

SENATE COMMERCE COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2990

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 24, 1997

The Senate Commerce Committee reports favorably and with committee amendments Assembly Bill No. 2990 (1R).

This bill brings State securities law into conformance with the federal National Securities Markets Improvement Act of 1996, which partially reallocated regulatory responsibility for the securities industry between federal and state agencies; streamlines the registration process by eliminating excessive and unnecessary filing requirements and broadens the categories of transactions and securities that qualify for exemptions from registration, thereby making New Jersey more attractive to business by making it easier to raise capital in this State; provides for the regulation of financial planners and others providing investment advice to the public; and enhances the enforcement powers of the Bureau of Securities in the Division of Consumer Affairs.

Current law provides that certain types of securities may be offered or sold or certain securities transactions may take place without registration of the securities. Under a so-called blue chip mutual fund exemption, open-end investment companies and unit investment trusts in business for a sufficient period of time and with significant assets under management or advisement are exempt from registration in New Jersey. This bill grants an exemption from registration to all investment companies and unit investment trusts but requires them to make a notice filing with the bureau and to pay a fee to claim the exemption. In addition, the bill allows the bureau chief to create new exemptions from securities registration for particular securities or classes of securities and for particular transactions and classes of transactions and thereby gives the bureau chief the flexibility to deal with new securities products and novel methods of distributing securities.

This bill provides the Bureau of Securities with strong enforcement powers to deal with securities firms and individuals regulated by the bureau who violate the law. Under the bill, the bureau is authorized to issue cease and desist orders, with post-issuance due process provisions to protect the defendant. The bureau is authorized to

enforce its own subpoenas, in addition to the existing remedy of applying to a court to enforce its subpoenas. Currently, criminal violations of the securities law are third degree crimes. This bill makes them second degree crimes if the amount involved is \$75,000 or more.

The bill expands the grounds for denial of a broker-dealer, agent or investment adviser registration and for entry of a stop order denying effectiveness of a securities offering by including activity and disciplinary actions outside the securities realm, such as fraudulent activity in the commodities, banking, insurance or advisory investment business.

This bill makes clear that financial planners who are persons or firms that are giving investment advice about securities for compensation are to be registered and regulated as investment advisers under the securities laws. Also, in response to federal law, the definition of investment adviser has been changed to recognize that investment adviser firms with \$25 million or more under management are regulated exclusively by the Securities and Exchange Commission, thereby giving sole responsibility to the states for regulating investment adviser firms with less than \$25 million in assets under management. The bureau chief may prohibit by rule or order the payment of performance fee compensation to any investment adviser not required to be registered, in addition to those registered, thus closing a loophole in the current law. This prohibition does not apply to investment advisers registered under federal law. The bill provides exemptions from registration for investment advisers with five or fewer New Jersey clients, other than institutional clients, within a period of 12 consecutive months.

The bill provides for the regulation and registration of investment adviser representatives. Currently, investment adviser firms are registered and regulated by the State or Securities and Exchange Commission but individuals giving the investment advice are not individually registered.

The definition of "blind pool" is changed to exclude from review by the bureau securities offerings of operating companies, mutual funds and small investment companies. This change allows the bureau to focus on securities offerings of companies with no particular business or business plan for the proceeds of the securities offering.

Among many other provisions, the bill: provides that fixed and variable annuities and endowments are to be regulated as securities under the securities law and thereby provides for the regulation and registration of those who sell them (annuities and endowment policies are currently regulated by the Department of Banking and Insurance and would continue to be so regulated by that department); brings the definition of accredited investor in conformance with the federal definition so that State and federal exemptions from registration coincide, thus fostering capital formation; grants the bureau chief additional exemptive authority to allow the law to evolve as capital raising mechanisms evolve; specifically makes market manipulation a

violation of the securities law; provides that the bureau's fees are to be set by regulation, rather than by statute, but in a manner which bears a correlation to the actual expenses of running the bureau; allows the bureau chief to set the minimum capital requirements for broker-dealers and investment advisers, but that minimum cannot exceed federal limitations; and provides that all the bureau's revenues are to be deposited into the Securities Enforcement Fund.

Finally, the bill repeals four sections of the current securities law - a section on investigations and subpoenas (replaced with a new section); a section on injunctions and receivers (also replaced by a new section); a technical section; and a section which establishes a Security Advisory Committee to serve in an advisory capacity to the bureau chief on all matters pertaining to the securities law.

The committee amended the bill to provide that banks, savings institutions and trusts will continue to be exempt from regulation as investment advisers under the State securities law.

This bill is a thorough revision of the "Uniform Securities Law (1967)." The bill was drafted in close consultation with the Securities Advisory Committee which was created by the Attorney General as an ad hoc advisory body in September, 1993.