

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL NO. 650
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 28, after “circumstances;” insert “clarifying certain provisions of law relating to fees for registering securities;”.

On page 2, in line 12, after “11-102(a),” insert “11-203(a)(1),”; in the same line, after “11-205,” insert “11-206(b) and (c),”; in the same line, strike “and 11-302(a)” and substitute “11-302(a), (b), and (d), and 11-304(a)(1)”; in line 13, strike “and”; in the same line, after “11-415” insert “, and 11-416”; in line 15, after “11-506,” insert “11-510(a),”; and after line 29, insert:

“BY repealing and reenacting, with amendments,

Article - Corporations and Associations

Section 11-405(b) and 11-503.1

Annotated Code of Maryland

(1993 Replacement Volume and 1996 Supplement)

(As enacted by Section 2 of this Act)”.

AMENDMENT NO. 2

On page 3, in lines 26 and 35, in each instance, strike “(1)”; in lines 26 and 27, strike “: (I)”; strike beginning with the semicolon in line 28 down through “1940” in line 30; and strike in their entirety lines 31 through 34, inclusive.

On pages 3 and 4, strike in their entirety the lines beginning with line 37 on page 3 through line 2 on page 4, inclusive.

AMENDMENT NO. 3

On page 3 in line 25, and on page 12 in line 37, in each instance, strike “AND”.

(Over)

On page 6, after line 14, insert:
“11-203.

(a) (1) The Commissioner from time to time may make, amend, and rescind the rules, forms, and orders necessary to carry out the provisions of this title, including rules and forms governing registration statements, NOTICE FILINGS, applications, and reports and defining any terms, whether or not used in this title, to the extent that the definitions are not inconsistent with the provisions of this title.”;

in line 21, after “OR” insert “THE SECURITY”; in the same line, after “SECURITY” insert “OR THE TRANSACTION IS WITH RESPECT TO A FEDERAL COVERED SECURITY”; after line 21, insert:

“11-206.

(b) (1) The Commissioner shall keep a register of every application for registration, EVERY NOTICE FILING, and every registration statement which is or has ever been effective under this title and every denial, suspension, or revocation order which is entered under this title.

(2) The register shall be open for public inspection.

(c) The information contained in or filed with any registration statement, application, NOTICE FILING, or report may be made available to the public under the rules which the Commissioner prescribes.”;

and after line 38, insert:

“(b) The prohibitions of subsection (a)(4) of this section do not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction OR TO TRANSACTIONS BY A FEDERAL COVERED ADVISER WHO IS OTHERWISE SUBJECT TO THE LIMITATIONS ON PRINCIPAL TRADES UNDER THE FEDERAL SECURITIES LAWS.

(d) (1) The Commissioner by rule or order may require that certain information be furnished or disseminated BY INVESTMENT ADVISERS as appropriate in the public interest or for the protection of investors and advisory clients.

(2) To the extent determined by the Commissioner in [his] THE COMMISSIONER’S discretion, information furnished to clients or prospective clients of an investment adviser [pursuant to] THAT WOULD BE IN COMPLIANCE WITH THE DISCLOSURE REQUIREMENTS OF the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

11-304.

(a)(1) Neither the fact that an application for registration under Subtitle 4 of this title or a registration statement OR NOTICE FILING under Subtitle 5 of this title has been filed, nor the fact that a person or security is effectively registered constitutes a finding by the Commissioner that any document filed under this title is true, complete, and not misleading.”.

On page 8, in lines 6 and 11, in each instance, after “employ” insert “OR ASSOCIATE WITH”; in line 8, strike “him” and substitute “THE INDIVIDUAL”; strike beginning with “A” in line 13 down through “STATE” in line 16 and substitute “AN INVESTMENT ADVISER REPRESENTATIVE WHO HAS A PLACE OF BUSINESS LOCATED IN THIS STATE MAY NOT TRANSACT BUSINESS ON BEHALF OF A FEDERAL COVERED ADVISER”; in line 19, after “by” insert “OR ASSOCIATED WITH”; in line 25, after “adviser” insert “OR TERMINATES THOSE ACTIVITIES THAT MAKE THE REPRESENTATIVE AN INVESTMENT ADVISER REPRESENTATIVE”; and in line 28, after “ADVISER” insert “OR TERMINATES THOSE ACTIVITIES THAT MAKE THE REPRESENTATIVE AN INVESTMENT ADVISER REPRESENTATIVE”.

On page 10, strike in their entirety lines 1 through 4, inclusive, and substitute:

“(2) BEFORE ACTING AS A FEDERAL COVERED ADVISER IN THIS STATE, A PERSON SHALL PAY THE FEE REQUIRED BY § 11-407 OF THIS SUBTITLE AND SHALL FILE THE FOLLOWING DOCUMENTS AS THE COMMISSIONER MAY REQUIRE BY RULE OR ORDER:

(1) THE DOCUMENTS THAT THE PERSON FILED WITH THE SECURITIES AND EXCHANGE COMMISSION; AND

(Over)

(II) A CONSENT TO SERVICE OF PROCESS UNDER § 11-802(A) OF THIS TITLE.

(3)(I) IF A FEDERAL COVERED ADVISER WHO IS REQUIRED TO COMPLY WITH PARAGRAPH (2) OF THIS SUBSECTION FAILS TO PAY THE REQUIRED FEE, THE COMMISSIONER MAY REQUIRE THE FEDERAL COVERED ADVISER TO REGISTER AS AN INVESTMENT ADVISER UNDER THIS SUBTITLE.

(II) FOR PURPOSES OF THIS PARAGRAPH, A FAILURE TO PAY DOES NOT INCLUDE A NONPAYMENT OR UNDERPAYMENT OF A FEE THAT IS PROMPTLY REMEDIED FOLLOWING WRITTEN NOTIFICATION FROM THE COMMISSIONER OF THE NONPAYMENT OR UNDERPAYMENT.”;

strike beginning with “OR” in line 6 down through “SECTION” in line 8; in line 11, strike “OR FEDERAL COVERED ADVISER”; after line 14, insert:

“(D) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (A) OF THIS SECTION, A REGISTERED BROKER-DEALER WHO IS ALSO A FEDERAL COVERED ADVISER THAT HAS FILED A NOTICE UNDER SUBSECTION (B) OF THIS SECTION MAY EFFECT THE INITIAL REGISTRATION OF ITS REGISTERED AGENTS WITH A PLACE OF BUSINESS IN THIS STATE AS INVESTMENT ADVISER REPRESENTATIVES BY THE FILING OF:

(1) A NOTICE WITH THE COMMISSIONER DESIGNATING THE REGISTERED AGENTS AS REPRESENTATIVES OF THE FEDERAL COVERED ADVISER;

(2) A CONSENT TO SERVICE OF PROCESS UNDER § 11-802(A) OF THIS TITLE; AND

(3) SUCH OTHER INFORMATION AS THE COMMISSIONER BY RULE OR ORDER MAY REQUIRE.”;

and in lines 15 and 18, strike “(D)” and “(E)”, respectively, and substitute “(E)” and “(F)”, respectively.

On page 11, in line 22, strike “OR NOTICE FILING”; and in the same line, after “or” insert “AN APPLICATION OR NOTICE FILING IS”.

On page 13, in line 29, strike “(2)” and substitute “(3)”.

On page 14, in line 26, strike “pursuant to” and substitute “THAT WOULD BE IN COMPLIANCE WITH THE DISCLOSURE REQUIREMENTS OF”.

On page 15, in line 13, after “FILED” insert “WITH THE COMMISSIONER”; in line 15, after “RESPECT;” insert “AND”; and strike beginning with the semicolon in line 17 down through “SUBTITLE” in line 19.

On page 19, after line 16, insert:

“11-416.

An order may not be entered under any part of §§ 11-412 through 11-415 of this subtitle, except § 11-413(a), without:

(1) Appropriate prior notice to the applicant or registrant, OR PERSON SUBMITTING A NOTICE FILING, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative;

(2) Opportunity for hearing; and

(3) Written findings of fact and conclusions of law.”;

strike in their entirety lines 25 through 27, inclusive, and substitute:

“(A) A PERSON MAY NOT OFFER OR SELL A FEDERAL COVERED SECURITY IN THIS STATE UNLESS THE DOCUMENTS REQUIRED BY THIS SECTION HAVE BEEN FILED AND THE FEES REQUIRED BY § 11-506 OR § 11-510.1 OF THIS SUBTITLE HAVE

(Over)

BEEN PAID.”;

in line 33, after “REQUIRES” insert “OR THE DOCUMENTS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933”; and in line 34, after “ISSUER;” insert “AND”.

On page 20, strike in their entirety lines 1 through 3, inclusive; in lines 6 and 7, strike “TO A CURRENT FEDERAL REGISTRATION STATEMENT”; in lines 7 and 24, in each instance, strike “UNITED STATES”; in line 10, after “(II)” insert “AS NECESSARY TO COMPUTE FEES.”; strike in their entirety lines 13 through 18, inclusive; in lines 19 and 26, strike “(D)” and “(E)”, respectively, and substitute “(C)” and “(D)”, respectively; in line 20, strike “§ 18(B)(4)(D)” and substitute “§ 18(B)(3) OR (4)”; and after line 32, insert:

“(E)(1) EXCEPT FOR A FEDERAL COVERED SECURITY SPECIFIED IN § 18(B)(1) OF THE SECURITIES ACT OF 1933, IF THERE IS A FAILURE TO PAY A FEE REQUIRED BY THIS SUBTITLE, THE COMMISSIONER MAY REQUIRE THE REGISTRATION OF THE FEDERAL COVERED SECURITY UNDER THIS SUBTITLE.

“(2) FOR PURPOSES OF THIS SUBSECTION, A FAILURE TO PAY DOES NOT INCLUDE A NONPAYMENT OR UNDERPAYMENT OF A FEE THAT IS PROMPTLY REMEDIED FOLLOWING WRITTEN NOTIFICATION FROM THE COMMISSIONER OF THE NONPAYMENT OR UNDERPAYMENT.”.

On page 21, after line 18, insert:

“11-510.

“(a) A registration statement relating to a security [issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940,] REGISTERED UNDER § 11-502, § 11-503, OR § 11-504 OF THIS SUBTITLE may be amended after its effective date so as to increase the securities specified as proposed to be offered.”;

and in line 27, after “ACT” insert “OF 1933”.

On page 21 in line 21, and on page 22 in lines 12 and 16, in each instance, after “COMPANY” insert “THAT IS NOT A FEDERAL COVERED SECURITY UNDER § 18(B)(1) OF THE SECURITIES ACT OF 1933”.

On page 22, in lines 11 and 15, in each instance, after “TRUST” insert a comma.

On page 23, in line 30, after “OTHERWISE,” insert “THAT”.

AMENDMENT NO. 4

On page 25, strike in their entirety lines 23 through 30, inclusive, and substitute:

“11-405.

(b)(1) This subsection does not apply to a federal covered adviser who conducts advisory business in accordance with § 11-401(b)(2) or (3) of this subtitle.

(2) Before acting as a federal covered adviser in this State, a person shall pay the fee required by § 11-407 of this subtitle and shall file the following documents as the Commissioner may require by rule or order:

(i) The documents that the person filed with the Securities and Exchange Commission; and

(ii) A consent to service of process under § 11-802(a) of this title.

[(3)(i) If a federal covered adviser who is required to comply with paragraph (2) of this subsection fails to pay the required fee, the Commissioner may require the federal covered adviser to register as an investment adviser under this subtitle.

(ii) For purposes of this paragraph, a failure to pay does not include a nonpayment or underpayment of a fee that is promptly remedied following written notification from the Commissioner of the nonpayment or underpayment.]

(Over)

11-503.1.

(a) A person may not offer or sell a federal covered security in this State unless the documents required by this section have been filed and the fees required by § 11-506 or § 11-510.1 of this subtitle have been paid.

(b) With respect to a federal covered security specified in § 18(b)(2) of the Securities Act of 1933, the Commissioner may require, by rule, order, or otherwise, the filing of the following documents:

(1) Before the initial offer of the federal covered security in this State:

(i) A notice in a form that the Commissioner requires or the documents filed with the Securities and Exchange Commission under the Securities Act of 1933;

(ii) A consent to service of process signed by the issuer; and

(iii) The fee required under § 11-510.1 of this subtitle; and

(2) After the initial offer of the federal covered security in this State:

(i) Any document that is part of an amendment filed with the Securities and Exchange Commission under the Securities Act of 1933; and

(ii) As necessary to compute fees, an annual or periodic report of the value of the federal covered securities offered or sold in this State together with any fee required under § 11-510.1(b) and (c) of this subtitle.

(c) With respect to a security that is a federal covered security specified in § 18(b)(3) or (4) of the Securities Act of 1933, the Commissioner may require, by rule, order, or otherwise, the issuer to file:

(1) A consent to service of process signed by the issuer;

(2) The fee required under § 11-506 of this subtitle; and

(3) Any document filed with the Securities and Exchange Commission under the Securities Act of 1933.

(d) Except for a federal covered security specified in § 18(b)(1) of the Securities Act of 1933, the Commissioner may issue a stop order suspending the offer and sale of a federal covered security, if the Commissioner finds that:

(1) The order is in the public interest; and

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

[(e)(1) Except for a federal covered security specified in § 18(b)(1) of the Securities Act of 1933, if there is a failure to pay a fee required by this subtitle, the Commissioner may require the registration of the federal covered security under this subtitle.

(2) For purposes of this subsection, a failure to pay does not include a nonpayment or underpayment of a fee that is promptly remedied following written notification from the Commissioner of the nonpayment or underpayment.]

[(f)] (E) The Commissioner may waive, by rule, order, or otherwise, the filing of any document required under this section.”.