
By: Senator Bromwell

Introduced and read first time: January 31, 1997

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Securities Act - Revision**

3 FOR the purpose of revising the Maryland Securities Act to conform to the National
4 Securities Markets Improvement Act of 1996; retaining the State's jurisdiction over
5 certain securities; clarifying the authority of the Securities Commissioner to require
6 the filing of certain documents; altering certain duties and powers of the Securities
7 Commissioner regarding exemption of certain persons from certain registration and
8 filing requirements, the filing of certain documents required for certain persons to
9 conduct certain business activities in the State, the establishment of certain
10 financial requirements and minimum capital requirements for certain persons
11 conducting certain business activities in this State, the maintenance and
12 preservation of certain reports, obtaining certain civil remedies, the issuance of
13 certain orders, the retention of certain fees, and the extension of certain renewal
14 periods; authorizing the Securities Commissioner to deem abandoned certain notice
15 filings under certain circumstances; altering the circumstances under which the
16 Securities Commissioner is estopped from instituting certain suspension and
17 revocation proceedings; clarifying that the Securities Commissioner may take
18 certain actions based on orders issued by certain other officials; authorizing certain
19 federally regulated advisers to conduct certain business activities in the State under
20 certain circumstances; requiring certain federally regulated advisers to file certain
21 documents, file certain corrective amendments, and pay certain fees under certain
22 circumstances; requiring issuers of certain federally regulated securities to file
23 certain documents and pay certain fees under certain circumstances; requiring
24 certain representatives of certain federally regulated advisers to register with the
25 Securities Commissioner; allowing certain companies to file certain applications for
26 registration of an indefinite amount of securities; providing for the registration or
27 the exemption from registration of certain federally regulated securities under
28 certain circumstances; eliminating certain references; defining certain terms;
29 making certain stylistic and technical changes; providing for the application of
30 certain provisions of this Act; providing for a delayed effective date for certain
31 provisions of this Act; and generally relating to the regulation of certain securities,
32 broker-dealers, agents, investment advisers, investment adviser representatives, and
33 federally regulated advisers under the Maryland Securities Act.

34 BY renumbering

35 Article - Corporations and Associations

2

1 Section 11-101(e) through (q), respectively
2 to be Section 11-101(g) through (s), respectively
3 Annotated Code of Maryland
4 (1993 Replacement Volume and 1996 Supplement)

5 BY repealing and reenacting, without amendments,
6 Article - Corporations and Associations
7 Section 11-101(a)
8 Annotated Code of Maryland
9 (1993 Replacement Volume and 1996 Supplement)

10 BY repealing and reenacting, with amendments,
11 Article - Corporations and Associations
12 Section 11-101(b), 11-102(a), 11-205, and 11-302(a); 11-401 through 11-412,
13 11-414, and 11-415 to be under the amended subtitle "Subtitle 4.
14 Requirements of Broker-Dealers, Agents, Investment Advisers, Investment
15 Adviser Representatives, and Federal Covered Advisers"; and 11-501, 11-506,
16 11-510.1, 11-513, 11-601(7) and (14), 11-702(b), 11-703(a)(3), and 11-802(a)
17 Annotated Code of Maryland
18 (1993 Replacement Volume and 1996 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article - Corporations and Associations
21 Section 11-101(h) and (i)
22 Annotated Code of Maryland
23 (1993 Replacement Volume and 1996 Supplement)
24 (As enacted by Section 1 of this Act)

25 BY adding to
26 Article - Corporations and Associations
27 Section 11-101(e) and (f), 11-103, 11-503.1, and 11-601(14)
28 Annotated Code of Maryland
29 (1993 Replacement Volume and 1996 Supplement)

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
31 MARYLAND, That Section(s) 11-101(e) through (q), respectively, of Article -
32 Corporations and Associations be renumbered to be Section(s) 11-101(g) through (s),
33 respectively.

34 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
35 read as follows:

3

1 **Article - Corporations and Associations**

2 11-101.

3 (a) In this title, unless the context requires otherwise, the following words have
4 the meanings indicated.

5 (b) (1) "Agent" means an individual other than a broker-dealer who represents
6 a broker-dealer or issuer in effecting or attempting to effect the purchase or sale of
7 securities.

8 (2) "Agent" includes a partner, officer, or director of a broker-dealer or
9 issuer, or a person occupying a similar status or performing similar functions, only if [he]
10 THE PERSON otherwise comes within this definition.

11 (3) "Agent" does not include an individual who represents:

12 (I) [an] AN issuer in:

13 [(i)] 1. Effecting a transaction in a security exempted by § 11-601(1),
14 (2), (3), (9)(i), (10), [or (11)] (11), OR (14)(I) of this title;

15 [(ii)] 2. Effecting a transaction exempted by § 11-602 of this title;
16 [or]

17 [(iii)] 3. Effecting a transaction with an existing employee, partner, or
18 director of the issuer if no commission or other remuneration is paid or given directly or
19 indirectly for soliciting [any] A person in [the State.] THIS STATE; OR

20 4. EFFECTING A TRANSACTION IN A FEDERAL COVERED
21 SECURITY UNDER § 18(B)(3) OR § 18(B)(4)(D) OF THE SECURITIES ACT OF 1933 IF NO
22 COMMISSION OR OTHER REMUNERATION IS PAID OR GIVEN DIRECTLY OR
23 INDIRECTLY FOR SOLICITING A PERSON IN THIS STATE; OR

24 (II) A BROKER-DEALER IN EFFECTING A TRANSACTION
25 DESCRIBED IN § 15(H)(2) OF THE SECURITIES AND EXCHANGE ACT OF 1934.

26 (E) (1) "FEDERAL COVERED ADVISER" MEANS A PERSON WHO IS:

27 (I) REGISTERED UNDER § 203 OF THE INVESTMENT ADVISERS ACT
28 OF 1940; OR

29 (II) EXCLUDED FROM THE DEFINITION OF "INVESTMENT
30 ADVISER" UNDER § 202(A)(11) OF THE INVESTMENT ADVISERS ACT OF 1940.

31 (2) "FEDERAL COVERED ADVISER" DOES NOT INCLUDE A FEDERAL
32 COVERED ADVISER FOR WHICH A NONPAYMENT OR UNDERPAYMENT OF A FEE HAS
33 NOT BEEN PROMPTLY REMEDIED FOLLOWING WRITTEN NOTIFICATION FROM THE
34 COMMISSIONER OF THE NONPAYMENT OR UNDERPAYMENT.

35 (F) (1) "FEDERAL COVERED SECURITY" MEANS A COVERED SECURITY
36 UNDER § 18(B) OF THE SECURITIES ACT OF 1933.

37 (2) "FEDERAL COVERED SECURITY" DOES NOT INCLUDE A COVERED
38 SECURITY FOR WHICH A FEE HAS NOT BEEN PAID AND PROMPTLY REMEDIED

4

1 FOLLOWING WRITTEN NOTIFICATION FROM THE COMMISSIONER OF THE
2 NONPAYMENT OR UNDERPAYMENT OF THE FEE.

3 (h) (1) "Investment adviser" means a person who, for compensation:

4 (i) Engages in the business of advising others, either directly or
5 through publications or writings, as to the value of securities or as to the advisability of
6 investing in, purchasing, or selling securities, or who, for compensation and as a part of a
7 regular business, issues or promulgates analyses or reports concerning securities; or

8 (ii) 1. Provides or offers to provide, directly or indirectly, financial
9 and investment counseling or advice, on a group or individual basis;

10 2. Gathers information relating to investments, establishes
11 financial goals and objectives, processes and analyzes the information gathered, and
12 recommends a financial plan; or

13 3. Holds [himself] out as an investment adviser in any way,
14 including indicating by advertisement, card, or letterhead, or in any other manner
15 indicates that [he] THE PERSON is, a financial or investment "planner", "counselor",
16 "consultant", or any other similar type of adviser or consultant.

17 (2) "Investment adviser" does not include:

18 (i) An investment adviser representative;

19 (ii) A bank, savings institution, or trust company;

20 (iii) A lawyer, certified public accountant, engineer, insurance agent or
21 broker, or teacher whose performance of investment advisory services is solely incidental
22 to the practice of [his] THE profession, provided that the performance of such services is
23 not solely incidental unless:

24 1. The investment advisory services rendered are connected
25 with and reasonably related to the other professional services rendered;

26 2. The fee charged for the investment advisory services is based
27 on the same factors as those used to determine the fee for other professional services; and

28 3. The lawyer, certified public accountant, engineer, insurance
29 agent or broker, or teacher does not hold out as an investment adviser;

30 (iv) A broker-dealer or its agent whose performance of these services
31 is solely incidental to the conduct of [his] business as a broker-dealer and who receives
32 no special compensation for them;

33 (v) A publisher of any bona fide newspaper, news column, newsletter,
34 news magazine, or business or financial publication or service, whether communicated in
35 hard copy form, or by electronic means, or otherwise, that does not consist of the
36 rendering of advice on the basis of the specific investment situation of each client; [or]

37 (VI) A FEDERAL COVERED ADVISER; OR

1 [(vi)] (VII) Any other person not within the intent of this subsection as
 2 the Commissioner by rule or order designates.

3 (i) (1) "Investment adviser representative" or "representative" means any
 4 partner, officer, director of (or a person occupying a similar status or performing similar
 5 functions) or other individual WHO IS employed by or associated with an investment
 6 [adviser, except clerical or ministerial personnel,] ADVISER OR WHO HAS A PLACE OF
 7 BUSINESS LOCATED IN THIS STATE AND IS EMPLOYED BY OR ASSOCIATED WITH A
 8 FEDERAL COVERED ADVISER, AND who:

9 (i) Makes any recommendations or otherwise renders investment
 10 advice to clients;

11 (ii) Represents an investment adviser in rendering the services
 12 described under subsection [(f)(1)] (H)(1) of this section;

13 (iii) Manages accounts or portfolios of clients;

14 (iv) Determines which recommendation or investment advice should be
 15 given with respect to a particular client account;

16 (v) Solicits, offers or negotiates for the sale of or sells investment
 17 advisory services;

18 (vi) Directly supervises employees who perform any of the foregoing;
 19 or

20 (vii) Holds [himself] out as an investment adviser.

21 (2) "Investment adviser representative" or "representative" does not
 22 include:

23 (I) [any] ANY other person not within the intent of this subsection as
 24 the Commissioner designates by rule or order[.]; OR

25 (II) CLERICAL OR MINISTERIAL PERSONNEL.

26 11-102.

27 (a) The terms "offer", "offer to sell", "sale", and "sell", as defined in [§
 28 11-101(k) and (n)] § 11-101(M) AND (P) of this subtitle, do not include:

29 (1) Any bona fide pledge or loan;

30 (2) Any stock dividend, whether the corporation distributing the dividend is
 31 the issuer of the stock or not, if nothing of value is given by stockholders for the dividend
 32 other than the surrender of a right to a cash or property dividend when each stockholder
 33 may elect to take the dividend in cash, property, or stock;

34 (3) Any act incident to a class vote by stockholders, under the certificate of
 35 incorporation or the applicable corporation statute, on a merger, consolidation, split-up,
 36 spin-off, share exchange, reclassification of securities, or transfer of corporate assets in
 37 consideration of the issuance, in whole or in part, of securities of another corporation;

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1 (4) Any act incident to a judicially approved reorganization in which a
2 security is issued:

3 (i) In exchange for one or more outstanding securities, claims, or
4 property interests; or

5 (ii) Partly in such exchange and partly for cash; or

6 (5) Any act as to which the Commissioner by rule or order finds that:

7 (i) Application of [§ 11-101(k) and (n)] § 11-101(M) AND (P) of this
8 title is not necessary or appropriate for the protection of investors; and

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

11 11-103.

12 IN ACCORDANCE WITH § 6 OF THE FEDERAL PHILANTHROPY PROTECTION ACT
13 OF 1995, THE FEDERAL PHILANTHROPY PROTECTION ACT OF 1995 DOES NOT
14 PREEMPT THE LAWS OF THIS STATE.

15 11-205.

16 The Commissioner by rule or order may require the filing of any prospectus,
17 pamphlet, circular, form letter, advertisement, or other sales literature or advertising
18 communication, WHETHER COMMUNICATED IN HARD COPY, ELECTRONIC MEANS, OR
19 OTHERWISE, addressed or intended for distribution to prospective investors, including
20 clients or prospective clients of an investment adviser, unless the security or transaction is
21 exempted by Subtitle 6 of this title OR IS A FEDERAL COVERED SECURITY.

22 11-302.

23 (a) It is unlawful for any person who receives, directly or indirectly, any
24 consideration from another person for advising the other person as to the value of
25 securities or their purchase or sale, or for acting as an investment adviser or
26 representative under [§ 11-101(f) and (g)] § 11-101(H) AND (I) of this title, whether
27 through the issuance of analyses, reports, or otherwise, to:

28 (1) Employ any device, scheme, or artifice to defraud the other person;

29 (2) Engage in any act, practice, or course of business which operates or
30 would operate as a fraud or deceit on the other person;

31 (3) Engage in dishonest or unethical practices as the Commissioner may
32 define by rule; or

33 (4) When acting as principal for [his] THE PERSON'S own account
34 knowingly sell any security to or purchase any security from a client, or when acting in an
35 agency capacity for a person other than such client knowingly effect any sale or purchase
36 of any security for the account of such client, without disclosing to such client in writing
37 before the completion of such transaction the capacity in which [he] THE PERSON is
38 acting and obtaining the consent of the client to such transaction.

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1 Subtitle 4. [Registration] REQUIREMENTS of Broker-Dealers, Agents, Investment
2 Advisers, [and] Investment Adviser Representatives[.], AND FEDERAL COVERED
3 ADVISERS.

4 11-401.

5 (a) [It is unlawful for any] A person [to] MAY NOT transact business in this
6 State as a broker-dealer or agent unless [he] THE PERSON is registered under this
7 subtitle.

8 (b) [It is unlawful for any] A person [to] MAY NOT transact business in this
9 State as an investment adviser or as an investment adviser representative unless:

10 (1) [He] THE PERSON is registered as an investment adviser or an
11 investment adviser representative under this subtitle; or

12 (2) [His] THE PERSON'S only clients in this State are investment
13 companies as defined in the Investment Company Act of 1940, or insurance companies; or

14 (3) [He] THE PERSON has no place of business in this State; and

15 (i) [His] THE PERSON'S only clients in this State are investment
16 companies as defined in the Investment Company Act of 1940, other investment advisers,
17 FEDERAL COVERED ADVISERS, broker-dealers, banks, trust companies, savings and
18 loan associations, insurance companies, employee benefit plans with assets of not less
19 than \$1,000,000, and governmental agencies or instrumentalities, whether acting for
20 themselves or as trustees or fiduciaries with investment control, or other institutional
21 investors as are designated by rule or order of the Commissioner; or

22 (ii) [During any period of 12 consecutive months he does not direct
23 business communications in this State in any manner to more than 5 clients, other than
24 those specified in subparagraph (i) of this paragraph, whether or not he or any of the
25 persons to whom the communications are directed is then present in this State.] DURING
26 THE PRECEDING 12-MONTH PERIOD, THE PERSON HAS HAD NO MORE THAN FIVE
27 CLIENTS WHO:

28 1. ARE RESIDENTS OF THE STATE; AND

29 2. ARE NOT THE TYPES OF CLIENTS DESCRIBED IN ITEM (1)
30 OF THIS PARAGRAPH.

31 (C) A FEDERAL COVERED ADVISER MAY NOT CONDUCT ADVISORY BUSINESS
32 IN THIS STATE UNLESS THE FEDERAL COVERED ADVISER CONDUCTS THE
33 ADVISORY BUSINESS IN ACCORDANCE WITH § 11-405(B) OF THIS SUBTITLE OR
34 SUBSECTION (B)(2) OR (3) OF THIS SECTION.

35 (D) BY RULE OR ORDER, THE COMMISSIONER MAY MODIFY THE
36 REQUIREMENTS OF THIS SECTION OR EXEMPT ANY BROKER-DEALER, INVESTMENT
37 ADVISER, OR FEDERAL COVERED ADVISER FROM THE REQUIREMENTS OF THIS
38 SECTION IF THE COMMISSIONER DETERMINES THAT:

39 (1) COMPLIANCE WITH THIS SECTION IS NOT NECESSARY OR
40 APPROPRIATE FOR THE PROTECTION OF INVESTORS; AND

1 (2) THE EXEMPTION IS CONSISTENT WITH THE PUBLIC INTEREST AND
2 WITHIN THE PURPOSES FAIRLY INTENDED BY THE POLICY AND PROVISIONS OF THIS
3 TITLE.

4 11-402.

5 (a) (1) [It is unlawful for any] A broker-dealer or issuer [to] MAY NOT
6 employ an agent unless the agent is registered.

7 (2) When an agent terminates a connection with a broker-dealer or issuer
8 or terminates those activities which make him an agent, the agent and the broker-dealer
9 or issuer shall promptly notify the Commissioner.

10 (b) (1) [It is unlawful for any] AN investment adviser required to be registered
11 [to] MAY NOT employ an investment adviser representative unless the representative is
12 registered under this subtitle.

13 (2) A FEDERAL COVERED ADVISER SUBJECT TO NOTICE FILING UNDER
14 § 11-405(B) OF THIS SUBTITLE MAY NOT EMPLOY, SUPERVISE, OR ASSOCIATE WITH
15 AN INVESTMENT ADVISER REPRESENTATIVE WHO HAS A PLACE OF BUSINESS
16 LOCATED IN THIS STATE, UNLESS THE INVESTMENT ADVISER REPRESENTATIVE IS
17 REGISTERED OR EXEMPT FROM REGISTRATION UNDER THIS SUBTITLE.

18 [(2)] (3) The registration of a representative is not effective during any
19 period when [he] THE REPRESENTATIVE is not employed by:

20 (I) [an investment adviser registered under this subtitle.] A
21 REGISTERED INVESTMENT ADVISER; OR

22 (II) A FEDERAL COVERED ADVISER THAT HAS FILED A NOTICE
23 UNDER § 11-405(B) OF THIS SUBTITLE.

24 [(3)] (4) When [a] AN INVESTMENT ADVISER representative begins or
25 terminates [his] A connection with [an] A REGISTERED investment adviser, the
26 investment adviser shall promptly notify the Commissioner.

27 (5) WHEN AN INVESTMENT ADVISER REPRESENTATIVE BEGINS OR
28 TERMINATES A CONNECTION WITH A FEDERAL COVERED ADVISER, THE
29 INVESTMENT ADVISER REPRESENTATIVE SHALL PROMPTLY NOTIFY THE
30 COMMISSIONER.

31 (C) BY RULE OR ORDER, THE COMMISSIONER MAY MODIFY THE
32 REQUIREMENTS OF THIS SECTION OR EXEMPT ANY BROKER-DEALER, AGENT,
33 INVESTMENT ADVISER, FEDERAL COVERED ADVISER, OR INVESTMENT ADVISER
34 REPRESENTATIVE FROM THE REQUIREMENTS OF THIS SECTION IF THE
35 COMMISSIONER DETERMINES THAT:

36 (1) COMPLIANCE WITH THIS SECTION IS NOT NECESSARY OR
37 APPROPRIATE FOR THE PROTECTION OF INVESTORS; AND

38 (2) THE EXEMPTION IS CONSISTENT WITH THE PUBLIC INTEREST AND
39 WITHIN THE PURPOSES FAIRLY INTENDED BY THE POLICY AND PROVISIONS OF THIS
40 TITLE.

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1 11-403.

2 Unless sooner terminated under other provisions of this title, the registration of
3 each broker-dealer, agent, investment adviser, and investment adviser representative
4 AND THE NOTICE FILING OF EACH FEDERAL COVERED ADVISER expires December
5 31, unless renewed.

6 11-404.

7 (a) (1) The registration of an agent expires when the agent terminates [his] A
8 connection with a REGISTERED broker-dealer [registered under this subtitle] or with an
9 issuer.

10 (2) The registration of an investment adviser representative expires when
11 the representative terminates [his] A connection with:

12 (I) [an] AN investment adviser registered under this subtitle[.]; OR

13 (II) A FEDERAL COVERED ADVISER SUBJECT TO NOTICE FILING
14 UNDER § 11-405(B) OF THIS SUBTITLE.

15 (b) (1) When a person who is currently registered as an agent under this subtitle
16 begins a connection with another broker-dealer or issuer, [he] THE PERSON shall file an
17 application for initial registration as provided in § 11-405 of this subtitle and shall pay the
18 [filing fee prescribed] FEE REQUIRED by § 11-407 of this subtitle.

19 (2) When a person who is currently registered as an investment adviser
20 representative under this subtitle begins a connection with another investment [adviser,
21 he] ADVISER OR FEDERAL COVERED ADVISER, THE PERSON shall file an application
22 for initial registration as provided in § 11-405 of this subtitle and pay the [filing fee
23 prescribed] FEE REQUIRED by § 11-407 of this subtitle.

24 (c) Unless the Commissioner takes action under §§ 11-412 through 11-414 of this
25 subtitle to deny or suspend the registration, the agent or investment adviser
26 representative registration shall become effective 30 days after receipt of the application
27 by the Commissioner and shall continue in effect until it expires under the provisions of
28 § 11-403 of this subtitle or under the provisions of this section, whichever would occur
29 earlier. The Commissioner [shall be empowered to] MAY waive the 30-day period or any
30 portion of it at [his] THE COMMISSIONER'S discretion.

31 11-405.

32 (a) A broker-dealer, agent, investment adviser, or investment adviser
33 representative may obtain an initial registration by filing with the Commissioner, or any
34 entity [he] THE COMMISSIONER designates by rule or order, an application together
35 with a consent to service of process under § 11-802(a) of this title. The application shall
36 contain whatever information the Commissioner by rule or order requires.

37 (B) (1) THIS SUBSECTION DOES NOT APPLY TO A FEDERAL COVERED
38 ADVISER WHO CONDUCTS ADVISORY BUSINESS IN ACCORDANCE WITH § 11-401(B)(2)
39 OR (3) OF THIS SUBTITLE.

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1 (2) BEFORE ACTING AS A FEDERAL COVERED ADVISER IN THIS STATE,
2 A PERSON SHALL FILE WITH THE COMMISSIONER THE SAME DOCUMENTS THAT THE
3 PERSON FILES WITH THE SECURITIES AND EXCHANGE COMMISSION, AS THE
4 COMMISSIONER MAY REQUIRE BY RULE OR ORDER.

5 [(b)] (C) Notwithstanding the provisions of subsection (a) of this section, a
6 registered broker-dealer who is also a registered investment adviser in this State OR WHO
7 IS ALSO A FEDERAL COVERED ADVISER THAT HAS FILED A NOTICE UNDER
8 SUBSECTION (B) OF THIS SECTION may effect the initial registration of any or all of its
9 registered agents in this State as investment adviser representatives by the filing of:

10 (1) A notice with the Commissioner designating the registered agents as
11 representatives of the investment adviser OR FEDERAL COVERED ADVISER;

12 (2) A consent to service of process under § 11-802(a) of this title; and

13 (3) Such other information as the Commissioner by rule or order may
14 require.

15 [(c)] (D) The Commissioner in [his] THE COMMISSIONER'S discretion may
16 publish an announcement of the applicants for registration in the newspapers [he] THE
17 COMMISSIONER determines.

18 [(d)] (E) If a denial order is not in effect and a proceeding is not pending under
19 §§ 11-412 through 11-414 of this subtitle, registration becomes effective at noon of the
20 30th day after an application is filed. The Commissioner by rule or order may specify an
21 earlier effective date, and [he] THE COMMISSIONER by order may defer the effective
22 date until noon of the 30th day after the filing of any amendment.

23 11-406.

24 (a) A broker-dealer or investment adviser may obtain a renewal registration by
25 filing with the Commissioner or any entity [he] THE COMMISSIONER designates by rule
26 or order an application containing whatever information the Commissioner by rule
27 requires to keep current the information contained in the application for initial
28 registration.

29 (b) A broker-dealer or issuer may obtain a renewal registration for the agents
30 associated with it by filing with the Commissioner or any entity [he] THE
31 COMMISSIONER designates by rule or order an application containing the names of the
32 agents associated with it and a certification that, to the best knowledge, information, and
33 belief of the broker-dealer or issuer:

34 (1) There has been no change in the information contained in the agents'
35 applications for the registration then currently in effect; or

36 (2) If there has been any such change, specifying the change.

37 (c) [An] A FEDERAL COVERED ADVISER WHO HAS FILED A NOTICE UNDER §
38 11-405(B) OF THIS SUBTITLE OR AN investment adviser may obtain a renewal registration
39 for the investment adviser representatives associated with it by filing with the
40 Commissioner or any entity [he] THE COMMISSIONER designates by rule or order an
41 application containing the names of the representatives associated with it and a

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1 certification that, to the best knowledge, information, and belief of the FEDERAL
2 COVERED ADVISER OR THE investment adviser:

3 (1) There has been no change in the information contained in the
4 investment adviser representatives' applications for the registration currently in effect; or

5 (2) If there has been any such change, specifying the change.

6 (d) [Every] AN application for renewal registration is effective on receipt by the
7 Commissioner of the proper application and fee or on the expiration of the previous
8 registration, whichever date is later.

9 11-407.

10 (a) (1) [Every] AN applicant for initial or renewal registration as a
11 broker-dealer shall pay a [filing] fee of \$250.

12 (2) [Every] AN applicant for initial or renewal registration or transfer of
13 registration as an agent shall pay a [filing] fee of \$35.

14 (b) (1) [Every] AN applicant for initial or renewal registration as an investment
15 adviser shall pay a [filing] fee of \$300.

16 (2) A FEDERAL COVERED ADVISER FILING NOTICE UNDER § 11-405(B)
17 OF THIS SUBTITLE SHALL PAY AN INITIAL FEE OF \$300 AND A RENEWAL FEE OF \$300.

18 [(2)] (3) [Every] AN applicant for initial or renewal registration or transfer
19 of registration as an investment adviser representative shall pay a [filing] fee of \$50.

20 (c) The Commissioner by rule may waive or reduce for any class of applicant the
21 application of the [filing] fee requirements set forth in subsection (b) of this section.

22 (d) If an application OR NOTICE FILING is denied or withdrawn, the
23 Commissioner shall retain the [filing] fee.

24 11-408.

25 (a) A registered broker-dealer or investment adviser may file an application for
26 registration of a successor, whether or not the successor is then in existence, for the
27 unexpired portion of the year. There is no [filing] fee.

28 (b) [If a broker-dealer or investment adviser succeeds to and continues the
29 business of a registered broker-dealer or investment adviser and the successor files an
30 application for registration within 30 days after the succession, the registration of the
31 predecessor remains effective as the registration of the successor for 60 days after the
32 succession.] THE REGISTRATION OF A PREDECESSOR REMAINS EFFECTIVE AS THE
33 REGISTRATION OF A SUCCESSOR FOR 60 DAYS AFTER THE SUCCESSION, IF:

34 (1) A BROKER-DEALER OR INVESTMENT ADVISER SUCCEEDS TO AND
35 CONTINUES THE BUSINESS OF A REGISTERED BROKER-DEALER OR INVESTMENT
36 ADVISER; AND

37 (2) THE SUCCESSOR FILES AN APPLICATION FOR REGISTRATION
38 WITHIN 30 DAYS AFTER THE SUCCESSION.

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1 [(c) Each registered agent of a broker-dealer and each registered representative
2 of an investment adviser whose successor is registered pursuant to either subsection (a) or
3 (b) of this section shall continue to be registered in accordance with such rules as the
4 Commissioner shall adopt.]

5 (C) A FEDERAL COVERED ADVISER WHO HAS FILED A NOTICE UNDER §
6 11-405(B) OF THIS SUBTITLE MAY FILE A NOTICE FILING OF A SUCCESSOR FOR THE
7 UNEXPIRED PORTION OF THE YEAR, WHETHER OR NOT THE SUCCESSOR IS IN
8 EXISTENCE AT THE TIME OF THE FILING. THERE IS NO FEE.

9 (D) THE NOTICE FILING OF A FEDERAL COVERED ADVISER STANDS AS THE
10 NOTICE FILING OF A SUCCESSOR FOR 60 DAYS AFTER THE SUCCESSION IF:

11 (1) THE FEDERAL COVERED ADVISER SUCCEEDS TO AND CONTINUES
12 THE BUSINESS OF A FEDERAL COVERED ADVISER THAT HAS FILED A NOTICE
13 UNDER § 11-405(B) OF THIS SUBTITLE; AND

14 (2) THE SUCCESSOR FILES A NOTICE FILING WITHIN 30 DAYS AFTER THE
15 SUCCESSION.

16 (E) (1) EACH REGISTERED AGENT OF A BROKER-DEALER AND EACH
17 REGISTERED REPRESENTATIVE OF AN INVESTMENT ADVISER WHOSE SUCCESSOR IS
18 REGISTERED IN ACCORDANCE WITH SUBSECTION (A) OR (B) OF THIS SECTION SHALL
19 CONTINUE TO BE REGISTERED IN ACCORDANCE WITH RULES THAT THE
20 COMMISSIONER ADOPTS.

21 (2) A REGISTERED INVESTMENT ADVISER REPRESENTATIVE OF A
22 FEDERAL COVERED ADVISER WHOSE SUCCESSOR HAS FILED IN ACCORDANCE WITH
23 SUBSECTION (D) OF THIS SECTION SHALL CONTINUE TO BE REGISTERED IN
24 ACCORDANCE WITH RULES THAT THE COMMISSIONER ADOPTS.

25 11-409.

26 [(a) Any broker-dealer registered in this State shall have and maintain a net
27 capital of not less than \$15,000, and a broker-dealer registered in this State, other than
28 one who deals exclusively in securities exempt under § 11-601 (1) or (2) of this title, may
29 not permit his aggregate indebtedness to all other persons to exceed 2,000 percent of his
30 net capital; but the Commissioner by rule or order may permit any class of broker-dealers
31 to maintain a net capital in an amount other than \$15,000 or to increase or decrease the
32 required percent of net capital except that the Commissioner may not permit any net
33 capital or percent of net capital requirement which is contrary to the limits set by the
34 Securities and Exchange Commission.]

35 (A) THE COMMISSIONER MAY REQUIRE BY RULE OR ORDER:

36 (1) A MINIMUM CAPITAL FOR A REGISTERED BROKER-DEALER,
37 SUBJECT TO THE LIMITATIONS OF § 15 OF THE SECURITIES AND EXCHANGE ACT OF
38 1934; AND

39 (2) MINIMUM FINANCIAL REQUIREMENTS FOR AN INVESTMENT
40 ADVISER, SUBJECT TO THE LIMITATIONS OF § 222 OF THE INVESTMENT ADVISERS
41 ACT OF 1940.

13

1 (b) [The terms "aggregate indebtedness" and "net capital" shall be defined by
2 rule of the Commissioner.

3 (c) (1) The Commissioner by rule or order may establish minimum financial
4 requirements for investment advisers.

5 (2) These financial requirements may include different requirements for
6 those investment advisers who maintain custody of clients' funds or securities, or who
7 require payment more than 6 months in advance of fees in excess of \$500, and those
8 investment advisers who do not.

9 11-410.

10 (a) (1) [The Commissioner by rule or order may require a registered
11 broker-dealer or agent, or a registered investment adviser or representative who has
12 custody of client funds or securities, or requires payment of more than 6 months in
13 advance of fees in excess of \$500, to post a surety bond, or deposit cash or any other
14 equivalent form of security as the Commissioner may permit, in amounts up to \$10,000.]
15 THE COMMISSIONER MAY REQUIRE BY RULE OR ORDER A REGISTERED
16 BROKER-DEALER OR AGENT TO POST A BOND OR DEPOSIT CASH OR ANY OTHER
17 EQUIVALENT FORM OF SECURITY IN AMOUNTS THAT THE COMMISSIONER MAY
18 REQUIRE.

19 (2) THE COMMISSIONER'S AUTHORITY TO ADOPT RULES OR ISSUE
20 ORDERS UNDER PARAGRAPH (1) OF THIS SUBSECTION IS SUBJECT TO THE
21 LIMITATIONS OF § 15 OF THE SECURITIES EXCHANGE ACT OF 1934.

22 (3) THE COMMISSIONER MAY REQUIRE BY RULE OR ORDER A
23 REGISTERED INVESTMENT ADVISER OR REPRESENTATIVE WHO HAS CUSTODY OF
24 CLIENT FUNDS OR SECURITIES OR REQUIRES PAYMENTS OF MORE THAN 6 MONTHS
25 IN ADVANCE OF FEES IN EXCESS OF \$500 TO POST A BOND OR DEPOSIT CASH OR ANY
26 OTHER EQUIVALENT FORM OF SECURITY IN AMOUNTS THAT THE COMMISSIONER
27 REQUIRES.

28 (4) THE COMMISSIONER'S AUTHORITY TO ADOPT RULES OR ISSUE
29 ORDERS UNDER PARAGRAPH (2) OF THIS SUBSECTION IS SUBJECT TO THE
30 LIMITATIONS OF § 222 OF THE INVESTMENT ADVISERS ACT OF 1940.

31 [(2)] (B) The condition of such bond or equivalent form of security shall be
32 that the registrant will comply with the provisions of this title and the rules and
33 regulations issued under this title.

34 [(3)] (C) The bond or equivalent form of security may be drawn to cover the
35 original registration and any renewals of the registration.

36 [(b)] (D) Every bond or equivalent form of security shall provide that:

37 (1) A suit may not be maintained to enforce any liability on the bond or
38 equivalent form of security unless brought within two years after the contract of sale or
39 other act on which the suit is based; and

14

1 (2) The liability of the surety on each bond or equivalent form of security to
2 all persons aggrieved may not in any event exceed in the aggregate the penal sum of the
3 bond.

4 11-411.

5 (a) (1) [Every registered broker-dealer and investment adviser shall make and
6 keep the accounts, correspondence, memoranda, papers, books, and other records which
7 the Commissioner by rule prescribes. All required records shall be preserved for three
8 years unless the Commissioner by rule prescribes otherwise for particular types of
9 records.] A REGISTERED BROKER-DEALER SHALL MAKE AND KEEP
10 CORRESPONDENCE, MEMORANDA, PAPERS, BOOKS, AND OTHER RECORDS THAT
11 THE COMMISSIONER REQUIRES BY RULE.

12 (2) THE COMMISSIONER'S AUTHORITY TO ADOPT RULES UNDER
13 PARAGRAPH (1) OF THIS SUBSECTION IS SUBJECT TO THE LIMITATIONS OF § 15 OF
14 THE SECURITIES EXCHANGE ACT OF 1934.

15 (3) A REGISTERED INVESTMENT ADVISER SHALL MAKE, KEEP, AND
16 PRESERVE ACCOUNTS, CORRESPONDENCE, MEMORANDA, PAPERS, BOOKS, AND
17 OTHER RECORDS THAT THE COMMISSIONER REQUIRES BY RULE.

18 (4) THE COMMISSIONER'S AUTHORITY TO ADOPT RULES UNDER
19 PARAGRAPH (3) OF THIS SUBSECTION IS SUBJECT TO THE LIMITATIONS OF § 222 OF
20 THE INVESTMENT ADVISERS ACT OF 1940.

21 (b) (1) With respect to investment advisers, the Commissioner by rule or order
22 may require that certain information be furnished or disseminated as appropriate in the
23 public interest or for the protection of investors and advisory clients.

24 (2) To the extent determined by the Commissioner in [his] THE
25 COMMISSIONER'S discretion, information furnished to clients or prospective clients of an
26 investment adviser pursuant to the Investment Advisers Act of 1940 and the rules
27 thereunder may be used in whole or partial satisfaction of this requirement.

28 (c) [Every registered broker-dealer and investment adviser shall file the financial
29 reports which the Commissioner by rule prescribes.]

30 (1) A REGISTERED BROKER-DEALER SHALL FILE FINANCIAL REPORTS
31 THAT THE COMMISSIONER REQUIRES BY RULE OR ORDER.

32 (2) THE COMMISSIONER'S AUTHORITY TO ADOPT RULES UNDER
33 PARAGRAPH (1) OF THIS SUBSECTION IS SUBJECT TO THE LIMITATIONS OF § 15 OF
34 THE SECURITIES EXCHANGE ACT OF 1934.

35 (3) A REGISTERED INVESTMENT ADVISER SHALL FILE THE FINANCIAL
36 REPORTS THAT THE COMMISSIONER REQUIRES BY RULE OR ORDER.

37 (4) THE COMMISSIONER'S AUTHORITY TO ADOPT RULES UNDER
38 PARAGRAPH (3) OF THIS SUBSECTION IS SUBJECT TO THE LIMITATIONS OF § 222 OF
39 THE INVESTMENT ADVISERS ACT OF 1940.

15

1 (d) [If the information contained in any document filed with the Commissioner is
2 or becomes inaccurate or incomplete in any material respect, the registrant promptly shall
3 file a correcting amendment, unless notification of the correction has been given under §
4 11-402 of this subtitle.] A REGISTRANT SHALL PROMPTLY FILE A CORRECTING
5 AMENDMENT, IF:

6 (1) THE INFORMATION CONTAINED IN ANY DOCUMENT FILED WITH
7 THE COMMISSIONER IS OR BECOMES INACCURATE OR INCOMPLETE IN ANY
8 MATERIAL RESPECT; AND

9 (2) THE REGISTRANT HAS NOT PROVIDED NOTIFICATION OF THE
10 CORRECTION UNDER § 11-402 OF THIS SUBTITLE.

11 (E) A FEDERAL COVERED ADVISER SHALL PROMPTLY FILE A CORRECTING
12 AMENDMENT WITH THE COMMISSIONER, IF:

13 (1) THE INFORMATION CONTAINED IN ANY DOCUMENT FILED BY THE
14 FEDERAL COVERED ADVISER IS OR BECOMES INACCURATE IN ANY MATERIAL
15 RESPECT;

16 (2) THE SECURITIES AND EXCHANGE COMMISSION REQUIRES THE
17 CORRECTING AMENDMENT; AND

18 (3) THE FEDERAL COVERED ADVISER HAS NOT PROVIDED
19 NOTIFICATION UNDER § 11-402 OF THIS SUBTITLE.

20 [(e)] (F) (1) All the records referred to in subsection (a) of this section are
21 subject at any time or from time to time to the reasonable periodic, special, or other
22 examinations by representatives of the Commissioner, within or without this State, which
23 the Commissioner considers necessary or appropriate in the public interest or for the
24 protection of investors.

25 (2) For the purpose of avoiding unnecessary duplication of examinations,
26 the Commissioner, to the extent [he] THE COMMISSIONER considers it practicable in
27 administering this subsection, may cooperate with the securities administrators of other
28 states, the Securities and Exchange Commission, and any national securities exchange or
29 national securities association registered under the Securities Exchange Act of 1934.

30 11-412.

31 (a) The Commissioner by order may deny, suspend, or revoke any registration if
32 [he] THE COMMISSIONER finds that the order is in the public interest and that the
33 applicant or registrant or, in the case of a broker-dealer or investment adviser, any
34 partner, officer, or director, any person occupying a similar status or performing similar
35 functions, or any person directly or indirectly controlling the broker-dealer or investment
36 adviser:

37 (1) Has filed an application for registration which, as of its effective date or
38 as of any date after filing in the case of an order denying effectiveness, was incomplete in
39 any material respect or contained any statement which was, in light of the circumstances
40 under which it was made, false or misleading with respect to any material fact;

16

1 (2) Has willfully violated or willfully failed to comply with any provisions of
 2 this title, a predecessor act, or any rule or order under this title or a predecessor act;

3 (3) Has been convicted, within the last 10 years, of a felony, or of an offense
 4 that:

5 (i) Involves the taking of a false oath, the making of a false report,
 6 bribery, perjury, burglary, or attempt or conspiracy to commit any of those offenses;

7 (ii) Arises out of the conduct of business as, or employment by or
 8 association with, a broker-dealer, municipal or government securities broker or dealer,
 9 investment adviser, bank, savings institution, trust company, credit union, savings and
 10 loan association, insurance company or broker, fiduciary, investment company,
 11 accountant, or real estate agent or broker, or any entity or person required to be
 12 registered under the Commodity Exchange Act; or

13 (iii) Involves the larceny, theft, robbery, extortion, forgery,
 14 counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or
 15 misappropriation of funds or securities, or an attempt or conspiracy to commit any of
 16 those offenses;

17 (4) Is permanently or temporarily enjoined by any court of competent
 18 jurisdiction from engaging in or continuing any conduct or practices involving any aspect
 19 of the securities or investment advisory or any other financial services business;

20 (5) Is the subject of an order of the Commissioner denying, suspending, or
 21 revoking registration as a broker-dealer, agent, investment adviser, or investment adviser
 22 representative;

23 (6) Is the subject of an order entered within the past five years by the
 24 securities administrator or any other financial services regulator of any [other] state or
 25 by the Securities and Exchange Commission denying or revoking registration as a
 26 broker-dealer, investment adviser, investment adviser representative, or agent or the
 27 substantial equivalent of those terms as defined in this title, or any other financial services
 28 license or registration, or is the subject of an order by the Commodity Futures Trading
 29 Commission denying, suspending, or revoking registration under the Commodity
 30 Exchange Act, or is suspended or expelled from a national securities exchange or national
 31 securities association registered under the Securities Exchange Act of 1934 either by
 32 action of a national securities exchange or national securities association, the effect of
 33 which action has not been stayed by appeal or otherwise, or by order of the Securities and
 34 Exchange Commission, or is the subject of a United States post office fraud order, but:

35 (i) The Commissioner may not institute a revocation or suspension
 36 proceeding under this item (6) more than one year from the date of the order or action
 37 relied on; and

38 (ii) [He] THE COMMISSIONER may not enter an order under this
 39 item (6) on the basis of an order under another state act unless that order was based on
 40 facts which would currently constitute a ground for an order under this section;

41 (7) Has engaged in dishonest or unethical practices in the securities or
 42 investment advisory or any other financial services business;

17

1 (8) Is insolvent, either in the sense that [his] THE PERSON'S liabilities
2 exceed [his] assets or in the sense that [he] THE PERSON cannot meet [his] obligations
3 as they mature, but the Commissioner may not enter an order against a broker-dealer or
4 investment adviser under this item (8) without a finding of insolvency as to the
5 broker-dealer or investment adviser;

6 (9) Is not qualified on the basis of factors such as training, experience, and
7 knowledge of the securities or investment advisory or any other financial services
8 business, except as otherwise provided in subsection (c) of this section;

9 (10) Has failed reasonably to supervise [his] THE BROKER-DEALER'S
10 agents, if [he] THE PERSON is a broker-dealer, or [his] THE investment [adviser]
11 ADVISER'S representatives, if [he] THE PERSON is an investment adviser; or

12 (11) Has failed to pay the proper [filing] fee, but the Commissioner may
13 enter only a denial order under this item (11), and [he] THE COMMISSIONER shall
14 vacate the order when the deficiency is corrected.

15 [(b) The Commissioner may not institute a suspension or revocation proceeding on
16 the basis of a fact or transaction known to him when the registration became effective
17 unless the proceeding is instituted within the next 30 days.]

18 (B) (1) IN THIS SUBSECTION, "FINAL ADMINISTRATIVE ORDER" DOES NOT
19 INCLUDE AN ORDER THAT IS STAYED OR SUBJECT TO FURTHER REVIEW OR
20 APPEAL.

21 (2) IF AN APPLICANT FOR INITIAL REGISTRATION DISCLOSES THE
22 EXISTENCE OF A FINAL JUDICIAL OR ADMINISTRATIVE ORDER TO THE
23 COMMISSIONER BEFORE THE EFFECTIVE DATE OF THE INITIAL REGISTRATION, THE
24 COMMISSIONER MAY NOT INSTITUTE A SUSPENSION OR REVOCATION PROCEEDING
25 BASED SOLELY ON THE JUDICIAL OR ADMINISTRATIVE ORDER UNLESS THE
26 PROCEEDING IS INITIATED WITHIN 90 DAYS IMMEDIATELY FOLLOWING THE
27 EFFECTIVE DATE OF THE APPLICANT'S INITIAL REGISTRATION.

28 (c) The following provisions govern the application of subsection (a)(9) of this
29 section:

30 (1) The Commissioner may not enter an order against a broker-dealer on
31 the basis of the lack of qualification of any person other than [the] THAT broker-dealer
32 [himself,] if [he] THE BROKER-DEALER is an individual, or an agent of the
33 broker-dealer;

34 (2) The Commissioner may not enter an order against an investment adviser
35 on the basis of the lack of qualification of any person other than [the] THAT investment
36 adviser [himself,] if [he] THE INVESTMENT ADVISER is an individual, or an investment
37 adviser representative of the investment adviser;

38 (3) The Commissioner may not enter an order solely on the basis of lack of
39 experience if the applicant or registrant is qualified by training or knowledge or both;

40 (4) The Commissioner shall consider that an agent who will work under the
41 supervision of a registered broker-dealer need not have the same qualifications as a

18

1 broker-dealer and that an investment adviser representative who will work under the
2 supervision of a registered investment adviser need not have the same qualifications as an
3 investment adviser;

4 (5) The Commissioner shall consider that an investment adviser is not
5 necessarily qualified solely on the basis of experience as a broker-dealer or agent. When
6 [he] THE COMMISSIONER finds that an applicant for initial or renewal registration as a
7 broker-dealer is not qualified as an investment adviser, [he] THE COMMISSIONER by
8 order may condition the applicant's registration as a broker-dealer upon [his] THE
9 BROKER-DEALER not transacting business in this State as an investment adviser; and

10 (6) The Commissioner by rule may provide for an examination, which may
11 be written, oral, or both, to be taken by any class of or all applicants. The Commissioner
12 by rule or order may waive the examination requirement as to a person or class of persons
13 if the Commissioner determines that the examination is not necessary or appropriate in
14 the public interest or for the protection of investors.

15 11-414.

16 (A) [If the Commissioner finds that any registrant or applicant for registration has
17 abandoned its application, is no longer in existence, has ceased to do business as a
18 broker-dealer, agent, investment adviser, or investment adviser representative, is subject
19 to an adjudication of mental incompetence or to the control of a committee, conservator,
20 or guardian, or cannot be located after reasonable search, the Commissioner by order
21 may cancel the registration or application.] BY ORDER, THE COMMISSIONER MAY
22 CANCEL A REGISTRATION OR APPLICATION, IF THE COMMISSIONER FINDS THAT
23 THE APPLICANT OR REGISTRANT:

24 (1) HAS ABANDONED THE APPLICATION;

25 (2) IS NO LONGER IN EXISTENCE;

26 (3) HAS CEASED TO DO BUSINESS AS A BROKER-DEALER, AGENT,
27 INVESTMENT ADVISER, OR INVESTMENT ADVISER REPRESENTATIVE;

28 (4) IS SUBJECT TO AN ADJUDICATION OF MENTAL INCOMPETENCE OR
29 THE CONTROL OF A COMMITTEE, CONSERVATOR, OR GUARDIAN; OR

30 (5) CANNOT BE LOCATED AFTER REASONABLE SEARCH.

31 (B) THE COMMISSIONER MAY DEEM ABANDONED A NOTICE FILING THAT A
32 FEDERAL COVERED ADVISER HAS FILED UNDER § 11-405 OF THIS SUBTITLE, IF THE
33 COMMISSIONER FINDS THAT THE FEDERAL COVERED ADVISER:

34 (1) HAS ABANDONED THE NOTICE FILING;

35 (2) IS NO LONGER IN EXISTENCE;

36 (3) HAS CEASED TO DO BUSINESS AS A FEDERAL COVERED ADVISER;

37 (4) IS SUBJECT TO ADJUDICATION OF MENTAL INCOMPETENCE OR TO
38 THE CONTROL OF A COMMITTEE, CONSERVATOR, OR GUARDIAN; OR

39 (5) CANNOT BE LOCATED AFTER A REASONABLE SEARCH.

19

1 11-415.

2 (a) Withdrawal from registration as a broker-dealer, agent, investment adviser, or
3 investment adviser representative becomes effective [30] 90 days after receipt of an
4 application to withdraw or within any shorter period of time which the Commissioner
5 determines, unless:

6 (1) A revocation or suspension proceeding is pending when the application
7 is filed; or

8 (2) A proceeding to revoke, suspend, or impose conditions on the
9 withdrawal is instituted within [30] 90 days after the application is filed.

10 (b) If a proceeding is pending or instituted, withdrawal becomes effective at the
11 time and on the conditions the Commissioner by order determines.

12 (c) If no proceeding is pending or instituted and withdrawal automatically
13 becomes effective, the Commissioner nevertheless may institute a revocation or
14 suspension proceeding under § 11-412(a)(2) OF THIS SUBTITLE within [one year] 2
15 YEARS after withdrawal became effective and enter a revocation or suspension order as
16 of the last date on which registration was effective.

17 11-501.

18 [It is unlawful for any person to] A PERSON MAY NOT offer or sell any security in
19 [the] THIS State unless:

20 (1) [It] THE SECURITY is registered under this title; [or]

21 (2) The security or transaction is exempted under Subtitle 6 of this title[.];
22 OR

23 (3) THE SECURITY IS A FEDERAL COVERED SECURITY.

24 11-503.1.

25 (A) A PERSON WHO OFFERS OR SELLS A FEDERAL COVERED SECURITY IN
26 THIS STATE SHALL FILE THE DOCUMENTS REQUIRED BY THIS SECTION AND PAY
27 ANY FEES REQUIRED BY § 11-506 OR § 11-510.1 OF THIS SUBTITLE.

28 (B) WITH RESPECT TO A FEDERAL COVERED SECURITY SPECIFIED IN §
29 18(B)(2) OF THE SECURITIES ACT OF 1933, THE COMMISSIONER MAY REQUIRE, BY
30 RULE, ORDER, OR OTHERWISE, THE FILING OF THE FOLLOWING DOCUMENTS:

31 (1) BEFORE THE INITIAL OFFER OF THE FEDERAL COVERED SECURITY
32 IN THIS STATE:

33 (I) A NOTICE IN A FORM THAT THE COMMISSIONER REQUIRES;

34 (II) A CONSENT TO SERVICE OF PROCESS SIGNED BY THE ISSUER;

35 (III) THE FEE REQUIRED UNDER § 11-510.1 OF THIS SUBTITLE; AND

20

1 (IV) ANY DOCUMENT THAT IS PART OF A CURRENT FEDERAL
2 REGISTRATION STATEMENT FILED WITH THE UNITED STATES SECURITIES AND
3 EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933; AND

4 (2) AFTER THE INITIAL OFFER OF THE FEDERAL COVERED SECURITY
5 IN THIS STATE:

6 (I) ANY DOCUMENT THAT IS PART OF AN AMENDMENT TO A
7 CURRENT FEDERAL REGISTRATION STATEMENT FILED WITH THE UNITED STATES
8 SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933;
9 AND

10 (II) AN ANNUAL OR PERIODIC REPORT OF THE VALUE OF THE
11 FEDERAL COVERED SECURITIES OFFERED OR SOLD IN THIS STATE TOGETHER WITH
12 ANY FEE REQUIRED UNDER § 11-510.1(B) AND (C) OF THIS SUBTITLE.

13 (C) WITH RESPECT TO A FEDERAL COVERED SECURITY SPECIFIED IN §
14 18(B)(3) OF THE SECURITIES ACT OF 1933, THE COMMISSIONER MAY REQUIRE, BY
15 RULE, ORDER, OR OTHERWISE, THE ISSUER TO FILE:

16 (1) ANY DOCUMENT FILED WITH THE UNITED STATES SECURITIES AND
17 EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933; AND

18 (2) THE FEE REQUIRED UNDER § 11-506 OF THIS SUBTITLE.

19 (D) WITH RESPECT TO A SECURITY THAT IS A FEDERAL COVERED SECURITY
20 SPECIFIED IN § 18(B)(4)(D) OF THE SECURITIES ACT OF 1933, THE COMMISSIONER MAY
21 REQUIRE, BY RULE, ORDER, OR OTHERWISE, THE ISSUER TO FILE:

22 (1) A CONSENT TO SERVICE OF PROCESS SIGNED BY THE ISSUER;

23 (2) THE FEE REQUIRED UNDER § 11-506 OF THIS SUBTITLE; AND

24 (3) ANY DOCUMENT FILED WITH THE UNITED STATES SECURITIES AND
25 EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933.

26 (E) EXCEPT FOR A FEDERAL COVERED SECURITY SPECIFIED IN § 18(B)(1) OF
27 THE SECURITIES ACT OF 1933, THE COMMISSIONER MAY ISSUE A STOP ORDER
28 SUSPENDING THE OFFER AND SALE OF A FEDERAL COVERED SECURITY, IF THE
29 COMMISSIONER FINDS THAT:

30 (1) THE ORDER IS IN THE PUBLIC INTEREST; AND

31 (2) THERE IS A FAILURE TO COMPLY WITH ANY CONDITION
32 ESTABLISHED UNDER THIS SECTION.

33 (F) THE COMMISSIONER MAY WAIVE, BY RULE, ORDER, OR OTHERWISE, THE
34 FILING OF ANY DOCUMENT REQUIRED UNDER THIS SECTION.

35 11-506.

36 (a) Except as provided in § 11-510.1 of this subtitle, [every] A person filing [a
37 registration statement] AN APPLICATION TO REGISTER SECURITIES shall pay a [filing]
38 fee of 0.1 percent of the maximum aggregate offering price at which the [registered]

21

1 securities are to be offered in this State, but the fee may not be [in any case] less than
2 \$500 or more than \$1,500.

3 (b) (1) [Every] A person required to submit a filing [pursuant to any] IN
4 ACCORDANCE WITH AN exemption granted under this title shall pay a fee of \$100 for
5 each filing.

6 (2) A PERSON REQUIRED TO SUBMIT A NOTICE OF THE OFFER OR SALE
7 OF FEDERAL COVERED SECURITIES UNDER § 11-503.1(C) OR (D) OF THIS SUBTITLE
8 SHALL PAY A FEE OF \$100 FOR EACH FILING.

9 (c) [When a registration statement is withdrawn before the effective date or a
10 preeffective stop order is entered under §§ 11-511 through 11-513 of this subtitle, the
11 Commissioner shall retain the filing fee.] THE COMMISSIONER SHALL RETAIN THE
12 FEE, IF:

13 (1) AN APPLICATION TO REGISTER SECURITIES IS WITHDRAWN BEFORE
14 THE EFFECTIVE DATE;

15 (2) A NOTICE OF THE OFFER OR SALE OF A FEDERAL COVERED
16 SECURITY IS WITHDRAWN; OR

17 (3) A PREEFFECTIVE STOP ORDER IS ENTERED UNDER §§ 11-511
18 THROUGH 11-513 OF THIS SUBTITLE.

19 11-510.1.

20 (a) A face-amount certificate company, an open-end management company, A
21 CLOSED-END MANAGEMENT COMPANY or a unit investment trust, as those terms are
22 defined in the Investment Company Act of 1940, [may register an indefinite amount of
23 securities under a registration statement.] SHALL COMPLY WITH THE REQUIREMENTS
24 OF THIS SECTION, IF THE COMPANY OR TRUST FILES:

25 (1) A NOTICE UNDER § 11-503.1 OF THIS SUBTITLE OF THE OFFER OR
26 SALE IN THIS STATE OF AN INDEFINITE AMOUNT OF FEDERAL COVERED
27 SECURITIES SPECIFIED IN § 18(B)(2) OF THE SECURITIES ACT; OR

28 (2) AN APPLICATION TO REGISTER UNDER § 11-503 OF THIS SUBTITLE
29 THE OFFER AND SALE IN THIS STATE OF AN INDEFINITE AMOUNT OF SECURITIES.

30 (b) (1) A face-amount certificate company or an open-end management
31 company, at the time of filing, shall pay an initial [registration] fee of \$500 and within 60
32 days after the [registrant's] ISSUER'S fiscal year end during which its registration
33 statement is effective [either:] OR NOTICE REQUIRED BY § 11-503.1(B) IS FILED:

34 (i) Pay a fee of \$1,300; or

35 (ii) 1. File a report on a form the Commissioner by rule adopts,
36 reporting all sales of securities to persons within this State during the fiscal year; and

37 2. Pay a fee of 0.1 percent of the maximum aggregate offering
38 price at which the [registered] securities [are] WERE sold in this State.

22

1 (2) (i) When calculating the fee [pursuant to] IN ACCORDANCE WITH
2 paragraph (1)(ii)2 of this subsection, the initial [registration] fee of \$500 shall be
3 deducted from the aggregate fee due.

4 (ii) [The] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS
5 SECTION, THE aggregate fee due under this paragraph may not exceed \$1,500.

6 (iii) If the amount due under paragraph (1)(ii)2 of this subsection is
7 less than \$500, no additional amount may be payable, and no credit or refund may be
8 allowed or returned.

9 (c) (1) [A unit investment trust, at the time of filing, shall pay an initial
10 registration fee of \$500 and within 60 days after the anniversary of the unit investment
11 trust's effective date either:] AT THE TIME OF FILING, A UNIT INVESTMENT TRUST OR
12 A CLOSED-END MANAGEMENT COMPANY SHALL PAY AN INITIAL FEE OF \$500.

13 (2) WITHIN 60 DAYS AFTER THE ANNIVERSARY OF THE DATE ON WHICH
14 THE ISSUER'S OFFER BECAME EFFECTIVE OR ITS NOTICE FILED UNDER § 11-503(B)
15 OF THIS SUBTITLE WAS ACCEPTED, A UNIT INVESTMENT TRUST OR A CLOSED-END
16 MANAGEMENT COMPANY SHALL:

17 (i) Pay a fee of \$1,300; or

18 (ii) 1. File a report on a form the Commissioner by rule adopts,
19 reporting all sales of securities to persons within this State during the effective period of
20 the registration statement OR THE ACCEPTANCE PERIOD OF THE NOTICE FILED
21 UNDER § 11-503.1(B) OF THIS SUBTITLE; and

22 2. Pay a fee of 0.1 percent of the maximum aggregate offering
23 price at which the [registered] securities [are] WERE sold in this State.

24 [(2)] (3) (i) When calculating the fee [pursuant to] IN ACCORDANCE
25 WITH paragraph (1)(ii)2 of this subsection, the initial [registration fee of] \$500 FEE shall
26 be deducted from the aggregate fee due.

27 (ii) [The] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS
28 SECTION, THE aggregate fee due under this paragraph may not exceed \$1,500.

29 (iii) [If] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS
30 SECTION, IF the amount due under paragraph (1)(ii)2 of this subsection is less than \$500,
31 no additional amount may be payable, and no credit or refund may be allowed or
32 returned.

33 (D) (1) THE COMMISSIONER, BY RULE, ORDER, OR OTHERWISE, MAY
34 EXTEND THE LENGTH OF THE RENEWAL PERIOD TO A PERIOD NOT EXCEEDING 2
35 YEARS FOR THE EFFECTIVENESS OF A REGISTERED OFFERING OR FOR A NOTICE
36 FILED UNDER § 11-503.1 OF THIS SUBTITLE.

37 (2) IF THE COMMISSIONER EXTENDS A RENEWAL PERIOD IN EXCESS OF
38 1 YEAR, THE FEE SHALL BE PRORATED TO THE EXTENDED RENEWAL PERIOD.

23

1 11-513.

2 A stop order may not be entered under any part of [§§ 11-511 or 11-512] §
3 11-503.1, § 11-511, OR § 11-512 of this subtitle, except § 11-512 (a), without:

4 (1) Appropriate prior notice to the applicant or registrant, the issuer, and
5 the person on whose behalf the securities are to be or have been offered;

6 (2) Opportunity for hearing; and

7 (3) Written findings of fact and conclusions of law.

8 11-601.

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

10 (7) Any security issued or guaranteed by any railroad, other common
11 carrier, public utility, or holding company which is:

12 (i) [Subject to the jurisdiction of the Interstate Commerce
13 Commission;

14 (ii)] A registered holding company under the Public Utility Holding
15 Company Act of 1935 or a subsidiary of such a company within the meaning of that act;

16 [(iii)] (II) Regulated in respect of its rates and charges by a
17 governmental authority of the United States or any state; or

18 [(iv)] (III) Regulated in respect of the issuance or guarantee of the
19 security by a governmental authority of the United States, any state, Canada, or any
20 Canadian province;

21 (14) A SECURITY EXEMPT UNDER § 3(A)(12)(A)(V) OF THE SECURITIES
22 EXCHANGE ACT OF 1934, IF:

23 (I) THE SECURITY IS OFFERED AND SOLD AS PART OF AN ISSUE
24 HAVING AN AGGREGATE OFFERING PRICE NOT IN EXCESS OF AN AMOUNT THAT
25 THE COMMISSIONER MAY REQUIRE, BY RULE, ORDER, OR OTHERWISE AND IS SOLD
26 WITHOUT PAYMENT OF ANY COMMISSION OR REMUNERATION FOR SOLICITING A
27 PROSPECTIVE BUYER; OR

28 (II) 10 DAYS PRIOR TO THE FIRST SALE OF THE SECURITY THERE IS
29 FILED WITH THE COMMISSIONER NOTICE THAT THE COMMISSIONER MAY REQUIRE
30 BY RULE, ORDER, OR OTHERWISE, NO OFFERS OR SALES ARE MADE IN THIS STATE
31 BY PERSONS OTHER THAN A BROKER-DEALER OR AGENT REGISTERED IN THIS
32 STATE, AND NO COMMISSION OR REMUNERATION FOR SOLICITING A PROSPECTIVE
33 BUYER IS PAID EXCEPT TO A BROKER-DEALER OR AGENT REGISTERED IN THIS
34 STATE.

35 [(14)] (15) Any security as to which the Commissioner by rule or order finds
36 that:

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

24

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

3 11-702.

4 (b) Whenever it appears to the Commissioner that any person has engaged in any
5 act or practice constituting a violation of any provision of this title or any rule or order
6 under this title, the Commissioner may in [his] THE COMMISSIONER'S discretion bring
7 an action to obtain one or more of the following remedies:

8 (1) A temporary restraining order;

9 (2) A temporary or permanent injunction;

10 (3) A civil penalty up to a maximum amount of \$5,000 for any single
11 violation of this title;

12 (4) A declaratory judgment;

13 (5) The appointment of a receiver or conservator for the defendant or the
14 defendant's assets;

15 (6) A freeze of the defendant's assets; [and]

16 (7) RESCISSION;

17 (8) RESTITUTION; AND

18 [(7)] (9) Any other relief as the court deems just.

19 11-703.

20 (a) (3) A person is civilly liable to another person if [he] THE PERSON:

21 (i) Acts as an investment adviser or representative in violation of §
22 11-302(c), § 11-401(b), § 11-402(b), or § 11-304(b) of this title or any rule or order
23 promulgated under it, except that an action [pursuant to] BASED ON a violation of §
24 11-402(b) of this title may not be maintained except by those persons who directly
25 received advice from the unregistered investment adviser representative; or

26 (ii) Receives, directly or indirectly, any consideration from another
27 person for advice as to the value of securities or their purchase or sale or for acting as an
28 investment adviser or representative under [§ 11-101(f) and (g)] § 11-101(H) AND (I) of
29 this title, whether through the issuance of analyses, reports, or otherwise, and employs
30 any device, scheme, or artifice to defraud such other person or engages in any act,
31 practice or course of business which operates or would operate as a fraud or deceit on
32 such other person.

33 11-802.

34 (a) (1) Every [applicant] ISSUER FILING AN APPLICATION for registration
35 under this title and every issuer [which proposes to offer a security in this State through
36 any person acting on an agency basis in the common-law sense] FILING AN
37 APPLICATION FOR, REQUEST FOR, OR NOTICE OF AN EXEMPTION FROM
38 REGISTRATION UNDER THIS TITLE, OR A NOTICE UNDER § 11-503.1 OF THIS TITLE

25

1 shall file with the Commissioner, in the form which [he] THE COMMISSIONER by rule
2 prescribes, an irrevocable consent appointing the Commissioner or [his] THE
3 COMMISSIONER'S successor in office to be [his] THE ISSUER'S attorney to receive
4 service of any lawful process in any noncriminal suit, action, or proceeding against [him]
5 THE ISSUER or [his] THE ISSUER'S successor or personal representative which arises
6 under this title or any rules or order under this title after the consent has been filed, with
7 the same force and validity as if served personally on the person filing the consent.

8 (2) A person who has filed the consent in connection with a previous
9 [registration] FILING need not file another.

10 (3) Service may be made by leaving a copy of the process in the office of the
11 Commissioner, but it is not effective unless:

12 (i) The plaintiff, who may be the Commissioner, in a suit, action, or
13 proceeding instituted by him, immediately sends notice of the service and a copy of the
14 process by certified mail, return receipt requested, bearing a postmark from the United
15 States Postal Service, to the defendant or respondent at [his] THE DEFENDANT'S OR
16 RESPONDENT'S last address on file with the Commissioner; and

17 (ii) The plaintiff's affidavit of compliance with this section is filed in
18 the case on or before the return day of the process, if any, or within any further time the
19 court allows.

20 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland
21 read as follows:

22 **Article - Corporations and Associations**

23 11-101.

24 (E) "FEDERAL COVERED ADVISER" MEANS A PERSON WHO IS:

25 (1) REGISTERED UNDER SECTION 203 OF THE INVESTMENT ADVISERS
26 ACT OF 1940; OR

27 (2) EXCLUDED FROM THE DEFINITION OF "INVESTMENT ADVISER"
28 UNDER SECTION 202(A)(11) OF THE INVESTMENT ADVISERS ACT OF 1940.

29 (F) "FEDERAL COVERED SECURITY" MEANS A COVERED SECURITY UNDER
30 SECTION 18(B) OF THE SECURITIES ACT OF 1933.

31 SECTION 4. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall
32 take effect October 10, 1999.

33 SECTION 5. AND BE IT FURTHER ENACTED, That § 11-103 of the
34 Corporations and Associations Article shall apply the Philanthropy Protection Act of
35 1995 and shall apply to administrative and judicial proceedings beginning after the
36 effective date of this Act.

37 SECTION 6. AND BE IT FURTHER ENACTED, That, except for Section 3 of
38 this Act, this Act shall take effect October 1, 1997.