending litigation or proceeding to which the issuer is a party and  
2 which materially affects its business or assets (including any such  
3 litigation or proceeding known to be contemplated by governmental  
4 authorities);

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

8 (15) a specimen or copy of the security being registered; a copy of  
9 the issuer's articles of incorporation and by-laws, or their substantial  
10 equivalents, as currently in effect; and a copy of any indenture or  
11 other instrument covering the security to be registered;

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

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

22 (18) a balance sheet of the issuer as of a date within **[4] four**  
23 months prior to the filing of the registration statement, accompanied  
24 by a declaration that there has been no substantial change in the  
25 financial position of the issuer since the date of such statement; a  
26 profit and loss statement and analysis of surplus for each of the **[3]**  
27 three fiscal years preceding the date of the balance sheet and for any  
28 period between the close of the last fiscal year and the date of the  
29 balance sheet, or for the period of the issuer's and any predecessor's  
30 existence if less than **[3] three** years; and, if any part of the proceeds  
31 of the offering is to be applied to the purchase of any business, the  
32 same financial statements which would be required if that business  
33 were the registrant; and

34 (19) such additional information as the bureau chief requires by rule  
35 or order.

36 (c) Registration by qualification shall become effective when the  
37 bureau chief so orders.

38 (d) The bureau chief may by rule or order require as a condition of  
39 registration by qualification that a prospectus containing any  
40 designated part of the information specified in subsection (b) of this  
41 section be sent or given to each person to whom an offer is made  
42 before or concurrently with (1) the first written offer made to him  
43 (otherwise than by means of a public advertisement) by or for the  
44 account of the issuer or any other person on whose behalf the offering  
45 is being made, or by any underwriter or broker-dealer who is offering  
46 part of an unsold allotment or subscription taken by him as a

1 participant in the distribution, (2) the confirmation of any sale made by  
2 or for the account of any such person, (3) payment pursuant to any  
3 such sale, or (4) delivery of the security pursuant to any such sale,  
4 whichever first occurs.

5 (e) The bureau chief may by rule or order require as a condition of  
6 registration by qualification (1) that any security issued within the past  
7 **[3] three** years or to be issued to a promoter for a consideration  
8 substantially different from the public offering price, or to any person  
9 for a consideration other than cash, be deposited in escrow; and (2)  
10 that the proceeds from the sale of the registered security in this State  
11 be deposited in escrow until the issuer receives a specified amount  
12 from the sale of the security either in this State or elsewhere. The  
13 bureau chief may by rule or order determine the conditions of any  
14 escrow required hereunder, but he may not reject a depository solely  
15 because of location in another **[State] state** .

16 (f) The bureau chief may by rule or order require as a condition of  
17 registration that any security registered by qualification be sold only  
18 on a specified form of subscription or sale contract, and that a signed  
19 or conformed copy of each contract be filed with the bureau chief or  
20 preserved for any period up to **[3] three** years specified in the rule or  
21 order.

22 (cf: P.L.1967, c.93, s.14)

23

24 16. Section 7 of P.L.1985, c.405 (C.49:3-61.1) is amended to read  
25 as follows:

26 7. a. Any security for which a registration statement has been filed  
27 under the "Securities Act of 1933," **[48 Stat. 74 (15 U.S.C.s. 77a et**  
28 **seq.)]** in connection with the same offering may be registered by  
29 coordination.

30 b. A registration statement under this section shall contain the  
31 following information and be accompanied by the following documents  
32 in addition to the information specified in section 15 of P.L.1967,  
33 c.93 (C.49:3-62) and the consent to service of process required by  
34 section 26 of P.L.1967, c.93 (C.49:3-73):

35 (1) Three copies of the latest form of prospectus filed under the  
36 "Securities Act of 1933";

37 (2) If the bureau chief by rule or otherwise requires, a copy of the  
38 articles of incorporation and bylaws, or other substantial equivalents,  
39 currently in effect, a copy of any agreements with or among  
40 underwriters, a copy of any indenture or other instrument governing  
41 the issuance of the security to be registered, and a specimen or copy  
42 of the security;

43 (3) If the bureau chief requests, any other information, or copies  
44 of any other documents, filed under the "Securities Act of 1933"; and

45 (4) An undertaking to forward all amendments to the federal  
46 prospectus, other than an amendment which merely delays the

1 effective date of the registration statement, promptly, and in any event,  
2 not later than the first business day after the day they are forwarded to  
3 or filed with the Securities and Exchange Commission, whichever  
4 occurs first.

5 c. The bureau chief shall make reasonable efforts to coordinate  
6 comments or requests with the securities administrators in other  
7 jurisdictions in which registration is sought and particularly with  
8 jurisdictions in which the issuer is located:

9 d. A registration statement under this section becomes effective at  
10 the moment the federal registration statement becomes effective if all  
11 the following conditions are satisfied:

12 (1) No stop order is in effect and no proceeding is pending against  
13 any person directly or indirectly involved in the offering under  
14 subsection (c) of section 3, section 17 or 23 of P.L.1967, c.93  
15 (C.49:3-50, 49:3-64 and 49:3-70 ) or section 29 of this act; and

16 (2) The registration statement has been on file with the bureau  
17 chief for at least **[10]** five days, but if the registration statement is not  
18 filed with the bureau chief within 10 days after the initial filing under  
19 the "Securities Act of 1933," the registration statement has been on  
20 file with the bureau chief for 30 days or any shorter period the bureau  
21 chief, by rule or order, specifies; and

22 (3) There are no comments or requests from the bureau that have  
23 not been answered to the satisfaction of the bureau; and

24 (4) A statement of the maximum and minimum proposed offering  
25 prices and the maximum underwriting discounts and commissions has  
26 been on file for two full business days or a shorter period as the bureau  
27 chief permits by rule or otherwise; and

28 **[(4)]** (5) The offering is made within the limitations set forth in  
29 paragraphs (1), (2) **[and]**, (3) and (4) of this subsection.

30 The registrant shall promptly notify the bureau chief by telephone  
31 or telegram of the date and time when the federal registration  
32 statement became effective, and the content of a price amendment, if  
33 any is made, and shall promptly file a post-effective amendment  
34 containing the information and documents in the price amendment.

35 For the purposes of this section, "price amendment" means the final  
36 federal amendment which includes a statement of the offering price,  
37 underwriting and selling discounts or commissions, amount of  
38 proceeds, conversion rates, call prices, and other matters dependent  
39 upon the offering prices.

40 **[d.] e.** Upon failure to receive the required notification and  
41 post-effective amendment with respect to the price amendment, the  
42 bureau chief may enter a stop order, without notice or hearing,  
43 retroactively denying effectiveness to the registration statement or  
44 suspending its effectiveness until there is compliance with subsection  
45 **[c.] d.** of this section, if he promptly notifies the registrant by  
46 telephone or telegram, and in the case of a telephone notification, by

1 subsequent written notification, of the issuance of the order. If the  
2 registrant proves compliance with the requirements of this subsection  
3 as to notice and post-effective amendment, the stop order shall be void  
4 as of the time of its entry. The bureau chief may by rule or otherwise  
5 waive any of the conditions specified in paragraphs (1), (2), (3) and  
6 (4) of subsection **[c.] d.** of this section.

7 **[e.] f.** If the federal registration statement becomes effective  
8 before all the conditions in subsection **[c.] d.** are satisfied and they are  
9 not waived, the registration statement shall become effective as soon  
10 as all the conditions are satisfied. If the registrant advises the bureau  
11 chief of the date when the federal registration statement is expected to  
12 become effective, the bureau chief shall promptly advise the registrant  
13 by telephone or telegram, at the registrant's expense, whether all the  
14 conditions are satisfied and whether he contemplates the institution of  
15 a proceeding under section 17 of P.L.1967, c.93 (C.49:3-64), but any  
16 advice by the bureau chief pursuant to this subsection shall not  
17 preclude the institution of such a proceeding at any time.

18 (cf: P.L.1985, c.405, s 7)

19

20 17. Section 8 of P.L.1985, c.405 (C.49:3-61.2) is amended to read  
21 as follows:

22 8. The following securities may be registered by notification,  
23 whether or not they are also eligible for registration by coordination  
24 under section 7 of **[this 1985 amendatory and supplementary act]**  
25 P.L.1985, c.405 (C.49:3-61.1) or by qualification under section 14 of  
26 P.L.1967, c.93 (C. 49:3-61):

27 a. Any security whose issuer, and any predecessors, have been in  
28 continuous operation for at least five years, if:

29 (1) There has been no default during the current fiscal year or  
30 within the three preceding fiscal years in the payment of principal,  
31 interest, or dividends on any security of the issuer, or of any  
32 predecessor thereof, with a fixed maturity or a fixed interest or  
33 dividend provision; and

34 (2) The issuer, and any predecessors, during the past three fiscal  
35 years, have had an average net earnings, determined in accordance  
36 with generally accepted accounting practices:

37 **[(a)] (i)** Which are applicable to all securities without a fixed  
38 maturity or a fixed interest or dividend provision, which securities are  
39 outstanding at the date the registration statement is filed, and which  
40 average net earnings equal at least 5% of the amount of those  
41 outstanding securities, as measured by the maximum offering price or  
42 the market price on a day, selected by the registrant, within 30 days  
43 before the date of filing the registration statement, whichever is higher,  
44 or by the book value on a day, selected by the registrant, within 90  
45 days of the date of filing the registration statement, to the extent that  
46 there is neither a readily determinable market price nor a cash offering

1 price; or

2 ~~[(b)]~~ (ii) Which average net earnings, if the issuer, and any  
3 predecessors, have not had any security of the type specified in  
4 subparagraph ~~[(a)]~~ (i) of this paragraph outstanding for three full  
5 fiscal years, equal to at least 5% of the amount, as established in  
6 subparagraph ~~[(a)]~~ (i) of this paragraph, of all securities which will  
7 be outstanding if all of the securities being offered or proposed to be  
8 offered, whether or not they are proposed to be registered or offered  
9 in this State, are issued;

10 b. A registration statement under this section shall contain the  
11 following information and shall be accompanied by the following  
12 documents, in addition to the information specified in section 15 of  
13 P.L.1967, c.93 (C.49:3-62) and the consent to service of process  
14 required by section 26 of P.L.1967, c.93 (C.49:3-73):

15 (1) A statement demonstrating eligibility for registration by  
16 notification;

17 (2) With respect to the issuer and any significant subsidiary: its  
18 name, address, and form of organization, the state or foreign  
19 jurisdiction and the date of its organization, and the general character  
20 and location of its business;

21 (3) With respect to any person on whose behalf any part of the  
22 offering is to be made in a nonissuer distribution: his name and  
23 address, the amount of securities of the issuer held by him as of the  
24 date of the filing of the registration statement, and a statement of his  
25 reasons for making the offering;

26 (4) A description of the security being registered;

27 (5) The information and documents specified in paragraphs (10),  
28 (12), and (14) of subsection (b) of section 14 of P.L.1967, c.93  
29 (C.49:3-61); and

30 (6) In the case of any registration under paragraph (2) of  
31 subsection a. of this section which does not satisfy the conditions of  
32 paragraph (1) ~~[,]~~ of subsection a. of this section, a balance sheet of  
33 the issuer as of a date within four months prior to the filing of the  
34 registration statement, and a summary of earnings for each of the two  
35 fiscal years preceding the date of the balance sheet and for any period  
36 between the close of the last fiscal year and the date of the balance  
37 sheet, or for the period of the issuer's and any predecessors' existence,  
38 if less than two years.

39 c. If no stop order is in effect and no proceeding is pending against  
40 any person directly or indirectly involved in the offering under  
41 subsection (c) of section 3, section 17 or section 23 of P.L.1967, c.93  
42 (C.49:3-50, 49:3-64 or 49:3-70) or section 29 of this act, a  
43 registration statement under this section automatically becomes  
44 effective at three o'clock Eastern Standard Time in the afternoon  
45 of the second full business day after the filing of the registration



1 statement or the last amendment, or at such earlier time as the bureau  
2 chief determines.

3 (cf: P.L.1985, c.405, s.8)

4

5 18. Section 15 of P.L.1967, c.93 (C.49:3-62) is amended to read  
6 as follows:

7 15. (a) A registration statement may be filed by the issuer, any  
8 other person on whose behalf the offering is to be made, or a  
9 registered broker-dealer.

10 (b) Every person filing a registration statement shall pay a filing fee  
11 ~~【of \$1,000.00】 for each registration statement, as set by rule of the~~  
12 ~~bureau chief.~~ This fee shall not be refundable.

13 (c) Every registration statement shall specify (1) the amount of  
14 securities to be offered in this State; (2) the states in which a  
15 registration statement or similar document in connection with the  
16 offering has been or is to be filed; and (3) any adverse order,  
17 judgment, or decree entered in connection with the offering by the  
18 regulatory authorities in any state or by any court or the Securities and  
19 Exchange Commission.

20 (d) Any document filed pursuant to this supplementary act within  
21 three years preceding the filing of a registration statement may be  
22 incorporated by reference in the registration statement to the extent  
23 that the document is currently accurate.

24 (e) The bureau chief may by rule or order permit the omission of  
25 any item of information or document from any registration statement.

26 (f) ~~【The bureau chief may waive the requirements of all or any part~~  
27 ~~of section 14 or 15 (h) of this act in the case of a nonissuer transaction~~  
28 ~~of securities which were initially sold prior to the effective date of this~~  
29 ~~supplementary act, where the information is not known by the person~~  
30 ~~filing the registration statement or by the persons on whose behalf the~~  
31 ~~transaction is to be made, or cannot be furnished by them without~~  
32 ~~unreasonable effort or expense.】 (Deleted by amendment, P.L. \_\_\_\_~~  
33 ~~c.\_\_\_\_.)~~

34 (g) Every registration statement is effective for one year from its  
35 effective date, or any longer period during which the security is being  
36 offered or distributed in a nonexempt transaction by or for the account  
37 of the issuer or other person on whose behalf the offering is being  
38 made or by any underwriter or broker-dealer who is still offering part  
39 of an unsold allotment or subscription taken by him as a participant in  
40 the distribution, except during the time a stop order is in effect under  
41 section 17 of ~~【this act】 P.L.1967, c.93 (C.49:3-64).~~ All outstanding  
42 securities of the same class as a registered security of the issuer are  
43 considered to be registered for the purpose of any nonissuer  
44 transaction (1) so long as the registration statement is effective and (2)  
45 between the thirtieth day after the entry of any stop order suspending  
46 or revoking the effectiveness of the registration statement under

1 section 17 of **[this act]** P.L.1967, c.93 (C.49:3-64) (if the registration  
2 statement did not relate in whole or in part to a nonissuer distribution)  
3 and one year from the effective date of the registration statement. A  
4 registration statement may not be withdrawn for one year from its  
5 effective date if any securities of the same class are outstanding. A  
6 registration statement may be withdrawn otherwise only in the  
7 discretion of the bureau chief.

8 (h) So long as a registration statement is effective, the bureau chief  
9 may by rule or order require the person who filed the registration  
10 statement to file reports, not more often than quarterly, to keep  
11 reasonably current the information contained in the registration  
12 statement and to disclose the progress of the offering.

13 (i) A registration statement relating to a security issued by a  
14 face-amount certificate company or a redeemable security issued by an  
15 open-end management company or unit investment trust, as those  
16 terms are defined in the **[Investment Company Act of 1940,]**  
17 "Investment Company Act of 1940." may be amended after its  
18 effective date so as to increase the securities specified as proposed to  
19 be offered. Such an amendment becomes effective when the bureau  
20 chief so orders. Every person filing such an amendment shall pay a  
21 filing fee, **[calculated in the manner specified in subsection (b)]** as may  
22 be set by rule of the bureau chief, with respect to the additional  
23 securities proposed to be offered.

24 j. Every registration statement shall be accompanied by an  
25 undertaking by the registrant agreeing that, as a condition of  
26 registration, the registrant will allow the bureau chief in the bureau  
27 chief's discretion (subject in all cases to the constitutional or statutory  
28 rights of the registrant, its agents and principals, if any) to (1) make  
29 such investigations within or outside this State as the bureau chief  
30 deems necessary to determine if the registrant, the registrant's agents,  
31 or principals have violated or are about to violate any provision of this  
32 act or any rule or order hereunder, or to aid in the enforcement of this  
33 act or in the prescribing of rules and forms hereunder, or (2) require  
34 or permit the registrant, the registrant's agents, and principals to file  
35 a statement in writing, under oath or otherwise as the bureau chief  
36 determines, as to all the facts and circumstances concerning the matter  
37 to be investigated.

38 k. The bureau chief may by rule or order restrict or condition a  
39 securities registration of any kind, or restrict the sale of such securities  
40 to accredited investors.

41 (cf: P.L.1985, c.405, s.9)

42

43 19. Section 16 of P.L.1967, c.3 (C.49:3-63) is amended to read as  
44 follows:

45 16. The bureau chief may by rule or order require the filing of any  
46 prospectus, pamphlet, circular, form letter, advertisement, or other

1 sales literature or advertising communication addressed or intended for  
2 distribution to prospective investors, including clients or prospective  
3 clients of an investment ~~adviser~~ adviser, unless the security is not  
4 required to be registered by subsection (a) or (f) of section 13 of [this  
5 act;

6 There shall be a filing fee of \$0.25 for each page of sales literature  
7 filed with the bureau under any regulations adopted pursuant to this  
8 section, but such fee shall not exceed \$25.00 for any prospectus,  
9 pamphlet, circular, or other sales literature ~~] P.L.1967, c.93 (C.49:3-~~  
10 ~~60) .~~

11 (cf: P.L.1967, c.93, s.16)

12

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

15 17. (a) The bureau chief may issue a stop order denying  
16 effectiveness to, or suspending or revoking the effectiveness of, any  
17 registration statement if he finds;

18 (1) that the order is in the public interest ; and

19 (2) that ;

20 (i) The registration statement, as of its effective date or as of any  
21 earlier date in the case of an order denying effectiveness, or any  
22 amendment under subsection (i) of section 15[(i)] of [this act]  
23 P.L.1967, c.93 (C.49:3-62) as of its effective date, or any report under  
24 subsection (h) of section 15[(h)] of [this act] P.L.1967, c.93 (C.49:3-  
25 62), is incomplete in any material respect or contains any statement  
26 which was, in the light of the circumstances under which it was made,  
27 false or misleading with respect to any material fact; or

28 (ii) Any provision of ~~[the "Uniform Securities Law (1967)"]~~ "as  
29 amended or supplemented] this act or any rule, order, or condition  
30 lawfully imposed thereunder has been willfully violated, in connection  
31 with the offering by (A) the person filing the registration statement,  
32 (B) the issuer, any partner, officer, or director of the issuer, any  
33 person occupying a similar status or performing similar functions, or  
34 any person directly or indirectly controlling or controlled by the issuer,  
35 or (C) any underwriter; or

36 (iii) The security registered or sought to be registered is the subject  
37 of an administrative stop order or similar order or a permanent or  
38 temporary injunction of any court of competent jurisdiction entered  
39 under any other federal, foreign or State act applicable to the offering;  
40 but ~~[(A)]~~ the bureau chief may not institute a proceeding against an  
41 effective registration statement under this subsection more than ~~[one~~  
42 ~~year]~~ two years from the date of the order or injunction relied on [,  
43 and (B) he may not enter an order under this subsection on the basis  
44 of an order or injunction entered under any other State act unless that  
45 order or injunction was based on facts which would currently

1 constitute a ground for a stop order under this section]; or  
2 (iv) The issuer's enterprise or method of business includes or would  
3 necessarily include activities which are illegal where performed; or  
4 (v) (Deleted by amendment; P.L.1985, c.405);  
5 (vi) (Deleted by amendment; P.L.1985, c.405);  
6 (vii) The applicant or registrant has failed to pay the proper filing  
7 fee [but he shall vacate any such order when the deficiency has been  
8 corrected] as set by rule of the bureau chief;  
9 (viii) The issuer, any partner, officer or director of the issuer, any  
10 person occupying a similar status or performing similar functions, or  
11 any person directly or indirectly controlling or controlled by the issuer,  
12 or any broker-dealer or other person involved directly or indirectly in  
13 the offering (A) has been convicted of any crime of embezzlement  
14 under state, federal or foreign law or any crime involving any theft,  
15 forgery or fraudulent practices in regard to any state, federal or  
16 foreign securities, investment advisory, banking, insurance, or  
17 commodities trading laws or anti-fraud laws; (B) is permanently or  
18 temporarily enjoined by any court of competent jurisdiction from  
19 engaging in or continuing any conduct or practice involving any aspect  
20 of the securities, commodities, banking, insurance or investment  
21 advisory business; (C) is the subject of an effective order of the bureau  
22 chief denying, suspending, or revoking securities registration,  
23 registration as a broker-dealer, agent, [or] investment [advisor]  
24 adviser or investment adviser representative; (D) is the subject of an  
25 order entered [within the past five years] by [the] any federal or state  
26 securities, commodities, banking, insurance or investment advisory  
27 administrator [of any other state or by the Securities and Exchange  
28 Commission] or self-regulatory organization denying or revoking any  
29 securities, commodities, banking, insurance or investment advisory  
30 license or registration under federal or state securities, commodities,  
31 banking, insurance or investment advisory law, including, but not  
32 limited to, registration as a broker-dealer, agent, [or] investment  
33 [advisor]adviser, investment adviser representative , or the substantial  
34 equivalent of those terms as defined in [the "Uniform Securities Law  
35 (1967)," P.L.1967, c.93 (C.49:3-48 et seq.)] this act, or is the subject  
36 of an order of the Securities and Exchange Commission, a self-  
37 regulatory organization, the Commodity Futures Trading Commission,  
38 an insurance commissioner, or a federal or state banking regulator,  
39 suspending or expelling him from a national securities or commodities  
40 exchange or national securities or commodities association registered  
41 under the "Securities Exchange Act of 1934" [(15 U.S.C. s. 78a et  
42 seq.)] or the "Commodity Exchange Act," or from engaging in the  
43 banking or insurance business, or is the subject of a United States  
44 Postal Service fraud order, except the bureau chief may not institute  
45 a revocation or suspension proceeding pursuant to this

1   subsubparagraph (D) of this subparagraph more than ~~one year~~ two  
2 years from the date of the order relied on and he may not enter an  
3 order pursuant to this subsubparagraph (D) of this subparagraph on  
4 the basis of an order under another state act unless that order was  
5 based on facts which would currently constitute a ground for an order  
6 under ~~the "Uniform Securities Law (1967)," P.L.1967, c.93~~  
7 ~~(C.49:3-48 et seq.)~~ New Jersey law; (E) has engaged in dishonest or  
8 unethical practices in the securities business; or (F) is insolvent, either  
9 in the sense that liabilities exceed assets or in the sense that obligations  
10 cannot be met as they mature; or

11       (ix) The offering is a blind pool.

12       (b) ~~the bureau chief may not institute an administrative stop~~  
13 ~~order proceeding against any effective registration statement on the~~  
14 ~~basis of a fact or transaction known to him when the registration~~  
15 ~~statement became effective, unless the proceeding is instituted within~~  
16 ~~the next 30 days.~~ ~~(Deleted by amendment, P.L. . . . c. . . .)~~ ~~(pending~~  
17 ~~before the Legislature as this bill)~~

18       (c) The bureau chief may by order summarily postpone or suspend  
19 the effectiveness of the registration statement pending final  
20 determination of any proceeding instituted pursuant to this section.  
21 Upon entry of such an order, the bureau chief shall promptly notify  
22 each person specified in subsection (d) of this section that it has been  
23 entered and of the reasons therefor ~~and that within 15 days after the~~  
24 ~~receipt of a written request the matter will be set down for hearing.~~  
25 ~~If no hearing is requested, the order will remain in effect until it is~~  
26 ~~modified or vacated by the bureau chief upon notice to the parties~~  
27 ~~specified in subsection (d)].~~

28       (1) Upon service of notice of the order issued by the bureau chief,  
29 the applicant shall have up to 15 days to respond to the bureau in the  
30 form of a written answer and written request for a hearing. The  
31 bureau chief shall, within five days of receiving the answer and a  
32 request for a hearing, either transmit the matter to the Office of  
33 Administrative Law for a hearing or schedule a hearing at the Bureau  
34 of Securities. Orders issued pursuant to this subsection to postpone  
35 or suspend the effectiveness of any registration statement shall be  
36 subject to an application to vacate upon 10 days' notice, and in any  
37 event a preliminary hearing on the order to postpone or suspend the  
38 effectiveness of any registration statement shall be held within 20 days  
39 after it is requested, and the filing of a motion to vacate the order shall  
40 toll the time for filing an answer and written request for a hearing.

41       (2) If an applicant fails to respond by either filing a written answer  
42 and written request for a hearing with the bureau or moving to vacate  
43 an order to postpone or suspend the effectiveness of any registration  
44 statement within the 15 day period prescribed, the registrant shall have  
45 waived the opportunity to be heard and the order shall remain in effect  
46 until modified or vacated.

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

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

8 (f) Notwithstanding any other provision of this act to the contrary,  
9 the bureau chief may bring an administrative or court action pursuant  
10 to section 29 of this act to seek and obtain civil penalties for violations  
11 of this section.

12 (cf: P.L.1987, c.301, s.3)

13

14 21. Section 18 of P.L.1967, c.93 (C.49:3-65) is amended to read  
15 as follows:

16 18. (a) A document is filed when it is received in completed form  
17 by the bureau;

18 (b) The bureau shall keep a register of all applications for  
19 registration and registration statements which are or have ever been  
20 effective under this act and all denial, suspension, revocation or other  
21 orders which have been entered under this act. The register shall be  
22 open for public inspection;

23 (c) The information contained in or filed with any registration  
24 statement, application or report may be made available to the public  
25 under such rules as the bureau chief prescribes;

26 (d) Upon request, the bureau chief shall furnish to any person  
27 photographic or other copies, certified under his seal of office if  
28 requested, of any entry in the register or any document in the custody  
29 of the bureau chief which is a public record. The bureau chief may  
30 establish such reasonable conditions and charges for the obtaining of  
31 such copies as will in his judgment be practicable.

32 (e) The provisions of this section are subject to the provisions of  
33 P.L.1963, c.73 (C.47:1A-1 et seq.).

34 (cf: P.L.1967, c.93, s.18)

35

36 22. Section 19 of P.L.1967, c.93 (C.49:3-66) is amended to read  
37 as follows:

38 19. (a) This **[law] act** shall be administered by the Bureau of  
39 Securities **[which is hereby created]** in the Division of **[Law of]**  
40 **Consumer Affairs** of the Department of Law and Public Safety. The  
41 principal executive officer of the bureau shall be a chief who is  
42 appointed by and serves at the pleasure of the Attorney General. The  
43 chief of the bureau shall have power to employ such officers and  
44 employees as may be necessary to carry out the purposes of this **[law]**  
45 **act** and to define their duties;

46 (b) It shall be unlawful for any of the officers or employees of the

1 bureau to use for personal benefit any information which is filed with  
2 or obtained by the bureau and which is not made public. No provision  
3 of this **[law] act** authorizes any officers or employees of the bureau to  
4 disclose any such information except among themselves or when  
5 necessary or appropriate in a proceeding or investigation under this  
6 **[law] act**. No provision of this **[law] act** either creates or derogates  
7 from any privilege which exists at common law or otherwise when  
8 documentary or other evidence is sought under subpoena directed to  
9 any of the officers or employees of the bureau.

10 (cf: P.L.1967, c.93, s.19)

11

12 23. Section 15 of P.L.1985, c.405 (C.49:3-66.1) is amended to  
13 read as follows:

14 15. The "Securities Enforcement Fund" **[is established]** in the  
15 Division of Consumer Affairs of the Department of Law and Public  
16 Safety shall continue as a nonlapsing, revolving fund. All fees  
17 **[collected pursuant to sections 10, 15 and 16 of P.L.1967, c.93**  
18 **(C.49:3-57), (C.49:3-62) and (C.49:3-63), and all] , penalties, costs,**  
19 **fin** es and other monies collected pursuant to **[section 23 of P.L.1967,**  
20 **c.93 (C.49:3-70)] this act**, shall be deposited in the fund. Moneys in  
21 the fund shall be used by the Director of the Division of Consumer  
22 Affairs to administer the provisions of **[the "Uniform Securities Law,"**  
23 **P.L.1967, c.93 (C.49:3-47 et seq.)]this act** and to investigate  
24 violations and to enforce the prohibitions of **[that law]this act** to  
25 protect the public. There shall be made available from the General  
26 Fund such additional amounts as may be required to carry out the  
27 provisions of **[P.L.1967, c.93 (C.49:3-47 et seq.)]this act**.

28 All fees set by rule of the bureau chief pursuant to this act may be  
29 imposed for revenue if the fees, taken together, are reasonably related  
30 to the overall costs of carrying out the regulatory and administrative  
31 duties of the bureau as set forth in this act.

32 The fees set pursuant to the "Uniform Securities Law (1967),"  
33 P.L.1967, c.93, (C.49:3-47 et seq.) and supplements thereto which are  
34 in effect on the effective date of this act, but which are to be set by  
35 regulation pursuant to this act, shall remain in effect until the  
36 regulations promulgated pursuant to this act take effect.

37 An annual accounting of deposits to and withdrawals from the fund  
38 shall be made by the Director of the Division of Consumer Affairs and  
39 filed with the Attorney General and bureau chief and any State agency,  
40 as required by law.

41 (cf: P.L.1985, c.405, s.15)

42

43 24. Section 20 of P.L.1967, c.93 (C.49:3-67) is amended to read  
44 as follows:

45 20. (a) The bureau chief may from time to time make, amend and

1 rescind such rules, forms and orders as are reasonably necessary to  
2 carry out the provisions of this **[law] act**, including rules and forms  
3 governing applications and reports, and defining any terms, whether  
4 or not used in this **[law] act**, insofar as the definitions are not  
5 inconsistent with the provisions of this **[law] act**. For the purpose of  
6 rules and forms, the bureau chief may classify securities, persons and  
7 matters within his jurisdiction, and prescribe different requirements for  
8 different classes;

9 (b) No rule, form or order may be made, amended or rescinded  
10 unless the bureau chief finds that the action is necessary and  
11 appropriate (1) in the public interest, or (2) for the protection of  
12 investors, or (3) consistent with the purposes fairly intended by the  
13 policy and provisions of this act. In prescribing rules and forms the  
14 bureau chief may co-operate with the securities administrators of the  
15 other **[States] states** and the Securities and Exchange Commission  
16 with a view to effectuating the policy of this statute to achieve  
17 maximum uniformity in the form and content of applications and  
18 reports wherever practicable;

19 (c) The bureau chief may by rule prescribe (1) the form and content  
20 of financial statements required under this act; and (2) the  
21 circumstances under which consolidated financial statements shall be  
22 filed. All financial statements shall be prepared in accordance with  
23 generally accepted accounting practices. The form and content of  
24 financial statements shall conform, insofar as practicable, to those  
25 prescribed by the Securities and Exchange Commission.

26 (d) All rules and forms promulgated by the bureau chief shall be  
27 filed **[with the Secretary of State a reasonable time before their**  
28 **effective date]** as required pursuant to the "Administrative Procedure  
29 Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Copies of the rules and  
30 samples of the forms shall be published in convenient form by the  
31 bureau for distribution to interested persons, subject to available  
32 appropriations.

33 (cf: P.L.1967, c.93, s.20)

34

35 25. Section 21 of P.L.1967, c.93 (C.49:3-68) is amended to read  
36 as follows"

37 21. (a) The bureau chief in his discretion (1) may make such  
38 private investigations within or outside of this State as he deems  
39 necessary to determine whether any person has violated or is about to  
40 violate any provision of this **[law] act** or any rule or order hereunder,  
41 or to aid in the enforcement of this **[law] act** or in the prescribing of  
42 rules and forms hereunder, (2) may require or permit any person to file  
43 a statement in writing, under oath or otherwise as the bureau chief  
44 determines, as to all the facts and circumstances concerning the matter  
45 to be investigated, and (3) may publish information concerning any



1 violation of this act or any rule or order hereunder[, provided that  
2 there shall be no publication until such rule or order becomes  
3 effective] ;

4 (b) For the purpose of any investigation or proceeding under this  
5 **[law] act**, the bureau chief or any officer designated by him may  
6 administer oaths and affirmations, subpoena witnesses, compel their  
7 attendance, take evidence and require the production of any books,  
8 papers, correspondence, memoranda, agreements or other documents  
9 or records which the bureau chief deems relevant or material to the  
10 inquiry. At his discretion, the bureau chief may make available private  
11 investigative materials to representatives of domestic or foreign  
12 governmental authorities, self-regulatory organizations, state or  
13 federal law enforcement officers, state securities administrators, and  
14 trustees in bankruptcy. The bureau may also disclose that information:  
15 (i) in court proceedings; (ii) if ordered to do so by a court of  
16 competent jurisdiction; or (iii) if appropriate, in furtherance of any  
17 ongoing investigation or proceeding. The bureau chief may also  
18 request and use private investigative materials provided to it by other  
19 federal and State authorities, including authorities of other states and  
20 foreign countries ;

21 (c) In case of contumacy by, or refusal to obey a subpoena or order  
22 issued to, any person, the Superior Court, upon application by the  
23 bureau chief, may issue to the person an order requiring him to appear  
24 before the bureau chief, or the officer designated by him, there to  
25 produce documentary evidence if so ordered or to give evidence  
26 touching the matter under investigation or in question. The court may  
27 grant injunctive relief restraining the issuance, sale or offer for sale,  
28 purchase or offer to purchase, promotion, negotiation, advertisement  
29 or distribution from or within this State of any securities or investment  
30 advisory advice concerning securities by a person, or agent, employee,  
31 broker, partner, officer, director, investment adviser, investment  
32 adviser representative or issuer or stockholder thereof, until such  
33 person has fully complied with such subpoena or order and the bureau  
34 has completed its investigation. The court may proceed in the action  
35 in a summary manner or otherwise;

36 (d) No person is excused from attending and testifying or from  
37 producing any document or record before the bureau or in obedience  
38 to the subpoena or order of the bureau chief or any officer designated  
39 by him, or in any proceeding instituted by the bureau, on the ground  
40 that the testimony or evidence (documentary or otherwise) required of  
41 him may tend to incriminate him or subject him to a penalty or  
42 forfeiture; but **[no individual may be prosecuted or subjected]** the  
43 testimony or evidence (documentary or otherwise) compelled from an  
44 individual who has claimed his privilege against self-incrimination, or  
45 the fruits thereof, may not be used to prosecute that individual or to  
46 subject that individual to any penalty or forfeiture **[for or on account**

1 of any transaction, matter or thing concerning which he is compelled,  
2 after claiming his privilege against self-incrimination, to testify or  
3 produce evidence (documentary or otherwise)], except that the  
4 individual testifying is not exempt from prosecution and punishment  
5 for perjury, false swearing or contempt committed in testifying.

6 (e) When it shall appear to the bureau chief that the testimony of  
7 any person is essential to an investigation instituted by him as provided  
8 by this chapter, and that the failure of such person to appear and  
9 testify may defeat the proper and effective conduct thereof, the bureau  
10 chief, in addition to the other remedies provided for herein, may, by  
11 petition verified generally, setting forth the facts, apply to the Superior  
12 Court for a writ of ne exeat against such person. The court shall  
13 thereupon direct the issuance of the writ against such person requiring  
14 him to give sufficient bail conditioned to insure his appearance before  
15 the bureau chief for examination under oath in such investigation and  
16 that he will continue his appearance therein from time to time until the  
17 completion of the investigation and will appear before the court if the  
18 bureau chief shall institute any proceeding therein as a result of his  
19 investigation.

20 The court shall cause to be indorsed on the writ of ne exeat, in  
21 words at length, a suitable amount of bail upon which the person  
22 named in the writ shall be freed, having a due regard to the nature of  
23 the case and the value of the securities involved. All applications to  
24 be freed on bail shall be on notice to the bureau chief and the  
25 sufficiency of the bail given on the writ shall be approved by the court.  
26 All recognizances shall be to the State and all forfeitures thereof shall  
27 be declared by the court. The proceeds of the forfeitures shall be paid  
28 into the State treasury.

29 (cf: P.L.1967, c.93, s.21)

30

31 26. (New section) (a) In case of contumacy by, or refusal to obey  
32 a subpoena or order issued to, any person, the bureau chief may, in his  
33 discretion, summarily order restraints on the issuance, sale, offer for  
34 sale, purchase or offer to purchase, promotion, negotiation,  
35 advertisement, or distribution from or within the State of any securities  
36 or investment advisory advice concerning securities, by the person, or  
37 agent, employee, broker, partner, officer, director, investment adviser  
38 representative, or stockholder thereof, until that person has fully  
39 complied with that subpoena or order and the bureau has completed  
40 its investigation.

41 (b) The bureau chief may proceed in an action in a summary  
42 manner or otherwise, by issuing a cease and desist order, by denying,  
43 revoking or suspending any registration or exemption under this act,  
44 by assessing civil monetary penalties, or by any combination of these  
45 actions he deems appropriate. Upon entry of such an order, the  
46 bureau chief shall promptly notify each person subject thereto that it

1 has been entered and of the reasons therefor. In the case of an agent,  
2 notice shall also be given to the broker-dealer with which the agent is  
3 affiliated as shown on the Central Registration Depository, and in the  
4 case of an investment adviser representative, notice shall also be given  
5 to the investment adviser with which the investment adviser  
6 representative is affiliated as shown on Form ADV, 17 C.F.R. §279.1,  
7 or successor federal registration form;

8 (1) The bureau chief shall entertain on no less than three days  
9 notice an application to lift the summary order on written application  
10 of the person subject thereto and in connection therewith may, but  
11 need not, hold a hearing and hear testimony, but shall provide to the  
12 person subject thereto a written statement of the reasons for the  
13 summary order;

14 (2) Upon service of notice of the order issued by the bureau chief,  
15 each person subject thereto shall have up to 15 days to respond to the  
16 bureau in the form of a written answer and written request for a  
17 hearing. The bureau chief shall, within five days of receiving the  
18 answer and request for a hearing, either transmit the matter to the  
19 Office of Administrative Law for a hearing, or schedule a hearing at  
20 the Bureau of Securities. Orders issued pursuant to this section shall  
21 be subject to an application to vacate upon 10 days' notice, and in any  
22 event a preliminary hearing on the order shall be held within 20 days  
23 after it is requested, and the filing of a motion to vacate the order shall  
24 toll the time for filing an answer and written request for a hearing.

25 (3) If a person subject to the order fails to respond by either filing  
26 a written answer and written request for a hearing with the bureau or  
27 moving to vacate the order within the 15 day prescribed period, that  
28 person shall have waived the opportunity to be heard and the order  
29 shall remain in effect as to that person until modified or vacated by the  
30 bureau chief.

31

32 27. Section 22 of P.L.1967, c.93 (C.49:3-69) is amended to read  
33 as follows:

34 22. (a) ~~When~~ If it ~~shall appear~~ appears to the bureau chief  
35 that ~~a~~ any person has, or directly or indirectly controls another  
36 person who has engaged in, is engaging in, or is about to engage in  
37 any act or practice ~~declared to be illegal and prohibited by~~  
38 constituting a violation of any provision of this law ~~act or any rule~~  
39 ~~of~~ or order hereunder, or ~~when~~ if it ~~shall appear~~ appears that  
40 it will be against the public interest for any person to issue, sell, offer  
41 for sale, purchase, offer to purchase, promote, negotiate, advertise or  
42 distribute any securities from or within this State, ~~the Attorney~~  
43 General on his behalf may bring an action in the Superior Court and  
44 apply therein for injunctive relief, or the appointment of a receiver, or  
45 both. The Attorney General shall notify the potential defendant two  
46 business days before filing the action and the court shall hear the

1 action within three business days of its filing.] the bureau chief may  
2 take, in addition to any other enforcement actions available under this  
3 act and in the bureau chief's discretion, either or both of the following  
4 actions:

5 (1) issue a cease and desist order against the persons engaged in  
6 the prohibited activities directing them to cease and desist from further  
7 illegal activity or doing any acts in furtherance thereof. Upon entry of  
8 such an order, the bureau chief shall promptly notify each person  
9 subject thereto that it has been entered and of the reasons therefor. In  
10 the case of an agent, notice shall also be given to the broker-dealer  
11 with which the agent is affiliated as shown on the Central Registration  
12 Depository, and in the case of an investment adviser representative,  
13 notice shall also be given to the investment adviser with which the  
14 investment adviser representative is affiliated as shown on Form ADV,  
15 17 C.F.R. §279.1, or successor federal registration form;

16 (i) The bureau chief shall entertain on no less than three days notice  
17 an application to lift the summary order on written application of the  
18 person subject thereto and in connection therewith may, but need not,  
19 hold a hearing and hear testimony, but shall provide to the person  
20 subject thereto a written statement of the reasons for the summary  
21 order ' [.] :'

22 (ii) Upon service of notice of the order issued by the bureau chief,  
23 each person subject thereto shall have up to 15 days to respond to the  
24 bureau in the form of a written answer and written request for a  
25 hearing. The bureau chief shall, within five days of receiving the  
26 answer and request for a hearing, either transmit the matter to the  
27 Office of Administrative Law for a hearing or schedule a hearing at the  
28 Bureau of Securities. Orders issued pursuant to this section shall be  
29 subject to an application to vacate upon 10 days' notice, and in any  
30 event a preliminary hearing on the order shall be held within 20 days  
31 after it is requested, and the filing of a motion to vacate the order shall  
32 toll the time for filing an answer and written request for a hearing:

33 (iii) If any person subject to the order fails to respond by either  
34 filing a written answer and written request for a hearing with the  
35 bureau or moving to vacate the order within the 15 day prescribed  
36 period, that person shall have waived the opportunity to be heard and  
37 the order shall remain in effect as to that person until modified or  
38 vacated by the bureau chief; or

39 (2) Have an action brought by the Attorney General in the Superior  
40 Court on the bureau chief's behalf to enjoin the acts or practices to  
41 enforce compliance with this act or any rule or order hereunder. Upon  
42 a proper showing, a permanent or temporary injunction, restraining  
43 order, or writ of mandamus shall be granted and a receiver or  
44 conservator may be appointed for the defendant or the defendant's  
45 assets. In addition, upon a proper showing by the bureau chief, the  
46 court may enter an order of rescission, restitution or disgorgement or

1 any other order within the court's power, directed to any person who  
2 has engaged in any act constituting a violation of any provision of this  
3 act or any rule or order hereunder. The court may not require the  
4 bureau chief to post a bond. The court may proceed in the action in  
5 a summary manner or otherwise;

6 (b) If it **[shall appear]** appears to the court in the action that such  
7 person has engaged in, is engaging in, or is about to engage in any act  
8 or practice [declared to be illegal and prohibited by] constituting a  
9 violation of any provision of this [law]act or any rule or order  
10 hereunder, it may enjoin such person, and any agent, employee,  
11 broker, partner, officer, director or stockholder thereof, from  
12 continuing such practices or engaging therein or doing any acts in  
13 furtherance thereof. The court may also enjoin the issuance, sale, offer  
14 for sale, purchase, offer to purchase, promotion, negotiation,  
15 advertisement or distribution from or within this State of any securities  
16 by such persons, and any agent, employee, broker, partner, officer,  
17 director or stockholder thereof, until the court shall otherwise order;

18 (c) **[When]** If the court **[shall grant]** grants injunctive relief as  
19 provided for in **[paragraph]** subsection (b) of this section, it may  
20 appoint a receiver with power to sue for, collect, receive and take into  
21 his possession all the goods and chattels, rights and credits, moneys  
22 and effects, lands and tenements, books, records, documents, papers,  
23 choses in action, bills, notes and property of every description, derived  
24 by means of any practice **[declared to be illegal and prohibited by]**  
25 constituting a violation of this [law] act or any rule or order  
26 hereunder, including property with which such property has been  
27 mingled, if it cannot be identified in kind because of such commingling,  
28 and to sell, convey and assign the same and hold and dispose of the  
29 proceeds thereof under the direction of the court for the equal benefit  
30 of all who establish an interest therein by reason of the use and  
31 employment by the defendant of any practices **[herein declared to be**  
32 **illegal and prohibited]** constituting a violation of this act or any rule  
33 or order hereunder. The receiver may retain an attorney with the  
34 consent of the Attorney General and the court. The court shall have  
35 jurisdiction of all questions arising in such proceedings and may make  
36 such orders and judgments therein as justice shall require;

37 (d) **[When]** If injunctive relief is granted as provided for in  
38 **[paragraph]** subsection (b) of this section against a corporation,  
39 partnership, company, association or trust, the court may appoint a  
40 receiver and may restrain the corporation, its officers, directors,  
41 stockholders, and agents, the partnership, company or association, its  
42 officers, members and agents, and the trust, its grantors, trustees,  
43 officers, cestuis que trustent and agents, from exercising any of its  
44 privileges or franchises, and in the case of a trust from executing the  
45 trust, and in all cases from collecting or receiving any debts, or paying

1 out, selling, assigning or transferring any of its estate, moneys, funds,  
2 lands, tenements or effects except to the receiver appointed by the  
3 court until the court shall otherwise order.

4 Upon the appointment of the receiver, all the real and personal  
5 property of the corporation, partnership, company, association or  
6 trust, and its franchises, rights, privileges and effects shall forthwith  
7 vest in him and the corporation, partnership, company, association or  
8 trust shall be divested of the title thereto.

9 The receiver shall settle the estate and distribute the assets, and  
10 have all the powers and duties conferred upon receivers by the  
11 provisions of Title **[14]** 14A of the New Jersey Statutes ,  
12 Corporations, General, so far as the provisions thereof are applicable.  
13 (cf: P.1985, c.405, s.12)

14

15 28. Section 23 of P.L.1967, c.93 (C.49:3-70) is amended to read  
16 as follows:

17 23. (a) Any person who **[willfully]** knowingly violates any  
18 provision of this act, except section 7 or 13 of P.L.1967, c.93 (C.49:3-  
19 54 or C.49:3-60), or who **[willfully]** knowingly violates any rule or  
20 order under this **[law]**act, or who willfully violates section 7 of  
21 P.L.1967, c.93 (C.49:3-54), knowing the statement made to be false  
22 or misleading in any material respect, shall be guilty of a second or  
23 third degree crime **[of the third degree; but no person may be**  
24 **imprisoned for the violation of any rule or order if he proves that he**  
25 **had no knowledge of the rule or order. No indictment or information**  
26 **may be returned under this law more than five years after the alleged**  
27 **violation.**

28 (b) Any person who violates any of the provisions of this law or  
29 who violates any rule or order under this law shall be liable for the first  
30 violation to a penalty of not more than \$10,000.00; for a second  
31 violation to a penalty of not more than \$20,000.00; and for subsequent  
32 violation to a penalty of \$20,000.00. The penalty shall be sued for and  
33 recovered by and in the name of the bureau chief and shall be collected  
34 and enforced by summary proceeding pursuant to "the penalty  
35 enforcement law" (N.J.S.2A:58-1 et seq.). Process shall issue at the  
36 suit of the bureau chief, as plaintiff, and shall be either in the nature of  
37 a summons or warrant. **], depending upon the amount of the loss as**  
38 **provided in subsection d. of this section.**

39 (b) Any person who recklessly violates subsection (a), (b) or (c) of  
40 section 5 or paragraph (1) or (2) of subsection (a) or subsection (f) of  
41 section 6 of P.L.1967, c.93 (C.49:3-52 or 49:3-53) or section 6 of this  
42 act, shall be guilty of a crime of the fourth degree.

43 (c) For purposes of this section, "knowingly" and "recklessly" shall  
44 have the respective meanings ascribed to them in subsection (b) of  
45 N.J.S.2C:2-2.

46 (d) If the total value of all money or anything else of value paid by

1 or lost by victims of the violations of this act, resulting from the same  
2 device, scheme or artifice, from the same untrue statement of a  
3 material fact or failure to state a material fact, from the same act,  
4 practice or course of business, or from any other fraud involving any  
5 security is:

6 (1) less than \$75,000, or if no monetary value can be placed upon  
7 the loss or if no person pays or loses anything of monetary value, the  
8 offender is guilty of a crime of the third degree;

9 (2) \$75,000 or more, the offender is guilty of a crime of the second  
10 degree;

11 (e) No person may be imprisoned for the violation of any rule or  
12 order if he proves that he had no knowledge of the rule or order.

13 (f) An indictment or information returned under this act shall be  
14 subject to the limitations of N.J.S.2C:1-6. A violation is committed  
15 when every element occurs or at the time when the course of conduct  
16 or the actor's complicity therein is terminated

17 (g) Nothing in this act shall limit the power of this State to  
18 prosecute a person for conduct constituting a crime under any other  
19 law.

20 (cf: P.L.1985, c.405, s.13)

21  
22 29. (New section) Any person who violates any of the provisions  
23 of this act or who violates any rule or order under this act, shall be  
24 liable for the first violation to a penalty of not more than \$10,000; for  
25 a second violation to a penalty of not more than \$20,000; and for each  
26 subsequent violation to a penalty of not more than \$20,000 per  
27 violation. One or more violations may occur at the same time or be  
28 part of the same conduct or pattern of conduct. The penalty shall be  
29 entered, with the requisite notice, sued for and recovered by and in the  
30 name of the bureau chief and shall be collected and enforced by  
31 summary proceeding pursuant to "the penalty enforcement law,"  
32 N.J.S.2A:58-1 et seq., or administratively.

33  
34 30. Section 24 of P.L.1967, c.93 (C.49:3-71) is amended to read  
35 as follows:

36 24. (a) Any person who

37 (1) Offers **【or】**, sells or purchases a security in violation of  
38 subsection (b) of section 8 **【(b)】**, subsection (a) of section 9 **【(a)】** or  
39 section 13 of **【this act】** P.L.1967, c.93 (C.49:3-55, 49:3-56, or 49:3-  
40 60), or

41 (2) Offers **【or】** . sells or purchases a security **【in violation of**  
42 subsection (a) or (c) of section 5 of P.L.1967, c.93 (C.49:3-52) or **】** by  
43 means of any untrue statement of material fact or any omission to state  
44 a material fact necessary in order to make the statements made, in the  
45 light of the circumstances under which they are made, not misleading  
46 (the buyer not knowing of the untruth or omission), or

1 (3) offers, sells or purchases a security by employing any device,  
2 scheme, or artifice to defraud, or

3 (4) offers, sells or purchases a security by engaging in any act,  
4 practice or course of business which operates or would operate as a  
5 fraud or deceit upon any person, or

6 (5) engages in the business of advising others, for compensation,  
7 either directly or through publications or writings, as to the value of  
8 securities, or as to the advisability of investing in, purchasing or selling  
9 securities, or who, for compensation and as a part of a regular  
10 business, issues or promulgates analyses or reports concerning  
11 securities (i) in willful violation of this act or of any rule or order  
12 promulgated pursuant to this act, or (ii) employs any device, scheme  
13 or artifice to defraud the other person or engages in any act, practice  
14 or course of business or conduct which operates or would operate as  
15 a fraud or deceit on the other person, is liable as set forth in subsection  
16 (c) of this section:

17 (b) (1) If any claim is brought for violation of paragraph (2), (3),  
18 (4) or (5) of subsection (a) of this section, the person who bought the  
19 security or received the investment advice shall sustain the burden of  
20 proof that the seller or giver of investment advice knew of the untruth  
21 or omission and intended to deceive the buyer or recipient of  
22 investment advice and that the buyer or recipient of investment advice  
23 has suffered a financial detriment:

24 (2) If any claim is brought for violation of paragraph (2), (3), (4) or  
25 (5) of subsection (a) of this section involving a purchase of securities  
26 by others or investment advice as to the selling of securities, the  
27 person who sold the security or who received the investment advice to  
28 sell the security shall sustain the burden of proof that that person  
29 suffered a net loss with respect to that sale or investment advice taking  
30 into account all transactions by that person in the same security or any  
31 security convertible into that security within one year before or after  
32 the sale or advice which is the basis of the claim:

33 (c) Any person who offered, sold or purchased a security or  
34 engaged in the business of giving investment advice to a person in  
35 violation of paragraph (1), (2), (3), (4) or (5) of subsection (a) of this  
36 section is liable to [the]that person [buying the security from him],  
37 who may [sue] bring an action either at law or in equity to recover the  
38 consideration paid for the security or the investment advice and any  
39 loss due to the advice, together with interest set at [12% per year] the  
40 rate established for interest on judgments for the same period by the  
41 Rules Governing the Courts of the State of New Jersey from the date  
42 of payment of the consideration for the investment advice or security,  
43 and costs, less the amount of any income received on the security,  
44 upon the tender of the security and any income received [on it] from  
45 the investment advice or on the security, or for damages if he no  
46 longer owns the security [; provided, however, that the person buying



1 the security must sustain the burden of proof that the seller knew of  
2 the untruth or omission and intended to deceive the buyer, and  
3 provided further that the buyer has suffered a financial detriment].  
4 Damages are the amount that would be recoverable upon a tender less  
5 the value of the security when the buyer disposed of it and interest at  
6 **[12% per year]** the rate established for interest on judgments for the  
7 same period by the Rules Governing the Courts of the State of New  
8 Jersey from the date of disposition;

9 (d) Every person who directly or indirectly controls a seller liable  
10 under **[paragraph]** subsection (a) of this section, every partner,  
11 officer, or director of such a seller, or investment adviser, every person  
12 occupying a similar status or performing similar functions, every  
13 employee of such a seller or investment adviser who materially aids in  
14 the sale or in the conduct giving rise to the liability, and every  
15 broker-dealer, investment adviser, investment <sup>1</sup> **[adivser]** adviser<sup>1</sup>  
16 representative or agent who materially aids in the sale or conduct are  
17 also liable jointly and severally with and to the same extent as the  
18 seller or investment adviser, unless the nonseller who is so liable  
19 sustains the burden of proof that he did not know, and in the exercise  
20 of reasonable care could not have known, of the existence of the facts  
21 **[by reason of which the liability is alleged to exist]** under paragraphs  
22 (1) through (5) of subsection (a) of this section which give rise to  
23 liability. There is contribution as in cases of contract among the  
24 several persons so liable;

25 **[(c)]** (e) Any tender specified in this section may be made at any  
26 time before entry of judgment;

27 **[(d)]** (f) Every cause of action under this **[law]** act survives the  
28 death of any person who might have been a plaintiff or defendant;

29 **[(e)]** (g) No person may **[sue]** bring an action under this section  
30 more than two years after the contract of sale or the rendering of the  
31 investment advice, or **[within]** more than two years **[of]** after the  
32 time when the person aggrieved knew or should have known of the  
33 existence of his cause of action, whichever is later. No person may  
34 **[sue]** bring an action under this section (1) if the buyer received a  
35 written offer, before suit and at a time when he owned the security, to  
36 refund the consideration paid, together with interest at **[12% per year]**  
37 the rate established for interest on judgments for the same period by  
38 the Rules Governing the Courts of the State of New Jersey at the time  
39 the offer was made, from the date of payment, less the amount of any  
40 income received on the security, and he failed to accept the offer  
41 within 30 days of its receipt, or (2) if the buyer received such an offer  
42 before suit and at a time when he did not own the security, unless he  
43 rejected the offer in writing within 30 days of its receipt;

44 **[(f)]** (h) No person who has made or engaged in the performance  
45 of any contract in violation of any provision of this **[law]** act or any

1 rule or order hereunder, or who has acquired any purported right  
2 under any such contract with knowledge of the facts by reason of  
3 which its making or performance was in violation, may base any suit  
4 on the contract;

5 **[(g)] (i)** Any condition, stipulation or provision binding any person  
6 acquiring any security or receiving investment advice to waive  
7 compliance with any provision of this **[law] act** or any rule or order  
8 hereunder is void;

9 **[(h)] (j)** The rights and remedies provided by this act are in  
10 addition to any other rights or remedies that may exist at law or in  
11 equity, but this **[law] act** does not create any cause of action not  
12 specified in this section or subsection (e) of section 10 **[**, paragraph  
13 **(e)] of P.L.1967, c.93 (C.49:3-57).**

14 (cf: P.L.1997, c.3, s.1)

15

16 31. Section 25 of P.L.1967, c.93 (C.49:3-72) is amended to read  
17 as follows:

18 25. No provision of this **[law] act** imposing any liability applies to  
19 any act done or omitted in good faith in conformity with any rule, form  
20 or order of the bureau chief, notwithstanding that the rule, form or  
21 order may later be amended or rescinded or be determined by judicial  
22 or other authority to be invalid for any reason.

23 (cf: P.L.1967, c.93, s.25)

24

25 32. Section 26 of P.L.1967, c.93 (C.49:3-73) is amended to read  
26 as follows:

27 26. (a) Every broker-dealer, agent or investment adviser applicant  
28 for registration under this **[law] act** and every issuer **[which proposes**  
29 **to offer a security] who is required to file with the bureau to claim an**  
30 **exemption from registration or to register a security** in this State  
31 **[through any person acting on an agency basis in the common-law**  
32 **sense]** shall file with the bureau, in such form as the bureau chief by  
33 rule prescribes, an irrevocable consent appointing the bureau chief or  
34 his successor in office to be his attorney to receive service of any  
35 lawful process in any noncriminal suit, action or proceeding against  
36 him or his successor, executor or administrator which arises under this  
37 **[law] act** or any rule or order hereunder after the consent has been  
38 filed, with the same force and validity as if served personally on the  
39 person filing the consent. A person who has filed such a consent in  
40 connection with a previous registration need not file another. Service  
41 may be made by leaving a copy of the process in the office of the  
42 bureau, but it is not effective unless the plaintiff, who may be the  
43 bureau chief, in a suit, action or proceeding instituted on his behalf by  
44 the Attorney General forthwith sends notice of the service and a copy  
45 of the process by certified or registered mail to the defendant or

1 respondent at his last address on file with the bureau. It is the  
2 responsibility of the registrant to maintain its current address on file  
3 with the bureau. If process was served on the last address on file with  
4 the bureau and is returned by the post office unclaimed, refused or not  
5 forwarded, that service will constitute valid service ;

6 (b) **【When】** If any person, including any nonresident of this State,  
7 engages in conduct prohibited or made actionable by this **【law】 act** or  
8 any rule or order authorized by this **【law】 act**, and he has not filed a  
9 consent to service of process under **【paragraph】 subsection (a) of this**  
10 **section** and personal jurisdiction over him cannot otherwise be  
11 obtained in this State, that conduct shall be considered equivalent to  
12 his appointment of the bureau chief or his successor in office to be his  
13 attorney to receive service of any lawful process in any noncriminal  
14 suit, action or proceeding against him or his successor, executor or  
15 administrator which grows out of that conduct and which is brought  
16 under this **【law】 act** or any rule or order hereunder, with the same  
17 force and validity as if served on him personally. Service may be made  
18 by leaving a copy of the process in the office of the bureau, and it is  
19 not effective unless the plaintiff, who may be the bureau chief in any  
20 action instituted on his behalf by the Attorney General, forthwith  
21 sends notice of the service and a copy of the process by certified or  
22 registered mail to the defendant or respondent at his last known  
23 address.

24 (cf: P.L.1967, c.93, s.26)

25

26 33. Section 28 of P.L.1967, c.93 (C.49:3-75) is amended to read  
27 as follows:

28 28. This **【law】act** shall be so construed as to effectuate its general  
29 purpose to make uniform the law of those **【States】 states** which enact  
30 similar laws and to co-ordinate the interpretation and administration  
31 of this **【law】 act** with related **【Federal】 federal** regulations. The  
32 bureau chief and the bureau chief's designees may participate in private  
33 investigations and enforcement proceedings and cooperate in sharing  
34 information with other State authorities, and with authorities of other  
35 states and of federal and foreign governments.

36 (cf: P.L.1967, c.93, s.28)

37

38 34. The following are repealed:

39 Sections 2 and 3 of P.L.1967, c.96 (C.49:3-45 and C.49:3-46); and  
40 Sections 1 and 27 of P.L.1967, c.93 (C.49:3-48 and 49:3-74)

41

42 35. This act shall take effect immediately.

43

44

45

46 Enacts the "Uniform Securities Law (1997)."

1 section and personal jurisdiction over him cannot otherwise be  
2 obtained in this State, that conduct shall be considered equivalent to  
3 his appointment of the bureau chief or his successor in office to be his  
4 attorney to receive service of any lawful process in any noncriminal  
5 suit, action or proceeding against him or his successor, executor or  
6 administrator which grows out of that conduct and which is brought  
7 under this **[law]** act or any rule or order hereunder, with the same  
8 force and validity as if served on him personally. Service may be made  
9 by leaving a copy of the process in the office of the bureau, and it is  
10 not effective unless the plaintiff, who may be the bureau chief in any  
11 action instituted on his behalf by the Attorney General, forthwith  
12 sends notice of the service and a copy of the process by certified or  
13 registered mail to the defendant or respondent at his last known  
14 address.

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18 as follows:

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20 general purpose to make uniform the law of those **[States]** states  
21 which enact similar laws and to co-ordinate the interpretation and  
22 administration of this **[law]** act with related **[Federal]** federal  
23 regulations. The bureau chief and the bureau chief's designees may  
24 participate in private investigations and enforcement proceedings and  
25 cooperate in sharing information with other State authorities, and with  
26 authorities of other states and of federal and foreign governments.

27 (cf: P.L.1967, c.93, s.28)

28

29 34. The following are repealed:

30 Sections 2 and 3 of P.L.1967, c.96 (C.49:3-45 and C.49:3-46); and  
31 Sections 1 and 27 of P.L.1967, c.93 (C.49:3-48 and 49:3-74)

32

33 35. This act shall take effect immediately.

34

35

36 *SPONSORS'* STATEMENT

37

38 The bill is designed to assist companies that wish to raise capital  
39 from investors. Exemptions from registration for securities and  
40 transactions more closely track the federal securities law transactions  
41 and the bureau chief has been given general exemptive authority, so as  
42 to carve out new exemptions as new types of securities and novel  
43 methods of distributing securities arise.

44 This bill provides the Bureau of Securities strong enforcement  
45 powers to deal with securities firms and individuals regulated by the  
46 bureau who violate the law. Under the bill, the bureau is authorized

1 to issue cease and desist orders, which include post-issuance due  
2 process provisions to protect the defendant. The bureau is authorized  
3 to enforce its own subpoenas, in addition to the existing remedy of  
4 applying to a court to enforce its subpoenas.

5 The bill expands the grounds for denial of a broker-dealer, agent or  
6 investment adviser registration and for entry of a stop order denying  
7 effectiveness of a securities offering by including activity and  
8 disciplinary actions outside the securities realm, such as fraudulent  
9 activity in the banking or insurance industries.

10 Under the bill, the bureau's fees are set by regulation, rather than by  
11 statute, but in a manner which bears a correlation to the actual  
12 expenses of running the bureau.

13 This bill makes several changes with respect to "investment  
14 advisers:" it incorporates the changes made recently by federal  
15 legislation which gives sole responsibility to the states for regulating  
16 investment adviser firms with less than \$25 million in assets under  
17 management: it places individuals and companies which have called  
18 themselves "financial planners" under the definition of "investment  
19 adviser," and thus requires them to register with the Securities and  
20 Exchange Commission and the State Bureau of Securities, as  
21 appropriate; and requires the registration of investment adviser  
22 representatives with the State.

23 Under the bill, an exemption from registration is granted to all  
24 investment companies and unit investment trusts, but each investment  
25 company and unit investment trust is required to make a notice filing  
26 and pay a fee to claim this exemption.

27 This bill is a thorough revision, with some supplementary sections,  
28 of the "Uniform Securities Law (1967)." The bill was drafted in close  
29 consultation with the Securities Advisory Committee which was  
30 created by the Attorney General as an ad hoc advisory body in  
31 September, 1993.

32

33

34

35

36 Enacts the "Uniform Securities Law (1997)."

# ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 2990**

with committee amendments

## **STATE OF NEW JERSEY**

DATED: JUNE 12, 1997

The Assembly Financial Institutions Committee reports favorably and with committee amendments, Assembly Bill No. 2990.

The bill, as amended, is designed to assist companies that wish to raise capital from investors. Exemptions from registration for securities and transactions more closely track the federal securities law transactions and the bureau chief has been given general exemptive authority, so as to carve out new exemptions as new types of securities and novel methods of distributing securities arise.

This bill provides the Bureau of Securities strong enforcement powers to deal with securities firms and individuals regulated by the bureau who violate the law. Under the bill, the bureau is authorized to issue cease and desist orders, which include post-issuance due process provisions to protect the defendant. The bureau is authorized to enforce its own subpoenas, in addition to the existing remedy of applying to a court to enforce its subpoenas.

The bill expands the grounds for denial of a broker-dealer, agent or investment adviser registration and for entry of a stop order denying effectiveness of a securities offering by including activity and disciplinary actions outside the securities realm, such as fraudulent activity in the banking or insurance industries.

Under the bill, the bureau's fees are set by regulation, rather than by statute, but in a manner which bears a correlation to the actual expenses of running the bureau.

This bill makes several changes with respect to "investment advisers:" it incorporates the changes made recently by federal legislation which gives sole responsibility to the states for regulating investment adviser firms with less than \$25 million in assets under management; it places individuals and companies which have called themselves "financial planners" under the definition of "investment adviser," and thus requires them to register with the Securities and Exchange Commission and the State Bureau of Securities, as appropriate; and requires the registration of investment adviser representatives with the State.

Under the bill, an exemption from registration is granted to all

investment companies and unit investment trusts, but each investment company and unit investment trust is required to make a notice filing and pay a fee to claim this exemption.

This bill is a thorough revision, with some supplementary sections, of the "Uniform Securities Law (1967)." The bill was drafted in close consultation with the Securities Advisory Committee which was created by the Attorney General as an ad hoc advisory body in September, 1993.

The committee amended the bill to delete the reference which provides that certain securities are exempt from the provisions of section 14 of the bill, which concerns the filing of certain documents with respect to certain federal covered securities, and make technical changes.

# LEGISLATIVE FISCAL ESTIMATE TO

[First Reprint]

ASSEMBLY, No. 2990

## STATE OF NEW JERSEY

DATED: JULY 3, 1997

Assembly Bill No.2990 (1R) of 1997 revises the State law governing the regulation of financial securities to protect consumers, while assisting companies which lawfully seek to raise capital through the securities market. Under the bill, exemptions from registration for securities and transactions more closely parallel those existing under federal security laws.

The bill authorizes the Bureau of Securities in the Department of Law and Public Safety to issue cease and desist orders and to enforce its own subpoenas as an alternative to applying to the courts for enforcement. The bill incorporates changes in federal law which give states sole responsibility for regulating investment adviser firms with less than \$25 million in assets under management. The bill also requires "financial planners" to register with the bureau or the federal Securities and Exchange Commission, as appropriate, and requires investment adviser representatives to register with the State. The bill exempts investment companies and unit investment trusts from registration, but requires them to pay a fee to claim this exemption.

The bill permits the bureau chief to establish fees for the bureau's services that are reasonably related to the cost of implementing the provisions of the bill.

The Division of Consumer Affairs in the Department of Law and Public Safety notes that this bill will increase the workload of the Bureau of Securities in the areas of registration and enforcement. The division informally estimates that \$409,000 in additional funding will be required by the bureau to carry out these responsibilities in the first year after enactment. This amount includes salary and benefit costs of \$189,000 for five personnel: a supervisor of licensing, two investigators and two clerical staff. Also included in the first year estimate are \$150,000 for services of the department's Division of Law, \$50,000 for hearings before the Office of Administrative Law, and \$20,000 for data processing. After adjustment for inflation and the deduction of certain start-up costs, the division estimates the cost of implementing this bill at \$423,00 in the second year after enactment and \$456,000 in the third year.

The division further estimates that the anticipated increase in registrations and fee payers under this bill should result in sufficient revenues to cover the estimated cost of implementation without increasing existing fees.

The Office of Legislative Services concurs with this estimate.

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A2990 [1R]

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

# SENATE COMMERCE COMMITTEE

## STATEMENT TO

[First Reprint]

### **ASSEMBLY, No. 2990**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: NOVEMBER 24, 1997

The Senate Commerce Committee reports favorably and with committee amendments Assembly Bill No. 2990 (1R).

This bill brings State securities law into conformance with the federal National Securities Markets Improvement Act of 1996, which partially reallocated regulatory responsibility for the securities industry between federal and state agencies; streamlines the registration process by eliminating excessive and unnecessary filing requirements and broadens the categories of transactions and securities that qualify for exemptions from registration, thereby making New Jersey more attractive to business by making it easier to raise capital in this State; provides for the regulation of financial planners and others providing investment advice to the public; and enhances the enforcement powers of the Bureau of Securities in the Division of Consumer Affairs.

Current law provides that certain types of securities may be offered or sold or certain securities transactions may take place without registration of the securities. Under a so-called blue chip mutual fund exemption, open-end investment companies and unit investment trusts in business for a sufficient period of time and with significant assets under management or advisement are exempt from registration in New Jersey. This bill grants an exemption from registration to all investment companies and unit investment trusts but requires them to make a notice filing with the bureau and to pay a fee to claim the exemption. In addition, the bill allows the bureau chief to create new exemptions from securities registration for particular securities or classes of securities and for particular transactions and classes of transactions and thereby gives the bureau chief the flexibility to deal with new securities products and novel methods of distributing securities.

This bill provides the Bureau of Securities with strong enforcement powers to deal with securities firms and individuals regulated by the bureau who violate the law. Under the bill, the bureau is authorized to issue cease and desist orders, with post-issuance due process provisions to protect the defendant. The bureau is authorized to

enforce its own subpoenas, in addition to the existing remedy of applying to a court to enforce its subpoenas. Currently, criminal violations of the securities law are third degree crimes. This bill makes them second degree crimes if the amount involved is \$75,000 or more.

The bill expands the grounds for denial of a broker-dealer, agent or investment adviser registration and for entry of a stop order denying effectiveness of a securities offering by including activity and disciplinary actions outside the securities realm, such as fraudulent activity in the commodities, banking, insurance or advisory investment business.

This bill makes clear that financial planners who are persons or firms that are giving investment advice about securities for compensation are to be registered and regulated as investment advisers under the securities laws. Also, in response to federal law, the definition of investment adviser has been changed to recognize that investment adviser firms with \$25 million or more under management are regulated exclusively by the Securities and Exchange Commission, thereby giving sole responsibility to the states for regulating investment adviser firms with less than \$25 million in assets under management. The bureau chief may prohibit by rule or order the payment of performance fee compensation to any investment adviser not required to be registered, in addition to those registered, thus closing a loophole in the current law. This prohibition does not apply to investment advisers registered under federal law. The bill provides exemptions from registration for investment advisers with five or fewer New Jersey clients, other than institutional clients, within a period of 12 consecutive months.

The bill provides for the regulation and registration of investment adviser representatives. Currently, investment adviser firms are registered and regulated by the State or Securities and Exchange Commission but individuals giving the investment advice are not individually registered.

The definition of "blind pool" is changed to exclude from review by the bureau securities offerings of operating companies, mutual funds and small investment companies. This change allows the bureau to focus on securities offerings of companies with no particular business or business plan for the proceeds of the securities offering.

Among many other provisions, the bill: provides that fixed and variable annuities and endowments are to be regulated as securities under the securities law and thereby provides for the regulation and registration of those who sell them (annuities and endowment policies are currently regulated by the Department of Banking and Insurance and would continue to be so regulated by that department); brings the definition of accredited investor in conformance with the federal definition so that State and federal exemptions from registration coincide, thus fostering capital formation; grants the bureau chief additional exemptive authority to allow the law to evolve as capital raising mechanisms evolve; specifically makes market manipulation a

violation of the securities law; provides that the bureau's fees are to be set by regulation, rather than by statute, but in a manner which bears a correlation to the actual expenses of running the bureau; allows the bureau chief to set the minimum capital requirements for broker-dealers and investment advisers, but that minimum cannot exceed federal limitations; and provides that all the bureau's revenues are to be deposited into the Securities Enforcement Fund.

Finally, the bill repeals four sections of the current securities law - a section on investigations and subpoenas (replaced with a new section); a section on injunctions and receivers (also replaced by a new section); a technical section; and a section which establishes a Security Advisory Committee to serve in an advisory capacity to the bureau chief on all matters pertaining to the securities law.

The committee amended the bill to provide that banks, savings institutions and trusts will continue to be exempt from regulation as investment advisers under the State securities law.

This bill is a thorough revision of the "Uniform Securities Law (1967)." The bill was drafted in close consultation with the Securities Advisory Committee which was created by the Attorney General as an ad hoc advisory body in September, 1993.

STATEMENT TO  
[Second Reprint]  
**ASSEMBLY, No. 2990**

with Senate Floor Amendments  
(Proposed By Senator Ewing)

ADOPTED: DECEMBER 11, 1997

This amendment excludes endowment policies and annuities from the definition of a security in the bill. This exclusion corresponds to current law.

Under the law, 90 percent of the revenue collected through the existing two percent tourism tax will go to the NJSEA for the construction and operation of the new convention center. The remaining 10 percent will go to the Greater Wildwood Tourism Improvement Development Authority for use in promotion of Wildwood as a tourism destination.

The cost of the new 72,000 square-foot convention center is estimated at \$58 million.

A-2479, sponsored by Assembly Members Walter Kavanaugh (R-Morris/Somerset) and Joseph Malone (R-Burlington/Monmouth/Ocean), creates a Ticket Brokering Study Commission to study the ticket brokering market. The Governor previously conditionally vetoed this legislation. Consistent with the Governor's recommendations, the bill shortens the commission's study period from 18 months to four months, includes one more public member on the commission in place of a ticket broker, and provides that the ticket market remain regulated during the study period to safeguard consumers.

A-2990, sponsored by Assembly Members Kip Bateman (R-Morris/Somerset) and Rich Bagger (R-Middlesex/Morris/Somerset/Union), enacts the Uniform Securities Law of 1997. The law strengthens the enforcement power of the Bureau of Securities, make New Jersey's securities law more consistent with federal law and reworks the statutory exemptions from securities registration to make New Jersey more attractive for private placement of securities (non-public offerings).