

[Second Reprint]
ASSEMBLY, No. 2990

STATE OF NEW JERSEY

INTRODUCED MAY 22, 1997

By Assemblymen BATEMAN and BAGGER

1 AN ACT concerning securities and revising various parts of the
2 statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 30 of P.L.1967, c.93 (C.49:3-47) is amended to read as
8 follows:

9 30. This act amending and supplementing the "Uniform Securities
10 Law (1967)" shall be known and may be cited as the "Uniform
11 Securities Law [(1967)](1997)." "Act" as used in this revision means
12 this 1997 act amending and supplementing the "Uniform Securities
13 Law (1967)."

14 (cf: P.L.1967, c.93, s.30)

15

16 2. Section 2 of P.L.1967, c.93 (C.49:3-49) is amended to read as
17 follows:

18 2. When used in this act, unless the context requires otherwise:

19 (a) "Bureau" means the agency designated in subsection (a) of
20 section 19 [(a)] of P.L.1967, c.93 (C.49:3-66) ;

21 (b) "Agent" means any individual other than a broker-dealer, who
22 represents a broker-dealer or issuer in effecting or attempting to effect
23 purchases or sales of securities. "Agent" does not include an
24 individual who represents an issuer in (1) effecting transactions in a
25 security exempted by [subdivision] paragraph (1), (2), (3), or (11) of
26 subsection (a) of section 3[(a)] of P.L.1967, c.93 (C.49:3-50) ; (2)
27 effecting transactions exempted by subsection (b) of section 3[(b)] of
28 P.L.1967, c.93 (C.49:3-50); [or] (3) effecting transactions with
29 existing employees, partners, or directors of the issuer , if no
30 commission or other remuneration is paid or given directly or
31 indirectly for soliciting any person in this State ; or (4) a broker-dealer

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AFI committee amendments adopted June 12, 1997.

² Senate SCM committee amendments adopted December 1, 1997.

1 in effecting transactions in this State limited to those transactions
2 described in paragraph (2) of subsection (h) of section 15 of the
3 "Securities Exchange Act of 1934," 15 U.S.C. §78o(h)(2); or (5) such
4 other persons not otherwise within the intent of this subsection (b), as
5 the bureau chief may by rule or order designate . A partner, officer,
6 or director of a broker-dealer or issuer, or a person occupying a
7 similar status or performing similar functions, is an agent only if he
8 otherwise comes within this definition. The bureau chief may by rule
9 or order, as to any transaction, waive the requirement of agent
10 registration. The bureau chief may by rule define classes of persons as
11 "agents," if those persons are regulated as "agents" by the Securities
12 and Exchange Commission or any self-regulatory organization
13 established pursuant to the laws of the United States ;

14 (c) "Broker-dealer" means any person engaged in the business of
15 effecting or attempting to effect transactions in securities for the
16 accounts of others or for his own account. "Broker-dealer" does not
17 include (1) an agent, (2) an issuer, (3) a person who effects
18 transactions in this State exclusively in securities described in
19 [subdivisions] paragraphs (1) and (2) of subsection (a) of section
20 3[(a)] of P.L.1967, c.93 (C.49:3-50) , (4) a bank, savings institution,
21 or trust company, or (5) a person who [(i)] effects transactions in this
22 State exclusively with or through [(A)] (i) the issuers of the securities
23 involved in the transactions, [(B)] (ii) other broker-dealers [or (C)]
24 , (iii) banks, savings institutions, trust companies, insurance
25 companies, investment companies as defined in the [Investment
26 Company Act of 1940,] "Investment Company Act of 1940," pension
27 or profit-sharing trusts, or other financial institutions or institutional
28 buyers, whether acting for themselves or as trustees [, or (ii) during
29 any period of 12 consecutive months does not direct more than 15
30 offers to sell or to buy into this State in any manner to persons other
31 than those specified in paragraph (c)(5)(i), whether or not the offeror
32 or any of the offerees is then present in this State] or (iv) such other
33 persons not otherwise within the intent of this subsection (c), as the
34 bureau chief may by rule or order designate ;

35 (d) "Capital" shall mean net capital, as defined and adjusted under
36 the formula established by the Securities and Exchange Commission
37 in Rule 15c3-1, 17 C.F.R. §240.15c3-1, made pursuant to the
38 "Securities Exchange Act of 1934," prescribing a minimum permissible
39 ratio of aggregate indebtedness to net capital as such formula presently
40 exists or as it may hereafter be amended;

41 (e) "Fraud," "deceit," and "defraud" are not limited to common-law
42 fraud or deceit. "Fraud," "deceit" and "defraud" in addition to the
43 usual construction placed on [it] these terms and accepted in courts of
44 law and equity, shall include the following, provided, however, that
45 any promise, representation, misrepresentation or omission be made
46 with knowledge and with intent to deceive or with reckless disregard

1 for the truth and results in a detriment to the purchaser or client of an
2 investment adviser:

3 (1) Any misrepresentation by word, conduct or in any manner of
4 any material fact, either present or past, and any omission to disclose
5 any such fact;

6 (2) Any promise or representation as to the future which is beyond
7 reasonable expectation or is unwarranted by existing circumstances;

8 (3) The gaining of, or attempt to gain, directly or indirectly,
9 through a trade in any security, a commission, fee or gross profit so
10 large and exorbitant as to be unconscionable [and], unreasonable or in
11 violation of any law, regulation, rule, order or decision of the
12 Securities and Exchange Commission, or the bureau chief; or to the
13 extent that such law, regulation, rule or order directly applies to the
14 person involved, the gaining of, or attempt to gain, directly or
15 indirectly, through a trade in any security, a commission, fee or gross
16 profit so large and exorbitant as to be in violation of any law,
17 regulation, rule, order or decision of any other state or Canadian
18 securities administrator, or any self-regulatory organization established
19 pursuant to the laws of the United States;

20 (4) Generally any course of conduct or business which is calculated
21 or put forward with intent to deceive the public or the purchaser of
22 any security or investment advisory services as to the nature of any
23 transaction or the value of such security;

24 (5) Any artifice, agreement, device or scheme to obtain money,
25 profit or property by any of the means herein set forth or otherwise
26 prohibited by [this law] this act;

27 (f) "Guaranteed" means guaranteed as to payment of principal,
28 interest or dividends;

29 (g) (1) "Investment [advisor] adviser" means:

30 (i) any person who, for direct or indirect compensation, engages in
31 the business of advising others, either directly or through publications
32 or writings, as to the value of securities or as to the advisability of
33 investing in, purchasing [or], selling or holding securities, or who, for
34 compensation and as a part of a regular business, issues or
35 promulgates analyses or reports concerning securities; and

36 (ii) any financial planner and other person who provides investment
37 advisory services to others for compensation and as part of a business
38 or who holds himself out as providing investment advisory services to
39 others for compensation.

40 (2) "Investment [advisor] adviser " does not include[(1)] :—

41 (i) a bank, savings institution, or trust company ²[, when acting on
42 its own account or when exercising trust or fiduciary powers]²;

43 [(2)] (ii) a lawyer, accountant, engineer, or teacher whose
44 performance of these services is solely incidental to the practice [of
45 his] or conduct of the profession and who does not hold himself out
46 as providing investment advisory or financial planning services, and

1 who receives no special compensation for those investment advisory
2 or financial planning services ;

3 [(3)] (iii) a broker-dealer registered under this [law] act ;

4 [(4)] (iv) a publisher of any bona fide newspaper, news magazine,
5 or business or financial publication of general, regular, and paid
6 circulation;

7 [(5)] (v) a person whose advice, analyses, or reports relate only to
8 securities exempted by paragraphs (1) and (2) of subsection (a) of
9 section 3 [, paragraph (a)(1) and (2)] of P.L.1967, c.93 (C.49:3-50);

10 [(6)] (vi) a person [who has no place of business in this State if (a)
11 his] whose only clients in this State are other investment [advisors]
12 advisers, any person that is registered as an "investment adviser" under
13 section 203 of the "Investment Advisers Act of 1940," 15 U.S.C.§80b-
14 3, or excluded from the definition of an "investment adviser" under
15 paragraph (11) of subsection (a) of section 202 of the "Investment
16 Advisers Act of 1940," 15 U.S.C.§80b-2(a)(11) , broker-dealers,
17 banks, bank holding companies, savings institutions, trust companies,
18 insurance companies, investment companies as defined in the
19 "Investment Company Act of 1940," pension or profit-sharing trusts,
20 or other financial institutions or institutional buyers, whether acting for
21 themselves or as trustees [, or (b) during any period of 12 consecutive
22 months he does not direct business communications into this State in
23 any manner to more than five clients other than those specified in
24 subparagraph (6)(a) of this paragraph, whether or not he or any of the
25 persons to whom the communications are directed is then present in
26 this State; or (7)];

27 (vii) any person that is registered as an "investment adviser" under
28 section 203 of the "Investment Advisers Act of 1940," 15 U.S.C.§80b-
29 3, or excluded from the definition of an "investment adviser" under
30 paragraph (11) of subsection (a) of section 202 of the "Investment
31 Advisers Act of 1940," 15 U.S.C.§80b-2(a)(11);

32 (viii) an investment adviser representative; or

33 (ix) such other persons not otherwise within the intent of this
34 [paragraph] subsection (g) as the bureau chief may by rule or order
35 designate.

36 Subject to applicable federal law, the bureau chief may by rule limit
37 the exclusions set out in this paragraph (2) ², except for those
38 exclusions provided in subparagraph (i) of paragraph (2)².

39 For purposes of this act, "investment advisory services" means
40 those services rendered by an "investment adviser" as defined in this
41 subsection;

42 (h) "Issuer" means any person who issues or proposes to issue any
43 security, except that (1) with respect to certificates of deposit,
44 voting-trust certificates, or collateral-trust certificates, or with respect
45 to certificates of interest or shares in an unincorporated investment
46 trust not having a board of directors (or persons performing similar

1 functions) or of the fixed, restricted management, or unit type, the
2 term "issuer" means the person or persons performing the acts and
3 assuming the duties of depositor or manager pursuant to the provisions
4 of the trust or other agreement or instrument under which the security
5 is issued; and (2) with respect to certificates of interest in oil, gas, or
6 mining titles or leases, there is not considered to be any "issuer";

7 (i) "Person" means an individual, a corporation, a partnership, an
8 association, a joint-stock company, a trust where the interests of the
9 beneficiaries are evidenced by a security, an unincorporated
10 organization, a government, or a political subdivision of a government;

11 (j) (1) "Sale" or "sell" includes every contract of sale of, contract
12 to sell, or disposition of, a security or interest in a security or
13 investment advisory services for value;

14 (2) "Offer" or "offer to sell" includes every attempt or offer to
15 dispose of, or solicitation of any offer to buy, a security or interest in
16 a security or investment advisory services for value;

17 (3) Any security given or delivered with, or as a bonus on account
18 of, any purchase of securities or any other thing is considered to
19 constitute part of the subject of the purchase and to have been offered
20 and sold for value;

21 (4) A purported gift of assessable stock is considered to involve an
22 offer and sale;

23 (5) Every sale or offer of a warrant or right to purchase or
24 subscribe to another security of the same or another issuer, as well as
25 every sale or offer of a security which gives the holder a present or
26 future right or privilege to convert into another security of the same
27 or another issuer, is considered to include an offer of the other
28 security;

29 (6) The terms defined in this [paragraph] subsection (j) do not
30 include [(a)] (i) any bona fide pledge or loan; [(b)] (ii) any stock
31 dividend, whether the corporation distributing the dividend is the
32 issuer of the stock or not, if nothing of value is given by stockholders
33 for the dividend other than the surrender of a right to a cash or
34 property dividend when each stockholder may elect to take the
35 dividend in cash or property or in stock; [(c)] (iii) any act incident to
36 a class vote by stockholders, pursuant to the certificate of
37 incorporation or the applicable corporation statute, on a merger,
38 consolidation, reclassification of securities, or sale of corporate assets
39 in consideration of the issuance of securities of another corporation;
40 or [(d)] (iv) any act incident to a judicially approved reorganization
41 in which a security is issued in exchange for one or more outstanding
42 securities, claims, or property interests, or partly in such exchange and
43 partly for cash;

44 (k) "Savings institutions" shall mean any savings and loan
45 association or building and loan association operating pursuant to the
46 "Savings and Loan Act (1963)," P.L.1963, c.144 (C.17:12B-2 et seq.),

1 and any federal savings and loan association and any association or
2 credit union organized under the laws of the United States or of any
3 state whose accounts are insured by [the Federal Savings and Loan
4 Insurance Corporation and who are subject to supervision and
5 examination by the Federal Home Loan Bank Board, and any credit
6 union licensed and supervised under "The Credit Union Act of 1984,"
7 P.L.1984, c.171 (C.17:13-79 et al.) or licensed and supervised by the
8 National Credit Union Administration] a federal corporation or
9 agency;

10 (l) "Securities Act of 1933," [48 Stat. 74 (15 U.S.C. s. 77a et
11 seq.)] 15 U.S.C. §77a et seq.; "Securities Exchange Act of 1934," [48
12 Stat. 881 (15 U.S.C. s. 78a et seq.)] 15 U.S.C. §78a et seq.; "Public
13 Utility Holding Company Act of 1935," [49 Stat. 838 (15 U.S.C. s. 79
14 et seq.)] 15 U.S.C. §79 et seq.; "Investment Advisers Act of 1940,"
15 [54 Stat. 857 (15 U.S.C. s. 80b-1 et seq.)] 15 U.S.C. §80b-1 et seq.;
16 [and] "Investment Company Act of 1940," [54 Stat. 847 (15 U.S.C.
17 s. 80a-1 et seq.)] 15 U.S.C. §80a-1 et seq.; and "Commodity Exchange
18 Act," 7 U.S.C. §1 et seq. mean the federal statutes of those names [as
19 amended or supplemented before or after the effective date of this
20 act];

21 (m) "Security" means any note; stock; treasury stock; bond;
22 debenture; evidence of indebtedness; certificate of interest or
23 participation in any profit-sharing agreement, including, but not limited
24 to, certificates of interest or participation in real or personal property;
25 collateral-trust certificate; preorganization certificate or subscription;
26 transferable share; investment contract; voting-trust certificate;
27 certificate of deposit for a security; certificate of interest in an oil, gas
28 or mining title or lease; or, in general, any interest or instrument
29 commonly known as a "security," or any certificate of interest or
30 participation in, temporary or interim certificate for, guarantee of, or
31 warrant or right to subscribe to or purchase, any of the foregoing [.
32 "Security" does not include any insurance or endowment policy or
33 annuity contract under which an insurance company promises to pay
34 a fixed or variable number of dollars either in a lump sum or
35 periodically for life or some other specified period];

36 (n) "State" means any state, territory, or possession of the United
37 States, as well as the District of Columbia and Puerto Rico;

38 (o) "Nonissuer" means secondary trading not involving the issuer
39 of the securities or any person in a control relationship with the issuer;

40 (p) "Accredited investor" means any person who [comes within any
41 of the following categories, or who the issuer reasonably believes
42 comes within any of the following categories, at the time of the sale of
43 the security to that person:

44 (1) Any bank, savings institution, trust company, insurance
45 company, investment company as defined in the "Investment Company
46 Act of 1940," pension or profit-sharing trust, or other financial

1 institution or institutional buyer, or to a broker-dealer, whether the
2 purchaser is acting for itself or in some fiduciary capacity;

3 (2) Any private business development company as defined in
4 section 202(a)(22) of the "Investment Advisers Act of 1940;

5 (3) Any organization described in section 501(c)(3) of the Internal
6 Revenue Code, with total assets in excess of \$5,000,000.00;

7 (4) Any director, executive officer, or general partner of the issuer
8 of the securities being offered or sold, or any director, executive
9 officer, or general partner of a general partner of that issuer;

10 (5) Any person who purchases at least \$150,000.00 of the
11 securities being offered, where the purchaser's total purchase price
12 does not exceed 20% of the purchaser's net worth at the time of sale,
13 or joint net worth with that person's spouse, for one or any
14 combination of the following: (i) cash, (ii) securities for which market
15 quotations are readily available, (iii) an unconditional obligation to pay
16 cash or securities for which market quotations are readily available,
17 which obligation is to be discharged within five years of the sale of the
18 securities to the purchaser, or (iv) the cancellation of any indebtedness
19 owed by the issuer of the purchaser;

20 (6) Any natural person whose individual net worth, or joint net
21 worth with that person's spouse, at the time of his purchase exceeds
22 \$1,000,000.00; and

23 (7) Any natural person who had an individual income in excess of
24 \$200,000.00 in each of the two most recent years and who reasonably
25 expects an income in excess of \$200,000.00 in the current year] is an
26 "accredited investor" as defined by subsection (15) of section 2 of the
27 "Securities Act of 1933," 15 U.S.C. §77b(15), and 17 C.F.R. §230.215
28 and §230.501 or any successor rule promulgated pursuant to that act.

29 The bureau chief may rule, or order, waive or modify the conditions
30 in this subsection (p) and shall interpret and apply this subsection (p)
31 so as to effectuate greater uniformity and coordination in federal-state
32 securities registration exemptions;

33 (q) "Direct participation security" means a security which provides
34 for flow-through tax consequences (tax shelter), regardless of the
35 structure of the legal entity or vehicle for distribution, including, but
36 not limited to, a security representing an interest in gas, oil, real estate,
37 agricultural property, cattle, a condominium, [or] a Subchapter S
38 [corporate offerings] corporation, a limited liability company and all
39 other securities of a similar nature, regardless of the industry
40 represented by the security, or any combination thereof. Excluded
41 from this definition are real estate investment trusts, tax qualified
42 pension and profit-sharing plans pursuant to sections 401 and 403(a)
43 of the Internal Revenue Code of 1986, 26 U.S.C. §401 and 403(a), and
44 individual retirement plans under section 408 of the Internal Revenue
45 Code of 1986, 26 U.S.C. §408, tax sheltered annuities pursuant to the
46 provisions of section 403(b) of the Internal Revenue Code of 1986, 26

1 U.S.C. §403(b), and any company including separate accounts
2 registered pursuant to the [Investment Company Act of 1940;]
3 "Investment Company Act of 1940;"

4 (r) "Blind pool"[, in addition to the usual construction placed on
5 it,] means an offering of securities in which , as to 65% or more of the
6 proceeds of the offering, the prospectus discloses no specific purpose
7 to which the proceeds of the offering will be put, [or does not state
8 with specificity] or the prospectus discloses no specific assets to be
9 purchased, projects to be undertaken, or business to be conducted
10 [with at least 65% of the proceeds of the offering] , except for:

11 (1) an offering of securities to provide working capital for an
12 operating company (as opposed to a development stage company);

13 (2) an offering of securities by an investment company registered
14 under the "Investment Company Act of 1940," including a business
15 development company; or

16 (3) an offering of securities by a small business investment
17 company licensed by the Small Business Administration or a business
18 development company within the meaning of the "Investment Advisers
19 Act of 1940;"

20 (s) "Investment ²[advisory] adviser² representative" means any
21 person, including, but not limited to, a partner, officer, or director, or
22 a person occupying a similar status or performing similar functions, or
23 other individual, except clerical or ministerial personnel, who is
24 employed by or associated with an investment adviser registered under
25 this act, or who has a place of business located in this State and is
26 employed by or associated with a person registered or required to be
27 registered as an investment adviser under section 203 of the
28 "Investment Advisers Act of 1940," 15 U.S.C. §80b-3; and who does
29 any of the following:

30 (1) makes any recommendations or otherwise renders advice
31 regarding securities if the person has direct advisory client contact;

32 (2) manages accounts or portfolios of clients;

33 (3) determines recommendations or advice regarding securities;

34 (4) solicits, offers or negotiates for the sale of or sells investment
35 advisory services; or

36 (5) directly supervises any investment ²[advisory] adviser²
37 representative or the supervisors of those investment ²[advisory]
38 adviser² representatives. "Investment adviser representative" does not
39 include a broker-dealer or an agent;

40 (t) "Institutional buyer" includes, but is not limited to, a "qualified
41 institutional buyer" as defined in SEC Rule 144A, 17 C.F.R.
42 §230.144A;

43 (u) "Willful" or "willfully" means a person who acts intentionally in
44 the sense that the person is aware of what he is doing;

45 (v) "Federal covered security" means any security described as a
46 covered security in subsection (b) of section 18 of the "Securities Act

1 of 1933," 15 U.S.C. § 77r(b).

2 (cf: P.L.1987, c.301, s.1)

3

4 3. Section 3 of P.L.1967, c.93 (C.49:3-50) is amended to read as
5 follows:

6 3. (a) The following securities are exempted from the provisions
7 of sections 13 and 16 of [this act P.L.1967, c.93 (C.49:3-60 and 49:3-
8 63)]¹[and section 14 of this act]¹:

9 (1) Any security (including a revenue obligation) issued or
10 guaranteed by the United States, any state, any political subdivision of
11 a state, or any agency or corporate or other instrumentality of one or
12 more of the foregoing; or any certificate of deposit for any of the
13 foregoing [, provided that the issuer or guarantor is not in default as
14 to principal or interest with respect to an obligation issued by the
15 issuer or a successor of the issuer, or an obligation guaranteed by the
16 guarantor or a successor to the guarantor];

17 (2) Any security issued or guaranteed by Canada, any Canadian
18 province, any political subdivision of any such province, any agency or
19 corporate or other instrumentality of one or more of the foregoing, or
20 any other foreign government with which the United States currently
21 maintains diplomatic relations, if the security is recognized as a valid
22 obligation by the issuer or guarantor;

23 (3) Any security issued by and representing an interest in or a debt
24 of, or guaranteed by, any bank, savings institution, or trust company
25 organized and supervised under the laws of any state or under the laws
26 of the United States;

27 (4) Any security issued by and representing an interest in or a debt
28 of, or guaranteed by, any [State or Federal Savings and Loan
29 Association, or any building and loan or similar association organized
30 under the laws of any state and authorized to do business in this State]
31 savings institution;

32 (5) Any security issued by and representing an interest in or a debt
33 of, or guaranteed by, any insurance company organized under the laws
34 of any state and authorized to do business in this State;

35 (6) [Any security issued or guaranteed by any Federal Credit Union
36 or any credit union, industrial loan association, or similar association
37 organized and supervised under the laws of this State;] (Deleted by
38 amendment, P.L. , c. .)

39 (7) Any security issued or guaranteed by any railroad, other
40 common carrier, public utility, or holding company which is [(A)
41 subject to the jurisdiction of the Interstate Commerce Commission;
42 (B)] (i) a registered holding company under the [Public Utility Holding
43 Company Act of 1935] "Public Utility Holding Company Act of 1935"
44 or a subsidiary of such a company within the meaning of that act; [(C)]
45 (ii) regulated in respect to its rates and charges by a governmental
46 authority of the United States or any state; or [(D)] (iii) regulated in

1 respect of the issuance or guarantee of the security by a governmental
2 authority of the United States, any state, Canada or any Canadian
3 province;

4 (8) Any security listed or approved for listing upon notice of
5 issuance on the New York Stock Exchange or the American Stock
6 Exchange, and such other exchanges as the bureau chief may from
7 time to time designate by rule or order; any security designated or
8 approved for designation upon notice of issuance as a Nasdaq National
9 Market [System] security [on the National Association of Securities
10 Dealers' Automated Quotation System] or any other national quotation
11 system as the bureau chief from time to time may designate by rule or
12 order; any other security of the same issuer which is of senior or
13 substantially equal rank; any security called for by subscription rights
14 or warrants so listed or approved; or any warrant or right to purchase
15 or subscribe to any of the foregoing;

16 (9) Any security issued by a person organized and operated
17 exclusively for religious, educational, benevolent, fraternal, charitable
18 or reformatory purposes and not for pecuniary profit, and no part of
19 the net earnings of which inures to the benefit of any person, private
20 stockholder, or individual;

21 (10) Any commercial paper which arises out of a current
22 transaction or the proceeds of which have been or are to be used for
23 current transactions, and which evidences an obligation to pay cash
24 within 12 months of the date of issuance, exclusive of days of grace,
25 or any renewal of such paper which is likewise limited, or any
26 guarantee of such paper or of any such renewal;

27 (11) Any investment contract issued in connection with an
28 employees' or professional stock purchase, savings, pension,
29 profit-sharing, retirement or similar benefit plan [if the bureau chief is
30 notified in writing 30 days before the inception of the plan or, with
31 respect to plans which are in effect on the effective date of this act,
32 within 60 days thereafter (or within 30 days before they are reopened
33 if they are closed on the effective date of this act)] and securities
34 issued pursuant to an employee benefit plan ;

35 (12) [Any security issued by an issuer registered as an open-end
36 management investment company or unit investment trust pursuant to
37 section 8 of the "Investment Company Act of 1940" (15 U.S.C.
38 s.80a-8), if:

39 (a) The issuer is advised by an investment advisor that is a
40 depository institution exempt from registration under the "Investment
41 Advisers Act of 1940" or that is currently registered as an investment
42 advisor, and has been registered, or is affiliated with an advisor that
43 has been registered, as an investment advisor under the "Investment
44 Advisers Act of 1940" for at least three years immediately before an
45 offer or sale of the security; and has acted, or is affiliated with an
46 investment advisor that has acted, as investment advisor to one or

1 more registered investment companies or unit investment trusts for at
2 least three years immediately before an offer or sale of the security; or

3 (b) The issuer has a principal sponsor that has at all times
4 throughout three years before an offer or sale of the security been the
5 principal sponsor for one or more registered investment companies or
6 unit investment trusts, the aggregate total assets of which have
7 exceeded \$100,000,000.00.

8 For the purposes of this paragraph (12), and notwithstanding
9 subsection (g) of section 2 of P.L.1967, c.93 (C. 49:3-49), "investment
10 advisor" shall have the same meaning that it has pursuant to the
11 "Investment Advisers Act of 1940." For the purposes of this
12 paragraph (12), an investment advisor is affiliated with another
13 investment advisor if it controls, is controlled by, or is under common
14 control with the other advisor. For the purposes of this paragraph
15 (12), "sponsor" of a unit investment trust means the person primarily
16 responsible for the organization of the unit investment trust or who has
17 continuing responsibilities for the administration of the affairs of the
18 unit investment trust other than the trustee or custodian. "Sponsor"
19 includes the depositor of the unit investment trust] The bureau chief
20 by rule or order, as to a particular security or class of securities, may
21 adopt a securities exemption (i) that will further the objectives of
22 compatibility with the exemptions from securities registration
23 authorized by the "Securities Act of 1933" and uniformity among the
24 states, or (ii) if the bureau chief determines that the public interest
25 does not require registration .

26 (b) The following transactions are exempted from the provisions
27 of sections 13 and 16 of [this act] of P.L.1967, c.93 (C.49:3-60 and
28 49:3-63) :

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

31 (2) (i) Any nonissuer transaction by a broker-dealer registered
32 under this act of [an] a security, which has been outstanding [security
33 if (A) a] in the hands of the public for at least 90 days prior to the
34 transaction and which is sold at a price reasonably related to the
35 current market price of such securities, provided:

36 (A) the securities are of an issuer for which all reports required to
37 be filed by section 13 or 15(d) of the "Securities Exchange Act of
38 1934," 15 U.S.C. §78m or §78o(d) have been filed; or

39 (B) the following information is published in a recognized
40 securities manual [contains]; the names of the issuer's officers and
41 directors [,]; a balance sheet of the issuer as of a date [within] not
42 more than 18 months [,] prior to the date of the sale; and [a] profit
43 and loss [statement] statements for [either the fiscal year preceding
44 that date or the most recent year of operation, or (B) the security has
45 a fixed maturity or a fixed interest or dividend provision and there has
46 been no default during the current fiscal year or within the three

1 preceding fiscal years, or during the existence of the issuer and any
2 predecessors, if less than three years, in the payment of principal,
3 interest, or dividends on the security] a period of not less than two
4 years next prior to the date of the balance sheet or for the period of
5 the issuer's existence as of the date of the balance sheet if the period
6 of existence is less than two years;

7 (ii) The exemption provided in this paragraph (2) does not apply
8 if the sale constitutes a distribution and is made for the direct or
9 indirect benefit of an issuer or controlling persons of that issuer or if
10 those securities constitute the whole or part of an unsold allotment to,
11 or subscription by, a broker-dealer as an underwriter of those
12 securities. This exemption shall not be available for any securities
13 which have been subject to a bureau stop order pursuant to section 17
14 of P.L.1967, c.93 (C.49:3-64), or a bureau order of denial of
15 secondary trading pursuant to subsection (c) of this section ;

16 (iii) Notwithstanding the foregoing, resale transactions by a
17 sponsor of a unit investment trust registered pursuant to section 8 of
18 the "Investment Company Act of 1940," 15 U.S.C.§80a-8, shall be
19 exempt from registration in this State.

20 (3) Any nonissuer transaction effected by or through a registered
21 broker-dealer pursuant to an unsolicited order or offer to buy; but the
22 bureau chief may by rule require that the customer acknowledge upon
23 a form prescribed by the bureau chief that the sale was unsolicited, and
24 that a signed copy of each such form be preserved by the broker-dealer
25 for a specified period;

26 (4) Any transaction between the issuer or other person on whose
27 behalf the offering is made and an underwriter, or among underwriters;

28 (5) Any transaction on a bond or other evidence of indebtedness
29 secured by a real or chattel mortgage or deed of trust, or by an
30 agreement for the sale of real estate or chattels, if the entire mortgage,
31 deed of trust, or agreement, together with all the bonds or other
32 evidences of indebtedness secured thereby, is offered and sold as a
33 single unit;

34 (6) Any transaction by an executor, administrator, sheriff, marshal,
35 receiver, trustee in bankruptcy, guardian, or conservator;

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

38 (8) Any offer or sale to a bank, savings institution, trust company,
39 insurance company, investment company as defined in the "Investment
40 Company Act of 1940," pension or profit-sharing trust, or other
41 financial institution or institutional buyer, or to a broker-dealer,
42 whether the purchaser is acting for itself or in some fiduciary capacity;

43 (9) Any transaction [pursuant to an offer directed by the offeror]
44 which results in sales to not more than 10 persons (other than those
45 persons designated in paragraph [(b)(8)]) (8) of subsection (b) of this
46 section in this State during any period of 12 consecutive months,

1 whether or not the [offeror] seller or any of the [offerees] buyers is
2 then present in this State, if (i) the seller reasonably believes that all
3 buyers are purchasing for investment, and (ii) no commission or other
4 remuneration is paid or given directly or indirectly for soliciting any
5 prospective buyer in this State, and (iii) the securities are not offered
6 or sold by general solicitation or any general advertisement; but the
7 bureau chief may by rule or order, as to any transaction or class of
8 transactions, withdraw or further condition this exemption, or increase
9 or decrease the number of [offerees] buyers permitted, or waive the
10 conditions in [subdivisions] subparagraph (i) [and], (ii) or (iii) of this
11 paragraph;

12 (10) Any offer or sale of a preorganization certificate or
13 subscription if (i) no commission or other remuneration is paid or
14 given directly or indirectly for soliciting any prospective subscriber,
15 (ii) the number of subscribers does not exceed 10, and (iii) no
16 payment is made by any subscriber;

17 (11) Any transaction pursuant to an offer to existing security
18 holders of the issuer, including persons who at the time of the
19 transaction are holders of convertible securities, nontransferable
20 warrants, or transferable warrants exercisable within not more than 90
21 days of their issuance, if [(i)] no commission or other remuneration
22 (other than a standby commission) is paid or given directly or
23 indirectly for soliciting any security holder in this State [, or (ii) the
24 issuer first files a notice specifying the terms of the offer and the
25 bureau chief does not by order disallow the exception within the next
26 five full business days];

27 (12) Any [nonpublic] transaction by or on behalf of an issuer, or
28 other person, if (i) the [issuer] seller has reasonable grounds to believe
29 and, after making reasonable inquiry, believes, immediately prior to
30 making any sale, that there are no more than 35 purchasers of the issue
31 in this State during any period of 12 consecutive months and that each
32 purchaser, who is not an accredited investor, either alone or with his
33 representative has the knowledge and experience in financial and
34 business matters that he is or they are capable of evaluating the merits
35 and risks of the prospective investment; (ii) a written offering
36 statement or prospectus is furnished to each [offeree, which provides
37 the offeree with] purchaser who is not an accredited investor
38 containing substantially the same information as is required by
39 subsection (b) of section 14[(b)] of P.L.1967, c.93 (C.49:3-61) or any
40 applicable form of registration under federal law, and provided that if
41 any purchaser is furnished with a written offering statement or
42 prospectus, then all purchasers shall be furnished therewith; [and] (iii)
43 the securities shall not be offered or sold by general solicitation or any
44 general advertisement; and (iv) a report of the offering is filed with the
45 bureau [within 30 days of the completion date of the offering] not
46 later than 15 days after the first sale of those securities in this State ,

1 setting forth the name and address of the issuer, the total amount of
2 the securities sold under this [subsection] paragraph (12), the price at
3 which the securities were sold, the total number of purchasers of the
4 securities, and the names and addresses of the purchasers of the
5 securities who reside in this State, indicating the number and amount
6 of the securities each purchased. Supplemental reports shall be filed
7 promptly after the initial filing with the bureau whenever there are
8 material changes to the information contained in the initial filing until
9 the closing of the offering. A final report shall be filed at the closing
10 of the offering if the information in the final report would be materially
11 different from the last prior filing. The fee for filing the report with
12 the bureau shall be [\$250.00] established by regulation of the bureau
13 chief. The information in the report of sale shall be deemed
14 confidential and shall not be disclosed to the public except by order of
15 the court or in court proceedings. In calculating the number of
16 purchasers permitted under this paragraph, accredited investors shall
17 be excluded;

18 (13) The bureau chief, by rule or order, as to a particular
19 transaction or class of transactions, may adopt a transactional
20 exemption (i) that will further the objectives of compatibility with the
21 exemptions from securities registration authorized by the "Securities
22 Act of 1933" and uniformity among the states, or (ii) if the bureau
23 chief determines that the public interest does not require registration.

24 (c) The bureau chief may by order deny or revoke any exemption
25 specified in paragraph (9), (10) or (11) of subsection (a) of this section
26 or in subsection (b) of this section with respect to a specific security
27 or transaction. These exemptions may be denied or revoked for the
28 grounds set forth in subsection (k) of section 9, section 11 and section
29 17 of P.L.1967, c.93 (C.49:3-56, 49:3-58 or 49:3-64). No such order
30 may be entered without appropriate [prior] notice to all interested
31 parties, opportunity for hearing, and written findings of fact and
32 conclusions of law, except that the bureau chief may by order
33 summarily deny or revoke any of the specified exemptions pending
34 final determination of any proceeding under this subsection. Upon the
35 entry of a summary order, the bureau chief shall promptly notify all
36 interested parties that it has been entered and of the reasons therefor
37 [and that within 15 days of the receipt of a written request the matter
38 will be set down for hearing].

39 (1) Upon service of notice of the order issued by the bureau chief,
40 the respondent shall have up to 15 days to respond to the bureau in the
41 form of a written answer and written request for a hearing. The
42 bureau chief shall, within five days of receiving the answer and a
43 request for a hearing, either transmit the matter to the Office of
44 Administrative Law for a hearing or schedule a hearing at the bureau.
45 Orders issued pursuant to this subsection (c) shall be subject to an
46 application to vacate upon 10 days' notice, and a preliminary hearing

1 on the order shall be held in any event within 20 days after it is
2 requested; and the filing of a motion to vacate the order shall toll the
3 time for filing an answer and written request for a hearing.

4 (2) If a respondent fails to respond by either filing a written answer
5 and written request for a hearing with the bureau or moving to vacate
6 an order within the 15 day prescribed period, the respondent shall be
7 deemed to have waived the opportunity to be heard. The order will
8 remain in effect until it is modified or vacated upon notice to all
9 interested parties by the bureau chief. No order under this subsection
10 may operate retroactively.

11 (d) In any proceeding under this act, the burden of proving an
12 exemption or an exception from a definition is upon the person
13 claiming it.

14 (cf: P.L.1987, c.301, s.2)

15
16 4. Section 4 of P.L.1967, c.93 (C.49:3-51) is amended to read as
17 follows:

18 4. (a) Sections 5, 8, subsection (a) of section 9[(a)], and sections
19 13 and 24 of [this act] P.L.1967, c.93 (C.49:3-52, 49:3-55, 49:3-56,
20 49:3-60 and 49:3-71) apply to persons who sell or offer to sell when
21 (1) an offer to sell is made in this State, or (2) an offer to buy is made
22 or accepted in this State;

23 (b) Sections 5, 8 and subsection (a) of section 9[(a)] of P.L.1967,
24 c.93 (C.49:3-52, 49:3-55 and 49:3-56) apply to persons who buy or
25 offer to buy when (1) an offer to buy is made in this State, or (2) an
26 offer to sell is made or accepted in this State;

27 (c) For the purpose of this section, except to the extent the bureau
28 chief may by rule or order determine, an offer to sell or to buy is made
29 in this State, whether or not either party is then present in this State,
30 when the offer (1) originates from this State or (2) is directed by the
31 offeror to this State and received at the place to which it is directed
32 (or at any post office in this State in the case of a mailed offer);

33 (d) For the purpose of this section, an offer to buy or to sell is
34 accepted in this State when acceptance (1) is communicated to the
35 offeror in this State and (2) has not previously been communicated to
36 the offeror, orally or in writing, outside this State; and acceptance is
37 communicated to the offeror in this State, whether or not either party
38 is then present in this State, when the offeree directs it to the offeror
39 in this State reasonably believing the offeror to be in this State and it
40 is received at the place to which it is directed (or at any post office in
41 this State in the case of a mailed acceptance);

42 (e) [An offer to sell or to buy is not made in this State when (1) the
43 publisher circulates or there is circulated on his behalf in this State any
44 bona fide newspaper or other publication of general, regular, and paid
45 circulation which is not published in this State, or which is published
46 in this State but has had more than 2/3 of its circulation outside this

1 State during the past 12 months, or (2) a radio or television program
2 originating outside this State is received in this State;] (Deleted by
3 amendment, P.L. , c. .)

4 (f) Sections 6, 8 and subsection (c) of section 9[(c) of P.L.1967,
5 c.93 (C.49:3-53, 49:3-55 and 49:3-56), so far as investment [advisors]
6 advisers are concerned, apply when any act instrumental in effecting
7 prohibited conduct is done in this State, whether or not either party is
8 then present in this State.

9 (cf: P.L.1967, c.93, s.4)

10
11 5. (New section) (a) Without limiting the general applicability of
12 section 5 of P.L.1967, c.93 (C.49:3-52), a person may not:

13 (1) quote a fictitious price with respect to a security;

14 (2) effect a transaction in a security which involves no change in the
15 beneficial ownership of the security for the purpose of creating a false
16 or misleading appearance of active trading in a security or with respect
17 to the market for the security;

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

24 (4) enter an order for the sale of a security with knowledge that an
25 order of substantially the same size and at substantially the same time
26 and price for the purchase of the security has been, or will be, entered
27 by or for the same, or affiliated, person for the purposes of creating a
28 false or misleading appearance of active trading in a security or with
29 respect to the market for the security; or

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

32 (b) A transaction effected in compliance with, or conduct that does
33 not violate, the applicable provisions of the "Securities Exchange Act
34 of 1934" and the rules and regulations of the Securities and Exchange
35 Commission thereunder is not a violation of subsection (a) of this
36 section.

37
38 6. Section 6 of P.L.1967, c.93 (C.49:3-53) is amended to read as
39 follows:

40 6. (a) It shall be unlawful for any person who receives, directly or
41 indirectly, any [consideration] compensation from another person
42 [primarily] for advising the other person as to the value of securities
43 or their purchase or sale, whether through the issuance of analyses or
44 reports or otherwise,

45 (1) to employ any device, scheme or artifice to defraud the other
46 person; [or]

1 (2) to engage in any act, practice, or course of business which
2 operates or would operate as a fraud or deceit upon the other person;

3 or

4 (3) to engage in dishonest or unethical practices as the bureau chief
5 may by rule define in a manner consistent with and compatible with the
6 laws and regulations of the Securities and Exchange Commission, the
7 self-regulatory organizations, and uniformity with the other states, the
8 remedies for which shall be civil or administrative only;

9 (b) It shall be unlawful for any [investment advisor or registered
10 broker-dealer] person acting as an investment [advisor] adviser,
11 whether required to be registered or not, to enter into, extend, or
12 renew any investment advisory contract unless it provides in writing

13 (1) [that the investment advisor shall not be compensated on the
14 basis of a share of capital gains upon or capital appreciation of the
15 funds or any portion of the funds of the client, except as may be
16 authorized by regulations issued by the bureau chief;

17 (2)] that no assignment of the contract may be made by the
18 investment ¹[advisor] adviser¹ without the consent of the other party
19 to the contract; and

20 [(3)] (2) that the investment [advisor] adviser, [if a partnership]
21 shall notify the other party to the contract of any change in [the
22 membership of the partnership] control of the investment adviser
23 within a reasonable time after the change;

24 (c) It shall be unlawful for any investment adviser required to be
25 registered or any registered broker-dealer acting as an investment
26 adviser to enter into, extend, or renew any investment advisory
27 contract, unless it provides in writing that the investment adviser shall
28 not be compensated on the basis of a share of capital gains upon or
29 capital appreciation of the funds or any portion of the funds, of the
30 client, except as may be authorized by rules issued by the bureau chief;

31 (d) The bureau chief may by rule or order prohibit any investment
32 adviser, except an investment adviser that is registered or not required
33 to be registered under the "Investment Advisers Act of 1940," from
34 being compensated on the basis of a share of capital gains upon, or
35 capital appreciation of the funds, or any portion of the funds, of the
36 client;

37 (e) [Paragraph (b)(1)] Subsection (c) of this section does not
38 prohibit an investment advisory contract which provides for
39 compensation based upon the total value of a fund averaged over a
40 definite period, or as of definite dates or taken as of a definite date.
41 "Assignment," as used in paragraph [(b)(2)] (1) of subsection (b) of
42 this section, includes any direct or indirect transfer or hypothecation
43 of an investment advisory contract by the assignor or of a controlling
44 block of the assignor's outstanding voting securities by a security
45 holder of the assignor; but, if the investment [advisor] adviser is a
46 partnership, no assignment of an investment advisory contract is

1 considered to result from the death or withdrawal of a minority of the
2 members of the investment [advisor] adviser having only a minority
3 interest in the business of the investment [advisor] adviser, or from the
4 admission to the investment [advisor] adviser of one or more members
5 who, after admission, will be only a minority of the members and will
6 have only a minority interest in the business.

7 (f) It shall be unlawful for any person soliciting advisory clients to
8 make any untrue statement of a material fact, or omit to state a
9 material fact necessary to make the statements made, in light of the
10 circumstances under which they are made, not misleading.

11 (cf: P.L.1987, c.424, s.1)

12
13 7. Section 7 of P.L.1967, c.93 (C.49:3-54) is amended to read as
14 follows:

15 7. It is unlawful for any person to make or cause to be made, in any
16 document filed with the bureau or in any proceeding , investigation or
17 examination conducted under this [law]act , any statement which is,
18 at the time and in the light of the circumstances under which it is
19 made, false or misleading in any material respect.

20 (cf: P.L.1967, c.93, s.7)

21
22 8. Section 8 of P.L.1967, c.93 (C.49:3-55) is amended to read as
23 follows:

24 8. (a) Neither (1) the fact that an application for registration of
25 any persons or a registration statement of any security has been filed
26 nor (2) the fact that a person or security is effectively registered
27 constitutes a finding by the bureau chief that any document filed under
28 this act is true, complete, and not misleading. Neither any such fact
29 nor the fact that an exemption or exception is available for a person,
30 security or transaction means that the bureau chief has passed in any
31 way upon the merits or qualifications of, or recommended or given
32 approval to, any person, security, or transaction.

33 (b) It is unlawful to make, or cause to be made, to any prospective
34 purchaser, customer, or client any representation inconsistent with
35 [paragraph] subsection (a) of this section .

36 (cf: P.L.1967, c.93, s.8)

37
38 9. Section 9 of P.L.1967, c.93 (C.49:3-56) is amended to read as
39 follows"

40 9. (a) It shall be unlawful for any person to act as a broker-dealer,
41 agent [or], investment [advisor] adviser or investment adviser
42 representative in this State unless [he] that person is registered or
43 exempt from registration under this act;

44 (b) A person shall be exempt from registration as a broker-dealer
45 if, during any period of 12 consecutive months, that person (1) does
46 not effect more than 15 transactions with persons other than those

1 specified in paragraph (5) of subsection (c) of section 2 of P.L.1967,
2 c.93 (C.49:3-49) located within New Jersey; (2) does not effect
3 transactions in more than five customer accounts of New Jersey
4 residents; or (3) effects transactions with persons who have no place
5 of residence in New Jersey and who are temporarily located in the
6 State; if at the time of the transactions described in paragraph (1), (2)
7 or (3) of this subsection (b), the broker-dealer has no place of business
8 in this State and is a member in good standing of a recognized
9 self-regulatory organization and is registered in the state in which the
10 broker-dealer is located;

11 (c) Agents who represent broker-dealers in transactions exempt
12 pursuant to paragraph (1), (2) or (3) of subsection ¹[b.] (b)¹ of this
13 section shall be exempt from registration for those transactions if they
14 are members of a recognized self-regulatory organization and
15 registered in the state in which they are located at the time of the
16 transaction;

17 (d) The burden of proving an exemption from registration under
18 this section shall be on the person claiming the exemption. A person
19 claiming an exemption from registration under this section shall keep
20 his books and records open to inspection by the bureau. If the bureau
21 chief finds it is in the public interest and necessary for the protection
22 of investors, the bureau chief may deny any exemption specified in
23 paragraphs (1), (2) or (3) of subsection (b) or in subsection (c) of this
24 section as to any broker-dealer or agent. The bureau chief may
25 proceed in summary fashion or otherwise;

26 (e) The bureau chief may identify classes of customers, securities,
27 transactions and broker-dealers for the purpose of increasing the
28 number of transactions or accounts available under the exemptions
29 specified in paragraphs (1), (2) or (3) of subsection (b) or subsection
30 (c) of this section;

31 (f) The bureau chief may by order identify the self-regulatory
32 organizations recognized under subsections (b) and (c) of this section
33 and may by rule or order define the conditions under which
34 non-resident persons are temporarily in New Jersey under paragraph
35 (3) of subsection (b) of this section;

36 (g) A person shall be exempt from registration as an investment
37 adviser or from making a notice filing required by section 10 of
38 P.L.1967, c.93 (C.49:3-57), if:

39 (1) the person has a place of business in this State and during any
40 period of 12 consecutive months that person does not have more than
41 five clients, who are residents of this State, other than those specified
42 in subparagraph (vi) of paragraph (2) of subsection (g) of section 2 of
43 P.L.1967, c.93 (C.49:3-49); or

44 (2) the person has no place of business in this State, and during any
45 period of 12 consecutive months that person does not have more than
46 five clients, who are residents of this State, other than those specified

1 in subparagraph (vi) of paragraph (2) of subsection (g) of section 2 of
2 P.L.1967, c.93 (C.49:3-49).

3 The bureau chief may by rule or order determine the availability of
4 the exemptions provided by this subsection (g), including the waiver
5 of the conditions in paragraphs (1) and (2) of this subsection.

6 (h) It shall be unlawful for any broker-dealer or issuer to employ
7 an agent in this State unless the agent is registered. The registration
8 of an agent is not effective during any period when he is not associated
9 with a particular broker-dealer registered under this act or a particular
10 issuer. When an agent begins or terminates a connection with a
11 broker-dealer or issuer, or begins or terminates those activities which
12 make him an agent, the agent as well as the broker-dealer or issuer
13 shall promptly notify the bureau. When an agent terminates his
14 connection with a particular broker-dealer or issuer, his authorization
15 to engage in those activities which make him an agent is terminated ;

16 [(c)] (i) It shall be unlawful for any person to transact business in
17 this State as an investment [advisor] adviser unless (1) he is so
18 registered under this act, is exempt from registration under this act, or
19 is excluded from the definition of investment adviser under this act, or
20 (2) he is registered as a broker-dealer without the imposition of a
21 condition under paragraph (5) of subsection (b) of section 11 [,
22 paragraph (b)(5)] of P.L.1967, c.93 (C.49:3-58); [or (3) his only
23 clients in this State are investment companies as defined in the
24 Investment Company Act of 1940 or insurance companies;]

25 (j) It shall be unlawful for any investment adviser required to be
26 registered pursuant to this section to employ an investment adviser
27 representative, unless the investment adviser representative is also
28 registered pursuant to this section. It is unlawful for any person
29 registered or required to be registered as an investment adviser under
30 section 203 of the "Investment Advisers Act of 1940," 15 U.S.C.§80b-
31 3, to employ, supervise, or associate with an investment adviser
32 representative having a place of business located in this State, unless
33 that investment adviser representative is registered under this act, or
34 is exempt from registration. The registration of an investment adviser
35 representative is not effective during any period when the investment
36 advisor representative is not employed by an investment adviser
37 registered pursuant to this section or registered under section 203 of
38 the "Investment Advisers Act of 1940," 15 U.S.C.§80b-3. When an
39 investment adviser representative described in this subsection begins
40 or terminates employment with an investment adviser, the investment
41 adviser and the investment adviser representative shall promptly notify
42 the bureau chief. When an investment adviser representative
43 terminates his connection with a particular investment adviser, his
44 authorization to engage in those activities which make him an
45 investment adviser representative is terminated;

46 [(d)] (k) The bureau chief may summarily bar, [after a hearing]

1 pending final determination of any proceeding under this subsection ,
2 any person, who has been convicted of any crime of embezzlement
3 under state, federal or foreign law or any crime involving any theft,
4 forgery or fraudulent practices in regard to any state, federal or
5 foreign securities, banking, insurance, or commodities trading laws or
6 anti-fraud laws, from being a partner, officer or director of an issuer,
7 broker-dealer or investment adviser, or from occupying a similar status
8 or performing a similar function or from directly or indirectly
9 controlling or being under common control or being controlled by an
10 issuer, broker-dealer or investment adviser, or from acting as a
11 broker-dealer, agent or investment [advisor] adviser in this State.
12 Any person barred by this subsection shall be entitled to request a
13 hearing by the same procedures as set forth in subsection (c) of section
14 3 of P.L.1967, c.93 (C.49:3-50);

15 (l) Notwithstanding any other provision of this act, the bureau
16 chief may bring an administrative or court action pursuant to section
17 29 of this act, to seek and obtain civil penalties for violations of this
18 section;

19 [(e)] (m) Every registration shall expire [2 years] one year from its
20 effective date unless renewed, except that the bureau chief may by rule
21 provide that registrations shall all expire on the same date.

22 (n) Except with respect to advisers whose only clients are those
23 described in subparagraph (vi) of paragraph (2) of subsection (g) of
24 section 2 of P.L.1967, c.93 (C.49:3-49), it is unlawful for any person
25 who is registered or required to be registered under section 203 of the
26 "Investment Advisers Act of 1940," 15 U.S.C.§80b-3, as an
27 investment adviser to conduct advisory business in this State, unless
28 that person files those documents filed with the Securities and
29 Exchange Commission with the bureau chief, as the bureau chief may
30 by rule or otherwise require, and a fee and consent to service of
31 process, as the bureau chief, by rule or otherwise, may require.

32 (o) Notwithstanding anything to the contrary in this act, until
33 October 11, 1999, the bureau chief may require the registration of any
34 person who is registered or required to be registered as an investment
35 adviser under section 203 of the "Investment Advisers Act of 1940,"
36 15 U.S.C.§80b-3, and who has failed to promptly pay the fees required
37 by subsection (n) of this section after being notified in writing by the
38 bureau chief of the non-payment or underpayment of those fees. A
39 person shall be considered to have promptly paid those fees if they are
40 remitted to the bureau chief within 15 days following that person's
41 receipt of the written notification from the bureau chief.

42 (cf: P.L.1985, c.405, s.11)

43

44 10. Section 10 of P.L.1967, c.93 (C.49:3-57) is amended to read
45 as follows:

46 10. (a) A broker-dealer, agent, [or] investment [advisor] adviser

1 or investment adviser representative may obtain an initial or renewal
2 registration by filing with the bureau an application together with a
3 consent to service of process pursuant to subsection (a) of section
4 26[(a)] of P.L.1967, c.93 (C.49:3-73). National Association of
5 Securities Dealers, Inc. (NASD) member broker-dealers and their
6 agents shall file their applications for initial or renewal registration
7 with the Central Registration Depository, or its successor
8 organization, as appropriate and available. The application shall
9 contain whatever information the bureau chief by rule requires
10 concerning such matters as (1) the applicant's form and place of
11 organization; (2) the applicant's proposed method of doing business;
12 (3) the qualifications and business history of the applicant; in the case
13 of a broker-dealer or investment [advisor] adviser , the qualifications
14 and business history of any partner, officer, or director, any person
15 occupying a similar status or performing similar functions, or any
16 person directly or indirectly controlling the broker-dealer or
17 investment [advisor] adviser; and, in the case of an investment
18 [advisor] adviser or registered broker-dealer acting as an investment
19 [advisor] adviser, the qualifications and business history of any
20 employee who is to give investment advice or who is an investment
21 adviser representative; (4) any injunction or administrative order or
22 conviction of a crime of the fourth degree or its equivalent in any other
23 jurisdiction involving a security or any aspect of the securities or
24 investment advisory business and any conviction of a crime of the first,
25 second or third degree or its equivalent in any other jurisdiction; [and]
26 (5) the applicant's financial condition; and (6) in the case of an
27 investment adviser, a copy of any information or brochure used by the
28 adviser to comply with any rule of the bureau promulgated pursuant
29 to subsection (b) of section 12 of P.L.1967, c.93 (C.49:3-59). If no
30 denial, postponement or suspension order is in effect and no
31 proceeding is pending under section 11 of P.L.1967, c.93 (C.49:3-58),
32 registration becomes effective at noon of the thirtieth day after an
33 application is filed. The bureau chief may by rule or order specify an
34 earlier effective date, or he may by order defer the effective date until
35 the first day of the next calendar month after the thirtieth day after the
36 filing of the application. The bureau chief may by order defer the
37 effective date for additional periods, as the applicant shall agree to in
38 writing. The time limits herein provided shall run anew from the filing
39 of any amendment [. Registration of a broker-dealer automatically
40 constitutes registration of any agent who is a partner, officer, or
41 director, or a person occupying a similar status or performing similar
42 functions];

43 (b) Every applicant for initial or renewal registration for broker-
44 dealer, agent, investment adviser and investment adviser representative
45 shall pay [a] filing [fee of \$500.00 in the case of a broker-dealer, plus
46 \$10.00 for each partner, officer, director, or principal doing business

1 in this State; \$60.00 in the case of an agent; \$100.00 in the case of an
2 investment advisor and \$100.00 in the case of an issuer] fees in the
3 amounts as set by rule of the bureau chief. [When] If an application
4 is denied or withdrawn, the bureau shall retain the fee. Whenever any
5 supplemental filing is made, for the purpose of keeping current the
6 information furnished to the bureau chief, [is made] there [shall] may
7 be a supplemental filing fee [of \$5.00] in an amount set by rule of the
8 bureau chief;

9 (c) A registered broker-dealer or investment advisor may file an
10 application for registration of a successor, whether or not the
11 successor is then in existence, for the unexpired portion of the
12 registration period. There shall be no filing fee, except as may be
13 provided by rule of the bureau chief ;

14 (d) (1) The bureau chief may by rule require a minimum capital for
15 registered broker-dealers [; provided that the bureau chief shall not in
16 any case require a minimum capital in excess of \$10,000.00 in the case
17 of a registered broker-dealer; and provided further that the minimum
18 capital requirement of a broker-dealer engaged exclusively in the sale
19 of investment company shares shall not be in excess of \$5,000.00] not
20 to exceed the limitations provided in section 15 of the "Securities
21 Exchange Act of 1934," 15 U.S.C.§78o. The minimum capital
22 required for a registered broker-dealer shall be determined by rule of
23 the bureau chief;

24 (2) The bureau chief may by rule establish minimum financial
25 requirements for investment advisers, not to exceed the limitations
26 provided in section 222 of the "Investment Advisers Act of 1940," 15
27 U.S.C.§80b-18a, which may include different requirements for those
28 investment advisers who maintain custody of or have discretionary
29 authority over clients' funds or securities and investment advisers who
30 do not maintain such custody or discretionary authority.

31 (e) The bureau chief may by rule require registered investment
32 [advisors] advisers who have custody of clients' funds or securities to
33 post bonds in amounts not to exceed the limitations provided in
34 section 222 of the "Investment Advisers Act of 1940," 15 U.S.C.
35 §80b-18a and registered broker-dealers to post [surety] bonds in
36 amounts [up to \$25,000.00] not to exceed the limitations provided in
37 section 15 of the "Securities Exchange Act of 1934," 15 U.S.C.§78o,
38 and may determine their conditions [; provided that no such surety
39 bond shall be required of an investment advisor or a broker-dealer who
40 has a minimum capital of at least \$25,000.00 or of a broker-dealer
41 engaged exclusively in the sale of investment company shares who has
42 a minimum capital of \$5,000.00; except that, notwithstanding the
43 provisions of this or any other section of this law, the bureau chief may
44 by rule require registered broker-dealers and investment advisers, if
45 such registrant or any partner, officer or director, any person
46 occupying a similar status or performing similar functions, or any

1 person directly or indirectly controlling such registrant has ever been
2 convicted of any crime of the fourth degree or its equivalent in any
3 other jurisdiction involving a security or any aspect of the securities
4 business, or any crime of the first, second or third degree or its
5 equivalent in any other jurisdiction, to post surety bonds in amounts
6 up to \$200,000.00]. Any appropriate deposit of cash or securities
7 shall be accepted in lieu of any bond so required. Every bond shall
8 provide for suit thereon by any person who has a cause of action under
9 section 24 of P.L.1967, c.93 (C.49:3-71). Every bond shall provide
10 that no suit may be maintained to enforce any liability on the bond
11 unless brought within two years after the sale or other act upon which
12 it is based, or within two years of the time when the person aggrieved
13 knew or should have known of the existence of his cause of action,
14 whichever is later. The dollar amount of the bonds shall be set by rule
15 of the bureau chief;

16 (f) (1) The bureau chief may by rule provide for an examination
17 which may be written or oral or both, to be taken by any class of or all
18 applicants, as well as persons who represent or will represent an
19 investment [advisor] adviser in doing any of the acts which make him
20 an investment [advisor] adviser;

21 (2) Each applicant for [such] broker-dealer, agent, investment
22 adviser or investment adviser representative who takes an examination
23 provided pursuant to paragraph (1) of this subsection shall pay
24 examination fees in the amounts as [follows: broker-dealer, \$50.00;
25 partner, officer, or director doing business in this State, \$50.00; agent,
26 \$50.00; and investment advisor, \$50.00. When an application for
27 examination is denied or withdrawn, the bureau shall retain the fee] set
28 forth by rule of the bureau chief ;

29 (g) (1) Registration as a broker-dealer or agent under this act for
30 the limited purpose of engaging in the business of effecting or
31 attempting to effect transactions in direct participation securities for
32 the accounts of others or for his own account shall be permitted. All
33 the requirements of this act shall apply to these limited registrations;
34 except that any examination or other evaluation of proficiency or
35 knowledge required by the bureau for this registration shall be limited
36 to matters relating to direct participation securities and to the
37 requirements of laws and regulations applicable to this registrant.

38 (2) Any applicant for a limited registration shall acknowledge in
39 writing to the bureau prior to registration that he understands (i) the
40 limitations on the scope of his authority to do business pursuant to this
41 limited registration; and (ii) that any activity which exceeds the
42 limitations of the registration shall violate the provisions of this act
43 and may result in disciplinary action by the bureau, prosecution under
44 this act or other laws, or civil liability, to the same extent as if he was
45 not registered under this act.

46 (cf: P.L.1985, c.405, s.5)

1 11. Section 11 of P.L.1967, c.93 (C.49:3-58) is amended to read
2 as follows:

3 11. (a) The bureau chief may by order deny, suspend, or revoke
4 any registration if he finds :

5 (1) that the order is in the public interest ; and

6 (2) that the applicant or registrant or, in the case of a broker-dealer
7 or investment [advisor] adviser, any partner, officer, or director, any
8 person occupying a similar status or performing similar functions, or
9 any person directly or indirectly controlling the broker-dealer or
10 investment [advisor] adviser:

11 (i) has filed an application for registration which as of its effective
12 date, or as of any date after filing in the case of an order denying
13 effectiveness, was incomplete in any material respect or contained any
14 statement which was, in the light of the circumstances under which it
15 was made, false or misleading with respect to any material fact;

16 (ii) has willfully violated or willfully failed to comply with any
17 provision of this [law or a predecessor law] act or any rule or order
18 authorized by this [law or a predecessor law] act or has willfully,
19 materially aided others in such conduct ;

20 (iii) has been convicted of any crime involving a security or any
21 aspect of the [security] securities, commodities, banking, insurance or
22 investment advisory business or any crime involving moral turpitude;
23 however, where the applicant can show by proof satisfactory to the
24 bureau chief that during the 10-year period preceding the application
25 he has conducted himself in such a manner as to warrant his
26 registration consistent with all other provisions of this act, the
27 conviction shall not be a bar to registration;

28 (iv) is permanently or temporarily enjoined by any court of
29 competent jurisdiction from engaging in or continuing any conduct or
30 practice involving any aspect of the securities, commodities, banking,
31 insurance or investment advisory business;

32 (v) is the subject of an effective order of the bureau chief denying,
33 suspending, or revoking registration as a broker-dealer, agent, [or]
34 investment [advisor] adviser, investment adviser representative or
35 securities offering registrant ;

36 (vi) is the subject of an order entered within the past [5] five years
37 by [the] any federal or state securities, commodities, banking,
38 insurance or investment advisory administrator [of any other State or
39 by the Securities and Exchange Commission] or self-regulatory
40 organization denying or revoking a securities, commodities, banking,
41 insurance or investment advisory license or registration under federal
42 or state securities, commodities, banking, insurance or investment
43 advisory law, including, but not limited to registration as a
44 broker-dealer, agent, [or] investment [advisor] adviser, investment
45 adviser representative or issuer, or the substantial equivalent of those
46 terms as defined in this act, or is the subject of an order of the

1 Securities and Exchange Commission, a self-regulatory organization,
2 the Commodity Futures Trading Commission, an insurance regulator,
3 or a federal or state banking regulator, suspending or expelling him
4 from a national securities or commodities exchange or national
5 securities or commodities association registered under the [Securities
6 Exchange Act of 1934,] "Securities Exchange Act of 1934," or the
7 "Commodity Exchange Act," or from engaging in the banking or
8 insurance business, or is the subject of a United States Post Office
9 fraud order; but (A) the bureau chief may not institute a revocation
10 or suspension proceeding under this [clause] subparagraph (vi) more
11 than [1 year] two years from the date of the order relied on and (B)
12 he may not enter an order under this [clause] subparagraph (vi) on the
13 basis of an order under another [State] state act unless that order was
14 based on facts which would currently constitute a ground for an order
15 under [this] New Jersey law;

16 (vii) has engaged in dishonest or unethical practices in the
17 securities, commodities, banking, insurance or investment advisory
18 business, as may be defined by rule of the bureau chief ;

19 (viii) is insolvent, either in the sense that his liabilities exceed his
20 assets or in the sense that he cannot meet his obligations as they
21 mature; but the bureau chief may not enter an order against a
22 broker-dealer or investment [advisor] adviser for insolvency without
23 a finding of insolvency as to the broker-dealer or investment [advisor]
24 adviser;

25 (ix) is not qualified on the basis of such factors as character,
26 training, experience and knowledge of the [security] securities
27 business, except as otherwise provided in [paragraph] subsection (b)
28 of this section ;

29 (x) has failed to pass an examination under [subdivision
30 (b)]subsection (f) of [this] section [11]10 of P.L.1967, 93. (C.49:3-
31 57) if such an examination has been by rule provided for by the bureau
32 chief;

33 (xi) has failed reasonably to supervise; his agents if he is a
34 broker-dealer or issuer; the agents of a broker dealer or issuer for
35 whom he has supervisory responsibility; or his employees who give
36 investment advice if he is an investment [advisor] adviser ;

37 (xii) has failed to pay the proper fees, [but the bureau chief shall
38 vacate any such order when the deficiency has been corrected] as set
39 by rule of the bureau chief.

40 (b) The following provisions govern the application of
41 subparagraph (ix) of paragraph (2) of subsection (a)[(2)(ix)] of this
42 section :

43 (1) The bureau chief may not enter an order against a broker-dealer
44 on the basis of the lack of qualification of any person other than (i)
45 the broker-dealer himself if he is an individual or (ii) an agent of the
46 broker-dealer;

1 (2) The bureau chief may not enter an order against an investment
2 [advisor] adviser on the basis of the lack of qualification of any person
3 other than (i) the investment [advisor] adviser himself if he is an
4 individual or (ii) any other person who represents the investment
5 [advisor] adviser in doing any of the acts which make him an
6 investment [advisor] adviser ;

7 (3) The bureau chief may not enter an order solely on the basis of
8 lack of experience if the applicant or registrant is qualified by training
9 or knowledge or both;

10 (4) The bureau chief shall consider that an agent who will work
11 under the supervision of a registered broker-dealer need not have the
12 same qualifications as a broker-dealer;

13 (5) The bureau chief shall consider that an investment [advisor]
14 adviser is not necessarily qualified solely on the basis of experience as
15 a broker-dealer or agent. [When] If he finds that an applicant for
16 initial or renewal registration as a broker-dealer is not qualified as an
17 investment [advisor] adviser, he may by order condition the applicant's
18 registration as a broker-dealer upon his not transacting business in this
19 State as an investment [advisor] adviser .

20 (c) [(1) When the] The bureau chief [finds that an application for
21 registration should be denied he] , for good cause shown, may [enter
22 an] by order [denying such] summarily postpone, suspend, revoke or
23 deny any registration [; but he] , pending final determination of any
24 proceeding under this section. Upon entry of the order, the bureau
25 chief shall promptly notify the applicant or registrant, as well as the
26 employer or prospective employer if the applicant or registrant is an
27 agent or an investment adviser representative, that the order has been
28 entered and of the reasons therefor [and that the matter will be set
29 down for hearing if a written request for such a hearing is filed with
30 the bureau chief within 30 days after receipt of such notice by the
31 applicant. If no hearing is requested the order shall remain in effect
32 until modified or vacated. If a hearing is held the bureau chief shall
33 affirm, vacate or modify the order in accord with the findings at the
34 hearing].

35 (1) The bureau chief shall entertain on no less than three days
36 notice a written application to lift the summary postponement,
37 suspension or revocation on written application of the applicant or
38 registrant and in connection therewith may, but need not, hold a
39 hearing and hear testimony, but shall provide to the applicant or
40 registrant a written statement of the reasons for the summary
41 postponement, suspension or revocation.

42 (2) Upon service of notice of the order issued by the bureau chief,
43 the applicant or registrant shall have up to 15 days to respond to the
44 bureau in the form of a written answer and written request for a
45 hearing. The bureau chief shall, within five days of receiving the
46 answer and a request for a hearing, either transmit the matter to the

1 Office of Administrative Law for a hearing or schedule a hearing at the
2 Bureau of Securities. Orders issued pursuant to this subsection to
3 suspend or revoke any registration shall be subject to an application to
4 vacate upon 10 days' notice, and a preliminary hearing on the order to
5 suspend or revoke any registration shall be held in any event within 20
6 days after it is requested, and the filing of a motion to vacate the order
7 shall toll the time for filing an answer and written request for a
8 hearing:

9 (3) If an applicant or registrant fails to respond by filing a written
10 answer and request for a hearing with the bureau or moving to vacate
11 an order to suspend or revoke any registration within the 15 day
12 prescribed period, the registrant shall have waived the opportunity to
13 be heard and the order shall remain in effect until modified or vacated.

14 [(2) When the bureau chief finds that a registration should be
15 suspended or revoked he may enter a proposed order to suspend or
16 revoke such registration and he shall promptly notify the registrant, as
17 well as the employer if the registrant is an agent, of the proposed
18 order, of the reasons therefor and that the matter will be set down for
19 hearing if a written request for such hearing is filed with the bureau
20 chief within 10 days after receipt of such notice by the registrant. If
21 no hearing is requested within the specified time the bureau chief shall
22 enter the proposed order as a final order, which shall be effective when
23 entered. If a hearing is held the bureau chief shall withdraw the
24 proposed order or enter a final order in accord with the findings at the
25 hearing, which order shall be effective when entered.]

26 (d) If the bureau chief finds that any registrant or applicant for
27 registration is no longer in existence or has ceased to do business as
28 a broker-dealer, agent, [or] investment [advisor] adviser or investment
29 adviser representative, or is subject to an adjudication of mental
30 incompetence or to the control of a committee, conservator, or
31 guardian, or cannot be located after reasonable search, the bureau
32 chief may by order summarily revoke or deny the registration or
33 application;

34 (e) Withdrawal from registration as a broker-dealer, agent, [or]
35 investment [advisor] adviser or investment adviser representative
36 becomes effective 30 days after receipt of an application to withdraw
37 or within such [shorter] other period of time as the bureau chief may
38 determine by rule or order. The bureau chief may nevertheless
39 institute a revocation or suspension proceeding under [paragraph
40 (a)(2)(ii)] subparagraph (ii) of paragraph (2) of subsection (a) of this
41 section within [1 year] two years after withdrawal becomes effective
42 and enter a revocation or suspension order as of the last date on which
43 registration was effective;

44 (f) [No order may be entered under this section, except under
45 paragraph (c)(1), without (i) appropriate prior notice to the applicant
46 or registrant (as well as the employer or prospective employer if the

1 applicant or registrant is an agent), (ii) opportunity for hearing, and
2 (iii) written findings of fact and conclusions of law;] (Deleted by
3 amendment, P.L. , c. .).

4 (g) Every hearing [before an officer or employee of the bureau]
5 which this [law] act requires to be held [before any formal action may
6 be taken by the bureau] shall [not] be [public without the written
7 consent of all the respondents] held in accordance with the
8 "Administrative Procedure Act, " P.L.1968, c.410 (C.52:14B-1 et
9 seq.) .
10 (cf: P.L.1967, c.93, s.11)

11
12 12. Section 12 of P.L.1967, c.93 (C.49:3-59) is amended to read
13 as follows:

14 12. (a) [Every registered broker-dealer shall file with the bureau
15 chief a report of financial condition as of a date within each calendar
16 year within 60 days after the date of such report of financial condition,
17 provided that reports for any 2 consecutive years shall not be as of
18 dates within 4 months of each other. The report of financial condition
19 of a broker-dealer shall be certified by a certified public accountant or
20 a public accountant who shall be in fact independent;] (Deleted by
21 amendment, P.L. , c. .)

22 (b) Every registered broker-dealer and investment [advisor] adviser
23 shall make and [whenever required by rule of the bureau chief shall file
24 with the bureau, such] keep those accounts, correspondence,
25 memoranda, papers, books, and other records [, and accounts] as the
26 bureau chief by rule prescribes. Such books, records and accounts
27 shall conform [insofar as practicable,] to those prescribed by the
28 Securities and Exchange Commission. All records and books so
29 required shall be accessible to the bureau and preserved for 3 years
30 unless the bureau chief by rule prescribes otherwise [for all records or
31 for particular types of records];

32 (c) With respect to investment advisers, the bureau chief may
33 require by rule that certain information be furnished or disseminated
34 as necessary or appropriate in the public interest or for the protection
35 of investors and investment advisory clients. To the extent determined
36 by the bureau chief, information furnished to clients or prospective
37 clients of an investment adviser that would be in compliance with the
38 "Investment Advisers Act of 1940" and the regulations promulgated
39 thereunder may be used in whole or partial satisfaction of this
40 requirement;

41 (d) Every registered broker-dealer and investment adviser shall file
42 the financial reports the bureau chief prescribes by rule, except that the
43 bureau chief shall not require a registered broker-dealer to file
44 financial reports which exceed the limitations provided in section 15
45 of the "Securities Exchange Act of 1934," 15 U.S.C.§78o;

46 [(c)] (e) If the information contained in any document filed with

1 the bureau is or becomes inaccurate or incomplete in any material
2 respect, the registrant shall promptly [make]file a correcting
3 [supplemental filing] amendment unless notification of the correction
4 has been given under [section 9, paragraph (b)] subsection (h) of
5 section 9 of P.L.1967, c.93 (C.49:3-56) .

6 (f) All the records referred to in subsection (b) of this section are
7 subject at any time or from time to time to such reasonable periodic,
8 special, or other examinations by representatives of the bureau chief,
9 within or without this State, as the bureau chief deems necessary or
10 appropriate in the public interest or for the protection of investors.
11 The bureau chief may cooperate with the securities administrators of
12 other states, the Securities and Exchange Commission, Commodity
13 Futures Trading Commission, federal and state banking regulators,
14 state insurance regulators and any national securities exchange or
15 national securities association registered under the "Securities
16 Exchange Act of 1934."

17 (cf: P.L.1967, c.93, s.12)

18

19 13. Section 13 of P.L.1967, c.93 (C.49:3-60) is amended to read
20 as follows:

21 13. It is unlawful for any security to be offered or sold in this State
22 unless:

23 (a) The security or transaction is exempt under section 3 of this
24 [act] of P.L.1967, c.93 (C.49:3-50);

25 (b) [The security or transaction is not subject to, or is exempt
26 from, the registration requirements of the Securities Act of 1933 and
27 the rules and regulations thereunder, other than by reason of section
28 3(a) or 3(b) of such act and the rules and regulations under said
29 section 3(a) or 3(b), and a report of the offering is filed with the
30 bureau within 30 days of the completion date of the offering, setting
31 forth the name and address of the issuer, the total amount of the
32 securities sold, the price at which the securities were sold, the total
33 number of purchasers of the securities, and the names and addresses
34 of the purchasers of the securities, indicating the number and amount
35 of the securities each purchased. The fee for filing the report with the
36 bureau shall be \$250.00. The information in the report of sale shall be
37 deemed confidential and shall not be disclosed to the public except by
38 order of the court or in court proceedings;] (Deleted by amendment,
39 P.L. , c. .)

40 (c) (Deleted by amendment; P.L. 1985, c. 405.)

41 (d) (Deleted by amendment; P.L. 1985, c. 405.) [or]

42 (e) The security is registered under this act ; or

43 (f) It is a federal covered security for which a notice filing and fees
44 have been submitted as required by section 14 of this act .

45 (cf: P.L.1985, c.405, s.6)

46

1 14. (New section) (a) The bureau chief, by rule or otherwise, may
2 require the filing of any or all of the following documents with respect
3 to a federal covered security under paragraph (2) of subsection (b) of
4 section 18 of the "Securities Act of 1933," 15 U.S.C. §77r(b):

5 (1) Prior to the initial offer of such federal covered security in this
6 State, a notice as prescribed by the bureau chief by rule or otherwise
7 or all documents that are part of a current federal registration
8 statement filed with the Securities and Exchange Commission under
9 the "Securities Act of 1933," together with a consent to service of
10 process signed by the issuer and with the fee required by section 15 of
11 P.L.1967, c.93 (C.49:3-62);

12 (2) After the initial offer of such federal covered security in this
13 State, all documents that are part of an amendment to a current federal
14 registration statement filed with the Securities and Exchange
15 Commission under the "Securities Act of 1933;"

16 (3) To the extent necessary to compute fees, an annual or periodic
17 report of the value of such federal covered securities offered or sold
18 in this State;

19 (4) A notice setting forth the name and address of the issuer, and
20 the name and the dollar amount of the securities issued and the number
21 of the securities to be issued;

22 (5) That notice shall be effective on the later of date of its receipt
23 by the bureau chief or effectiveness of the offering with the Securities
24 and Exchange Commission and shall expire on June 30 of each year,
25 unless renewed prior to expiration by filing an additional notice and
26 fee, except that the bureau chief may by rule determine that such
27 notice will automatically remain in effect in the case of unit investment
28 trusts. A renewal notice shall take effect upon expiration of the notice
29 filing being renewed. Only one notice and one fee needs to be filed for
30 multiple portfolios, classes, trusts, or funds that are offered through
31 one prospectus. In setting fees, the bureau shall take into account
32 whether the investment company issuing the shares is an open-end
33 management company or unit investment trust and shall establish
34 different fees for different types of investment companies. In no event
35 shall the fee charged in any calendar year for claiming this exemption
36 exceed the fee charged for registering securities with the bureau under
37 subsection (b) of section 15 of P.L.1967, c.93 (C.49:3-62).

38 (b) With respect to any security that is a federal covered security
39 under subparagraph (D) of paragraph (4) of subsection (b) of section
40 18 of the "Securities Act of 1933," 15 U.S.C. §77r(b)(4)(D), the
41 bureau chief, by rule or otherwise, may require the issuer to file a
42 notice on SEC Form D, 17 C.F.R. §239.500, or a successor form, and
43 a consent to service of process signed by the issuer no later than 15
44 days after the first sale of that federal covered security in this State,
45 together with the fee required to be paid pursuant to paragraph (12)
46 of subsection (b) of section 3 of P.L.1967, c.93 (C.49:3-50);

1 (c) The bureau chief, by rule or otherwise, may require the filing
2 of any document filed with the Securities and Exchange Commission
3 under the "Securities Act of 1933" with respect to a federal covered
4 security under paragraph (3) or (4) of subsection (b) of section 18 of
5 the "Securities Act of 1933," 15 U.S.C. §77r(b)(3) or (4);

6 (d) The bureau chief may issue a stop order suspending the offer
7 and sale of a federal covered security, except a federal covered
8 security under paragraph (1) of subsection (b) of section 18 of the
9 "Securities Act of 1933," 15 U.S.C. §77r(b)(1), if the bureau chief
10 finds that (1) the order is in the public interest and (2) there is a failure
11 to comply with any condition established under this section;

12 (e) The bureau chief, by rule or otherwise, may waive any or all of
13 the provisions of this section.

14

15 15. Section 14 of P.L.1967, c.93 (C.49:3-61) is amended to read
16 as follows:

17 14. (a) Subject to the provisions of this section and section 15 of
18 [this act] of P.L.1967, c.93 (C.49:3-62) any security may be registered
19 by qualification.

20 (b) A registration statement under this section shall contain the
21 following information and be accompanied by the following
22 documents:

23 (1) the information specified in subsection (c) of section 15 [(c)] of
24 [this act] of P.L.1967, c.93 (C.49:3-62) ;

25 (2) the consent to service of process required by subsection (a) of
26 section 26 [(a)] of [this act] of P.L.1967, c.93 (C.49:3-73);

27 (3) with respect to the issuer and any significant subsidiary; its
28 name, address, and form of organization; the State or foreign
29 jurisdiction and date of its organization; the general character and
30 location of its business; a description of its physical properties and
31 equipment; and a statement of the general competitive conditions in
32 the industry or business in which it is or will be engaged;

33 (4) with respect to every director and officer of the issuer, or
34 person occupying a similar status or performing similar functions: his
35 name, address, and principal occupation for the past [5] five years;
36 the amount of securities of the issuer held by him as of a specified date
37 within 30 days of the filing of the registration statement; the amount
38 of the securities covered by the registration statement to which he has
39 indicated his intention to subscribe; and a description of any material
40 interest in any material transaction with the issuer or any significant
41 subsidiary effected within the past [3] three years or proposed to be
42 effected;

43 (5) with respect to persons covered by [subsection] paragraph (4)
44 of this subsection; the remuneration paid during the past 12 months
45 and estimated to be paid during the next 12 months, directly or
46 indirectly, by the issuer (together with all predecessors, parents,

- 1 subsidiaries, and affiliates) to all those persons in the aggregate;
- 2 (6) with respect to any person owning of record, or beneficially if
3 known, 10% or more of the outstanding shares of any class of equity
4 security of the issuer: the information specified in [subsection]
5 paragraph (4) of this subsection other than his occupation;
- 6 (7) with respect to every promoter if the issuer was organized
7 within the past [3] three years: the information specified in
8 [subsection] paragraph (4) of this subsection, any amount paid to him
9 within the period or intended to be paid to him, and the consideration
10 for any such payment;
- 11 (8) with respect to any person on whose behalf any part of the
12 offering is to be made in a nonissuer transaction: his name and
13 address; the amount of securities of the issuer held by him as of the
14 date of the filing of the registration statement; a description of any
15 material interest in any material transaction with the issuer or any
16 significant subsidiary effected within the past [3] three years or
17 proposed to be effected; and a statement of his reasons for making
18 the offering;
- 19 (9) the capitalization and long-term debt (on both a current and a
20 pro forma basis) of the issuer and any significant subsidiary, including
21 a description of each security outstanding or being registered or
22 otherwise offered, and a statement of the amount and kind of
23 consideration (whether in the form of cash, physical assets, services,
24 patents, goodwill, or anything else) for which the issuer or any
25 subsidiary has issued any of its securities within the past [2] two years
26 or is obligated to issue any of its securities;
- 27 (10) the kind and amount of securities to be offered; the proposed
28 offering price or the method by which it is to be computed; any
29 variation therefrom at which any portion of the offering is to be made
30 to any person or class of persons other than the underwriters, with a
31 specification of any such person or class; the basis upon which the
32 offering is to be made if otherwise than for cash; the estimated
33 aggregate underwriting and selling discounts or commissions and
34 finders' fees (including separately cash, securities, contracts, or
35 anything else of value to accrue to the underwriters or finders in
36 connection with the offering) or, if the selling discounts or
37 commissions are variable, the basis of determining them and their
38 maximum and minimum amounts; the estimated amounts of other
39 selling expenses, including legal, engineering, and accounting charges;
40 the name and address of every underwriter and every recipient of a
41 finder's fee; a copy of any underwriting or selling-group agreement
42 pursuant to which the distribution is to be made, or the proposed form
43 of any such agreement whose terms have not yet been determined, and
44 a description of the plan of distribution of any securities which are to
45 be offered otherwise than through an underwriter;
- 46 (11) the estimated cash proceeds to be received by the issuer from

1 the offering; the purposes for which the proceeds are to be used by the
2 issuer; the amount to be used for each purpose; the order or priority
3 in which the proceeds will be used for the purposes stated; the
4 amounts of any funds to be raised from other sources to achieve the
5 purposes stated; the sources of any such funds; and, if any part of the
6 proceeds is to be used to acquire any property (including goodwill)
7 otherwise than in the ordinary course of business, the names and
8 addresses of the vendors, the purchase price, the names of any persons
9 who have received commissions in connection with the acquisition,
10 and the amounts of any such commissions and any other expense in
11 connection with the acquisition (including the cost of borrowing
12 money to finance the acquisition);

13 (12) a description of any stock options or other security options
14 outstanding, or to be created in connection with the offering, together
15 with the amount of any such options held or to be held by every person
16 required to be named in [subsections] paragraph (4), (6), (7), (8), or
17 (10) of this subsection and by any person who holds or will hold 10%
18 or more in the aggregate of any such options;

19 (13) the dates of, parties to, and general effect concisely stated of,
20 every management or other contract of material importance made or
21 to be made otherwise than in the ordinary course of business if it is to
22 be performed in whole or in part at or after the filing of the
23 registration statement or was made within the past [2] two years,
24 together with a copy of every such contract; and a description of any
25 pending litigation or proceeding to which the issuer is a party and
26 which materially affects its business or assets (including any such
27 litigation or proceeding known to be contemplated by governmental
28 authorities);

29 (14) a copy of any prospectus, pamphlet, circular, form letter,
30 advertisement, or other sales literature intended as of the effective date
31 to be used in connection with the offering;

32 (15) a specimen or copy of the security being registered; a copy of
33 the issuer's articles of incorporation and by-laws, or their substantial
34 equivalents, as currently in effect; and a copy of any indenture or
35 other instrument covering the security to be registered;

36 (16) a signed or conformed copy of an opinion of counsel as to the
37 legality of the security being registered (with an English translation if
38 it is in a foreign language), which shall state whether the security when
39 sold will be legally issued, fully paid, and nonassessable, and, if a debt
40 security, a binding obligation of the issuer;

41 (17) the written consent of any accountant, engineer, appraiser, or
42 other person whose profession gives authority to a statement made by
43 him, if any such person is named as having prepared or certified a
44 report or valuation (other than a public and official document or
45 statement) which is used in connection with the registration statement;

46 (18) a balance sheet of the issuer as of a date within [4] four

1 months prior to the filing of the registration statement, accompanied
2 by a declaration that there has been no substantial change in the
3 financial position of the issuer since the date of such statement; a
4 profit and loss statement and analysis of surplus for each of the [3]
5 three fiscal years preceding the date of the balance sheet and for any
6 period between the close of the last fiscal year and the date of the
7 balance sheet, or for the period of the issuer's and any predecessor's
8 existence if less than [3] three years; and, if any part of the proceeds
9 of the offering is to be applied to the purchase of any business, the
10 same financial statements which would be required if that business
11 were the registrant; and

12 (19) such additional information as the bureau chief requires by rule
13 or order.

14 (c) Registration by qualification shall become effective when the
15 bureau chief so orders.

16 (d) The bureau chief may by rule or order require as a condition of
17 registration by qualification that a prospectus containing any
18 designated part of the information specified in subsection (b) of this
19 section be sent or given to each person to whom an offer is made
20 before or concurrently with (1) the first written offer made to him
21 (otherwise than by means of a public advertisement) by or for the
22 account of the issuer or any other person on whose behalf the offering
23 is being made, or by any underwriter or broker-dealer who is offering
24 part of an unsold allotment or subscription taken by him as a
25 participant in the distribution, (2) the confirmation of any sale made by
26 or for the account of any such person, (3) payment pursuant to any
27 such sale, or (4) delivery of the security pursuant to any such sale,
28 whichever first occurs.

29 (e) The bureau chief may by rule or order require as a condition of
30 registration by qualification (1) that any security issued within the past
31 [3] three years or to be issued to a promoter for a consideration
32 substantially different from the public offering price, or to any person
33 for a consideration other than cash, be deposited in escrow; and (2)
34 that the proceeds from the sale of the registered security in this State
35 be deposited in escrow until the issuer receives a specified amount
36 from the sale of the security either in this State or elsewhere. The
37 bureau chief may by rule or order determine the conditions of any
38 escrow required hereunder, but he may not reject a depository solely
39 because of location in another [State] state .

40 (f) The bureau chief may by rule or order require as a condition of
41 registration that any security registered by qualification be sold only
42 on a specified form of subscription or sale contract, and that a signed
43 or conformed copy of each contract be filed with the bureau chief or
44 preserved for any period up to [3] three years specified in the rule or
45 order.

46 (cf: P.L.1967, c.93, s.14)

1 16. Section 7 of P.L.1985, c.405 (C.49:3-61.1) is amended to read
2 as follows:

3 7. a. Any security for which a registration statement has been filed
4 under the "Securities Act of 1933," [48 Stat. 74 (15 U.S.C.s. 77a et
5 seq.)] in connection with the same offering may be registered by
6 coordination.

7 b. A registration statement under this section shall contain the
8 following information and be accompanied by the following documents
9 in addition to the information specified in section 15 of P.L.1967,
10 c.93 (C.49:3-62) and the consent to service of process required by
11 section 26 of P.L.1967, c.93 (C.49:3-73):

12 (1) Three copies of the latest form of prospectus filed under the
13 "Securities Act of 1933";

14 (2) If the bureau chief by rule or otherwise requires, a copy of the
15 articles of incorporation and bylaws, or other substantial equivalents,
16 currently in effect, a copy of any agreements with or among
17 underwriters, a copy of any indenture or other instrument governing
18 the issuance of the security to be registered, and a specimen or copy
19 of the security;

20 (3) If the bureau chief requests, any other information, or copies
21 of any other documents, filed under the "Securities Act of 1933"; and

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

28 c. The bureau chief shall make reasonable efforts to coordinate
29 comments or requests with the securities administrators in other
30 jurisdictions in which registration is sought and particularly with
31 jurisdictions in which the issuer is located;

32 d. A registration statement under this section becomes effective at
33 the moment the federal registration statement becomes effective if all
34 the following conditions are satisfied:

35 (1) No stop order is in effect and no proceeding is pending against
36 any person directly or indirectly involved in the offering under
37 subsection (c) of section 3, section 17 or 23 of P.L.1967, c.93
38 (C.49:3-50, 49:3-64 and 49:3-70) or section 29 of this act; and

39 (2) The registration statement has been on file with the bureau
40 chief for at least [10] five days, but if the registration statement is not
41 filed with the bureau chief within 10 days after the initial filing under
42 the "Securities Act of 1933," the registration statement has been on
43 file with the bureau chief for 30 days or any shorter period the bureau
44 chief, by rule or order, specifies; and

45 (3) There are no comments or requests from the bureau that have
46 not been answered to the satisfaction of the bureau; and

1 (4) A statement of the maximum and minimum proposed offering
2 prices and the maximum underwriting discounts and commissions has
3 been on file for two full business days or a shorter period as the bureau
4 chief permits by rule or otherwise; and

5 ~~[(4)]~~ (5) The offering is made within the limitations set forth in
6 paragraphs (1), (2) ~~[and]~~, (3) ~~and~~ (4) of this subsection.

7 The registrant shall promptly notify the bureau chief by telephone
8 or telegram of the date and time when the federal registration
9 statement became effective, and the content of a price amendment, if
10 any is made, and shall promptly file a post-effective amendment
11 containing the information and documents in the price amendment.

12 For the purposes of this section, "price amendment" means the final
13 federal amendment which includes a statement of the offering price,
14 underwriting and selling discounts or commissions, amount of
15 proceeds, conversion rates, call prices, and other matters dependent
16 upon the offering prices.

17 ~~[d.]~~ e. Upon failure to receive the required notification and
18 post-effective amendment with respect to the price amendment, the
19 bureau chief may enter a stop order, without notice or hearing,
20 retroactively denying effectiveness to the registration statement or
21 suspending its effectiveness until there is compliance with subsection
22 ~~[c.]~~ d. of this section, if he promptly notifies the registrant by
23 telephone or telegram, and in the case of a telephone notification, by
24 subsequent written notification, of the issuance of the order. If the
25 registrant proves compliance with the requirements of this subsection
26 as to notice and post-effective amendment, the stop order shall be void
27 as of the time of its entry. The bureau chief may by rule or otherwise
28 waive any of the conditions specified in paragraphs (1), (2), (3) and
29 (4) of subsection ~~[c.]~~ d. of this section.

30 ~~[e.]~~ f. If the federal registration statement becomes effective before
31 all the conditions in subsection ~~[c.]~~ d. are satisfied and they are not
32 waived, the registration statement shall become effective as soon as all
33 the conditions are satisfied. If the registrant advises the bureau chief
34 of the date when the federal registration statement is expected to
35 become effective, the bureau chief shall promptly advise the registrant
36 by telephone or telegram, at the registrant's expense, whether all the
37 conditions are satisfied and whether he contemplates the institution of
38 a proceeding under section 17 of P.L.1967, c.93 (C.49:3-64), but any
39 advice by the bureau chief pursuant to this subsection shall not
40 preclude the institution of such a proceeding at any time.

41 (cf: P.L.1985, c.405, s 7)

42
43 17. Section 8 of P.L.1985, c.405 (C.49:3-61.2) is amended to read
44 as follows:

45 8. The following securities may be registered by notification,
46 whether or not they are also eligible for registration by coordination

1 under section 7 of [this 1985 amendatory and supplementary act]
2 P.L.1985, c.405 (C.49:3-61.1) or by qualification under section 14 of
3 P.L.1967, c.93 (C. 49:3-61):

4 a. Any security whose issuer, and any predecessors, have been in
5 continuous operation for at least five years, if:

6 (1) There has been no default during the current fiscal year or
7 within the three preceding fiscal years in the payment of principal,
8 interest, or dividends on any security of the issuer, or of any
9 predecessor thereof, with a fixed maturity or a fixed interest or
10 dividend provision; and

11 (2) The issuer, and any predecessors, during the past three fiscal
12 years, have had an average net earnings, determined in accordance
13 with generally accepted accounting practices:

14 [(a)] (i) Which are applicable to all securities without a fixed
15 maturity or a fixed interest or dividend provision, which securities are
16 outstanding at the date the registration statement is filed, and which
17 average net earnings equal at least 5% of the amount of those
18 outstanding securities, as measured by the maximum offering price or
19 the market price on a day, selected by the registrant, within 30 days
20 before the date of filing the registration statement, whichever is higher,
21 or by the book value on a day, selected by the registrant, within 90
22 days of the date of filing the registration statement, to the extent that
23 there is neither a readily determinable market price nor a cash offering
24 price; or

25 [(b)] (ii) Which average net earnings, if the issuer, and any
26 predecessors, have not had any security of the type specified in
27 subparagraph [(a)] (i) of this paragraph outstanding for three full
28 fiscal years, equal to at least 5% of the amount, as established in
29 subparagraph [(a)] (i) of this paragraph, of all securities which will be
30 outstanding if all of the securities being offered or proposed to be
31 offered, whether or not they are proposed to be registered or offered
32 in this State, are issued;

33 b. A registration statement under this section shall contain the
34 following information and shall be accompanied by the following
35 documents, in addition to the information specified in section 15 of
36 P.L.1967, c.93 (C.49:3-62) and the consent to service of process
37 required by section 26 of P.L.1967, c.93 (C.49:3-73):

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

40 (2) With respect to the issuer and any significant subsidiary: its
41 name, address, and form of organization, the state or foreign
42 jurisdiction and the date of its organization, and the general character
43 and location of its business;

44 (3) With respect to any person on whose behalf any part of the
45 offering is to be made in a nonissuer distribution: his name and
46 address, the amount of securities of the issuer held by him as of the

1 date of the filing of the registration statement, and a statement of his
2 reasons for making the offering;

3 (4) A description of the security being registered;

4 (5) The information and documents specified in paragraphs (10),
5 (12), and (14) of subsection (b) of section 14 of P.L.1967, c.93
6 (C.49:3-61); and

7 (6) In the case of any registration under paragraph (2) of
8 subsection a. of this section which does not satisfy the conditions of
9 paragraph (1) [,] of subsection a. of this section, a balance sheet of the
10 issuer as of a date within four months prior to the filing of the
11 registration statement, and a summary of earnings for each of the two
12 fiscal years preceding the date of the balance sheet and for any period
13 between the close of the last fiscal year and the date of the balance
14 sheet, or for the period of the issuer's and any predecessors' existence,
15 if less than two years.

16 c. If no stop order is in effect and no proceeding is pending against
17 any person directly or indirectly involved in the offering under
18 subsection (c) of section 3, section 17 or section 23 of P.L.1967, c.93
19 (C.49:3-50, 49:3-64 or 49:3-70) or section 29 of this act, a
20 registration statement under this section automatically becomes
21 effective at three o'clock Eastern Standard Time in the afternoon of
22 the second full business day after the filing of the registration
23 statement or the last amendment, or at such earlier time as the bureau
24 chief determines.

25 (cf: P.L.1985, c.405, s.8)

26

27 18. Section 15 of P.L.1967, c.93 (C.49:3-62) is amended to read
28 as follows:

29 15. (a) A registration statement may be filed by the issuer, any
30 other person on whose behalf the offering is to be made, or a
31 registered broker-dealer.

32 (b) Every person filing a registration statement shall pay a filing fee
33 [of \$1,000.00] for each registration statement, as set by rule of the
34 bureau chief. This fee shall not be refundable.

35 (c) Every registration statement shall specify (1) the amount of
36 securities to be offered in this State; (2) the states in which a
37 registration statement or similar document in connection with the
38 offering has been or is to be filed; and (3) any adverse order,
39 judgment, or decree entered in connection with the offering by the
40 regulatory authorities in any state or by any court or the Securities and
41 Exchange Commission.

42 (d) Any document filed pursuant to this supplementary act within
43 three years preceding the filing of a registration statement may be
44 incorporated by reference in the registration statement to the extent
45 that the document is currently accurate.

46 (e) The bureau chief may by rule or order permit the omission of

1 any item of information or document from any registration statement.

2 (f) [The bureau chief may waive the requirements of all or any part
3 of section 14 or 15 (h) of this act in the case of a nonissuer transaction
4 of securities which were initially sold prior to the effective date of this
5 supplementary act, where the information is not known by the person
6 filing the registration statement or by the persons on whose behalf the
7 transaction is to be made, or cannot be furnished by them without
8 unreasonable effort or expense.] (Deleted by amendment, P.L. . . .
9 c. . . .)

10 (g) Every registration statement is effective for one year from its
11 effective date, or any longer period during which the security is being
12 offered or distributed in a nonexempt transaction by or for the account
13 of the issuer or other person on whose behalf the offering is being
14 made or by any underwriter or broker-dealer who is still offering part
15 of an unsold allotment or subscription taken by him as a participant in
16 the distribution, except during the time a stop order is in effect under
17 section 17 of [this act] P.L.1967, c.93 (C.49:3-64). All outstanding
18 securities of the same class as a registered security of the issuer are
19 considered to be registered for the purpose of any nonissuer
20 transaction (1) so long as the registration statement is effective and (2)
21 between the thirtieth day after the entry of any stop order suspending
22 or revoking the effectiveness of the registration statement under
23 section 17 of [this act] P.L.1967, c.93 (C.49:3-64) (if the registration
24 statement did not relate in whole or in part to a nonissuer distribution)
25 and one year from the effective date of the registration statement. A
26 registration statement may not be withdrawn for one year from its
27 effective date if any securities of the same class are outstanding. A
28 registration statement may be withdrawn otherwise only in the
29 discretion of the bureau chief.

30 (h) So long as a registration statement is effective, the bureau chief
31 may by rule or order require the person who filed the registration
32 statement to file reports, not more often than quarterly, to keep
33 reasonably current the information contained in the registration
34 statement and to disclose the progress of the offering.

35 (i) A registration statement relating to a security issued by a
36 face-amount certificate company or a redeemable security issued by an
37 open-end management company or unit investment trust, as those
38 terms are defined in the [Investment Company Act of 1940,]
39 "Investment Company Act of 1940," may be amended after its
40 effective date so as to increase the securities specified as proposed to
41 be offered. Such an amendment becomes effective when the bureau
42 chief so orders. Every person filing such an amendment shall pay a
43 filing fee, [calculated in the manner specified in subsection (b)] as may
44 be set by rule of the bureau chief, with respect to the additional
45 securities proposed to be offered.

46 j. Every registration statement shall be accompanied by an

1 undertaking by the registrant agreeing that, as a condition of
2 registration, the registrant will allow the bureau chief in the bureau
3 chief's discretion (subject in all cases to the constitutional or statutory
4 rights of the registrant, its agents and principals, if any) to (1) make
5 such investigations within or outside this State as the bureau chief
6 deems necessary to determine if the registrant, the registrant's agents,
7 or principals have violated or are about to violate any provision of this
8 act or any rule or order hereunder, or to aid in the enforcement of this
9 act or in the prescribing of rules and forms hereunder, or (2) require
10 or permit the registrant, the registrant's agents, and principals to file
11 a statement in writing, under oath or otherwise as the bureau chief
12 determines, as to all the facts and circumstances concerning the matter
13 to be investigated.

14 k. The bureau chief may by rule or order restrict or condition a
15 securities registration of any kind, or restrict the sale of such securities
16 to accredited investors.

17 (cf: P.L.1985, c.405, s.9)

18

19 19. Section 16 of P.L.1967, c.3 (C.49:3-63) is amended to read as
20 follows:

21 16. The bureau chief may by rule or order require the filing of any
22 prospectus, pamphlet, circular, form letter, advertisement, or other
23 sales literature or advertising communication addressed or intended for
24 distribution to prospective investors, including clients or prospective
25 clients of an investment [advisor] adviser, unless the security is not
26 required to be registered by subsection (a) or (f) of section 13 of [this
27 act;

28 There shall be a filing fee of \$0.25 for each page of sales literature
29 filed with the bureau under any regulations adopted pursuant to this
30 section, but such fee shall not exceed \$25.00 for any prospectus,

1 pamphlet, circular, or other sales literature] P.L.1967, c.93 (C.49:3-
2 60) .

3 (cf: P.L.1967, c.93, s.16)

4

5 20. Section 17 of P.L.1967, c.93 (C.49:3-64) is amended to read
6 as follows:

7 17. (a) The bureau chief may issue a stop order denying
8 effectiveness to, or suspending or revoking the effectiveness of, any
9 registration statement if he finds:

10 (1) that the order is in the public interest ; and

11 (2) that :

12 (i) The registration statement, as of its effective date or as of any
13 earlier date in the case of an order denying effectiveness, or any
14 amendment under subsection (i) of section 15[(i) of [this act]
15 P.L.1967, c.93 (C.49:3-62) as of its effective date, or any report under
16 subsection (h) of section 15[(h) of [this act] P.L.1967, c.93 (C.49:3-
17 62), is incomplete in any material respect or contains any statement
18 which was, in the light of the circumstances under which it was made,
19 false or misleading with respect to any material fact; or

20 (ii) Any provision of [the "Uniform Securities Law (1967)"as
21 amended or supplemented] this act or any rule, order, or condition
22 lawfully imposed thereunder has been willfully violated, in connection
23 with the offering by (A) the person filing the registration statement,
24 (B) the issuer, any partner, officer, or director of the issuer, any
25 person occupying a similar status or performing similar functions, or
26 any person directly or indirectly controlling or controlled by the issuer,
27 or (C) any underwriter; or

28 (iii) The security registered or sought to be registered is the subject
29 of an administrative stop order or similar order or a permanent or
30 temporary injunction of any court of competent jurisdiction entered
31 under any other federal, foreign or State act applicable to the offering;
32 but [(A)] the bureau chief may not institute a proceeding against an
33 effective registration statement under this subsection more than [one
34 year] two years from the date of the order or injunction relied on [,
35 and (B) he may not enter an order under this subsection on the basis
36 of an order or injunction entered under any other State act unless that
37 order or injunction was based on facts which would currently
38 constitute a ground for a stop order under this section]; or

39 (iv) The issuer's enterprise or method of business includes or would
40 necessarily include activities which are illegal where performed; or

41 (v) (Deleted by amendment; P.L.1985, c.405);

42 (vi) (Deleted by amendment; P.L.1985, c.405);

43 (vii) The applicant or registrant has failed to pay the proper filing
44 fee [but he shall vacate any such order when the deficiency has been
45 corrected] , as set by rule of the bureau chief;

46 (viii) The issuer, any partner, officer or director of the issuer, any

1 person occupying a similar status or performing similar functions, or
2 any person directly or indirectly controlling or controlled by the issuer,
3 or any broker-dealer or other person involved directly or indirectly in
4 the offering (A) has been convicted of any crime of embezzlement
5 under state, federal or foreign law or any crime involving any theft,
6 forgery or fraudulent practices in regard to any state, federal or
7 foreign securities, investment advisory, banking, insurance, or
8 commodities trading laws or anti-fraud laws; (B) is permanently or
9 temporarily enjoined by any court of competent jurisdiction from
10 engaging in or continuing any conduct or practice involving any aspect
11 of the securities, commodities, banking, insurance or investment
12 advisory business; (C) is the subject of an effective order of the bureau
13 chief denying, suspending, or revoking securities registration,
14 registration as a broker-dealer, agent, [or] investment [advisor]
15 adviser or investment adviser representative; (D) is the subject of an
16 order entered [within the past five years] by [the] any federal or state
17 securities, commodities, banking, insurance or investment advisory
18 administrator [of any other state or by the Securities and Exchange
19 Commission] or self-regulatory organization denying or revoking any
20 securities, commodities, banking, insurance or investment advisory
21 license or registration under federal or state securities, commodities,
22 banking, insurance or investment advisory law, including, but not
23 limited to, registration as a broker-dealer, agent, [or] investment
24 [advisor]adviser, investment adviser representative , or the substantial
25 equivalent of those terms as defined in [the "Uniform Securities Law
26 (1967)," P.L.1967, c.93 (C.49:3-48 et seq.)]this act, or is the subject
27 of an order of the Securities and Exchange Commission, a self-
28 regulatory organization, the Commodity Futures Trading Commission,
29 an insurance commissioner, or a federal or state banking regulator,
30 suspending or expelling him from a national securities or commodities
31 exchange or national securities or commodities association registered
32 under the "Securities Exchange Act of 1934" [(15 U.S.C. s. 78a et
33 seq.)] or the "Commodity Exchange Act," or from engaging in the
34 banking or insurance business, or is the subject of a United States
35 Postal Service fraud order, except the bureau chief may not institute
36 a revocation or suspension proceeding pursuant to this
37 subparagraph (D) of this subparagraph more than [one year] two
38 years from the date of the order relied on and he may not enter an
39 order pursuant to this subparagraph (D) of this subparagraph on
40 the basis of an order under another state act unless that order was
41 based on facts which would currently constitute a ground for an order
42 under [the "Uniform Securities Law (1967)," P.L.1967, c.93
43 (C.49:3-48 et seq.)] New Jersey law; (E) has engaged in dishonest or
44 unethical practices in the securities business; or (F) is insolvent, either
45 in the sense that liabilities exceed assets or in the sense that obligations
46 cannot be met as they mature; or

1 (ix) The offering is a blind pool.

2 (b) [The bureau chief may not institute an administrative stop order
3 proceeding against any effective registration statement on the basis of
4 a fact or transaction known to him when the registration statement
5 became effective, unless the proceeding is instituted within the next 30
6 days.] (Deleted by amendment, P.L. , c.)(pending before the
7 Legislature as this bill)

8 (c) The bureau chief may by order summarily postpone or suspend
9 the effectiveness of the registration statement pending final
10 determination of any proceeding instituted pursuant to this section.
11 Upon entry of such an order, the bureau chief shall promptly notify
12 each person specified in subsection (d) of this section that it has been
13 entered and of the reasons therefor [and that within 15 days after the
14 receipt of a written request the matter will be set down for hearing.
15 If no hearing is requested, the order will remain in effect until it is
16 modified or vacated by the bureau chief upon notice to the parties
17 specified in subsection (d)].

18 (1) Upon service of notice of the order issued by the bureau chief,
19 the applicant shall have up to 15 days to respond to the bureau in the
20 form of a written answer and written request for a hearing. The
21 bureau chief shall, within five days of receiving the answer and a
22 request for a hearing, either transmit the matter to the Office of
23 Administrative Law for a hearing or schedule a hearing at the Bureau
24 of Securities. Orders issued pursuant to this subsection to postpone
25 or suspend the effectiveness of any registration statement shall be
26 subject to an application to vacate upon 10 days' notice, and in any
27 event a preliminary hearing on the order to postpone or suspend the
28 effectiveness of any registration statement shall be held within 20 days
29 after it is requested, and the filing of a motion to vacate the order shall
30 toll the time for filing an answer and written request for a hearing.

31 (2) If an applicant fails to respond by either filing a written answer
32 and written request for a hearing with the bureau or moving to vacate
33 an order to postpone or suspend the effectiveness of any registration
34 statement within the 15 day period prescribed, the registrant shall have
35 waived the opportunity to be heard and the order shall remain in effect
36 until modified or vacated.

37 (d) No stop order may be entered pursuant to this section, except
38 as provided in subsection (c), without (1) appropriate [prior] notice
39 to the applicant or registrant, the issuer, and the person on whose
40 behalf the securities are to be offered, (2) opportunity for hearing, and
41 (3) written findings of fact and conclusions of law.

42 (e) The bureau chief may vacate or modify a stop order if he finds
43 that the conditions which prompted its entry have changed.

44 (f) Notwithstanding any other provision of this act to the contrary,
45 the bureau chief may bring an administrative or court action pursuant
46 to section 29 of this act to seek and obtain civil penalties for violations

1 of this section.

2 (cf: P.L.1987, c.301, s.3)

3

4 21. Section 18 of P.L.1967, c.93 (C.49:3-65) is amended to read
5 as follows:

6 18. (a) A document is filed when it is received in completed form
7 by the bureau;

8 (b) The bureau shall keep a register of all applications for
9 registration and registration statements which are or have ever been
10 effective under this act and all denial, suspension, revocation or other
11 orders which have been entered under this act. The register shall be
12 open for public inspection;

13 (c) The information contained in or filed with any registration
14 statement, application or report may be made available to the public
15 under such rules as the bureau chief prescribes;

16 (d) Upon request, the bureau chief shall furnish to any person
17 photographic or other copies, certified under his seal of office if
18 requested, of any entry in the register or any document in the custody
19 of the bureau chief which is a public record. The bureau chief may
20 establish such reasonable conditions and charges for the obtaining of
21 such copies as will in his judgment be practicable.

22 (e) The provisions of this section are subject to the provisions of
23 P.L.1963, c.73 (C.47:1A-1 et seq.).

24 (cf: P.L.1967, c.93, s.18)

25

26 22. Section 19 of P.L.1967, c.93 (C.49:3-66) is amended to read
27 as follows:

28 19. (a) This [law] act shall be administered by the Bureau of
29 Securities [which is hereby created] in the Division of [Law of]
30 Consumer Affairs of the Department of Law and Public Safety. The
31 principal executive officer of the bureau shall be a chief who is
32 appointed by and serves at the pleasure of the Attorney General. The
33 chief of the bureau shall have power to employ such officers and
34 employees as may be necessary to carry out the purposes of this [law]
35 act and to define their duties;

36 (b) It shall be unlawful for any of the officers or employees of the
37 bureau to use for personal benefit any information which is filed with
38 or obtained by the bureau and which is not made public. No provision
39 of this [law] act authorizes any officers or employees of the bureau to
40 disclose any such information except among themselves or when
41 necessary or appropriate in a proceeding or investigation under this
42 [law] act. No provision of this [law] act either creates or derogates
43 from any privilege which exists at common law or otherwise when
44 documentary or other evidence is sought under subpoena directed to
45 any of the officers or employees of the bureau.

46 (cf: P.L.1967, c.93, s.19)

1 23. Section 15 of P.L.1985, c.405 (C.49:3-66.1) is amended to
2 read as follows:

3 15. The "Securities Enforcement Fund" [is established] in the
4 Division of Consumer Affairs of the Department of Law and Public
5 Safety shall continue as a nonlapsing, revolving fund. All fees
6 [collected pursuant to sections 10, 15 and 16 of P.L.1967, c.93
7 (C.49:3-57), (C.49:3-62) and (C.49:3-63), and all] , penalties, costs,
8 finest and other monies collected pursuant to [section 23 of P.L.1967,
9 c.93 (C.49:3-70)] this act, shall be deposited in the fund. Moneys in
10 the fund shall be used by the Director of the Division of Consumer
11 Affairs to administer the provisions of [the "Uniform Securities Law,"
12 P.L.1967, c.93 (C.49:3-47 et seq.)]this act and to investigate
13 violations and to enforce the prohibitions of [that law]this act to
14 protect the public. There shall be made available from the General
15 Fund such additional amounts as may be required to carry out the
16 provisions of [P.L.1967, c.93 (C.49:3-47 et seq.)]this act.

17 All fees set by rule of the bureau chief pursuant to this act may be
18 imposed for revenue if the fees, taken together, are reasonably related
19 to the overall costs of carrying out the regulatory and administrative
20 duties of the bureau as set forth in this act.

21 The fees set pursuant to the "Uniform Securities Law (1967),"
22 P.L.1967, c.93. (C.49:3-47 et seq.) and supplements thereto which are
23 in effect on the effective date of this act, but which are to be set by
24 regulation pursuant to this act, shall remain in effect until the
25 regulations promulgated pursuant to this act take effect.

26 An annual accounting of deposits to and withdrawals from the fund
27 shall be made by the Director of the Division of Consumer Affairs and
28 filed with the Attorney General and bureau chief and any State agency,
29 as required by law.

30 (cf: P.L.1985, c.405, s.15)

31

32 24. Section 20 of P.L.1967, c.93 (C.49:3-67) is amended to read
33 as follows:

34 20. (a) The bureau chief may from time to time make, amend and
35 rescind such rules, forms and orders as are reasonably necessary to
36 carry out the provisions of this [law] act, including rules and forms
37 governing applications and reports, and defining any terms, whether
38 or not used in this [law] act, insofar as the definitions are not
39 inconsistent with the provisions of this [law] act. For the purpose of
40 rules and forms, the bureau chief may classify securities, persons and
41 matters within his jurisdiction, and prescribe different requirements for
42 different classes;

43 (b) No rule, form or order may be made, amended or rescinded
44 unless the bureau chief finds that the action is necessary and
45 appropriate (1) in the public interest, or (2) for the protection of
46 investors, or (3) consistent with the purposes fairly intended by the

1 policy and provisions of this act. In prescribing rules and forms the
2 bureau chief may co-operate with the securities administrators of the
3 other [States] states and the Securities and Exchange Commission
4 with a view to effectuating the policy of this statute to achieve
5 maximum uniformity in the form and content of applications and
6 reports wherever practicable;

7 (c) The bureau chief may by rule prescribe (1) the form and content
8 of financial statements required under this act; and (2) the
9 circumstances under which consolidated financial statements shall be
10 filed. All financial statements shall be prepared in accordance with
11 generally accepted accounting practices. The form and content of
12 financial statements shall conform, insofar as practicable, to those
13 prescribed by the Securities and Exchange Commission.

14 (d) All rules and forms promulgated by the bureau chief shall be
15 filed [with the Secretary of State a reasonable time before their
16 effective date] as required pursuant to the "Administrative Procedure
17 Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Copies of the rules and
18 samples of the forms shall be published in convenient form by the
19 bureau for distribution to interested persons, subject to available
20 appropriations.

21 (cf: P.L.1967, c.93, s.20)

22

23 25. Section 21 of P.L.1967, c.93 (C.49:3-68) is amended to read
24 as follows"

25 21. (a) The bureau chief in his discretion (1) may make such
26 private investigations within or outside of this State as he deems
27 necessary to determine whether any person has violated or is about to
28 violate any provision of this [law] act or any rule or order hereunder,
29 or to aid in the enforcement of this [law] act or in the prescribing of
30 rules and forms hereunder, (2) may require or permit any person to file
31 a statement in writing, under oath or otherwise as the bureau chief
32 determines, as to all the facts and circumstances concerning the matter
33 to be investigated, and (3) may publish information concerning any
34 violation of this act or any rule or order hereunder[, provided that
35 there shall be no publication until such rule or order becomes
36 effective] ;

37 (b) For the purpose of any investigation or proceeding under this
38 [law] act, the bureau chief or any officer designated by him may
39 administer oaths and affirmations, subpoena witnesses, compel their
40 attendance, take evidence and require the production of any books,
41 papers, correspondence, memoranda, agreements or other documents
42 or records which the bureau chief deems relevant or material to the
43 inquiry. At his discretion, the bureau chief may make available private
44 investigative materials to representatives of domestic or foreign
45 governmental authorities, self-regulatory organizations, state or
46 federal law enforcement officers, state securities administrators, and

1 trustees in bankruptcy. The bureau may also disclose that information:
2 (i) in court proceedings; (ii) if ordered to do so by a court of
3 competent jurisdiction; or (iii) if appropriate, in furtherance of any
4 ongoing investigation or proceeding. The bureau chief may also
5 request and use private investigative materials provided to it by other
6 federal and State authorities, including authorities of other states and
7 foreign countries ;

8 (c) In case of contumacy by, or refusal to obey a subpoena or order
9 issued to, any person, the Superior Court, upon application by the
10 bureau chief, may issue to the person an order requiring him to appear
11 before the bureau chief, or the officer designated by him, there to
12 produce documentary evidence if so ordered or to give evidence
13 touching the matter under investigation or in question. The court may
14 grant injunctive relief restraining the issuance, sale or offer for sale,
15 purchase or offer to purchase, promotion, negotiation, advertisement
16 or distribution from or within this State of any securities or investment
17 advisory advice concerning securities by a person, or agent, employee,
18 broker, partner, officer, director, investment adviser, investment
19 adviser representative or issuer or stockholder thereof, until such
20 person has fully complied with such subpoena or order and the bureau
21 has completed its investigation. The court may proceed in the action
22 in a summary manner or otherwise;

23 (d) No person is excused from attending and testifying or from
24 producing any document or record before the bureau or in obedience
25 to the subpoena or order of the bureau chief or any officer designated
26 by him, or in any proceeding instituted by the bureau, on the ground
27 that the testimony or evidence (documentary or otherwise) required of
28 him may tend to incriminate him or subject him to a penalty or
29 forfeiture; but [no individual may be prosecuted or subjected] the
30 testimony or evidence (documentary or otherwise) compelled from an
31 individual who has claimed his privilege against self-incrimination, or
32 the fruits thereof, may not be used to prosecute that individual or to
33 subject that individual to any penalty or forfeiture [for or on account
34 of any transaction, matter or thing concerning which he is compelled,
35 after claiming his privilege against self-incrimination, to testify or
36 produce evidence (documentary or otherwise)], except that the
37 individual testifying is not exempt from prosecution and punishment
38 for perjury, false swearing or contempt committed in testifying.

39 (e) When it shall appear to the bureau chief that the testimony of
40 any person is essential to an investigation instituted by him as provided
41 by this chapter, and that the failure of such person to appear and
42 testify may defeat the proper and effective conduct thereof, the bureau
43 chief, in addition to the other remedies provided for herein, may, by
44 petition verified generally, setting forth the facts, apply to the Superior
45 Court for a writ of ne exeat against such person. The court shall
46 thereupon direct the issuance of the writ against such person requiring

1 him to give sufficient bail conditioned to insure his appearance before
2 the bureau chief for examination under oath in such investigation and
3 that he will continue his appearance therein from time to time until the
4 completion of the investigation and will appear before the court if the
5 bureau chief shall institute any proceeding therein as a result of his
6 investigation.

7 The court shall cause to be indorsed on the writ of ne exeat, in
8 words at length, a suitable amount of bail upon which the person
9 named in the writ shall be freed, having a due regard to the nature of
10 the case and the value of the securities involved. All applications to
11 be freed on bail shall be on notice to the bureau chief and the
12 sufficiency of the bail given on the writ shall be approved by the court.
13 All recognizances shall be to the State and all forfeitures thereof shall
14 be declared by the court. The proceeds of the forfeitures shall be paid
15 into the State treasury.

16 (cf: P.L.1967, c.93, s.21)

17

18 26. (New section) (a) In case of contumacy by, or refusal to obey
19 a subpoena or order issued to, any person, the bureau chief may, in his
20 discretion, summarily order restraints on the issuance, sale, offer for
21 sale, purchase or offer to purchase, promotion, negotiation,
22 advertisement, or distribution from or within the State of any securities
23 or investment advisory advice concerning securities, by the person, or
24 agent, employee, broker, partner, officer, director, investment adviser
25 representative, or stockholder thereof, until that person has fully
26 complied with that subpoena or order and the bureau has completed
27 its investigation.

28 (b) The bureau chief may proceed in an action in a summary
29 manner or otherwise, by issuing a cease and desist order, by denying,
30 revoking or suspending any registration or exemption under this act,
31 by assessing civil monetary penalties, or by any combination of these
32 actions he deems appropriate. Upon entry of such an order, the
33 bureau chief shall promptly notify each person subject thereto that it
34 has been entered and of the reasons therefor. In the case of an agent,
35 notice shall also be given to the broker-dealer with which the agent is
36 affiliated as shown on the Central Registration Depository, and in the
37 case of an investment adviser representative, notice shall also be given
38 to the investment adviser with which the investment adviser
39 representative is affiliated as shown on Form ADV, 17 C.F.R. §279.1,
40 or successor federal registration form;

41 (1) The bureau chief shall entertain on no less than three days
42 notice an application to lift the summary order on written application
43 of the person subject thereto and in connection therewith may, but
44 need not, hold a hearing and hear testimony, but shall provide to the
45 person subject thereto a written statement of the reasons for the
46 summary order;

1 (2) Upon service of notice of the order issued by the bureau chief,
2 each person subject thereto shall have up to 15 days to respond to the
3 bureau in the form of a written answer and written request for a
4 hearing. The bureau chief shall, within five days of receiving the
5 answer and request for a hearing, either transmit the matter to the
6 Office of Administrative Law for a hearing, or schedule a hearing at
7 the Bureau of Securities. Orders issued pursuant to this section shall
8 be subject to an application to vacate upon 10 days' notice, and in any
9 event a preliminary hearing on the order shall be held within 20 days
10 after it is requested, and the filing of a motion to vacate the order shall
11 toll the time for filing an answer and written request for a hearing.

12 (3) If a person subject to the order fails to respond by either filing
13 a written answer and written request for a hearing with the bureau or
14 moving to vacate the order within the 15 day prescribed period, that
15 person shall have waived the opportunity to be heard and the order
16 shall remain in effect as to that person until modified or vacated by the
17 bureau chief.

18

19 27. Section 22 of P.L.1967, c.93 (C.49:3-69) is amended to read
20 as follows:

21 22. (a) ~~[When]~~ If it [shall appear] appears to the bureau chief that
22 [a] any person has, or directly or indirectly controls another person
23 who has engaged in, is engaging in, or is about to engage in any act or
24 practice [declared to be illegal and prohibited by] constituting a
25 violation of any provision of this [law]act or any rule ¹[of] or¹ order
26 hereunder, or [when] if it [shall appear] appears that it will be against
27 the public interest for any person to issue, sell, offer for sale, purchase,
28 offer to purchase, promote, negotiate, advertise or distribute any
29 securities from or within this State, [the Attorney General on his
30 behalf may bring an action in the Superior Court and apply therein for
31 injunctive relief, or the appointment of a receiver, or both. The
32 Attorney General shall notify the potential defendant two business
33 days before filing the action and the court shall hear the action within
34 three business days of its filing.] the bureau chief may take, in
35 addition to any other enforcement actions available under this act and
36 in the bureau chief's discretion, either or both of the following actions:

37 (1) issue a cease and desist order against the persons engaged in
38 the prohibited activities directing them to cease and desist from further
39 illegal activity or doing any acts in furtherance thereof. Upon entry of
40 such an order, the bureau chief shall promptly notify each person
41 subject thereto that it has been entered and of the reasons therefor. In
42 the case of an agent, notice shall also be given to the broker-dealer
43 with which the agent is affiliated as shown on the Central Registration
44 Depository, and in the case of an investment adviser representative,
45 notice shall also be given to the investment adviser with which the
46 investment adviser representative is affiliated as shown on Form ADV.

1 17 C.F.R. §279.1, or successor federal registration form;

2 (i) The bureau chief shall entertain on no less than three days notice
3 an application to lift the summary order on written application of the
4 person subject thereto and in connection therewith may, but need not,
5 hold a hearing and hear testimony, but shall provide to the person
6 subject thereto a written statement of the reasons for the summary
7 order ¹[.] ¹

8 (ii) Upon service of notice of the order issued by the bureau chief,
9 each person subject thereto shall have up to 15 days to respond to the
10 bureau in the form of a written answer and written request for a
11 hearing. The bureau chief shall, within five days of receiving the
12 answer and request for a hearing, either transmit the matter to the
13 Office of Administrative Law for a hearing or schedule a hearing at the
14 Bureau of Securities. Orders issued pursuant to this section shall be
15 subject to an application to vacate upon 10 days' notice, and in any
16 event a preliminary hearing on the order shall be held within 20 days
17 after it is requested, and the filing of a motion to vacate the order shall
18 toll the time for filing an answer and written request for a hearing;

19 (iii) If any person subject to the order fails to respond by either
20 filing a written answer and written request for a hearing with the
21 bureau or moving to vacate the order within the 15 day prescribed
22 period, that person shall have waived the opportunity to be heard and
23 the order shall remain in effect as to that person until modified or
24 vacated by the bureau chief; or

25 (2) Have an action brought by the Attorney General in the Superior
26 Court on the bureau chief's behalf to enjoin the acts or practices to
27 enforce compliance with this act or any rule or order hereunder. Upon
28 a proper showing, a permanent or temporary injunction, restraining
29 order, or writ of mandamus shall be granted and a receiver or
30 conservator may be appointed for the defendant or the defendant's
31 assets. In addition, upon a proper showing by the bureau chief, the
32 court may enter an order of rescission, restitution or disgorgement or
33 any other order within the court's power, directed to any person who
34 has engaged in any act constituting a violation of any provision of this
35 act or any rule or order hereunder. The court may not require the
36 bureau chief to post a bond. The court may proceed in the action in
37 a summary manner or otherwise;

38 (b) If it [shall appear] appears to the court in the action that such
39 person has engaged in, is engaging in, or is about to engage in any act
40 or practice [declared to be illegal and prohibited by] constituting a
41 violation of any provision of this [law]act or any rule or order
42 hereunder, it may enjoin such person, and any agent, employee,
43 broker, partner, officer, director or stockholder thereof, from
44 continuing such practices or engaging therein or doing any acts in
45 furtherance thereof. The court may also enjoin the issuance, sale, offer
46 for sale, purchase, offer to purchase, promotion, negotiation,

1 advertisement or distribution from or within this State of any securities
2 by such persons, and any agent, employee, broker, partner, officer,
3 director or stockholder thereof, until the court shall otherwise order;

4 (c) [When] If the court [shall grant] grants injunctive relief as
5 provided for in [paragraph] subsection (b) of this section, it may
6 appoint a receiver with power to sue for, collect, receive and take into
7 his possession all the goods and chattels, rights and credits, moneys
8 and effects, lands and tenements, books, records, documents, papers,
9 choses in action, bills, notes and property of every description, derived
10 by means of any practice [declared to be illegal and prohibited by]
11 constituting a violation of this [law] act or any rule or order
12 hereunder, including property with which such property has been
13 mingled, if it cannot be identified in kind because of such commingling,
14 and to sell, convey and assign the same and hold and dispose of the
15 proceeds thereof under the direction of the court for the equal benefit
16 of all who establish an interest therein by reason of the use and
17 employment by the defendant of any practices [herein declared to be
18 illegal and prohibited] constituting a violation of this act or any rule or
19 order hereunder. The receiver may retain an attorney with the consent
20 of the Attorney General and the court. The court shall have
21 jurisdiction of all questions arising in such proceedings and may make
22 such orders and judgments therein as justice shall require;

23 (d) [When] If injunctive relief is granted as provided for in
24 [paragraph] subsection (b) of this section against a corporation,
25 partnership, company, association or trust, the court may appoint a
26 receiver and may restrain the corporation, its officers, directors,
27 stockholders, and agents, the partnership, company or association, its
28 officers, members and agents, and the trust, its grantors, trustees,
29 officers, cestuis que trustent and agents, from exercising any of its
30 privileges or franchises, and in the case of a trust from executing the
31 trust, and in all cases from collecting or receiving any debts, or paying
32 out, selling, assigning or transferring any of its estate, moneys, funds,
33 lands, tenements or effects except to the receiver appointed by the
34 court until the court shall otherwise order.

35 Upon the appointment of the receiver, all the real and personal
36 property of the corporation, partnership, company, association or
37 trust, and its franchises, rights, privileges and effects shall forthwith
38 vest in him and the corporation, partnership, company, association or
39 trust shall be divested of the title thereto.

40 The receiver shall settle the estate and distribute the assets, and
41 have all the powers and duties conferred upon receivers by the
42 provisions of Title [14] 14A of the New Jersey Statutes ,
43 Corporations, General, so far as the provisions thereof are applicable.
44 (cf: P.1985, c.405, s.12)

45

46 28. Section 23 of P.L.1967, c.93 (C.49:3-70) is amended to read

1 as follows:

2 23. (a) Any person who [willfully] knowingly violates any
3 provision of this act, except section 7 or 13 of P.L.1967, c.93 (C.49:3-
4 54 or C.49:3-60), or who [willfully] knowingly violates any rule or
5 order under this [law]act, or who willfully violates section 7 of
6 P.L.1967, c.93 (C.49:3-54), knowing the statement made to be false
7 or misleading in any material respect, shall be guilty of a second or
8 third degree crime [of the third degree; but no person may be
9 imprisoned for the violation of any rule or order if he proves that he
10 had no knowledge of the rule or order. No indictment or information
11 may be returned under this law more than five years after the alleged
12 violation.

13 (b) Any person who violates any of the provisions of this law or
14 who violates any rule or order under this law shall be liable for the first
15 violation to a penalty of not more than \$10,000.00; for a second
16 violation to a penalty of not more than \$20,000.00; and for subsequent
17 violation to a penalty of \$20,000.00. The penalty shall be sued for and
18 recovered by and in the name of the bureau chief and shall be collected
19 and enforced by summary proceeding pursuant to "the penalty
20 enforcement law" (N.J.S.2A:58-1 et seq.). Process shall issue at the
21 suit of the bureau chief, as plaintiff, and shall be either in the nature of
22 a summons or warrant.], depending upon the amount of the loss as
23 provided in subsection d. of this section.

24 (b) Any person who recklessly violates subsection (a), (b) or (c) of
25 section 5 or paragraph (1) or (2) of subsection (a) or subsection (f) of
26 section 6 of P.L.1967, c.93 (C.49:3-52 or 49:3-53) or section 6 of this
27 act, shall be guilty of a crime of the fourth degree.

28 (c) For purposes of this section, "knowingly" and "recklessly" shall
29 have the respective meanings ascribed to them in subsection (b) of
30 N.J.S.2C:2-2.

31 (d) If the total value of all money or anything else of value paid by
32 or lost by victims of the violations of this act, resulting from the same
33 device, scheme or artifice, from the same untrue statement of a
34 material fact or failure to state a material fact, from the same act,
35 practice or course of business, or from any other fraud involving any
36 security is:

37 (1) less than \$75,000, or if no monetary value can be placed upon
38 the loss or if no person pays or loses anything of monetary value, the
39 offender is guilty of a crime of the third degree;

40 (2) \$75,000 or more, the offender is guilty of a crime of the second
41 degree;

42 (e) No person may be imprisoned for the violation of any rule or
43 order if he proves that he had no knowledge of the rule or order.

44 (f) An indictment or information returned under this act shall be
45 subject to the limitations of N.J.S.2C:1-6. A violation is committed
46 when every element occurs or at the time when the course of conduct

1 or the actor's complicity therein is terminated

2 (g) Nothing in this act shall limit the power of this State to
3 prosecute a person for conduct constituting a crime under any other
4 law.

5 (cf: P.L.1985, c.405, s.13)

6

7 29. (New section) Any person who violates any of the provisions
8 of this act or who violates any rule or order under this act, shall be
9 liable for the first violation to a penalty of not more than \$10,000; for
10 a second violation to a penalty of not more than \$20,000; and for each
11 subsequent violation to a penalty of not more than \$20,000 per
12 violation. One or more violations may occur at the same time or be
13 part of the same conduct or pattern of conduct. The penalty shall be
14 entered, with the requisite notice, sued for and recovered by and in the
15 name of the bureau chief and shall be collected and enforced by
16 summary proceeding pursuant to "the penalty enforcement law,"
17 N.J.S.2A:58-1 et seq., or administratively.

18

19 30. Section 24 of P.L.1967, c.93 (C.49:3-71) is amended to read
20 as follows:

21 24. (a) Any person who

22 (1) Offers [or], sells or purchases a security in violation of
23 subsection (b) of section 8 [(b)], subsection (a) of section 9 [(a)] or
24 section 13 of [this act] P.L.1967, c.93 (C.49:3-55, 49:3-56, or 49:3-
25 60), or

26 (2) Offers [or] , sells or purchases a security [in violation of
27 subsection (a) or (c) of section 5 of P.L.1967, c.93 (C.49:3-52) or] by
28 means of any untrue statement of material fact or any omission to state
29 a material fact necessary in order to make the statements made, in the
30 light of the circumstances under which they are made, not misleading
31 (the buyer not knowing of the untruth or omission), or

32 (3) offers, sells or purchases a security by employing any device,
33 scheme, or artifice to defraud, or

34 (4) offers, sells or purchases a security by engaging in any act,
35 practice or course of business which operates or would operate as a
36 fraud or deceit upon any person, or

37 (5) engages in the business of advising others, for compensation,
38 either directly or through publications or writings, as to the value of
39 securities, or as to the advisability of investing in, purchasing or selling
40 securities, or who, for compensation and as a part of a regular
41 business, issues or promulgates analyses or reports concerning
42 securities (i) in willful violation of this act or of any rule or order
43 promulgated pursuant to this act, or (ii) employs any device, scheme
44 or artifice to defraud the other person or engages in any act, practice
45 or course of business or conduct which operates or would operate as
46 a fraud or deceit on the other person, is liable as set forth in subsection

1 (c) of this section:

2 (b) (1) If any claim is brought for violation of paragraph (2), (3),
3 (4) or (5) of subsection (a) of this section, the person who bought the
4 security or received the investment advice shall sustain the burden of
5 proof that the seller or giver of investment advice knew of the untruth
6 or omission and intended to deceive the buyer or recipient of
7 investment advice and that the buyer or recipient of investment advice
8 has suffered a financial detriment;

9 (2) If any claim is brought for violation of paragraph (2), (3), (4) or
10 (5) of subsection (a) of this section involving a purchase of securities
11 by others or investment advice as to the selling of securities, the
12 person who sold the security or who received the investment advice to
13 sell the security shall sustain the burden of proof that that person
14 suffered a net loss with respect to that sale or investment advice taking
15 into account all transactions by that person in the same security or any
16 security convertible into that security within one year before or after
17 the sale or advice which is the basis of the claim;

18 (c) Any person who offered, sold or purchased a security or
19 engaged in the business of giving investment advice to a person in
20 violation of paragraph (1), (2), (3), (4) or (5) of subsection (a) of this
21 section is liable to [the]that person [buying the security from him],
22 who may [sue] bring an action either at law or in equity to recover the
23 consideration paid for the security or the investment advice and any
24 loss due to the advice, together with interest set at [12% per year] the
25 rate established for interest on judgments for the same period by the
26 Rules Governing the Courts of the State of New Jersey from the date
27 of payment of the consideration for the investment advice or security,
28 and costs, less the amount of any income received on the security,
29 upon the tender of the security and any income received [on it] from
30 the investment advice or on the security, or for damages if he no
31 longer owns the security [; provided, however, that the person buying
32 the security must sustain the burden of proof that the seller knew of
33 the untruth or omission and intended to deceive the buyer, and
34 provided further that the buyer has suffered a financial detriment].
35 Damages are the amount that would be recoverable upon a tender less
36 the value of the security when the buyer disposed of it and interest at
37 [12% per year] the rate established for interest on judgments for the
38 same period by the Rules Governing the Courts of the State of New
39 Jersey from the date of disposition;

40 (d) Every person who directly or indirectly controls a seller liable
41 under [paragraph] subsection (a) of this section, every partner, officer,
42 or director of such a seller, or investment adviser, every person
43 occupying a similar status or performing similar functions, every
44 employee of such a seller or investment adviser who materially aids in
45 the sale or in the conduct giving rise to the liability, and every
46 broker-dealer , investment adviser, investment ¹[adivser] adviser¹

1 representative or agent who materially aids in the sale or conduct are
2 also liable jointly and severally with and to the same extent as the
3 seller or investment adviser, unless the nonseller who is so liable
4 sustains the burden of proof that he did not know, and in the exercise
5 of reasonable care could not have known, of the existence of the facts
6 [by reason of which the liability is alleged to exist] under paragraphs
7 (1) through (5) of subsection (a) of this section which give rise to
8 liability. There is contribution as in cases of contract among the
9 several persons so liable;

10 [(c)] (e) Any tender specified in this section may be made at any
11 time before entry of judgment;

12 [(d)] (f) Every cause of action under this [law] act survives the
13 death of any person who might have been a plaintiff or defendant;

14 [(e)] (g) No person may [sue] bring an action under this section
15 more than two years after the contract of sale or the rendering of the
16 investment advice , or [within] more than two years [of] after the time
17 when the person aggrieved knew or should have known of the
18 existence of his cause of action, whichever is later. No person may
19 [sue] bring an action under this section (1) if the buyer received a
20 written offer, before suit and at a time when he owned the security, to
21 refund the consideration paid, together with interest at [12% per year]
22 the rate established for interest on judgments for the same period by
23 the Rules Governing the Courts of the State of New Jersey at the time
24 the offer was made, from the date of payment, less the amount of any
25 income received on the security, and he failed to accept the offer
26 within 30 days of its receipt, or (2) if the buyer received such an offer
27 before suit and at a time when he did not own the security, unless he
28 rejected the offer in writing within 30 days of its receipt;

29 [(f)] (h) No person who has made or engaged in the performance
30 of any contract in violation of any provision of this [law] act or any
31 rule or order hereunder, or who has acquired any purported right
32 under any such contract with knowledge of the facts by reason of
33 which its making or performance was in violation, may base any suit
34 on the contract;

35 [(g)] (i) Any condition, stipulation or provision binding any person
36 acquiring any security or receiving investment advice to waive
37 compliance with any provision of this [law] act or any rule or order
38 hereunder is void;

39 [(h)] (j) The rights and remedies provided by this act are in
40 addition to any other rights or remedies that may exist at law or in
41 equity, but this [law] act does not create any cause of action not
42 specified in this section or subsection (e) of section 10 [, paragraph
43 (e)] of P.L.1967, c.93 (C.49:3-57) .
44 (cf: P.L.1997, c.3, s.1)

45

46 31. Section 25 of P.L.1967, c.93 (C.49:3-72) is amended to read

1 as follows:

2 25. No provision of this [law] act imposing any liability applies to
3 any act done or omitted in good faith in conformity with any rule, form
4 or order of the bureau chief, notwithstanding that the rule, form or
5 order may later be amended or rescinded or be determined by judicial
6 or other authority to be invalid for any reason.

7 (cf: P.L.1967, c.93, s.25)

8

9 32. Section 26 of P.L.1967, c.93 (C.49:3-73) is amended to read
10 as follows:

11 26. (a) Every broker-dealer, agent or investment adviser applicant
12 for registration under this [law] act and every issuer [which proposes
13 to offer a security] who is required to file with the bureau to claim an
14 exemption from registration or to register a security in this State
15 [through any person acting on an agency basis in the common-law
16 sense] shall file with the bureau, in such form as the bureau chief by
17 rule prescribes, an irrevocable consent appointing the bureau chief or
18 his successor in office to be his attorney to receive service of any
19 lawful process in any noncriminal suit, action or proceeding against
20 him or his successor, executor or administrator which arises under this
21 [law] act or any rule or order hereunder after the consent has been
22 filed, with the same force and validity as if served personally on the
23 person filing the consent. A person who has filed such a consent in
24 connection with a previous registration need not file another. Service
25 may be made by leaving a copy of the process in the office of the
26 bureau, but it is not effective unless the plaintiff, who may be the
27 bureau chief, in a suit, action or proceeding instituted on his behalf by
28 the Attorney General forthwith sends notice of the service and a copy
29 of the process by certified or registered mail to the defendant or
30 respondent at his last address on file with the bureau. It is the
31 responsibility of the registrant to maintain its current address on file
32 with the bureau. If process was served on the last address on file with
33 the bureau and is returned by the post office unclaimed, refused or not
34 forwarded, that service will constitute valid service ;

35 (b) [When] If any person, including any nonresident of this State,
36 engages in conduct prohibited or made actionable by this [law] act or
37 any rule or order authorized by this [law] act, and he has not filed a
38 consent to service of process under [paragraph] subsection (a) of this
39 section and personal jurisdiction over him cannot otherwise be
40 obtained in this State, that conduct shall be considered equivalent to
41 his appointment of the bureau chief or his successor in office to be his
42 attorney to receive service of any lawful process in any noncriminal
43 suit, action or proceeding against him or his successor, executor or
44 administrator which grows out of that conduct and which is brought
45 under this [law] act or any rule or order hereunder, with the same
46 force and validity as if served on him personally. Service may be made

1 by leaving a copy of the process in the office of the bureau, and it is
2 not effective unless the plaintiff, who may be the bureau chief in any
3 action instituted on his behalf by the Attorney General, forthwith
4 sends notice of the service and a copy of the process by certified or
5 registered mail to the defendant or respondent at his last known
6 address.

7 (cf: P.L.1967, c.93, s.26)

8

9 33. Section 28 of P.L.1967, c.93 (C.49:3-75) is amended to read
10 as follows:

11 28. This [law]act shall be so construed as to effectuate its general
12 purpose to make uniform the law of those [States] states which enact
13 similar laws and to co-ordinate the interpretation and administration
14 of this [law] act with related [Federal] federal regulations. The bureau
15 chief and the bureau chief's designees may participate in private
16 investigations and enforcement proceedings and cooperate in sharing
17 information with other State authorities, and with authorities of other
18 states and of federal and foreign governments.

19 (cf: P.L.1967, c.93, s.28)

20

21 34. The following are repealed:

22 Sections 2 and 3 of P.L.1967, c.96 (C.49:3-45 and C.49:3-46); and
23 Sections 1 and 27 of P.L.1967, c.93 (C.49:3-48 and 49:3-74)

24

25 35. This act shall take effect immediately.

26

27

28

29

30 Enacts the "Uniform Securities Law (1997)."