

Article - Corporations and Associations

§11-602.

The following transactions are exempted from §§ 11-205 and 11-501 of this title:

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

(2) Any nonissuer distribution of an outstanding security if:

(i) A recognized securities manual contains the names of the officers and directors of the issuer, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations; or

(ii) The security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessor if less than three years, in the payment of principal, interest, or dividends on the security;

(3) Any nonissuer transaction effected by or through a registered broker-dealer under an unsolicited order or offer to buy, but the Commissioner by rule may require that:

(i) The customer acknowledge on a specified form that the sale was unsolicited; and

(ii) A signed copy of each form be preserved by the broker-dealer for a specified period;

(4) Any transaction:

(i) Between the issuer or other person on whose behalf the offering is made and an underwriter; or

(ii) Among underwriters;

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

(6) Any transaction by a personal representative, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

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

(8) Any offer or sale to an investment company as defined in the Investment Company Act of 1940, an investment adviser with assets under management of not less than \$1,000,000, a broker-dealer, bank, trust company, savings and loan association, insurance company, employee benefit plan with assets of not less than \$1,000,000, or governmental agency or instrumentality, whether acting for itself or as a trustee or a fiduciary with investment control, or other institutional investor as designated by rule or order of the Commissioner;

(9) To the extent the Commissioner by rule or order permits, any offer or sale in a transaction involving the sale by an issuer to not more than 35 persons, other than those designated in item (8) of this section, in this State during any period of 12 consecutive months, whether or not the seller or any purchaser is then present in this State, if the seller reasonably believes that all the purchasers in this State, other than those designated in item (8) of this section, are purchasing for investment, and if the securities have not been offered to the general public by advertisement or general solicitation but the Commissioner by rule or order, as to any security or transaction or any type of security or transaction, may withdraw or further condition this exemption, increase or decrease the number of purchasers permitted, or waive the condition relating to their investment intent;

(10) Any offer or sale of a preorganization certificate or subscription if:

(i) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;

(ii) The number of subscribers does not exceed ten; and

(iii) No payment is made by any subscriber;

(11) Any transaction under an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(i) No commission or other remuneration, other than a stand-by commission, is paid or given directly or indirectly for soliciting any security holder in this State; or

(ii) The issuer first files a notice specifying the terms of the offer and the Commissioner does not by order disallow the exemption within the next five full business days;

(12) (i) Any offer, but not a sale, of a security for which a registration statement has been filed under both this title and the Securities Act of 1933 if a stop order or refusal order is not in effect and a public proceeding or examination looking toward such an order is not pending under either this title or the Securities Act of 1933;

(ii) Any offer, but not a sale, of a security for which a registration

statement has been filed under this title if a stop order or refusal order is not in effect and a public proceeding or examination looking toward such an order is not pending, and if the offeror complies with § 11-502(c) or § 11-504(d) of this title;

(13) Any offer or sale of a security by or through a registered broker-dealer if:

(i) The offer or sale is not directly or indirectly for the benefit of the issuer or a person who is known or who reasonably should be known to the broker-dealer to be the record or beneficial owner of 10 percent or more of the outstanding voting securities of the issuer;

(ii) The security is not part of an unsold allotment or subscription taken by a participant in a distribution directly or indirectly for the benefit of the issuer or a person who is known or who reasonably should be known to the broker-dealer to be the record or beneficial owner of 10 percent or more of the outstanding voting securities of the issuer; and

(iii) An administrative stop order or similar order or permanent or temporary injunction of any court of competent jurisdiction is not in effect under this title or under any federal or State act against the offering or sale of the security or any security of the same class;

(14) Any sale of securities to an employee stock ownership plan trust, as defined in the Internal Revenue Code, any accrual of interests of participants in the plan, and any distribution made under the plan to participants or beneficiaries of the plan;

(15) To the extent permitted by rule or order of the Commissioner, any offer or sale within this State by an issuer now or hereafter exempted from Section 5 of the Securities Act of 1933 by virtue of a rule or regulation adopted by the United States Securities and Exchange Commission under Section 3(b) or Section 4(2) of that Act; if the issuer files with the Commissioner a notice of intent to claim exemption under this paragraph, at such time or times, in such form, and containing such information as the Commissioner determines;

(16) Any offer or sale of units of fractional undivided interests in a unit investment trust registered under the Investment Company Act of 1940 if:

(i) The units have been the subject of a previously effective registration statement under this title or were exempt from registration;

(ii) The units are offered or sold by a broker-dealer registered under this title; and

(iii) The broker-dealer is a sponsor or depositor of the unit investment trust or is an affiliate of the sponsor or depositor; and

(17) Any transaction as to which the Commissioner by rule or order finds that:

(i) Compliance with §§ 11-205 and 11-501 of this title is not necessary or appropriate for the protection of investors; and

(ii) The exemption is consistent with the public interest and within the purposes fairly intended by the policy and provisions of this title.