

Department of Fiscal Services
Maryland General Assembly

FISCAL NOTE
Revised

House Bill 877 (Delegate Frank)
Economic Matters

Referred to Judicial Proceedings

Maryland Securities Act - Revision

This amended bill revises the Maryland Securities Act to conform to the National Securities Markets Improvement Act (NSMIA) of 1996. In doing so, the bill revises the State regulation of certain securities, divides the jurisdiction over investment advisers, and incorporates certain amendments to the Uniform Securities Act.

NSMIA allows states a three-year grace period to adopt the necessary changes to make the effect of NSMIA revenue neutral on the states. Thus, the bill adopts definitions of “federal covered adviser” and “federal covered security” to conform to NSMIA and makes these terms effective on October 10, 1999, the date on which the grace period expires.

Fiscal Summary

State Effect: None as discussed below.

Local Effect: None.

Small Business Effect: Potential meaningful impact on investment advisers and investment advisor representatives as discussed below.

Fiscal Analysis

Bill Summary: The bill’s major provisions include:

- The addition of the definition of “federal covered security” to exclude mutual funds and certain other national offerings from State registration.

- A “notice filing” requirement is substituted in place of the registration requirement for mutual funds and certain other securities, and registration fees are replaced with equivalent “notice filing” fees.
- The Securities Commissioner is permitted to reduce or eliminate certain required filings and to modify registration requirements as needed.
- The State will regulate investment advisers that do business in the State and manage less than \$25 million in assets, and the federal Securities and Exchange Commission will regulate investment advisers that manage more than \$25 million in assets.
- Investment adviser representatives with a place of business in the State must be licensed by the Securities Division and may not transact business on behalf of a federal covered advisor. Under current law, representatives who do business in the State must be licensed.
- Uniform reporting, record keeping, and bonding requirements are established for broker-dealers and investment advisers consistent with federal requirements.
- Restitution and rescission are added as possible remedies that the Securities Commissioner may request from the court for the benefit of investors.
- The commissioner is permitted to establish a two-year renewal cycle for mutual funds (current cycle is one year), and mutual funds are required to utilize similar fee computation and reporting methods.
- The amendment to the Uniform Securities Act is adopted to specify when the Securities Commissioner is estopped from taking disciplinary action against a licensed stockbroker or investment adviser representative.
- The period for revocation action following withdrawal of broker-dealer or investment adviser registration is extended from 30 days to 90 days.
- A catch-all exemption from broker-dealer registration is established that permits the commissioner to create a limited registration in the State so that Canadian broker-dealers can serve existing customers who are temporarily in Maryland.
- Clarification is provided to allow disciplinary action taken by a Maryland financial regulator to have the same effect on a registration as action taken by a regulator from another state.

- As permitted by Congress in the Federal Philanthropy Protection Act, the State is permitted to retain regulatory authority over certain pooled income funds and similar funds, but exempts such funds from registration requirements.

State Effect: Enactment of this legislation will conform State law to federal law, thus avoiding revenue losses beginning in fiscal 2000. The federal NSMIA preempts the State registration laws, including fee provisions, pertaining to certain securities. Failure to amend the Maryland Securities Act to substitute notice filing fees and fee provisions for “covered securities” allowed by NSMIA could result in a loss of registration fees collected from securities firms and professionals totaling an estimated \$8 million annually. The federal legislation this bill adopts allows the states to collect these current registration fees for three years. This was done to allow states time to enact new notice filing fee provisions to replace the state registration fees and make the effect of the federal legislation revenue neutral on the states. Thus, the bill changes are not effective until October 10, 1999 when the three-year period allowed by the federal legislation expires.

The State will, however, lose approximately \$200,000 in revenue in fiscal 2000 when the estimated 4,000 investment advisor representatives that have clients in Maryland, but do not have a place of business in the State, will no longer be required to register and pay the required \$50 fee. The definition of “having a place of business in the State” is not clear so the estimated impact may vary significantly. It should be noted that this is a change in federal law which is reflected in the bill. If the bill is not enacted, this revenue will still be lost in fiscal 2000 and the out-years based on the federal changes that will preempt State law.

Small Business Effect: There are approximately 10,600 investment advisor representatives and approximately 200 securities brokers and dealers registered in the State. There are also 1,100 investment advisor firms in the State of which the majority are assumed to be small businesses. It is also assumed that the majority of the individuals employed in this profession are employed by small businesses. The bill makes several modifications to Maryland securities law, that may have an impact on these small businesses.

The bill adds restitution and rescission to the possible remedies the Securities Commissioner may request that the court award to investors who are victims of a violation of the securities laws in addition to a declaratory judgment, civil fines, or the freezing of assets and the appointment of a receiver. To the extent that small businesses violate securities laws, these businesses may experience increased expenditures based on the additional remedies that may be sought for claims.

The bill also permits the Securities Commissioner to extend the registration renewal period up to two years and collect a fee proportionate to the extended period. This could minimally

reduce administrative costs for investment businesses.

Under the bill, disciplinary actions taken by Maryland officials are accorded the same weight as those in other states. To the extent that any of these professionals or the small businesses that employ them have disciplinary actions taken against them in Maryland, these actions could impact the ability of these professionals/businesses to be licensed and do business in the State.

The bill exempts those representatives that do business in Maryland, but do not have a place of business in the State, from registration and associated fees. This would advantage out-of-state investment representatives. However, federal legislation requires that each state license those representatives with places of business in that state and generally, the representatives affected are those that work for large investment firms and are not assumed to be small businesses. It should also be noted that an investment adviser representative who has a place of business in the State may not transact business on behalf of a federal covered advisor.

Information Source(s): Attorney General (Maryland Securities Division)

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Analysis by: Shelley Finlayson	Direct Inquiries to:
Reviewed by: John Rixey	John Rixey, Coordinating Analyst
	(410) 841-3710
	(301) 858-3710