

AN ACT

*Codification
District of
Columbia
Code
2001 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To require the licensing of securities, broker-dealers, investment advisers and investment adviser representatives, to regulate broker-dealers and others who participate in the sale and purchase of securities, to require the registration of certain securities offered and sold in the District of Columbia, to prohibit fraudulent and other misconduct in these transactions, to establish civil and criminal penalties for such misconduct, to authorize the Commissioner of Insurance and Securities Regulation to administer these requirements, including the licensing of broker-dealers, agents, agents of issuers, investment advisers and investment adviser representatives, the registration of securities, the monitoring of securities activities, the investigation of misconduct, the initiation of enforcement proceedings, the issuance of orders, and the promulgation of rules; to continue in effect the District of Columbia Securities Advisory Committee; and to repeal the District of Columbia Securities Act and Investment Advisers Act of 1992.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Securities Act of 2000".

TITLE I. DEFINITIONS AND RULES OF CONSTRUCTION.

Sec. 101. Definitions.

For the purposes of this act, the term:

(1) "Advertisement" means a publicly disseminated, written, or printed communication, including by radio, television, internet, or other public media, used in connection with a sale or purchase, or an offer to sell or purchase, a security.

(2) "Affiliate" of, or a person "affiliated" with, a specified person, means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified.

(3)(A) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer or issuer in effecting, or attempting to effect, purchases or sales of securities. The term "agent" shall not include:

(i) An individual who represents a broker in effecting transactions in the District of Columbia ("District") limited to transactions described in section 15(h)(2) of the Securities Exchange Act of 1934;

(ii) An individual who represents an issuer in effecting transactions in a security exempted by section 401(1), (2), (3), (4), (5), (6), (7), (8) or (9);

(iii) An individual who represents an issuer in effecting transactions exempted by section 402;

(iv) An individual who represents an issuer in effecting a transaction in a covered security as described in section 18(b)(3) and (b)(4)(D) of the Securities Act of 1933;

(v) An individual who represents an issuer in effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given, directly or indirectly, for soliciting a person in the District; or

(vi) A person not within the intent of this paragraph as the Commissioner may, by rule or order, determine.

(B) A partner, including a general partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if (i) the person otherwise comes within this definition, and (ii) any compensation that he or she receives is directly or indirectly related to purchases or sales of securities.

(4) "Broker-dealer" means a person engaged in the business of effecting offers, purchases, or sales in securities for the account of others or for his or her own account. The term "broker-dealer" shall not include:

(A) An agent;

(B) An issuer, except when effecting purchases, offers, or sales other than with respect to the offer or sale of the issuer's own securities;

(C) A depository institution; or

(D) A person who has no place of business in the District if:

(i) The person effects, whether acting for itself or as trustee, transactions in the District exclusively with or through the issuers of the securities involved in the transactions; a depository institution; another broker-dealer; an insurance company; an investment company as defined in the Investment Company Act of 1940; a pension or profit-sharing trust; or other financial institution or institutional buyer; and

(ii) The person is licensed under the securities law of a state in which the person maintains a place of business and the person offers and sells in the District to a person who is an existing customer of the person and whose residence is not in the District.

(5) "Commissioner" means the Commissioner of the Department of Insurance and Securities Regulation.

(6) "Commodity Exchange Act" means the Commodity Exchange Act, approved September 21, 1922 (42 Stat. 998; 7 U.S.C. § 1 *et seq.*).

(7) "Control", including the terms "controlling", "controlled by", and "under common control with", means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(8) "Department" means the Department of Insurance and Securities Regulation.

(9)(A) "Depository institution" means:

(i) A person that is organized, chartered, or holds an authorization certificate under the laws of a state or of the United States to receive deposits, including a savings, share, certificate, or deposit account, and that is supervised and examined for the protection of depositors by an official or agency of a state or the United States; and

(ii) A trust company or other institution that is authorized by federal or state law to exercise fiduciary powers of the type that a national bank is permitted to exercise under the authority of the Comptroller of the Currency and is supervised and examined by an official or agency of a state or the United States.

(B) The term "depository institution" shall not include an insurance company or other organization primarily engaged in the insurance business or a Morris Plan bank, industrial loan company, or a similar bank or company unless its deposits are insured by a federal agency.

(10) "Federal covered adviser" means a person who is registered, or required to be registered, under section 203 of the Investment Advisers Act of 1940. The term "federal covered adviser" shall not include a person who is not an investment adviser as defined under paragraph 17(B)(ii) through (xiii) of this section.

(11) "Federal covered security" means a security which is a covered security under section 18(b) of the Securities Act of 1933 or the rules and regulations promulgated thereunder.

(12) "Filed" means the actual delivery of a document or application to the Commissioner or designee of the Commissioner or to the principal office of the Commissioner.

(13) "Financial or institutional investor" means any of the following, whether acting for itself or others in a fiduciary capacity:

- (A) A depository institution;
- (B) An insurance company;
- (C) A separate account of an insurance company;
- (D) An investment company registered under the Investment Company

Act of 1940;

- (E) A business development company as defined in the Investment

Company Act of 1940;

- (F) An employee pension, profit-sharing, or benefit plan if:

- (i) The plan has total assets in excess of \$5 million; or

- (ii) Its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is either a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, a depository institution, or an insurance company;

- (G) A "qualified institutional buyer" as defined in SEC Rule 144A, 17

C.F.R. § 230.144A;

- (H) A broker-dealer;

- (I) An accredited investor as defined in SEC Rule 501(a), 17 C.F.R. §

230.501(a);

- (J) A limited liability company with net assets of at least \$500,000; and

- (K) Any other financial institution or institutional buyer.

(14) "Fraud", "deceit", and "defraud" are not limited to common law fraud or deceit.

(15) "Guaranteed" means guaranteed as to payment of all, or substantially all, of principal and interest or dividends.

(16) "Insured" means insured as to payment of all, or substantially all, of principal and interest or dividends.

(17)(A) "Investment adviser" means a person who, for compensation (i) engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or (ii) as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term "investment adviser" shall include financial planners or other persons who, as an integral component of other financially related services, provide investment advisory services to others for compensation, or as a part of a business, hold themselves out as providing investment advisory services to others for compensation.

- (B) The term "investment adviser" shall not include:

- (i) A federal covered adviser;

- (ii) An investment adviser representative;

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- (iii) A depository institution or a person employed by, or directly associated with, a depository institution;
- (iv) A lawyer, accountant, engineer, insurance agent or broker, or teacher whose performance of investment advisory services is solely incidental to the practice of the person's profession;
- (v) A broker-dealer or agent whose performance of investment advisory services is solely incidental to the conduct of business as a broker-dealer and who receives no special compensation for the investment advisory services;
- (vi) A publisher, employee, or columnist of a bona fide newspaper, magazine, or business or financial publication or service, whether communicated in printed form, by electronic means, or otherwise, with a regular paid circulation;
- (vii) A publisher of a securities advisory newsletter, whether communicated in printed form, by electronic means, or otherwise, with a regular paid circulation who does not provide advice to subscribers on the basis of their specific investment situations;
- (viii) An author of material included in a newspaper, magazine, publication, or newsletter who is not otherwise an investment adviser or investment adviser representative as defined under this section;
- (ix) A person who provides investment advisory services solely while acting as an investment banker or business broker on behalf of one or more parties to, and in connection with, a transaction or proposed transaction for the transfer of a controlling interest in a business enterprise;
- (x) An official, employee, or representative of the United States, a state, a political subdivision of a state, or an agency or a corporate or other instrumentality of the United States or a state, while acting in such person's official capacity on behalf of such entity;
- (xi) A person excluded from the definition of "investment adviser" under section 202(a)(11)(A) through (F) of the Investment Advisers Act of 1940;
- (xii) A licensed real estate broker or salesperson whose advice to clients relates only to the investment in, or acquisition of, real property; and
- (xiii) Any other person or class of persons not within the intent of this paragraph as the Commissioner, by rule or order, may designate.

(18) "Investment adviser representative" means:

- (A) With respect to an investment adviser licensed or required to be licensed under this act, a partner, officer, director, or person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or administrative personnel, who performs any of the following functions:
 - (i) Makes any recommendations or otherwise renders advice regarding securities;
 - (ii) Manages accounts or portfolios of clients;
 - (iii) Determines which recommendation or advice regarding securities should be given;
 - (iv) Solicits, offers, or negotiates for the sale of, or sells, investment advisory services; or
 - (v) Supervises employees who perform any of the foregoing functions;
- (B) With respect to a federal covered adviser, an individual employed by, or associated with, a federal covered adviser who is an "investment adviser representative" and who has a "place of business" in the District, as those terms are defined by rules promulgated by the Securities and Exchange Commission.

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(19) "Investment Advisers Act of 1940" means the Investment Advisers Act of 1940, approved August 22, 1940 (54 Stat. 847; 15 U.S.C. § 80b-1 *et seq.*).

(20) "Investment Company Act of 1940" means the Investment Company Act of 1940, approved August 22, 1946 (54 Stat. 789; 15 U.S.C. § 80a-1 *et seq.*).

(21) "Issuer" means a person who issues, or proposes to issue, a security, except that:

(A) With respect to certificates of deposit, voting-trust certificates, collateral-trust certificates, or certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the person performing the acts and assuming the duties of depositor or manager under the provisions of the trust or other agreement or instrument under which the security is issued; and

(B) With respect to certificates of interest or participation in oil, gas, or mining titles or leases, or in payments out of production under such titles or leases, there is not considered to be an issuer.

(22) "Non-issuer transaction" means a transaction not directly or indirectly for the benefit of the issuer.

(23) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a limited liability company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(24) "Price amendment" means the final federal amendment which includes a statement of: the offering price; underwriting and selling discounts or commissions; amount of proceeds; conversion rates; call prices; and other matters dependent upon the offering price.

(25) "Promoter" includes:

(A) A person who, acting alone or in concert with one or more other persons, takes the entrepreneurial initiative in founding or organizing the business or enterprise of an issuer;

(B) An officer or director owning securities of an issuer or a person who owns, beneficially or of record, 10% or more of a class of securities of the issuer if the officer, director, or person acquires any of those securities in a transaction within 3 years before the filing by the issuer of a registration statement under this act and the transaction does not possess the indicia of arms-length bargaining; and

(C) A member of the immediate family of a person identified in subparagraphs (A) or (B) if the family member receives securities of the issuer from that person in a transaction within 3 years before the filing by the issuer of a registration statement under this act and the transaction does not possess the indicia of arms-length bargaining.

(26) "Public Utility Holding Company Act of 1935" means the Public Utility Holding Company Act of 1935, approved August 26, 1935 (49 Stat. 838; 15 U.S.C. § 79a *et seq.*).

(27) "Sale" or "sell" includes every contract to sell, exchange, or dispose of a security or interest in a security for value. In this context:

(A) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value;

(B) "Offer to purchase" includes every attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value, but the term shall not include a transaction that is subject to section 14(d) of the Securities Exchange Act of 1934;

(C) A security given or delivered with, or as a bonus on account of, a

purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value;

(D) A gift of assessable stock is deemed to involve an offer and sale;

(E) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, or a sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, shall be considered to include an offer of the other security; and

(F) The terms "offer", "offer to sell", "sale", and "sell" shall not include:

(i) The creation of a security interest or a loan;

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

(iii) An act incident to a vote by security holders, pursuant to the certificate of incorporation or the applicable corporation statute or other controlling statute, a partnership agreement, or the controlling agreement among security holders, on a merger; triangular merger; exchange of securities for securities; consolidation; reclassification of securities; reorganization; or sale of corporate assets in consideration of the issuance of securities of another person other than an individual;

(iv) An act incident to a judicially approved reorganization in which a security is issued in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or

(v) An act as to which the Commissioner finds, by rule or order, that application of this paragraph is not necessary or appropriate for the protection of investors, and the finding is consistent with the public interest and the purposes fairly intended by the policy and provisions of this act.

(28) "Securities Act of 1933" means the Securities Act of 1933, approved May 27, 1933 (48 Stat. 74; 15 U.S.C. § 77a *et seq.*).

(29) "Securities Exchange Act of 1934" means the Securities Exchange Act of 1934, approved June 6, 1934 (48 Stat. 881; 15 U.S.C. § 78a *et seq.*).

(30) "Securities and Exchange Commission" means the United States Securities and Exchange Commission.

(31) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; a limited partnership interest; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty; a put, call, straddle, or option entered into a national securities exchange relating to foreign currency; a put, call, straddle, or option on a security, certificate of deposit, or group or index of securities, including an interest in or based on the value of any of the foregoing; or an interest or instrument commonly known as a security; or certificate of interest or participation in, temporary or interim certificate for, receipt for, whole or partial guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term "security" shall not include:

(A) An insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money in a lump sum periodically for life, or for some other specified period; or

(B) An interest in a contributory or non-contributory pension or welfare

plan subject to the Employee Retirement Income Security Act of 1974, approved September 2, 1974 (88 Stat. 832; 29 U.S.C. § 1001 *et seq.*).

(32) "Self-regulatory organization" means a national securities exchange registered under section 6 of the Securities Exchange Act of 1934; a national securities association of brokers and dealers registered under section 15A of the Securities Exchange Act of 1934; the Municipal Securities Rulemaking Board established under section 15B(b)(1) of the Securities Exchange Act of 1934; a clearing agency registered under section 17A of the Securities Exchange Act of 1934; or a futures association under section 21 of the Commodity Exchange Act.

(33) "State" means a state, territory, or possession of the United States, and Puerto Rico.

(34) "Underwriter" means a person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of a security; participates, or has a direct or indirect participation in, such undertaking; or participates, or has a participation in, the direct or indirect underwriting of such undertaking. The term "underwriter" shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributor's or seller's commission. As used in this paragraph, the term "issuer" shall include a person directly or indirectly controlling, or controlled by, the issuer or a person under direct or indirect common control with the issuer.

Sec. 102. Purpose and coordination with federal law.

(a) The purpose of this act is to protect investors and maintain public confidence in securities markets while avoiding unreasonable burdens on participants in capital markets. This act is remedial in nature and is to be broadly construed to effectuate its purposes.

(b) This act and the rules and regulations promulgated hereunder shall be coordinated with the federal acts and statutes to which references are made in this act and the rules and regulations promulgated under those federal acts and statutes to the extent that coordination is consistent with both the purposes and the provisions of this act.

TITLE II. BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES.

Sec. 201. Licensing of broker-dealer and agent.

(a) No person shall transact business in the District of Columbia ("District") as a broker-dealer or agent unless the person is licensed or exempt from licensure under this act.

(b) No broker-dealer or issuer shall employ an agent to represent the broker-dealer or issuer unless the agent is licensed or exempt from licensure under this act. The license of an agent shall not be effective during any period when the agent is not associated with a specified broker-dealer licensed under this act or with a specified issuer.

(c) No agent shall at any time represent more than one broker-dealer or issuer without the written consent of each broker-dealer or issuer. If an agent begins or terminates an association with a broker-dealer or issuer, or begins or terminates those activities which make the person an agent, the agent and the broker-dealer or issuer shall promptly notify the Commissioner.

(d) Unless sooner terminated under this act or renewed, the license of a broker-dealer or agent shall expire on December 31.

(e) No broker-dealer licensed under this act shall transact business in the District unless it registers at least one agent with the Department.

Sec. 202. Licensing of investment adviser and investment adviser representative.

(a) No person shall transact business in the District as an investment adviser or as an investment adviser representative unless the person is licensed, or exempt from licensure, under this act, or the person has no place of business in the District, and:

(1) The person's only clients in the District are other investment advisers, federal covered advisers, broker-dealers, investment companies as defined in the Investment Company Act of 1940, depository institutions, insurance companies, employee benefit plans with assets of not less than \$1 million, governmental agencies or instrumentalities (whether acting for themselves or as trustees with investment control), or other institutional investors as are designated by rule or order of the Commissioner; or

(2) During the preceding 12 months, the person has had no more than 5 clients who are residents of the District and are not the types of clients described in paragraph (1) of this subsection.

(b) No person shall:

(1) In the case of a licensed investment adviser, employ an investment adviser representative unless the investment adviser representative is licensed under this act; provided, that the license of an investment adviser representative shall not be effective during any period when the investment adviser representative is not employed by a licensed investment adviser; or

(2) In the case of a federal covered adviser, employ, supervise, or associate with an investment adviser representative having a place of business located in the District unless the investment adviser representative is licensed under this act or is exempt from licensure.

(c) When an investment adviser representative begins or terminates employment with a licensed investment adviser or federal covered adviser, the investment adviser or the investment adviser representative shall promptly notify the Commissioner.

(d) Except for advisers whose only clients are those described in subsection (a) of this section, a federal covered adviser shall not conduct advisory business in the District unless the federal covered adviser complies with section 203(e).

(e) Unless sooner terminated under this act or renewed, the license of an investment adviser and investment adviser representative, and the notice filing of each federal covered adviser, shall expire on December 31.

(f) No investment adviser representative may be registered with more than one investment adviser unless the investment advisers which employ or associate with the investment adviser representative are under common ownership or control.

Sec. 203. License and notice filing procedure.

(a) A broker-dealer, agent, investment adviser, or investment adviser representative may obtain an initial or renewal license by filing with the Commissioner an application and the consent to service of process required under section 706. The application shall contain whatever information the Commissioner may, by rule, require, including:

(1) The applicant's form and place of organization;

(2) The applicant's proposed method of doing business;

(3) The qualifications and business history of the applicant, and in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director; any person occupying a similar status or performing similar functions; or any person directly or indirectly controlling the broker-dealer or investment adviser;

(4) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(5) The applicant's financial condition and history for 10 years; and

(6) If the applicant is an investment adviser, any information to be furnished or disseminated to a client or prospective client.

(b) If no denial order is in effect and no proceeding is pending under section 207, the license shall become effective no later than noon on the 30th day after the application is filed. If the application is incomplete, the Commissioner may request additional information from the applicant and delay the effective date for 30 days from the date of receipt of the requested information. The Commissioner shall consider the application withdrawn if the requested information is not received by noon on the 90th day after the request.

(c) The licensing of a broker-dealer shall constitute the licensing of any agent who is a partner, officer, or director, or a person occupying a similar status or performing similar functions. The licensing of an investment adviser shall constitute the licensing of any investment adviser representative who is a partner, officer, or director, or a person occupying a similar status or performing similar functions.

(d)(1) Except for a federal covered adviser whose only clients are those described in section 202(a), a person shall not transact business as a federal covered adviser unless the person has made a notice filing with the Commissioner, which filing shall consist of:

(A) A copy of those documents that have been filed with the Securities and Exchange Commission that the Commissioner may, by rule or order, require;

(B) The consent to service of process required under section 706; and

(C) A fee that the Commissioner may, by rule, prescribe.

(2) A notice filing shall be effective from the date of its receipt by the Commissioner until the following December 31st and may be renewed by filing with the Commissioner those documents that have been filed with the Securities and Exchange Commission that the Commissioner requires, by rule or order and a fee to be established by the Commissioner.

(3) The Commissioner may, by rule or order, require a federal covered adviser who has made a notice filing under this section to file with the Commissioner copies of any amendments to documents filed with the Securities and Exchange Commission.

(4) A notice filing may be terminated by a filing notice of termination with the Commissioner. A notice of termination shall be effective upon receipt by the Commissioner.

(e)(1) An applicant for an initial or renewal license as a broker-dealer or agent shall pay a license filing fee as the Commissioner may, by rule, require. The applicant shall not be entitled to a refund of the fee in the event of a withdrawal or denial of the application or the failure to provide additional information requested by the Commissioner.

(2) An applicant for an initial or renewal as an investment adviser or an investment adviser representative who is required to obtain a license shall pay a license filing fee as the Commissioner may, by rule, require. The applicant shall not be entitled to a refund of the fee in the event of a withdrawal or denial of the application or the failure to provide additional information requested by the Commissioner.

(3) A person acting as a federal covered adviser in the District, except a federal covered adviser whose only clients are those described in section 202(a), shall pay an initial and renewal notice filing fee as the Commissioner may, by rule, require.

(f) The Commissioner may, by rule or order, require a minimum net capital for a licensed broker-dealer, subject to the limitations of section 15 of the Securities Exchange Act of 1934, and establish minimum financial requirements for an investment adviser, subject to the limitations

of section 222 of the Investment Advisers Act of 1940. The Commissioner may prescribe different requirements for those investment advisers who maintain custody of clients funds or securities or have discretionary authority over these funds or securities and those investment advisers who do not have such custody or authority.

(g)(1) The Commissioner may, by rule or order:

(A) Require a licensed broker-dealer or agent, or a licensed investment adviser or representative who has custody of or discretionary authority over client funds or securities, to post a surety bond or deposit cash or any other equivalent form of security in such amounts as the Commissioner may require, subject to the limitations of section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer, and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser; and

(B) Determine the conditions of such bond or equivalent security.

(2) A surety bond or equivalent form of security shall provide that:

(A) No action may be maintained to enforce a liability on the bond or equivalent form of security unless brought within 2 years after the contract of sale or other act on which the action is based; and

(B) The liability of the surety on the bond or equivalent form of security to all persons aggrieved shall not exceed, in the aggregate, the penal sum of the bond.

Sec. 204. Post-licensing requirements.

(a)(1) A licensed broker-dealer shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the Commissioner may, by rule, require.

(2) The authority of the Commissioner to adopt rules under paragraph (1) of this subsection shall be subject to the limitations of section 15 of the Securities Exchange Act 1934.

(3) A licensed investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the Commissioner may by rule require.

(4) The authority of the Commissioner to adopt rules under paragraph (3) of this subsection shall be subject to the limitations of section 222 of the Investment Advisers Act of 1940.

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

(2) Information furnished to clients or prospective clients of a licensed investment adviser that complies with the Investment Advisers Act of 1940 and the rules promulgated under that Act may be used in whole or partial satisfaction of the requirement in paragraph (1) of this subsection.

(c) A licensed broker-dealer or investment adviser shall file such financial reports as the Commissioner may, by rule or order, prescribe, except as provided by section 15 of the Securities Exchange Act 1934 in the case of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser.

(d) If the information contained in any document filed with the Commissioner is, or becomes, inaccurate or incomplete in any material respect, a licensed broker-dealer or investment adviser shall promptly file a correcting amendment with the Commissioner, and a federal covered adviser shall file a correcting amendment when required to do so with the Securities and Exchange Commission.

Sec. 205. Licensing of successor firms.

(a) A licensed broker-dealer or investment adviser or federal covered adviser shall file an application for the license or a notice filing, as applicable, of a successor, whether or not the successor is then in existence. There shall be no fee for the license or notice filing of the successor.

(b) If a broker-dealer or investment adviser succeeds to, and continues the business of, a licensed broker-dealer or investment adviser, or a federal covered adviser succeeds to and continues the business of, a federal covered adviser who has made a notice filing, and the successor files an application for a license or a notice filing, as applicable, within 30 days after the succession, the license or notice filing of the predecessor remains effective as the license or notice filing of the successor for 60 days after the succession.

(c) The licensing of a licensed agent of the broker-dealer filing an application under subsections (a) or (b) of this section continues without a separate filing or fee upon the licensing of the successor.

Sec. 206. Power of inspection, examination and audit.

(a) The Commissioner may, in a manner reasonable under the circumstances, examine, audit, or inspect the books and records, within or without the District, of a licensed broker-dealer, agent, investment adviser, or investment adviser representative as the Commissioner considers necessary or appropriate in the public interest or for the protection of investors or to determine compliance with this act. All licensed broker-dealers, agents, and investment advisers shall make their books and records available to the Commissioner in legible form.

(b) The Commissioner may copy records, or require a licensed person to copy records and provide the copies to the Commissioner, to the extent and in a manner reasonable under the circumstances.

(c) The Commissioner may impose a reasonable fee for the expense of conducting an examination, inspection, or audit under this section.

(d) For the purpose of avoiding unnecessary duplication of examinations, the Commissioner may cooperate with the securities administrators of other states, the Securities and Exchange Commission, or any self-regulatory organization.

Sec. 207. Grounds for denial, suspension, or revocation.

(a) The Commissioner may, by order, deny, suspend, or revoke a license if the Commissioner finds that the order is in the public interest and the applicant or licensed person or, in the case of a broker-dealer or investment adviser, a partner, officer, or director, or a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer or investment adviser:

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

(2) Has violated or failed to comply with this act, the District of Columbia Securities Act, approved August 30, 1964 (78 Stat. 620; D.C. Code § 2-2601 *et seq.*) ("1964 Act"), the Investment Advisers Act of 1992, effective March 17, 1993 (D.C. Law 9-216; D.C. Code § 2-2631 *et seq.*) ("1992 Act"), or any insurance law in the District, or a rule or order promulgated under this act, the 1964 Act, the 1992 Act, or any insurance law in the District;

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

(A) Involves making a false statement under oath, making a false report, bribery, perjury, theft, or attempt or conspiracy to commit any of these offenses;

(B) Arises out of the conduct of business as, employment by, or association with, a broker-dealer, investment adviser, depository institution, insurer, agency, fiduciary, accountant, real estate broker, or an entity or person required to be registered under the Commodity Exchange Act; or

(C) Involves larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, misappropriation of funds or securities, or an attempt or conspiracy to commit any of these offenses;

(4) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice (A) as an investment adviser, underwriter, broker-dealer, or as an affiliated person or employee of an investment company, depository institution, or insurance company, or from (B) in connection with any of the foregoing activities or any aspect of the securities business;

(5) Is the subject of an order of the Commissioner denying, suspending, or revoking the person's license as a broker-dealer, agent, investment adviser, or investment adviser representative;

(6) Is the subject of an order entered within the past 10 years by a securities administrator or any other financial services regulator of another state, by the Securities and Exchange Commission, or by the National Association of Securities Dealers, suspending, denying or revoking the license or registration as a broker-dealer, investment adviser, investment adviser representative, or agent, or the substantial equivalent of these terms as defined in this act, or any other financial services license or registration;

(7) Is the subject of an order by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act; is the subject of a United States Postal Service fraud order; or is suspended or expelled from membership in, or association with a member of, a self-regulatory organization;

(8) Is the subject of an order of a court of competent jurisdiction finding that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the securities or insurance law of another state, but only if the act constituting the violation of that state's law would violate this act if the act occurred in the District;

(9) Has engaged in an unethical or dishonest practice in the securities business as the Commissioner may, by rule, define;

(10) Is insolvent, either because liabilities exceed assets or because obligations cannot be met as they mature, but the Commissioner may not enter an order against a broker-dealer or investment adviser under this paragraph without a finding of insolvency as to the broker-dealer or investment adviser;

(11) Is determined by the Commissioner, in accordance with section 208, not to be qualified because of lack of training, experience, knowledge of the securities or insurance business, or failure to comply with the continuing education requirements established by the National Association of Securities Dealers;

(12) Has failed reasonably to supervise a sales representative or employee;

(13) Has failed to pay the proper filing fee within 30 days after being notified by the Commissioner of a deficiency; provided, that the Commissioner shall vacate an order under this paragraph when the deficiency is corrected; or

(14) In the conduct of his or her affairs under the license, the licensee has shown himself or herself to be incompetent, untrustworthy, or financially irresponsible.

(b) The Commissioner shall not begin a proceeding to revoke or suspend a license under this section on the basis of a fact or transaction known to the Commissioner when the license became effective unless the proceeding is begun within 90 days after the license became effective.

(c) If the Commissioner finds that an applicant or licensed person is no longer in existence, has ceased to do business as a broker-dealer, agent, investment adviser, or investment adviser representative, is adjudicated mentally incompetent or subjected to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the Commissioner may, by order, deny the application or revoke the license.

Sec. 208. Denial, suspension, or revocation on grounds of lack of qualification.

A determination by the Commissioner that an applicant or licensed person lacks qualification shall be made subject to the following limitations and considerations:

(1) The Commissioner may not enter an order against a broker-dealer on the basis of the lack of qualification of a person other than the broker-dealer if the broker-dealer is an individual.

(2) The Commissioner may not enter an order against an investment adviser on the basis of the lack of qualification of a person other than the investment adviser if the investment adviser is an individual.

(3) The Commissioner may not enter an order solely because of lack of experience of the applicant or licensed person if the applicant or licensed person is qualified by training or knowledge.

(4) An agent who will work under the supervision of a licensed broker-dealer need not have the same qualifications as a broker-dealer and an investment adviser representative who will work under the supervision of a licensed investment adviser need not have the same qualifications as an investment adviser.

(5) An investment adviser is not qualified solely on the basis of experience as a broker-dealer or agent. If the Commissioner finds an applicant for initial or renewal licensure as a broker-dealer is not qualified as an investment adviser, the Commissioner may, by order, condition the applicant's licensure as a broker-dealer upon the broker-dealer not transacting business in the District as an investment adviser.

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

Sec. 209. Withdrawal.

(a) Withdrawal from licensing as a broker-dealer, agent, investment adviser, or investment adviser representative shall be effective 30 days after the receipt by the Commissioner of an application to withdraw or within any shorter period the Commissioner, by order, determines, unless:

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

(2) A proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the withdrawal application is filed.

(b) If a proceeding is pending or instituted, the withdrawal shall be effective at the time

and upon the conditions that the Commissioner, by order, determines. If no proceeding is pending or instituted and the withdrawal becomes effective, the Commissioner may institute a proceeding under section 207 within one year after the withdrawal became effective and enter an order as of the last date on which the license was effective.

TITLE III. REGISTRATION OF SECURITIES.

Sec. 301. Registration requirement.

No person shall offer or sell a security in the District unless the security is registered under this act, the security or transaction is exempt under sections 401 or 402, or the security is a federal covered security.

Sec. 302. Registration by notification.

(a) The following securities may be registered by notification, whether or not the securities are also eligible for registration by coordination under section 303:

(1) A security whose issuer, and any predecessor (by merger, consolidation or acquisition of assets), has been in continuous operation for at least 5 years if:

(A) There has been no default within the past 3 calendar years in the payment of principal, interest, or dividends on any security of the issuer with a fixed maturity or a fixed interest or dividend provision; and

(B) The issuer and any predecessor during the past 3 calendar years have had average net earnings, determined in accordance with generally accepted accounting principles, which:

(i) Are applicable to all securities without a fixed maturity or a fixed interest or dividend provision outstanding on the date that the registration statement is filed and equal at least 5% of the amount of these outstanding securities, as measured by the maximum cash offering price or the market price on a day selected by the registrant, within 30 days before the date of filing the registration statement, whichever is higher, or book value, on a day selected by the registrant within 90 days of the date of filing the registration statement, to the extent that there is not a readily determinable market price or a cash offering price; or

(ii) If the issuer and any predecessor has not had a security of the type specified in sub-subparagraph (i) of this subparagraph outstanding for 3 full calendar years, equal at least 5% of the amount, as measured in sub-subparagraph (i) of this subparagraph, of all securities which will be outstanding if all the securities being offered or proposed to be offered, whether or not they are proposed to be registered or offered in the District, are issued; and

(2) A security, other than a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, registered for nonissuer distribution if:

(A) A security of the same class has ever been registered under this act;

or

(B) The security being registered was originally issued pursuant to an exemption under this act.

(b) In addition to the information specified in section 305(c) and the consent to service of process required under section 706, a registration statement under this section shall contain the following information and be accompanied by the following documents,:

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

(2) With respect to the issuer and any significant subsidiary:

(A) The name, address, and form of organization;

(B) The state or jurisdiction of its organization and the date of its

organization; and

(C) The general character and location of its business;

(3) With respect to a person on whose behalf a part of the offering is to be made in a non-issuer distribution:

(A) The person's name and address;

(B) The amount of the issuer's securities held by the person as of the date of the filing of the registration statement; and

(C) A statement of the person's reasons for making the offering;

(4) A description of the security being registered;

(5) The information and documents specified in section 304(b)(2), (4), (7), (8), (9), (10), and (12);

(6) A balance sheet of the issuer as of a date within 4 months before the filing of the registration statement;

(7) A summary of earnings:

(A) For each of the 2 calendar years preceding the date of the balance sheet and for any period between the close of the last calendar year and the date of the balance sheet; or

(B) For the period of existence of the issuer and any predecessor, if less than 2 years; and

(8) Two copies of the prospectus required by subsection (c) of this section.

(c)(1) As a condition of registration under this section, a prospectus containing any designated part of the information specified in subsection (b) of this section shall be sent or given to each person to whom an offer is made before or concurrently with the first to occur of:

(A) The first written offer to the person, other than by means of a public advertisement, by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by the underwriter or broker-dealer as a participant in the distribution;

(B) The confirmation of a sale made by or for the account of the person;

(C) Payment under the sale; or

(D) Delivery of the security under the sale.

(2) Paragraph (1)(A) of this subsection may be satisfied by the use of a preliminary prospectus, so designated and bearing the legend which the Commissioner prescribes, if a final prospectus is sent or given to each recipient of the preliminary prospectus before or concurrently with whichever event in paragraph (1)(B), (C), and (D) first occurs.

(d) If a stop order is not in effect and a proceeding is not pending under section 306, a registration statement under this section shall become effective at:

(1) Three o'clock p.m. eastern standard time or eastern daylight savings time, as applicable, of the 10th full business day after the filing of the registration statement or the last amendment; or

(2) At any earlier time which the Commissioner determines by rule or order.

Sec. 303. Registration by coordination.

(a) A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the offering of the security may be registered by coordination.

(b) In addition to the information specified in section 305(c) and the consent to service of process required under section 706, a registration statement under this section shall contain the following information and be accompanied by the following documents:

(1) Two copies of the latest prospectus or offering circular filed under the Securities Act of 1933;

(2) If the Commissioner, by rule or order, requires:

(A) A copy of the articles of incorporation and by-laws, or their substantial equivalents, as currently in effect;

(B) A copy of any agreement with or among underwriters;

(C) A copy of any indenture or other instrument governing the issuance of the security to be registered; and

(D) A specimen, copy, or description of the security;

(3) If the Commissioner requests, any other information or copies of any document filed under the Securities Act of 1933; and

(4) An undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly and not later than the first business day after the day on which they are forwarded to or filed with the Securities and Exchange Commission, whichever occurs first.

(c) A registration statement under this section shall become effective at the time that the federal registration statement becomes effective if all of the following conditions are satisfied:

(1) A stop order is not in effect and a proceeding is not pending under section 306;

(2) The registration statement has been on file with the Commissioner for at least 10 business days; and

(3) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for 2 full business days, or any shorter period which the Commissioner permits by rule or otherwise, and the offering is made within those limitations.

(d) The registrant shall promptly notify the Commissioner, in writing, facsimile transmission, or other means considered acceptable by the Commissioner, of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment.

(e) Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the Commissioner may enter a stop order, without notice or hearing, retroactively denying the effectiveness of the registration statement or suspending its effectiveness until there is compliance with subsection (d) of this section if the Commissioner promptly notifies the registrant by telephone or otherwise, and promptly confirms by letter, facsimile transmission, or otherwise if the Commissioner notifies by telephone, of the issuance of the order. If the registrant proves compliance with the requirements of subsection (d) of this section as to notice and post-effective amendment, the stop order shall be void as of the time of its entry.

(f) The Commissioner may, by rule or otherwise, waive either or both of the conditions specified in subsection (c)(2) or (3) of this section.

(g) If the federal registration statement becomes effective before all of the conditions in subsection (c) of this section are satisfied and they are not waived, the registration statement shall become effective when all the conditions are satisfied. If the registrant advises the Commissioner of the date when the federal registration statement is expected to become effective, the Commissioner shall promptly advise the registrant by telephone, facsimile, or otherwise, at the registrant's expense, whether all of the conditions are satisfied and whether the Commissioner then contemplates the institution of a proceeding under section 306. This advice

by the Commissioner shall not preclude the institution of a proceeding for a stop order suspending the effectiveness of the registration statement.

(h) The Commissioner may, by rule or order, waive or modify the application of a requirement of this section if a provision, or an amendment, repeal, or other alteration of the securities registration provisions, of the Securities Act of 1933, or the regulations adopted thereunder, render the waiver or modification appropriate for further coordination of District and federal law.

Sec. 304. Registration by qualification.

(a) A security may be registered by qualification.

(b) In addition to the information specified in section 305(c) and the consent to service of process required under section 706, a registration statement under this section shall contain the following information and be accompanied by the following documents:

(1) With respect to the issuer and any significant subsidiary:

- (A) The name, address, and form of its organization;
- (B) The state or foreign jurisdiction and date of its organization;
- (C) The general character and location of its business;
- (D) A description of its physical properties and equipment;
- (E) A statement of the general competitive conditions in the industry or

business in which it is or will be engaged; and

(F) Certified copies of its articles of incorporation;

(2) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions:

(A) The name, address, and principal occupation for the past 5 years;

(B) The amount of securities of the issuer held by the person as of a specified date within 30 days of the filing of the registration statement;

(C) The amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and

(D) A description of any material interest in any material transaction that the person has effected, or proposed to effect, with the issuer or any significant subsidiary of the issuer within the past 3 years;

(3) With respect to persons covered under paragraph (2) of this subsection, the remuneration paid during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, including all its predecessors, parents, subsidiaries, and affiliates, to all these persons in the aggregate;

(4) With respect to a person owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph (2) of this subsection other than the person's occupation;

(5) With respect to every promoter if the issuer was organized within the past 3 years, the information specified in paragraph (2) of this subsection, any amount paid, or intended to be paid, to the promoter within the 3-year period or intended to be paid to the promoter and a description of the services or other consideration provided in return for the payment;

(6) With respect to a person on whose behalf a part of the offering is to be made in a non-issuer distribution:

(A) The person's name and address;

(B) The amount of securities of the issuer held by the person as of the date of the filing of the registration statement;

(C) A description of any material interest in any material transaction that

the person has effected, or proposed to effect, with the issuer or any significant subsidiary of the subsidiary within the past 3 years; and

(D) A statement of the person's reasons for making the offering;

(7)(A) The capitalization and long-term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered; and

(B) A statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else, for which the issuer or any subsidiary has issued any of its securities within the past 2 years or is obligated to issue any of its securities;

(8)(A) The amount and kind of securities to be offered; the proposed offering price or method by which it shall be computed, and any variation from the offering price at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; and the basis upon which the offering is to be made if otherwise than for cash;

(B) The estimated aggregate underwriting and selling discounts or commissions and finders' fees, separately stating the amount of cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts;

(C) The estimated amounts of other selling expenses, including legal, engineering, and accounting charges, the name and address of every underwriter and every recipient of a finder's fee, and a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of the agreement whose terms have not yet been determined; and

(D) A description of the plan of distribution of securities which are to be offered otherwise than through an underwriter;

(9)(A) The estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, and the amount to be used for each purpose;

(B) The order or priority in which the proceeds will be used for the purposes stated, the amounts of any funds to be raised from other sources to achieve the purposes stated, and the sources of such funds; and

(C) If any part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business:

(i) The names and addresses of the vendors;

(ii) The purchase price;

(iii) The names of persons who have received commissions in connection with the acquisition; and

(iv) The amount of the commissions and any other expense in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(10) A description of stock options or other security options outstanding, or to be created in connection with the offering, and the amount of such options held, or to be held, by a person required to be named in paragraphs (2), (4), (5), (6), or (8) of this subsection and by a person who holds, or will hold, 10% or more, in the aggregate, of any such options;

(11)(A) The dates of, parties to, and general effect, concisely stated of, every management or other material contract made, or to be made, otherwise than in the ordinary

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course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past 2 years, together with a copy of the contract; and

(B) A description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets, including any litigation or proceeding known to be contemplated by governmental authorities;

(12) Two copies of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended, as of the effective date, to be used in connection with the offering;

(13) A specimen, copy, or description of the security being registered; a certified copy of the issuer's articles of incorporation and a certified copy of its bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

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

(15) The written consent of an accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than a public and official document or statement, which is used in connection with the registration statement;

(16) A certified statement of financial condition of the issuer as of a date within 4 months prior to the filing of the registration statement; a balance sheet, profit and loss statement, and analysis of surplus for each of the 3 calendar years preceding the date of the statement of financial condition and for any period between the close of the last calendar year and the date of the statement of financial condition, or for the period of the issuer's and any predecessors existence if less than 3 years, and if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

(17) Any additional information the Commissioner may require by rule or order.

(c) A registration statement under this section shall become effective no later than 60 calendar days after the date of the registration statement or the last statement other than a price amendment is filed if:

(1) No stop order is in effect and no proceeding is pending under section 306;

(2) The Commissioner has not ordered under subsection (d) of this section that effectiveness be delayed; and

(3) The registrant has not requested that effectiveness be delayed.

(d) The Commissioner may delay effectiveness for a single period not to exceed 90 days if the Commissioner determines that the registration statement is not complete in all material respects and promptly notifies the registrant of the determination. The Commissioner may delay effectiveness for a single period not to exceed 30 days if the Commissioner determines that delay is necessary, whether or not the Commissioner previously delayed effectiveness under this subsection.

Sec. 305. Offer and sale of an indefinite amount of securities.

(a) A face-amount certificate company, an open management company, a closed-end management company that is not a federal covered security under section 18(b)(1) of the Securities Act of 1933, or a unit investment trust, as those terms are defined in the Investment

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Company Act of 1940, shall comply with the requirements of this section if the company or trust files:

(1) A notice under section 308 of the offer or sale in the District of an indefinite amount of federal covered securities specified in section 18(b)(2) of the Securities Act of 1933; or

(2) An application to register under section 303 the offer or sale in the District of an indefinite amount of securities.

(b)(1) A face-amount certificate company or an open-end management company, at the time of filing, shall pay an initial fee established by the Commissioner.

(2) Within 60 days after the issuer's fiscal year end during which its registration statement is effective or notice required by section 308 is filed, a face-amount certificate company or an open-end management company shall:

(A) Pay a fee in an amount established by rule; or

(B) File a report, on a form that the Commissioner, by rule, adopts for the reporting of all sales of securities to persons within the District during the fiscal year, and pay a fee based upon the maximum aggregate offering price at which the securities were sold in the District in accordance with a formula established by rule.

(3)(A) To calculate the net amount due under paragraph (2)(B) of this subsection, the initial fee paid in accordance with paragraph (1) of this subsection shall be deducted from the aggregate fee.

(B) Except as provided in subsection (d) of this section, the aggregate fee due under this subsection may not exceed the maximum aggregate fee established by rule.

(C) If the aggregate fee due under paragraph (2)(B) of this subsection is less than the initial fee, no additional amount shall be payable and no credit or refund shall be allowed or returned.

(c)(1) At the time of the filing, a unit investment trust or a closed-end management company that is not a federal covered security under section 18(b)(1) of the Securities Act of 1933 shall pay an initial fee established by rule.

(2) Within 60 days after the anniversary of the date on which the issuer's offer became effective or its notice filed under section 308 was accepted, a unit investment trust or closed-end management fund that is not a federal covered security under section 18(b)(1) of the Securities Act of 1933 shall:

(A) Pay a fee in an amount established by rule; or

(B) File a report, on a form that the Commissioner, by rule, adopts for the reporting of all sales of securities to persons within the District during the effective period of the registration statement or the acceptance period of the notice filed under section 308; and pay a fee based upon the maximum aggregate offering price at which the securities were sold in the District in accordance with a formula established by rule.

(3)(A) To calculate the net amount due under paragraph (2)(B) of this subsection, the initial fee paid in accordance with paragraph (2) of this subsection shall be deducted from the aggregate fee.

(B) Except as provided in subsection (d) of this section, the aggregate fee due under paragraph (2)(B) of this subsection may not exceed the maximum aggregate fee established by rule.

(iii) If the aggregate fee under paragraph (2)(B) of this subsection is less than the initial fee, no additional amount shall be payable and no credit or refund shall be allowed or returned.

(d)(1) The Commissioner may, by rule or order, extend the length of the renewal period

to a period not exceeding 2 years for the effectiveness of a registered offering or for a notice filed under section 308.

(2) If the Commissioner extends a renewal period in excess of one year, the fee shall be prorated for the extended renewal period.

Sec. 306. Provisions applicable to registration generally.

(a) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a broker-dealer licensed under this act.

(b) A person filing a registration statement shall pay a filing fee in an amount established by rule. If a registration statement is withdrawn or abandoned before the effective date, or if a pre-effective stop order is entered under section 306, the Commissioner shall retain the fee.

(c) Every registration statement shall specify:

(1) The amount of securities to be offered in the District;

(2) The states in which a registration statement or similar document in connection with the offering has been or is to be filed; and

(3) Any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in any state, by any court, or by the Securities and Exchange Commission.

(d) A document filed under this act may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(e) The Commissioner may, by rule or order, permit the omission of an item of information or document from a registration statement.

(f) In the case of a non-issuer offering, the Commissioner may not require information under section 304 unless it is known to the person filing the registration statement or on whose behalf the offering is to be made or can be furnished by the person without unreasonable effort or expense.

(g) The Commissioner may, by rule or order, require as a condition of registration by coordination under section 303, and registration by qualification under section 304, for an issuer that has no public market for its shares or no significant earnings from continuing operations during the last 5 years or any shorter period of its existence:

(1) That any security to be issued for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and

(2) That the proceeds from the sale of the registered security in the District be impounded until the issuer receives a specified amount from the sale of the security either in the District or elsewhere.

(h) The Commissioner may, by rule or order, require as a condition of registration that any security registered by qualification or coordination be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the Commissioner or preserved for a period, not to exceed 3 years, specified in the rule or order.

(i) Except during the time of stop order is in effect under section 307, a registration statement shall be effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a non-exempt transaction by or for the account of the issuer or other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by the underwriter or broker-dealer as a participant in the distribution.

(j) During the period that a registration statement is effective, the Commissioner may, by rule or order, require the person who filed the registration statement to file reports, not more

often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(k) A registration statement may be amended after its effective date to increase the securities specified to be offered and sold if the public offering price and the underwriters' discounts and commissions are not changed from the respective amounts of which the Commissioner was informed. The amendment shall become effective when the Commissioner so orders. A person filing an amendment shall pay an amendment fee in the amount established by rule. The amendment shall relate back to the date of the sale of the additional securities being registered; provided, that within 6 months of the date of the sale, the amendment is filed and the additional fee is paid.

(l) The Commissioner may, by rule or order, require as a condition of registration under sections 302, 303 or 304 that a prospectus be sent or given to each person to whom an offer is made in accordance with the prospectus delivery requirements of the Securities Act of 1933. The Commissioner may require that a prospectus containing any part of the information specified in section 304(b) be sent or given to each person to whom an offer is made before the sale of the security.

Sec. 307. Denial, suspension, and revocation of registration.

(a) The Commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the Commissioner finds the order is in the public interest, and:

(1) The registration statement as of its effective date (or any earlier date in the case of an order denying effectiveness), any amendment under section 305(k) as of its effective date, or any report under section 305(j) is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) This act or any rule, order, or condition lawfully imposed under this act has been willfully violated in connection with the offering by:

(A) The person filing the registration statement;

(B) The issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or

(C) An underwriter;

(3) The security registered, or sought to be registered, is the subject of an administrative stop order or similar order or a permanent or temporary injunction of a court of competent jurisdiction entered under a federal or state act applicable to the offering; provided, that the Commissioner shall not:

(A) Institute a proceeding against an effective registration statement under this subsection more than one year from the date of the order or injunction relied on; and

(B) Enter an order under this subsection on the basis of an order or injunction entered under the law of a state unless the order or injunction was based on facts which would constitute a basis for a stop order under this subsection;

(4) The issuer's enterprise or method of business includes, or would include, activities which are illegal where performed;

(5) The offering has worked, or tended to work, a fraud upon purchasers or would so operate;

(6) The offering has been, or would be made, with an unreasonable amount of

underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amount or kind of options;

(7) If a security is sought to be registered by notification, it is not eligible for such registration; or

(8) If a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by section 303(b)(4).

(b) If an applicant or registrant has failed to pay the proper filing fee and the Commissioner finds that it is in the public interest, the Commissioner may enter a denial order for a registration statement and shall vacate the order when the deficiency has been corrected.

(c) The Commissioner shall not institute a stop order proceeding against an effective registration statement on the basis of a fact or transaction known to the Commissioner when the registration statement became effective unless the proceeding is instituted within 30 days after the registration statement became effective.

(d) The Commissioner may, by order, summarily postpone or suspend the effectiveness of the registration statement pending the final determination of a proceeding under this section. Upon the entry of the order, the Commissioner shall promptly notify each person specified in subsection (e) of this section that it has been entered, of the reasons therefor, and that, within 30 days after the receipt of a written request, the matter will be scheduled for hearing. If no hearing is requested and none is ordered by the Commissioner, the order will remain in effect until it is modified or vacated by the Commissioner. If a hearing is requested or ordered, the Commissioner, after notice of an opportunity for hearing to each person specified in subsection (e) of this section, may modify or vacate the order or extend it until final determination.

(e) No stop order may be entered under this section, except the first sentence of subsection (d) of this section, without:

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

(2) Opportunity for a hearing; and

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

(f) The Commissioner may vacate or modify a stop order if he or she finds that the conditions which prompted its entry have changed or it is otherwise in the public interest to do so.

Sec. 308. Federal covered securities.

(a) This section shall apply to a federal covered security that is not otherwise exempt from the requirements of section 301 pursuant to section 401 or 402.

(b) A security that is a federal covered security under section 18(b)(2) of the Securities Act of 1933 may be offered for sale and sold into, from, or within the District upon:

(1)(A) The filing with the Commissioner a copy of the registration statement filed by the issuer with the Securities and Exchange Commission under the Securities Act of 1933; or

(B) In lieu of filing a copy of the registration statement, the filing of a notice as prescribed by the Commissioner by rule or order;

(2) The filing of the consent to service of process required under section 706; and

(3) The payment of a filing fee in the amount established by rule, per class, or per series for unit investment trusts.

(c)(1) A notice filing under this section shall be effective for one year commencing upon the later of the date the notice or registration statement, as applicable, is received by the

Commissioner or the date the offering is effective with the Securities and Exchange Commission. A notice filing may be renewed by filing, before the expiration of an effective notice filing, the documents and fees required by subsection (b) of this section. A renewal notice filing shall be effective upon the expiration of the previous notice filing.

(2) A previously filed consent to service of process may be incorporated by reference in a renewal filing to the extent that the previously filed consent to service of process is currently accurate.

(3) After the initial offer of the federal covered security in the District, all documents that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 shall be filed promptly with the Commissioner upon request. A notice filing may be terminated by an issuer upon notice to the Commissioner of such termination.

(d) The Commissioner may, by rule or order, require the issuer of a security that is a federal covered security under section 18(b)(4)(D) of the Securities Act of 1933 to:

(1) File a notice on a Form D as adopted by the Securities and Exchange Commission;

(2) File the consent to service of process required under section 706 no later than 15 days after the first sale in the District of the federal covered security; and

(3) Pay a filing fee in the amount established by rule.

(e) The Commissioner may, by rule or order, require the filing of a document filed with the Securities and Exchange Commission under the Securities Act of 1933 for a security that is a federal covered security under section 18(b)(3) or (4) of the Securities Act of 1933 and the payment of a filing fee in the amount established by rule.

(f) Except for a security covered by section 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 in the District if the Commissioner finds the order is in the public interest and there is a failure to comply with a requirement of this section. The Commissioner may, by rule or order, waive any or all of the provisions of this section.

Sec. 309. Withdrawal and abandonment.

(a) A registration statement may be withdrawn, at the discretion of the Commissioner, after receipt by the Commissioner of an application to withdraw, unless a revocation or suspension proceeding is pending when the withdrawal application is filed.

(b) If a proceeding is pending or instituted, withdrawal shall be effective at the time and upon the conditions that the Commissioner, by order, determines. If no proceeding is pending or instituted and withdrawal becomes effective, the Commissioner may institute a proceeding under section 306 and enter an order as of the last date on which the registration was effective.

(c) A registration statement that has not been made effective within one year of the initial filing may be deemed abandoned by the Commissioner.

TITLE IV. EXEMPTION FROM REGISTRATION.

Sec. 401. Exempt securities.

The following securities shall be exempt from the requirements of sections 301, 307 and 405:

(1) A security, including a revenue obligation, issued or guaranteed by the United States; an international agency or corporate or other instrumentality of which the United States and one or more foreign governments are members; a state; a political subdivision of a state; or any agency or corporate or other instrumentality of one or more of the foregoing; or a certificate

of deposit for any of the foregoing;

(2) A security issued, insured, or guaranteed by Canada; a Canadian province; a political subdivision of an agency or other instrumentality of one or more of the foregoing; or an foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor.

(3) A security issued by and representing an interest in, or a direct obligation of, or guaranteed by, a depository institution or credit union organized under the laws of the United States or a depository institution or credit union organized and supervised under the laws of any state if the deposit or share accounts of the depository institution or credit union are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor to one of the foregoing;

(4) A security issued by and representing an interest in, or a direct obligation of, or insured or guaranteed by, an insurance company organized under the laws of any state or the District and authorized to do business in the District; provided, that this exemption shall not apply to an annuity contract, investment contract, or similar security under which the promised payments or rate of return are not fixed in dollars but are substantially dependent upon the investment results of a segregated fund or account invested in securities;

(5) A security issued or guaranteed by a railroad, other common carrier, public utility, or holding company that is:

(A) Subject to the jurisdiction of the Interstate Commerce Commission or a successor agency;

(B) A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that Act;

(C) Regulated with respect to its rates and charges by a governmental authority of the United States or any state; or

(D) Regulated with respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, the District, Canada, or a Canadian province;

(6)(A) A security which is listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Philadelphia Stock Exchange, the Midwest Stock Exchange, the Pacific stock exchange, or any other exchange which the Commissioner designates by rule to have substantially the same standards for listing as these exchanges, or designated for trading on the National Association of Securities Dealers Automated Quotation System or any other electronic trading system which the Commissioner designates by rule to have substantially the same standards for listing or trading;

(B) Any other security of the same issuer which is of senior or substantially equal rank;

(C) A security called for by subscription rights or warrants so listed or approved; or

(D) A warrant or right to purchase or subscribe to any of the foregoing;

(7) An option issued by a clearing agency registered under the Securities Exchange Act of 1934, other than an off-exchange futures contract or substantially similar arrangement, if the security, currency, commodity, or other interest underlying the option:

(A) Is registered under section 302, section 303, or section 304;

(B) Is exempt under this section; or

(C) Is not otherwise required to be registered under this act;

(8) A security issued by a person organized and operated not for private profit

but exclusively for a religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purpose or as a chamber of commerce or trade or professional association, and no part of the net earnings of the issuer inures to the benefit of any private shareholder or individual; provided, that at least 10 calendar days before a sale of the security, the person has filed with the Commissioner a notice setting forth the material terms of the proposed sale and copies of any sales and advertising literature to be used and the Commissioner, by order, does not disallow the exemption within the next 5 calendar days;

(9)(A) A promissory note, draft, bill of exchange, or bankers' acceptance that evidences an obligation to pay cash within 9 months after the date of issuance, exclusive of days of grace, that is issued in denominations of at least \$50,000, and that receives a rating in one of the 3 highest rating categories from a nationally recognized statistical rating organization;

(B) A renewal of such an obligation that is likewise limited; or

(C) A guarantee of such an obligation or of a renewal;

(10) A security issued in connection with:

(A) A written compensatory benefit plan, including a stock purchase, savings, option, bonus, stock appreciation, profit sharing, thrift, incentive, pension, or similar employees' benefit plan, and interests in such plans established by one or more of the issuers thereof or its parents or affiliates or controlled subsidiaries, for the participation of their employees, directors, general partners trustees if the issuer is a business trust, officers, or consultants or advisers of such issuers or their parents or controlled subsidiaries; provided, that bona fide services are rendered by consultants or advisers and the services are not in connection with the offer and sale of securities in a capital-raising transaction; or

(B) A written contract relating to the compensation of such participating persons;

(11) Equipment trust certificates for equipment leased or conditionally sold to a person if securities issued by the person would be exempt under this section;

(12) A membership or equity interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of the District or any state if not traded to the public; and

(13)(A) A security issued by an issuer registered as an open-end management investment company or unit investment trust under section 8 of the Investment Company Act of 1940 if:

(i) The issuer is advised by an investment adviser that is a depository institution exempt from registration under the Investment Advisers Act of 1940 or that is currently registered as an investment adviser, and has been registered, or is affiliated with an adviser that has been registered, as an investment adviser under the Investment Advisers Act of 1940 for at least 3 years next preceding an offer or sale of a security claimed to be exempt under this subsection, and the issuer has acted, or is affiliated with an investment adviser that has acted, as investment adviser to one or more registered investment companies or unit investment trusts for at least 3 years next preceding an offer or sale of a security claimed to be exempt under this paragraph; or

(ii) The issuer has a sponsor that has at all times throughout the 3 years before an offer or sale of a security claimed to be exempt under this paragraph sponsored one or more registered investment companies or unit investment trusts the aggregate total assets of which have exceeded \$100 million.

(B) For purposes of this paragraph, the term "sponsor" means the person responsible for the organization of the unit investment trust or who has continuing

responsibilities for the administration of the affairs of the unit investment trust other than a trustee or custodian. The term "sponsor" shall also include the depositor of the unit investment trust.

Sec. 402. Exempt transactions.

The following transactions are exempt from sections 301, 307 and 405:

- (1) An isolated nonissuer transaction, whether or not effected through a broker-dealer;
- (2) A nonissuer transaction by a licensed agent of a licensed broker-dealer, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding and publicly held for at least 90 days; provided, that at the time of the transaction:
 - (A) The issuer of the security is actually engaged in business and not in the organizational stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;
 - (B) The security is sold at a price reasonably related to the current market price of the security;
 - (C) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;
 - (D) A nationally recognized securities manual designated by rule or order of the Commissioner or a document filed with the Securities and Exchange Commission which is publicly available through the Securities and Exchange Commission's Electronic Data Gathering and Retrieval System contains:
 - (i) A description of the business and operations of the issuer;
 - (ii) The names of the issuer's officers and directors, if any, or, in the case of a non-United States issuer, the corporate equivalents of such persons in the issuer's country of domicile;
 - (iii) An audited balance sheet of the issuer as of a date within 18 months, or in the case of a reorganization or merger where parties to the reorganization or merger had an audited balance sheet, a pro forma balance sheet as of a date within 18 months;
 - (iv) An audited income statement for each of the issuer's immediately preceding 2 fiscal years or for the period of existence of the issuer, if in existence for less than 2 years or, in the case of a reorganization or merger where the parties to the reorganization or merger had an audited income statement, a pro forma income statement; and
 - (E) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, or designated for trading on the National Association of Securities Dealers Automated Quotation System or any other electronic trading system which the Commissioner designates by rule to have substantially the same standards for listing or trading, unless:
 - (i) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;
 - (ii) The issuer of the security has been engaged in continuous business (including predecessors) for at least 3 years; or
 - (iii) The issuer of the security has total assets of at least \$2 million based on an audited balance sheet as of a date within 18 months or, in the case of a reorganization or merger where parties to the reorganization or merger had an audited balance

sheet, a pro forma balance sheet;

(3) A nonissuer transaction in a security by a licensed agent of a licensed broker-dealer if:

(A) The issuer of the security is actually engaged in business and not in the organizational stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person ; and

(B) The security is senior in rank to the common stock of the issuer both as to payment of dividends or interest and upon dissolution or liquidation of the issuer, the security has been outstanding at least 3 years, and the issuer or any predecessors has not defaulted within the current fiscal year or the 3 immediately preceding fiscal years in the payment of a dividend, interest, principal, or sinking fund installment on the security when due and payable;

(4) A nonissuer transaction in an outstanding security if the issuer of the security has a class of securities subject to registration under section 12 of the Securities Exchange Act 1934 and has been subject to the reporting requirements of sections 13 or 15(d) of the Securities Exchange Act of 1934 for not less than 90 days next preceding the transaction, or has filed and maintained with the Commissioner for not less than 90 days preceding the transaction information, in the form that the Commissioner, by rule, specifies, substantially comparable to the information that the issuer would be required to file under section 12(b) or (g) of the Securities Exchange Act of 1934 if the issuer had a class of its securities registered under section 12 of the Securities Exchange Act of 1934;

(5) A nonissuer transaction in a security that has a fixed maturity or a fixed interest or dividend provision and for which there has been no default in the payment of principal, interest, or dividends on the security during the current fiscal year or within the 3 past years, or, if less than 3 years, during the existence of the issuer and any predecessors;

(6) A nonissuer transaction effected by or through a licensed broker-dealer under an unsolicited order or offer to purchase, if either the confirmation of the transaction delivered to the customer clearly states that the transaction was unsolicited, or the broker-dealer obtains a written acknowledgment signed by the customer that the transaction was unsolicited, and a copy of the confirmation or the acknowledgment is preserved by the broker-dealer for such period as the Commissioner may, by rule, require;

(7) A transaction between the issuer or other person on whose behalf the offering of a security is made and an underwriter, or a transaction among underwriters;

(8) A transaction in a bond or other evidence of indebtedness secured by a real estate mortgage, deed of trust, personal property security agreement, or by an agreement for the sale of real estate or personal property, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(9) A transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(10) A transaction executed by a bona fide secured party without any purpose of evading this act;

(11) An offer to sell, or the sale of a, security to a financial or institutional investor or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(12)(A) Subject to paragraph (2) of this subsection, a transaction pursuant to an offer directed by the offeror to not more than 25 persons, other than those designated in section

202(a)(1), in the District during any period of 12 consecutive months, whether or not the offeror, or any of the offerees, is then present in the District at the time of the transaction, if:

(i) The seller reasonably believes that all the purchasers in the District are purchasing for investment; and
(ii) No commission or other remuneration is paid or given directly or indirectly for soliciting a prospective purchaser in the District except to a licensed broker-dealer or a licensed agent.

(B) The Commissioner may, by rule or order, as to a security or transaction or any type of security or transaction, withdraw or further condition this exemption, increase or decrease the number of purchasers permitted, or waive one or more of the conditions in this paragraph;

(13) To the extent permitted by rule or order of the Commissioner, an offer or sale within the District by an issuer now or hereafter exempt from section 5 of the Securities Act of 1933 by a rule or regulation adopted by the 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, in such form, and containing such information as the Commissioner determines;

(14) An offer or sale of a preorganization certificate or subscription if:
(A) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;
(B) The number of subscribers does not exceed 10; and
(C) No payment is made by a subscriber;

(15) A transaction pursuant to 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 no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting a security holder in the District except to a licensed or exempt broker-dealer;

(16) A transaction involving an offer to sell, but not a sale, of a security if:
(A) A registration statement or offering statement or similar document as required under the Securities Act of 1933 has been filed with the Securities and Exchange Commission, but is not effective;
(B) A registration statement, if required, has been filed under section 302, but is not effective; and
(C) No stop order of which the offeror is aware has been entered by the Commissioner or the Securities and Exchange Commission;

(17) The issuance of a security dividend, whether the corporation distributing the dividend is the issuer of the security or not, if nothing of value is given by security holders for the distribution other than the surrender of a right to a cash dividend where the security holder can elect to take a dividend in cash or in a security;

(18) A transaction involving an offer to sell, but not a sale, of a security if:
(A) A registration statement has been filed under section 304, but is not effective; and
(B) No stop order of which the offeror is aware has been entered by the Commissioner or the Securities and Exchange Commission;

(19) A transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, triangular merger, consolidation, sale of assets, or exchange of

securities; and

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

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

(B) The units are offered or sold by a broker-dealer licensed under this act; and

(C) The broker-dealer is a sponsor or depositor of the unit investment trust or is an affiliate of the sponsor or depositor.

Sec. 403. Additional exemptions.

The Commissioner may, by rule or order, exempt any other security or transaction or class of securities or transactions from section 301, 307, or 405. The Commissioner may, by rule or order, adopt a limited offering transactional exemption that will further the objectives of compatibility with the exemptions from securities registration under the Securities Act of 1933 and uniformity among the states.

Sec. 404. Revocation of exemptions.

(a) The Commissioner may, by order, deny or revoke an exemption specified in section 401(7), (8), (10) or (12) or in section 402 for any security or transaction.

(b) An order issued under this section shall not be retroactive. A person shall not violate sections 301, 307 or 405 by reason of an offer to sell or sale effected after the entry of an order under this section if the person did not know and, in the exercise of reasonable care could not have known, of the order.

Sec. 405. Filing of sales and advertising literature.

The Commissioner may, by rule or order, require the filing of a prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication, whether communicated in printed form, by electronic means, or otherwise, addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, unless the security or transaction is exempt under sections 401 or 402, the security is a federal covered security, the transaction concerns a federal covered security or a federal covered adviser, or the transaction concerns a broker-dealer registered under the Securities Exchange Act of 1934.

Sec. 406. Coordination of exemptions.

(a) In furtherance of the policy stated in section 102(b), the exemptions under sections 401, 402 and 403 shall be coordinated with exemptions for securities and transactions under the Securities Act of 1933 so that an offering registered under the Securities Act of 1933 shall be subject to registration by filing under this act in the absence of an exemption under this act, and an offering exempt from registration under the Securities Act of 1933, other than under the exemption for intrastate offerings, shall be exempt from registration under this act.

(b) The Commissioner may make, amend, and rescind rules and regulations for exemptions under sections 401 and 402, or added by the Commissioner under section 403, but not contained in the Securities Act of 1933 or any of the rules and regulations promulgated thereunder.

TITLE V. FRAUDULENT AND OTHER PROHIBITED PRACTICES.

Sec. 501. Unlicensed or unregistered activity.

A person shall not:

- (1) Offer or sell a security except in accordance with this act;
- (2) Deliver to a purchaser a security required to be registered under section 301 unless accompanied or preceded by a registration statement that meets the requirements of sections 302(b), 303(b), or 304(b);
- (3) Act as a broker-dealer, agent, investment adviser, or investment adviser representative unless licensed as required under sections 201 or 202; or
- (4) Fail to file with the Commissioner an application, report, or document required to be filed under this act, or any rule or regulation adopted by the Commissioner under this act, or to fail to comply with the terms of an order issued by the Commissioner issued under this act.

Sec. 502. Fraudulent transactions.

(a) A person shall not:

- (1) In connection with the rendering of investment advice or in connection with the offer, sale, or purchase of an investment or security, including a security exempt under section 401 sold in a transaction exempt under section 402, directly or indirectly:
 - (A) Employ a device, scheme, or artifice to defraud;
 - (B) Obtain money or property by means of an untrue statement of a material fact or an omission to state a material fact in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
 - (C) Engage in a transaction, practice, or course of business which operates, or would operate, as a fraud or deceit upon a person;
 - (2) Except as provided in subsection (b) of this section, publish, give publicity to, or circulate a notice, circular, advertisement, newspaper, article, letter, investment service, communication, or broadcast which, though not purporting to offer a security for sale, describes the security for a consideration received or to be received directly or indirectly from an issuer, underwriter, or dealer, or an agent or employee of an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of the consideration and the amount of the consideration;
 - (3) In a matter within the jurisdiction of the Commissioner, falsify, conceal, or cover up, by a trick, scheme, or device, a material fact, make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document, knowing the same to contain a false, fictitious, or fraudulent statement or entry; or
 - (4) Except as provided in subsections (b) and (h) of this section, when acting as principal for the person's own account, knowingly sell a security to, or purchase a security from, a client, or acting as broker for a person other than the client, or knowingly effect a sale or purchase of a security for the account of the client, without disclosing to the client in writing before the completion of such transaction the capacity in which the person is acting and obtaining the consent of the client to the transaction.
- (b) The prohibition of subsection (a)(2) of this section shall not apply to any information published or circulated relating to a federal covered security. The prohibition of subsection (a)(4) of this section shall not apply to a transaction with a federal covered adviser or to a transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction.
- (c) For purposes of this section, the term "investment" means a commitment of money or

property principally induced by a representation that an economic benefit may be derived from the commitment; provided, that the term "investment" shall not include a commitment of money or property for:

- (1) The purchase of a business opportunity, a business enterprise, or real property; or
- (2) The purchase of tangible personal property through a person not engaged in telephone solicitation if there are no specific representations or guarantees made by the offeror or seller as to the economic benefit to be derived from the purchase.

(d) In the solicitation of, or dealings with, advisory clients, a person shall not knowingly make an untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(e) Except as may be permitted by rule or order of the Commissioner, an investment adviser shall not enter into, extend, or renew an investment advisory contract unless it provides in writing that:

- (1) Except as provided in subsections (f)(1) and (h) of this section, the investment adviser shall not be compensated on the basis of a share of capital gains upon, or capital appreciation of, the funds or a portion of the funds of the client;
- (2) Except as provided in subsection (h) of this section, no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and
- (3) Except as provided in subsection (h) of this section, the investment adviser, if a partnership, shall notify the other party to the contract of a change in the membership of the partnership within a reasonable time after the change.

(f)(1) The requirement of subsection (e)(1) of this section shall not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, as of definite dates, or taken as of a definite date.

(2) The term "assignment," as used in subsection (e)(2) of this section, includes any direct or indirect transfer or pledge without delivery or possession of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; provided, that if the investment adviser is a partnership, no assignment of an investment advisory contract shall be considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will constitute a minority of the members and will own a minority interest in the business.

(g) An investment adviser shall not take or have custody of any securities or funds of a client if:

- (1) The Commissioner, by rule, prohibits custody; or
- (2) In the absence of rule, the investment adviser fails to notify the Commissioner that he or she has custody.

(h) The Commissioner may, by rule or order, adopt exemptions from subsections (a)(4), (e)(1), (e)(2), and (e)(3) of this section if the exemptions are consistent with the public interest and within the purposes fairly intended by the policy and provisions of this act.

Sec. 503. Manipulation of market.

- (a) A person shall not, directly or indirectly, in the District:
 - (1) Quote a fictitious price for a security;

(2) Effect a transaction in a security which involves no change in the beneficial ownership of the security for the purpose of creating a false or misleading appearance of active trading in a security or for the market for the security;

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

(4) Enter an order for the sale of a security with knowledge that an order of substantially the same size and at substantially the same time and price for the purchase of the security has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in a security or with respect to the market for the security; or

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

(b) A transaction effected in compliance with, or conduct that does not violate, the applicable provisions of the Securities Exchange Act of 1934, and the rules and regulations promulgated thereunder, shall not constitute a violation of subsection (a) of this section.

Sec. 504. Misleading filings.

A person shall not make, or cause to be made, in a document filed with the Commissioner or in any proceeding under this act, a statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

Sec. 505. Unlawful representations concerning licensing, registration, notice filing, or exemption.

(a) The filing of an application for a registration or notice filing under Title II, the filing of a registration statement or notice filing under Title III, or registration of a person or security shall not constitute a finding by the Commissioner that any document filed under this act is true, complete, and not misleading. Such filings, licensure, or registration, or that an exemption or exception is available for a security or a transaction, shall not mean the Commissioner has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction.

(b) A person shall not make, or cause to be made, to a prospective purchaser, customer, or client a representation inconsistent with subsection (a) of this section.

TITLE VI. ENFORCEMENT, CRIMINAL AND CIVIL LIABILITY.

Sec. 601. Investigation; subpoena power.

(a) The Commissioner may:

(1) Make public or private investigations inside or outside of the District as he considers necessary to determine whether a person has violated, or is about to violate, any provision of this act, or any rule or order hereunder, to aid in the enforcement of this act, or to aid in the prescribing of rules and forms to implement this act. The Commissioner may require the person to pay the reasonable costs and expenses of the investigation;

(2) Require or permit the person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all the facts and circumstances concerning the matter to be investigated; and

(3) Publish information concerning a violation of this act or any rule or order adopted under this act.

(b) For purposes of an investigation or proceeding under this act, the Commissioner may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Commissioner deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, a person, the Superior Court of the District of Columbia, upon application by the Commissioner, may issue to the person an order requiring the person to appear before the Commissioner to produce documentary evidence, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished as a contempt of court.

(d) No person shall be excused from attending and testifying or from producing a document or record before the Commissioner, in obedience to the subpoena of the Commissioner, or in any proceeding instituted by the Commissioner, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture; provided, that no individual may be prosecuted or subjected to a penalty or forfeiture for or on account of a specific subject concerning which the individual is compelled, after claiming his privilege against self-incrimination as to the specific subject, to testify or produce evidence, documentary or otherwise; provided further, that the individual testifying shall not be exempt from prosecution and punishment for perjury or contempt committed in testifying.

(e) The Commissioner may issue and apply to enforce subpoenas in the District at the request of a securities agency or administrator of another state if the activities constituting an alleged violation for which the information is sought would violate this act if the activities had occurred in the District.

Sec. 602. Enforcement) administrative.

(a) Whenever the Commissioner determines that a person has engaged, or is about to engage, in an act or practice constituting a violation of any provision of this act or any rule or order hereunder, and that immediate action against such person is in the public interest, the Commissioner may issue, without a hearing, a summary order directing the person to cease and desist from engaging in such activity; provided, that the summary cease and desist order shall give the person:

(1) Notice of the opportunity for a hearing before the Commissioner to determine whether the summary cease and desist order should be vacated, modified, or entered as final; and

(2) Notice that the summary cease and desist order will be entered as final if the person does not request a hearing within 15 days of the receipt of the summary cease and desist order.

(b) Whenever the Commissioner, or his or her designee, determines after notice and a hearing, unless the right to a hearing is waived, that a person has engaged in an act or practice constituting a violation of this act or any rule or order adopted under this act, the Commissioner may, in addition to taking any other action authorized under this act:

(1) Issue a cease and desist order against the person;

(2) Censure the person if the person is licensed under this act;

(3) Bar the person from engaging in the securities business or investment advisory business in the District;

(4) Issue an order against the person imposing a civil penalty up to \$10,000 for any single violation of this act; or

(5) Issue an order requiring the person to pay restitution and reasonable costs of the hearing.

Sec. 603. Enforcement - judicial.

(a) Whenever it appears to the Commissioner that a person is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order adopted under this act, the Commissioner may request the Corporation Counsel to bring an action in the Superior Court of the District of Columbia to obtain one or more of the following remedies:

(1) Temporary restraining order; or

(2) Temporary or permanent injunction.

(b) Whenever it appears to the Commissioner that a person has engaged in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, the Commissioner may request the Corporation Counsel to bring an action in the Superior Court of the District of Columbia to obtain one or more of the following remedies:

(1) Temporary restraining order;

(2) Temporary or permanent injunction;

(3) A civil penalty not to exceed \$10,000 for a single violation ;

(4) A declaratory judgment;

(5) Appointment of a receiver or conservator for the defendant or the defendant's assets;

(6) A freeze of the defendant's assets; or

(7) Any other relief as the court deems just, such as rescission, restitution, or disgorgement.

(c) The court shall not require the Commissioner to post a bond in any action under this section.

Sec. 604. Criminal penalties.

(a) Any person who violates section 501 shall be guilty of a misdemeanor and, upon conviction thereof, shall pay a fine of not more than \$1,000, be imprisoned for not more than one year, or both. All prosecutions under this subsection shall be upon information filed in the Superior Court of the District of Columbia in the name of the District by the Corporation Counsel or any of his or her assistants.

(b) Any person who knowingly or intentionally violates any of the provisions of sections 502, 503, 504, or 505(b), shall be guilty of fraud in the second degree, as defined in section 121(b) of the District of Columbia Theft and White Collar Crimes Act of 1982.

(c) Any person who knowingly or intentionally violates any of the provisions of sections 502, 503, 504, or 505(b), by use of a plan, program, or campaign that is conducted using one or more telephones or other electronic means of communication for the purpose of inducing the purchase or sale of securities, shall be guilty of fraud in the first degree, as defined in section 121(a) of the District of Columbia Theft and White Collar Crimes Act of 1982.

(d) No prosecution for a violation of this act shall bar, or be barred by, a prosecution for the violation of any other law. All prosecutions under this act, or based upon any provision of this act, shall be commenced within 3 years after the violation upon which the prosecution is based. If the accused person has intentionally concealed evidence of a violation of sections 502, 503, 504, or 505(b), the period of limitation prescribed in this subsection shall be extended up to an additional 2 years after the prosecuting officer becomes aware of the offense.

(e) Nothing in this act shall limit the power of the District to punish a person for conduct constituting a crime under other law.

Sec. 605. Civil liability.

(a)(1) A person shall be civilly liable to another person who buys a security if the person:

(A) Offers or sells a security in violation of sections 201, 301, or 505(b), of a rule or order under section 405 which requires the affirmative approval of sales literature, or of a condition imposed under section 305(g) or (h); or

(B) Offers or sells a security by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in the light of the circumstances under which made, not misleading, the buyer does not know of the untruth or omission and the offeror or seller does not sustain the burden of proof that the offeror or seller did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(2) A person shall be civilly liable to another person who sells a security if the person offers to purchase or purchases the security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading, the seller does not know of the untruth or omission, and the purchaser does not sustain the burden of proof that the purchaser did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(3) A person shall be civilly liable to another person if the person:

(A) Acts as an investment adviser or representative in violation of sections 202, 502, or 505(b), or of any rule or order adopted under section 405; or

(B)(i) Receives directly or indirectly any consideration from the other person for advice as to the value of securities or their purchase or sale or for acting as an investment adviser or representative under section 101(17) or (18), whether through the issuance of analyses, reports or otherwise, and

(ii) Employs an device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business which operates or would operate as a fraud or deceit on the other person.

(b)(1) In an action brought under subsection (a)(1) of this section, a buyer may sue at law or in equity:

(A) To recover the consideration paid for the security, interest at the rate used in the Superior Court of the District of Columbia from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security and any income received on it; or

(B) For damages if the buyer no longer owns the security. The amount of damages shall be the amount that would be recoverable on a tender less the value of the security when the buyer disposed of it, plus interest at the rate used in the Superior Court of the District of Columbia from the date of disposition.

(2) In an action under subsection (a)(2) of this section, a seller may sue at law or in equity:

(A) On tender of the consideration paid for the security, to recover the security, the amount of any income received on the security, costs, and reasonable attorneys' fees; or

(B) For damages if the buyer no longer owns the security.

(3) In an action brought under subsection (a)(3) of this section, a person may sue

at law or in equity for the rescission of the advisory contract and any damages resulting from the violation, interest at the rate used in the Superior Court of the District of Columbia from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such advice.

(c) A person who directly or indirectly controls a person liable under subsection (a) of this section; a partner, officer, or director of the person liable; a person occupying a similar status or performing similar functions; an employee of the person liable who materially aids in the conduct giving rise to the liability; and a broker-dealer or agent who materially aids in the conduct shall be liable jointly and severally with, and to the same extent as the person liable, unless her or she is able to sustain the burden of proof that he or she did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution among the several persons so liable.

(d) A tender specified in this section may be made at any time before entry of judgment.

(e) A cause of action under this act shall survive the death of any person who might have been a plaintiff or defendant.

(f)(1) A person may not sue under subsection (a)(1) and (2) of this section after the earlier of 3 years after the contract of sale or purchase, or the time specified in paragraph (2) of this subsection.

(2) An action may not be maintained:

(A) To enforce any liability under subsection (a)(1)(A) of this section unless brought within one year after the violation on which it is based; or

(B) To enforce a liability under subsections (a)(1)(B) or (a)(2) of this section unless brought within one year after the discovery of the untrue statement or omission or after the discovery should have been made by the exercise of reasonable diligence.

(3) A person may not sue under subsection (a)(3) of this section after the earlier of 3 years after the date of the advisory contract or the rendering of investment advice, or the expiration of 2 years after the discovery of the facts constituting the violation.

(g) No person may sue under this section if:

(1) The buyer received a written offer, before suit and at a time when the buyer owned the security or asset, to refund the consideration paid, and interest at the rate used in the Superior Court of the District of Columbia from the date of payment, less the amount of any income received on the security or asset, and the buyer failed to accept the offer within 30 days of its receipt;

(2) The buyer received such an offer before suit and at a time when the buyer did not own the security or asset, unless the buyer rejected the offer in writing within 30 days of its receipt; or

(3) The seller received a written offer from the buyer, before suit, to return the security or asset, together with the amount of any income received on the security, and interest at the rate used by the Superior Court of the District of Columbia from the date of payment, and the seller failed to accept the offer within 30 days of its receipt.

(h) No person may sue on a contract if the person has made or engaged in the performance of the contract in violation of this act or any rule or order adopted under this act, or has acquired any purported right under the contract with knowledge of the facts by reason of which its making or performance violated this act or a rule or order adopted under this act.

(i) A condition, stipulation, or provision that binds a person who acquires a security or asset, or receives a investment advice, to waive compliance with a provision of this act or a rule or order adopted under this act shall be void.

(j) The rights and remedies provided by this act shall be in addition to any other rights or remedies that may exist at law or in equity, but this act does not create a cause of action not specified in this section or authorized under the bonding requirements of section 203(h).

TITLE VII. ADMINISTRATION.

Sec. 701. Administration of act.

This act shall be administered by the Commissioner.

Sec. 702. Prohibitions on use of information.

The Commissioner or an employee of the Commissioner shall not use for personal gain or benefit information filed with or obtained by the Commissioner which is not public information. The Commissioner or an employee of the Commissioner shall not conduct securities dealings based upon information filed with or obtained by the Commissioner, even though public, if there has not been sufficient time for the securities markets to assimilate the information.

Sec. 703. Public information; confidentiality.

(a) Except as provided in subsection (b) of this section, information and documents filed with, or obtained by, the Commissioner shall be available for public examination under Title II of the District of Columbia Administrative Procedure Act.

(b) The following information and documents shall not constitute public information under subsection (a) of this section:

(1) Information or documents obtained by the Commissioner in connection with an investigation under section 601; and

(2) Information or documents filed with the Commissioner in connection with a registration statement under Title III or a report under section 204 constituting trade secrets or commercial or financial information of a person for which a person is entitled to a claim of confidentiality or privilege.

Sec. 704. Cooperation with other agencies.

(a) To encourage uniform interpretation and administration of this act and effective securities regulation and enforcement, the Commissioner may cooperate with the securities agencies or administrators of one or more states, Canadian provinces or territories, or another country, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Securities Investor Protection Corporation, any self-regulatory organization, any national or international organization of securities officials or agencies, and any governmental law enforcement or regulatory agency.

(b) The cooperation authorized by subsection (a) shall include the following actions:

(1) Establishing a central depository for registration under this act and for documents or records required or allowed to be maintained under this act;

(2) Making a joint registration examination or investigation;

(3) Holding a joint administrative hearing;

(4) Filing and prosecuting a joint civil or administrative proceeding;

(5) Sharing and exchanging personnel;

(6) Sharing and exchanging information and documents; and

(7) Formulating rules or proposed rules, statements of policy, guidelines, and interpretative opinions and releases.

Sec. 705. Rules, forms, and orders.

- (a) In addition to specific authority otherwise granted by this act, the Commissioner:
- (1) Shall adopt, as a rule, a description of the general course and method of where and how a person may obtain information or make a submission or request;
 - (2) Shall adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available to a person, including all forms that are to be used by a person dealing with the Commissioner;
- (b) To keep rules adopted by the Commissioner in harmony with the regulations adopted by the Securities and Exchange Commission under the federal securities laws and to encourage uniformity with the rules of securities agencies and administrators in other states, the Commissioner, so far as is consistent with this act, shall take into consideration the regulations adopted by the Securities and Exchange Commission and the rules of securities agencies and administrators in other states which have enacted a law comparable to this act.
- (c) Unless specifically provided in this act to the contrary, a rule or order may not be adopted, amended, or repealed unless the Commissioner determines that the action is in the public interest and appropriate for the protection of investors and is consistent with the purposes fairly intended by the policy and provisions of this act.
- (d) The Commissioner may, by rule or order, prescribe the form and content of financial statements required under this act, the circumstances under which consolidated financial statements must be filed, and whether a required financial statement must be certified and by whom. Unless the Commissioner provides, by rule or order, otherwise, and subject to the limitations of section 15 of the Securities Exchange Act of 1934 and section 222 of the Investment Advisers Act of 1940, a financial statement required under this act must be prepared in accordance with generally accepted accounting principles or other accounting principles as are prescribed for the issuer of the financial statement by the Securities and Exchange Commission.

Sec. 706. Consent to service of process.

- (a) An applicant for licensure or registration under this act, and every issuer that proposes to offer a security in the District through any person acting as an agent, shall file with the Commissioner, in such form as may be prescribed by rule, an irrevocable consent appointing the Commissioner to be the person's attorney to receive service of any lawful process in any non-criminal suit, action, or proceeding against the person or the person's successor, executor or administrator which arises under this act, or any rule or order hereunder, after the consent is filed, with the same force and validity as if served personally on the person filing the consent.
- (b) A person who has filed a consent complying with subsection (a) of this section in connection with a previous application for licensing, registration, or notice filing need not file an additional consent.
- (c) If any person, including a nonresident of the District, engages in conduct prohibited or made actionable by this act or a rule or order hereunder, and the person has not filed a consent to service of process under subsection (a) of this section, and personal jurisdiction over the person cannot otherwise be obtained in the District, the conduct shall be deemed the person's appointment of the Commissioner to be the person's attorney to receive service of any lawful process in any non-criminal suit, action, or proceeding against the person or the person's successor, executor or administrator, which grows out of the conduct and which is brought under this act, or a rule or order adopted under this act, with the same force and validity as if served on the person personally.
- (d) Service under subsection (a) or (c) of this section may be made by leaving a copy of the process in the Commissioner's office, but it shall not be effective unless:
- (1) The plaintiff, who may be the Commissioner in a suit, action, or proceeding

instituted by the Commissioner, sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at that person's last address on file with the Commissioner, or takes other steps reasonably calculated to give actual notice; and

(2) The plaintiff's affidavit of compliance with this subsection is filed on or before the return day of the process, if any, or within such further time as the court or the Commissioner, in a proceeding before the Commissioner, allows.

(e) Service as provided in subsection (d) of this section may be utilized in a proceeding before the Commissioner or by the Commissioner in a proceeding in which the Commissioner is the moving party.

(f) When process is served under this section, the court, or the Commissioner, in a proceeding before the Commissioner, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

Sec. 707. Administrative files and records.

(a) The Commissioner shall keep one or more registers of all applications for licensing and registration under this act, all notice filings, licenses and registration statements that become effective under this act, all disciplinary and enforcement orders issued and reports of investigation made under this act, all declaratory orders and rulings issued under this act, and all other orders issued under this act.

(b) The Commissioner shall retain:

(1) All licenses and related applications and all registration statements and notice filings currently effective or that have been effective within the last 5 years;

(2) All licenses and related applications and all registration statements that have been denied, suspended, or revoked within the last 5 years and the order of suspension, denial, or revocation;

(3) All investigatory files under this act that are open or that have been closed within the last 5 years and any disciplinary or closure orders pertaining to the files;

(4) The transcript or record of all administrative hearings held during the last 5 years; and

(5) All other orders of the Commissioner entered under this act.

(c) All records required to be maintained pursuant to subsections (a) and (b) of this section may be maintained in any form of data storage. Upon request, the Commissioner shall certify under the seal of the Department a copy as being a true and correct copy of the records maintained by the Department. The Commissioner may, by rule, establish reasonable charges for furnishing or certifying copies. In an investigation or proceeding, a copy so certified shall be prima facie evidence of the contents of the records certified.

Sec. 708. Provisions applicable to administrative proceedings.

(a) All actions of the Commissioner, including administrative proceedings, adoption of rules, and issuance of orders shall be governed by the District of Columbia Administrative Procedure Act; provided, that:

(1) The issuance of a stop order under section 303(e) shall be governed by section 303(e); and

(2) The issuance of a summary order under section 602(a) shall be governed by section 602(a).

TITLE VIII. MISCELLANEOUS PROVISIONS.

Sec. 801. Scope of act.

(a) Sections 201, 301, 501, 502, 505, and 605 shall apply to a person who sells, or offers to sell, when an offer to sell is made in the District or an offer to purchase is made and accepted in the District.

(b) Sections 201, 501, 502, and 505 shall apply to a person who purchases, or offers to purchase, when an offer to purchase, is made in the District or an offer to sell is made and accepted in the District.

(c) For the purpose of this section, an offer to sell or to purchase is made in the District, whether or not either person is present in the District, if the offer originates in the District, or is directed by the offeror to a destination in the District and received where it is directed or at a post office in the District if the offer is mailed.

(d) For the purpose of this section, an offer to purchase or to sell is accepted in the District if the acceptance is communicated to the offeror in the District and has not previously been communicated to the offeror, orally or in writing, outside the District. The acceptance is communicated to the offeror in the District, whether or not either party is then present in the District, when the offeree directs it to the offeror in the District reasonably believing the offeror to be in the District and it is received at the place to which it is directed or at any post office in the District in the case of a mailed acceptance.

(e) An offer to sell or purchase is not made in the District when the publisher circulates, or there is circulated on the publisher's behalf, in the District a bona fide newspaper or other publication of general, regular, and paid circulation which is not published in the District, or which is published in the District, but has had more than 2/3 of its circulation outside the District during the last 12 months, or a radio or television program originating outside the District is received in the District.

Sec. 802. District of Columbia Securities Advisory Committee.

(a) The Mayor shall appoint a District of Columbia Advisory Committee which shall consist of 6 members who shall be residents of the District, Maryland, or Virginia, at least 2 of whom shall be actively engaged in the securities business and at least 2 of whom shall be members of the bar of the District of Columbia.

(b) No more than 3 members of the Advisory Committee shall be members of the same political party. The members shall be selected on the basis of their experience and qualifications to advise the Commissioner on all phases of the securities business.

(c) Members of the Advisory Committee shall be appointed for staggered terms of 3 years each, with 2 members appointed each year, to serve without compensation and eligible for reappointment for additional terms. Of the first members appointed hereunder, 2 shall be appointed for one year, 2 shall be appointed for 2 years, and 2 shall be appointed for 3 years, as designated by the Mayor at the time of their appointment.

(d) The members of the Advisory Committee shall select their own chairperson. Meetings of the Advisory Committee shall be held when called by the Commissioner.

(e) The Advisory Committee shall give the Commissioner the benefit of its advice on any and all matters pertaining to the administration of this act, particularly the adoption, amendment of repeal of rules, regulations, and forms.

Sec. 803 Judicial review.

(a) A person aggrieved by an act, determination, rule, regulation, order, or any other action of the Mayor, may appeal to the District of Columbia Court of Appeals in accordance

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with section 11 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Code § 1-1510).

(b) The filing of an appeal under this section shall not stay the application of a rule, regulation, order, or other action of the Mayor to the appealing party unless the court, after giving the appealing party notice and an opportunity to be heard, determines that failure to grant a stay would be detrimental to the interest of policyholders, shareholders, creditors, or the public.

Sec. 804. Repeal and transition provisions.

(a) The District of Columbia Securities Act and the Investment Advisers Act of 1992 ("prior law"), are repealed, subject to the transition provisions of subsections (b) through (e) of this section.

(b) Prior law shall govern all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this act.

(c) A civil suit or action shall not be maintained to enforce a liability under prior law unless brought within the period of limitation which applied when the cause of action accrued and, in any event, no later than 2 years after the effective date of this act.

(d) All effective registrations and notice filings under prior law, all administrative orders relating to such registrations and notice filings, and all conditions imposed upon such registrations shall apply to the extent they would have applied under prior law.

(e) All no-action and opinion letters, administrative orders, and waivers issued under prior law or regulation shall apply to the extent they would have applied under prior law.

Sec. 805. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by Section 602(c)(3) of the District of Columbia Home Rule Act approved December 24, 1973 (87 Stat. 813; D. C. Code 1-233(c)(3)).

Sec. 806. Applicability date.

Titles III and IV shall apply as of June 1, 2001.

Sec. 807. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia