

§5
C. 49:3-52.1
§14
C. 49:3-60.1
§26
C. 49:3-68.1
§29
C. 49:3-70.1
§34
REPEALER

P.L. 1997, CHAPTER 276, *approved December 24, 1997*
Assembly No. 2990 (*Third Reprint*)

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

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.

³ Senate floor amendments adopted December 11, 1997.

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

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

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

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

1 with knowledge and with intent to deceive or with reckless disregard
2 for the truth and results in a detriment to the purchaser or client of an
3 investment adviser:

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

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

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

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

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

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

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

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

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

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

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

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

1 as providing investment advisory or financial planning services, and
2 who receives no special compensation for those investment advisory
3 or financial planning services ;

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

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

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

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

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

33 (viii) an investment adviser representative; or

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

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

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

43 (h) "Issuer" means any person who issues or proposes to issue any
44 security, except that (1) with respect to certificates of deposit,
45 voting-trust certificates, or collateral-trust certificates, or with respect
46 to certificates of interest or shares in an unincorporated investment

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

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

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

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

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

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

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

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

45 (k) "Savings institutions" shall mean any savings and loan
46 association or building and loan association operating pursuant to the

1 "Savings and Loan Act (1963)," P.L.1963, c.144 (C.17:12B-2 et seq.),
2 and any federal savings and loan association and any association or
3 credit union organized under the laws of the United States or of any
4 state whose accounts are insured by [the Federal Savings and Loan
5 Insurance Corporation and who are subject to supervision and
6 examination by the Federal Home Loan Bank Board, and any credit
7 union licensed and supervised under "The Credit Union Act of 1984,"
8 P.L.1984, c.171 (C.17:13-79 et al.) or licensed and supervised by the
9 National Credit Union Administration] a federal corporation or
10 agency;

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

22 (m) "Security" means any note; stock; treasury stock; bond;
23 debenture; evidence of indebtedness; certificate of interest or
24 participation in any profit-sharing agreement, including, but not limited
25 to, certificates of interest or participation in real or personal property;
26 collateral-trust certificate; preorganization certificate or subscription;
27 transferable share; investment contract; voting-trust certificate;
28 certificate of deposit for a security; certificate of interest in an oil, gas
29 or mining title or lease; or, in general, any interest or instrument
30 commonly known as a "security," or any certificate of interest or
31 participation in, temporary or interim certificate for, guarantee of, or
32 warrant or right to subscribe to or purchase, any of the foregoing [.
33 "Security" does not include any insurance or endowment policy or
34 annuity contract under which an insurance company promises to pay
35 a fixed or variable number of dollars either in a lump sum or
36 periodically for life or some other specified period]³. "Security" does
37 not include any insurance or endowment policy or annuity contract
38 under which an insurance company promises to pay a fixed or variable
39 number of dollars either in a lump sum or periodically for life or some
40 other specified period³;

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

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

45 (p) "Accredited investor" means any person who [comes within any
46 of the following categories, or who the issuer reasonably believes

1 comes within any of the following categories, at the time of the sale of
2 the security to that person:

3 (1) Any bank, savings institution, trust company, insurance
4 company, investment company as defined in the "Investment Company
5 Act of 1940," pension or profit-sharing trust, or other financial
6 institution or institutional buyer, or to a broker-dealer, whether the
7 purchaser is acting for itself or in some fiduciary capacity;

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

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

12 (4) Any director, executive officer, or general partner of the issuer
13 of the securities being offered or sold, or any director, executive
14 officer, or general partner of a general partner of that issuer;

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

25 (6) Any natural person whose individual net worth, or joint net
26 worth with that person's spouse, at the time of his purchase exceeds
27 \$1,000,000.00; and

28 (7) Any natural person who had an individual income in excess of
29 \$200,000.00 in each of the two most recent years and who reasonably
30 expects an income in excess of \$200,000.00 in the current year] is an
31 "accredited investor" as defined by subsection (15) of section 2 of
32 the "Securities Act of 1933," 15 U.S.C. §77b(15), and 17
33 C.F.R. §230.215 and §230.501 or any successor rule promulgated
34 pursuant to that act.

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

39 (q) "Direct participation security" means a security which provides
40 for flow-through tax consequences (tax shelter), regardless of the
41 structure of the legal entity or vehicle for distribution, including, but
42 not limited to, a security representing an interest in gas, oil, real estate,
43 agricultural property, cattle, a condominium, [or] a Subchapter S
44 [corporate offerings] corporation, a limited liability company and all
45 other securities of a similar nature, regardless of the industry
46 represented by the security, or any combination thereof. Excluded

1 from this definition are real estate investment trusts, tax qualified
2 pension and profit-sharing plans pursuant to sections 401 and 403(a)
3 of the Internal Revenue Code of 1986, 26 U.S.C.§401 and 403(a),
4 and individual retirement plans under section 408 of the Internal
5 Revenue Code of 1986, 26 U.S.C.§408, tax sheltered annuities
6 pursuant to the provisions of section 403(b) of the Internal Revenue
7 Code of 1986, 26 U.S.C.§403(b), and any company including separate
8 accounts registered pursuant to the [Investment Company Act of
9 1940;] "Investment Company Act of 1940;"

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

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

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

22 (3) an offering of securities by a small business investment
23 company licensed by the Small Business Administration or a business
24 development company within the meaning of the "Investment Advisers
25 Act of 1940;"

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

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

38 (2) manages accounts or portfolios of clients;

39 (3) determines recommendations or advice regarding securities;

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

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

46 (t) "Institutional buyer" includes, but is not limited to, a "qualified

1 institutional buyer" as defined in SEC Rule 144A, 17 C.F.R.
2 §230.144A:

3 (u) "Willful" or "willfully" means a person who acts intentionally in
4 the sense that the person is aware of what he is doing:

5 (v) "Federal covered security" means any security described as a
6 covered security in subsection (b) of section 18 of the "Securities Act
7 of 1933," 15 U.S.C. §77r(b).

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

9

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

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

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

23 (2) Any security issued or guaranteed by Canada, any Canadian
24 province, any political subdivision of any such province, any agency or
25 corporate or other instrumentality of one or more of the foregoing, or
26 any other foreign government with which the United States currently
27 maintains diplomatic relations, if the security is recognized as a valid
28 obligation by the issuer or guarantor;

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

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

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

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

45 (7) Any security issued or guaranteed by any railroad, other
46 common carrier, public utility, or holding company which is [(A)

1 subject to the jurisdiction of the Interstate Commerce Commission;
2 (B)] (i) a registered holding company under the [Public Utility Holding
3 Company Act of 1935] "Public Utility Holding Company Act of 1935"
4 or a subsidiary of such a company within the meaning of that act; [(C)]
5 (ii) regulated in respect to its rates and charges by a governmental
6 authority of the United States or any state; or [(D)] (iii) regulated in
7 respect of the issuance or guarantee of the security by a governmental
8 authority of the United States, any state, Canada or any Canadian
9 province;

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

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

27 (10) Any commercial paper which arises out of a current
28 transaction or the proceeds of which have been or are to be used for
29 current transactions, and which evidences an obligation to pay cash
30 within 12 months of the date of issuance, exclusive of days of grace,
31 or any renewal of such paper which is likewise limited, or any
32 guarantee of such paper or of any such renewal;

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

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

45 (a) The issuer is advised by an investment advisor that is a
46 depository institution exempt from registration under the "Investment

1 Advisers Act of 1940" or that is currently registered as an investment
2 advisor, and has been registered, or is affiliated with an advisor that
3 has been registered, as an investment advisor under the "Investment
4 Advisers Act of 1940" for at least three years immediately before an
5 offer or sale of the security; and has acted, or is affiliated with an
6 investment advisor that has acted, as investment advisor to one or
7 more registered investment companies or unit investment trusts for at
8 least three years immediately before an offer or sale of the security; or

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

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

32 (b) The following transactions are exempted from the provisions
33 of sections 13 and 16 of [this act] of P.L.1967, c.93 (C.49:3-60 and
34 49:3-63) :

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

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

42 (A) the securities are of an issuer for which all reports required to
43 be filed by section 13 or 15(d) of the "Securities Exchange Act of
44 1934," 15 U.S.C. §78m or §78o(d) have been filed; or

45 (B) the following information is published in a recognized
46 securities manual [contains]; the names of the issuer's officers and

1 directors [,]; a balance sheet of the issuer as of a date [within] not
2 more than 18 months [,] prior to the date of the sale; and [a] profit
3 and loss [statement] statements for [either the fiscal year preceding
4 that date or the most recent year of operation, or (B) the security has
5 a fixed maturity or a fixed interest or dividend provision and there has
6 been no default during the current fiscal year or within the three
7 preceding fiscal years, or during the existence of the issuer and any
8 predecessors, if less than three years, in the payment of principal,
9 interest, or dividends on the security] a period of not less than two
10 years next prior to the date of the balance sheet or for the period of
11 the issuer's existence as of the date of the balance sheet if the period
12 of existence is less than two years;

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

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

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

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

34 (5) Any transaction on a bond or other evidence of indebtedness
35 secured by a real or chattel mortgage or deed of trust, or by an
36 agreement for the sale of real estate or chattels, if the entire mortgage,
37 deed of trust, or agreement, together with all the bonds or other
38 evidences of indebtedness secured thereby, is offered and sold as a
39 single unit;

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

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

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

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

3 (9) Any transaction [pursuant to an offer directed by the offeror]
4 which results in sales to not more than 10 persons (other than those
5 persons designated in paragraph [(b)(8))] (8) of subsection (b) of this
6 section in this State during any period of 12 consecutive months,
7 whether or not the [offeror] seller or any of the [offerees] buyers is
8 then present in this State, if (i) the seller reasonably believes that all
9 buyers are purchasing for investment, and (ii) no commission or other
10 remuneration is paid or given directly or indirectly for soliciting any
11 prospective buyer in this State, and (iii) the securities are not offered
12 or sold by general solicitation or any general advertisement; but the
13 bureau chief may by rule or order, as to any transaction or class of
14 transactions, withdraw or further condition this exemption, or increase
15 or decrease the number of [offerees] buyers permitted, or waive the
16 conditions in [subdivisions] subparagraph (i) [and], (ii) or (iii) of this
17 paragraph;

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

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

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

1 any purchaser is furnished with a written offering statement or
2 prospectus, then all purchasers shall be furnished therewith; [and] (iii)
3 the securities shall not be offered or sold by general solicitation or any
4 general advertisement; and (iv) a report of the offering is filed with the
5 bureau [within 30 days of the completion date of the offering] not
6 later than 15 days after the first sale of those securities in this State ,
7 setting forth the name and address of the issuer, the total amount of
8 the securities sold under this [subsection] paragraph (12), the price at
9 which the securities were sold, the total number of purchasers of the
10 securities, and the names and addresses of the purchasers of the
11 securities who reside in this State , indicating the number and amount
12 of the securities each purchased. Supplemental reports shall be filed
13 promptly after the initial filing with the bureau whenever there are
14 material changes to the information contained in the initial filing until
15 the closing of the offering. A final report shall be filed at the closing
16 of the offering if the information in the final report would be materially
17 different from the last prior filing. The fee for filing the report with
18 the bureau shall be [\$250.00] established by regulation of the bureau
19 chief. The information in the report of sale shall be deemed
20 confidential and shall not be disclosed to the public except by order of
21 the court or in court proceedings. In calculating the number of
22 purchasers permitted under this paragraph, accredited investors shall
23 be excluded;

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

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

45 (1) Upon service of notice of the order issued by the bureau chief,
46 the respondent shall have up to 15 days to respond to the bureau in the

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

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

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

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

21
22 4. Section 4 of P.L.1967, c.93 (C.49:3-51) is amended to read as
23 follows:

24 4. (a) Sections 5, 8, subsection (a) of section 9[(a)], and sections
25 13 and 24 of [this act] P.L.1967, c.93 (C.49:3-52, 49:3-55, 49:3-56,
26 49:3-60 and 49:3-71) apply to persons who sell or offer to sell when
27 (1) an offer to sell is made in this State, or (2) an offer to buy is made
28 or accepted in this State;

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

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

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

1 this State in the case of a mailed acceptance);

2 (e) [An offer to sell or to buy is not made in this State when (1) the
3 publisher circulates or there is circulated on his behalf in this State any
4 bona fide newspaper or other publication of general, regular, and paid
5 circulation which is not published in this State, or which is published
6 in this State but has had more than 2/3 of its circulation outside this
7 State during the past 12 months, or (2) a radio or television program
8 originating outside this State is received in this State;] (Deleted by
9 amendment, P.L. , c. .)

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

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

16

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

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

20 (2) effect a transaction in a security which involves no change in the
21 beneficial ownership of the security for the purpose of creating a false
22 or misleading appearance of active trading in a security or with respect
23 to the market for the security;

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

30 (4) enter an order for the sale of a security with knowledge that an
31 order of substantially the same size and at substantially the same time
32 and price for the purchase of the security has been, or will be, entered
33 by or for the same, or affiliated, person for the purposes of creating a
34 false or misleading appearance of active trading in a security or with
35 respect to the market for the security; or

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

38 (b) A transaction effected in compliance with, or conduct that does
39 not violate, the applicable provisions of the "Securities Exchange Act
40 of 1934" and the rules and regulations of the Securities and Exchange
41 Commission thereunder is not a violation of subsection (a) of this
42 section.

43

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

46 6. (a) It shall be unlawful for any person who receives, directly or

1 indirectly, any [consideration] compensation from another person
2 [primarily] for advising the other person as to the value of securities
3 or their purchase or sale, whether through the issuance of analyses or
4 reports or otherwise,

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

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

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

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

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

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

26 [(3)] (2) that the investment [advisor] adviser, [if a partnership]
27 shall notify the other party to the contract of any change in [the
28 membership of the partnership] control of the investment adviser
29 within a reasonable time after the change;

30 (c) It shall be unlawful for any investment adviser required to be
31 registered or any registered broker-dealer acting as an investment
32 adviser to enter into, extend, or renew any investment advisory
33 contract, unless it provides in writing that the investment adviser shall
34 not be 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, except as may be authorized by rules issued by the bureau chief;

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

43 (e) [Paragraph (b)(1)] Subsection (c) of this section does not
44 prohibit an investment advisory contract which provides for
45 compensation based upon the total value of a fund averaged over a
46 definite period, or as of definite dates or taken as of a definite date.

1 "Assignment," as used in paragraph [(b)(2)] (1) of subsection (b) of
2 this section, includes any direct or indirect transfer or hypothecation
3 of an investment advisory contract by the assignor or of a controlling
4 block of the assignor's outstanding voting securities by a security
5 holder of the assignor; but, if the investment [advisor] adviser is a
6 partnership, no assignment of an investment advisory contract is
7 considered to result from the death or withdrawal of a minority of the
8 members of the investment [advisor] adviser having only a minority
9 interest in the business of the investment [advisor] adviser, or from the
10 admission to the investment [advisor] adviser of one or more members
11 who, after admission, will be only a minority of the members and will
12 have only a minority interest in the business.

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

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

18

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

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

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

27

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

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

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

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

43

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

46 9. (a) It shall be unlawful for any person to act as a broker-dealer,

1 agent [or], investment [advisor] adviser or investment adviser
2 representative in this State unless [he] that person is registered or
3 exempt from registration under this act;

4 (b) A person shall be exempt from registration as a broker-dealer
5 if, during any period of 12 consecutive months, that person (1) does
6 not effect more than 15 transactions with persons other than those
7 specified in paragraph (5) of subsection (c) of section 2 of P.L.1967,
8 c.93 (C.49:3-49) located within New Jersey; (2) does not effect
9 transactions in more than five customer accounts of New Jersey
10 residents; or (3) effects transactions with persons who have no place
11 of residence in New Jersey and who are temporarily located in the
12 State; if at the time of the transactions described in paragraph (1), (2)
13 or (3) of this subsection (b), the broker-dealer has no place of business
14 in this State and is a member in good standing of a recognized
15 self-regulatory organization and is registered in the state in which the
16 broker-dealer is located;

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

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

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

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

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

45 (1) the person has a place of business in this State and during any
46 period of 12 consecutive months that person does not have more than

1 five clients, who are residents of this State, other than those specified
2 in subparagraph (vi) of paragraph (2) of subsection (g) of section 2 of
3 P.L.1967, c.93 (C.49:3-49); or

4 (2) the person has no place of business in this State, and during any
5 period of 12 consecutive months that person does not have more than
6 five clients, who are residents of this State, other than those specified
7 in subparagraph (vi) of paragraph (2) of subsection (g) of section 2 of
8 P.L.1967, c.93 (C.49:3-49).

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

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

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

31 (j) It shall be unlawful for any investment adviser required to be
32 registered pursuant to this section to employ an investment adviser
33 representative, unless the investment adviser representative is also
34 registered pursuant to this section. It is unlawful for any person
35 registered or required to be registered as an investment adviser under
36 section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. §80b-
37 3, to employ, supervise, or associate with an investment adviser
38 representative having a place of business located in this State, unless
39 that investment adviser representative is registered under this act, or
40 is exempt from registration. The registration of an investment adviser
41 representative is not effective during any period when the investment
42 advisor representative is not employed by an investment adviser
43 registered pursuant to this section or registered under section 203 of
44 the "Investment Advisers Act of 1940," 15 U.S.C. §80b-3. When an
45 investment adviser representative described in this subsection begins
46 or terminates employment with an investment adviser, the investment

1 adviser and the investment adviser representative shall promptly notify
2 the bureau chief. When an investment adviser representative
3 terminates his connection with a particular investment adviser, his
4 authorization to engage in those activities which make him an
5 investment adviser representative is terminated;

6 [(d)] (k) The bureau chief may summarily bar, [after a hearing]
7 pending final determination of any proceeding under this subsection ,
8 any person, who has been convicted of any crime of embezzlement
9 under state, federal or foreign law or any crime involving any theft,
10 forgery or fraudulent practices in regard to any state, federal or
11 foreign securities, banking, insurance, or commodities trading laws or
12 anti-fraud laws, from being a partner, officer or director of an issuer,
13 broker-dealer or investment adviser, or from occupying a similar status
14 or performing a similar function or from directly or indirectly
15 controlling or being under common control or being controlled by an
16 issuer, broker-dealer or investment adviser, or from acting as a
17 broker-dealer, agent or investment [advisor] adviser in this State.
18 Any person barred by this subsection shall be entitled to request a
19 hearing by the same procedures as set forth in subsection (c) of section
20 3 of P.L.1967, c.93 (C.49:3-50);

21 (l) Notwithstanding any other provision of this act, the bureau
22 chief may bring an administrative or court action pursuant to section
23 29 of this act, to seek and obtain civil penalties for violations of this
24 section;

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

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

38 (o) Notwithstanding anything to the contrary in this act, until
39 October 11, 1999, the bureau chief may require the registration of any
40 person who is registered or required to be registered as an investment
41 adviser under section 203 of the "Investment Advisers Act of 1940,"
42 15 U.S.C.§80b-3, and who has failed to promptly pay the fees required
43 by subsection (n) of this section after being notified in writing by the
44 bureau chief of the non-payment or underpayment of those fees. A
45 person shall be considered to have promptly paid those fees if they are
46 remitted to the bureau chief within 15 days following that person's

1 receipt of the written notification from the bureau chief.

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

3

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

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

1 director, or a person occupying a similar status or performing similar
2 functions];

3 (b) Every applicant for initial or renewal registration for broker-
4 dealer, agent, investment adviser and investment adviser representative
5 shall pay [a] filing [fee of \$500.00 in the case of a broker-dealer, plus
6 \$10.00 for each partner, officer, director, or principal doing business
7 in this State; \$60.00 in the case of an agent; \$100.00 in the case of an
8 investment adviser and \$100.00 in the case of an issuer] fees in the
9 amounts as set by rule of the bureau chief. [When] If an application
10 is denied or withdrawn, the bureau shall retain the fee. Whenever any
11 supplemental filing is made, for the purpose of keeping current the
12 information furnished to the bureau chief, [is made] there [shall] may
13 be a supplemental filing fee [of \$5.00] in an amount set by rule of the
14 bureau chief;

15 (c) A registered broker-dealer or investment adviser may file an
16 application for registration of a successor, whether or not the
17 successor is then in existence, for the unexpired portion of the
18 registration period. There shall be no filing fee, except as may be
19 provided by rule of the bureau chief ;

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

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

37 (e) The bureau chief may by rule require registered investment
38 [advisors] advisers who have custody of clients' funds or securities to
39 post bonds in amounts not to exceed the limitations provided in
40 section 222 of the "Investment Advisers Act of 1940," 15 U.S.C.
41 §80b-18a and registered broker-dealers to post [surety] bonds in
42 amounts [up to \$25,000.00] not to exceed the limitations provided in
43 section 15 of the "Securities Exchange Act of 1934," 15 U.S.C. §78o,
44 and may determine their conditions [; provided that no such surety
45 bond shall be required of an investment advisor or a broker-dealer who
46 has a minimum capital of at least \$25,000.00 or of a broker-dealer

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

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

27 (2) Each applicant for [such] broker-dealer, agent, investment
28 adviser or investment adviser representative who takes an examination
29 provided pursuant to paragraph (1) of this subsection shall pay
30 examination fees in the amounts as [follows: broker-dealer, \$50.00;
31 partner, officer, or director doing business in this State, \$50.00; agent,
32 \$50.00; and investment advisor, \$50.00. When an application for
33 examination is denied or withdrawn, the bureau shall retain the fee] set
34 forth by rule of the bureau chief ;

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

44 (2) Any applicant for a limited registration shall acknowledge in
45 writing to the bureau prior to registration that he understands (i) the
46 limitations on the scope of his authority to do business pursuant to this

1 limited registration; and (ii) that any activity which exceeds the
2 limitations of the registration shall violate the provisions of this act
3 and may result in disciplinary action by the bureau, prosecution under
4 this act or other laws, or civil liability, to the same extent as if he was
5 not registered under this act.

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

7

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

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

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

13 (2) that the applicant or registrant or, in the case of a broker-dealer
14 or investment [advisor] adviser, any partner, officer, or director, any
15 person occupying a similar status or performing similar functions, or
16 any person directly or indirectly controlling the broker-dealer or
17 investment [advisor] adviser:

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

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

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

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

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

43 (vi) is the subject of an order entered within the past [5] five years
44 by [the] any federal or state securities, commodities, banking,
45 insurance or investment advisory administrator [of any other State or
46 by the Securities and Exchange Commission] or self-regulatory

1 organization denying or revoking a securities, commodities, banking,
2 insurance or investment advisory license or registration under federal
3 or state securities, commodities, banking, insurance or investment
4 advisory law, including, but not limited to registration as a
5 broker-dealer, agent, [or] investment [advisor] adviser, investment
6 adviser representative or issuer, or the substantial equivalent of those
7 terms as defined in this act, or is the subject of an order of the
8 Securities and Exchange Commission, a self-regulatory organization,
9 the Commodity Futures Trading Commission, an insurance regulator,
10 or a federal or state banking regulator, suspending or expelling him
11 from a national securities or commodities exchange or national
12 securities or commodities association registered under the [Securities
13 Exchange Act of 1934,] "Securities Exchange Act of 1934," or the
14 "Commodity Exchange Act," or from engaging in the banking or
15 insurance business, or is the subject of a United States Post Office
16 fraud order; but (A) the bureau chief may not institute a revocation
17 or suspension proceeding under this [clause] subparagraph (vi) more
18 than [1 year] two years from the date of the order relied on and (B)
19 he may not enter an order under this [clause] subparagraph (vi) on the
20 basis of an order under another [State] state act unless that order was
21 based on facts which would currently constitute a ground for an order
22 under [this] New Jersey law;

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

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

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

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

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

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

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

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

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

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

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

20 (5) The bureau chief shall consider that an investment [advisor]
21 adviser is not necessarily qualified solely on the basis of experience as
22 a broker-dealer or agent. ~~[When]~~ If he finds that an applicant for
23 initial or renewal registration as a broker-dealer is not qualified as an
24 investment [advisor] adviser, he may by order condition the applicant's
25 registration as a broker-dealer upon his not transacting business in this
26 State as an investment [advisor] adviser .

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

42 (1) The bureau chief shall entertain on no less than three days
43 notice a written application to lift the summary postponement,
44 suspension or revocation on written application of the applicant or
45 registrant and in connection therewith may, but need not, hold a
46 hearing and hear testimony, but shall provide to the applicant or

1 registrant a written statement of the reasons for the summary
2 postponement, suspension or revocation.

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

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

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

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

41 (e) Withdrawal from registration as a broker-dealer, agent, [or]
42 investment [advisor] adviser or investment adviser representative
43 becomes effective 30 days after receipt of an application to withdraw
44 or within such [shorter] other period of time as the bureau chief may
45 determine by rule or order. The bureau chief may nevertheless
46 institute a revocation or suspension proceeding under [paragraph

1 (a)(2)(ii)] subparagraph (ii) of paragraph (2) of subsection (a) of this
2 section within [1 year] two years after withdrawal becomes effective
3 and enter a revocation or suspension order as of the last date on which
4 registration was effective;

5 (f) [No order may be entered under this section, except under
6 paragraph (c)(1), without (i) appropriate prior notice to the applicant
7 or registrant (as well as the employer or prospective employer if the
8 applicant or registrant is an agent), (ii) opportunity for hearing, and
9 (iii) written findings of fact and conclusions of law;] (Deleted by
10 amendment, P.L. , c. .).

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

17 (cf: P.L.1967, c.93, s.11)

18

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

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

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

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

1 requirement:

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

7 ~~[(c)]~~ (e) If the information contained in any document filed with
8 the bureau is or becomes inaccurate or incomplete in any material
9 respect, the registrant shall promptly ~~[make]~~file a correcting
10 ~~[supplemental filing]~~ amendment unless notification of the correction
11 has been given under ~~[section 9, paragraph (b)]~~ subsection (h) of
12 section 9 of P.L.1967, c.93 (C.49:3-56) .

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

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

25

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

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

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

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

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

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

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

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

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

7

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

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

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

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

26 (4) A notice setting forth the name and address of the issuer, and
27 the name and the dollar amount of the securities issued and the number
28 of the securities to be issued;

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

45 (b) With respect to any security that is a federal covered security
46 under subparagraph (D) of paragraph (4) of subsection (b) of section

1 18 of the "Securities Act of 1933," 15 U.S.C. §77r(b)(4)(D), the
2 bureau chief, by rule or otherwise, may require the issuer to file a
3 notice on SEC Form D, 17 C.F.R. §239.500, or a successor form, and
4 a consent to service of process signed by the issuer no later than 15
5 days after the first sale of that federal covered security in this State,
6 together with the fee required to be paid pursuant to paragraph (12)
7 of subsection (b) of section 3 of P.L.1967, c.93 (C.49:3-50);

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

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

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

21

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

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

27 (b) A registration statement under this section shall contain the
28 following information and be accompanied by the following
29 documents:

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

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

34 (3) with respect to the issuer and any significant subsidiary; its
35 name, address, and form of organization; the State or foreign
36 jurisdiction and date of its organization; the general character and
37 location of its business; a description of its physical properties and
38 equipment; and a statement of the general competitive conditions in
39 the industry or business in which it is or will be engaged;

40 (4) with respect to every director and officer of the issuer, or
41 person occupying a similar status or performing similar functions: his
42 name, address, and principal occupation for the past [5] five years;
43 the amount of securities of the issuer held by him as of a specified date
44 within 30 days of the filing of the registration statement; the amount
45 of the securities covered by the registration statement to which he has
46 indicated his intention to subscribe; and a description of any material

1 interest in any material transaction with the issuer or any significant
2 subsidiary effected within the past [3] three years or proposed to be
3 effected;

4 (5) with respect to persons covered by [subsection] paragraph (4)
5 of this subsection; the remuneration paid during the past 12 months
6 and estimated to be paid during the next 12 months, directly or
7 indirectly, by the issuer (together with all predecessors, parents,
8 subsidiaries, and affiliates) to all those persons in the aggregate;

9 (6) with respect to any person owning of record, or beneficially if
10 known, 10% or more of the outstanding shares of any class of equity
11 security of the issuer: the information specified in [subsection]
12 paragraph (4) of this subsection other than his occupation;

13 (7) with respect to every promoter if the issuer was organized
14 within the past [3] three years: the information specified in
15 [subsection] paragraph (4) of this subsection, any amount paid to him
16 within the period or intended to be paid to him, and the consideration
17 for any such payment;

18 (8) with respect to any person on whose behalf any part of the
19 offering is to be made in a nonissuer transaction: his name and
20 address; the amount of securities of the issuer held by him as of the
21 date of the filing of the registration statement; a description of any
22 material interest in any material transaction with the issuer or any
23 significant subsidiary effected within the past [3] three years or
24 proposed to be effected; and a statement of his reasons for making
25 the offering;

26 (9) the capitalization and long-term debt (on both a current and a
27 pro forma basis) of the issuer and any significant subsidiary, including
28 a description of each security outstanding or being registered or
29 otherwise offered, and a statement of the amount and kind of
30 consideration (whether in the form of cash, physical assets, services,
31 patents, goodwill, or anything else) for which the issuer or any
32 subsidiary has issued any of its securities within the past [2] two years
33 or is obligated to issue any of its securities;

34 (10) the kind and amount of securities to be offered; the proposed
35 offering price or the method by which it is to be computed; any
36 variation therefrom at which any portion of the offering is to be made
37 to any person or class of persons other than the underwriters, with a
38 specification of any such person or class; the basis upon which the
39 offering is to be made if otherwise than for cash; the estimated
40 aggregate underwriting and selling discounts or commissions and
41 finders' fees (including separately cash, securities, contracts, or
42 anything else of value to accrue to the underwriters or finders in
43 connection with the offering) or, if the selling discounts or
44 commissions are variable, the basis of determining them and their
45 maximum and minimum amounts; the estimated amounts of other
46 selling expenses, including legal, engineering, and accounting charges;

1 the name and address of every underwriter and every recipient of a
2 finder's fee; a copy of any underwriting or selling-group agreement
3 pursuant to which the distribution is to be made, or the proposed form
4 of any such agreement whose terms have not yet been determined, and
5 a description of the plan of distribution of any securities which are to
6 be offered otherwise than through an underwriter;

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

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

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

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

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

43 (16) a signed or conformed copy of an opinion of counsel as to the
44 legality of the security being registered (with an English translation if
45 it is in a foreign language), which shall state whether the security when
46 sold will be legally issued, fully paid, and nonassessable, and, if a debt

1 security, a binding obligation of the issuer;

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

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

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

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

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

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

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

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

8

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

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

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

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

22 (2) If the bureau chief by rule or otherwise requires, a copy of the
23 articles of incorporation and bylaws, or other substantial equivalents,
24 currently in effect, a copy of any agreements with or among
25 underwriters, a copy of any indenture or other instrument governing
26 the issuance of the security to be registered, and a specimen or copy
27 of the security;

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

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

36 c. The bureau chief shall make reasonable efforts to coordinate
37 comments or requests with the securities administrators in other
38 jurisdictions in which registration is sought and particularly with
39 jurisdictions in which the issuer is located;

40 d. A registration statement under this section becomes effective at
41 the moment the federal registration statement becomes effective if all
42 the following conditions are satisfied:

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

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

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

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

13 [(4)] (5) The offering is made within the limitations set forth in
14 paragraphs (1), (2) [and], (3) and (4) of this subsection.

15 The registrant shall promptly notify the bureau chief by telephone
16 or telegram of the date and time when the federal registration
17 statement became effective, and the content of a price amendment, if
18 any is made, and shall promptly file a post-effective amendment
19 containing the information and documents in the price amendment.

20 For the purposes of this section, "price amendment" means the final
21 federal amendment which includes a statement of the offering price,
22 underwriting and selling discounts or commissions, amount of
23 proceeds, conversion rates, call prices, and other matters dependent
24 upon the offering prices.

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

38 [e.] f. If the federal registration statement becomes effective before
39 all the conditions in subsection [c.] d. are satisfied and they are not
40 waived, the registration statement shall become effective as soon as all
41 the conditions are satisfied. If the registrant advises the bureau chief
42 of the date when the federal registration statement is expected to
43 become effective, the bureau chief shall promptly advise the registrant
44 by telephone or telegram, at the registrant's expense, whether all the
45 conditions are satisfied and whether he contemplates the institution of
46 a proceeding under section 17 of P.L.1967, c.93 (C.49:3-64), but any

1 advice by the bureau chief pursuant to this subsection shall not
2 preclude the institution of such a proceeding at any time.

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

4

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

7 8. The following securities may be registered by notification,
8 whether or not they are also eligible for registration by coordination
9 under section 7 of [this 1985 amendatory and supplementary act]
10 P.L.1985, c.405 (C.49:3-61.1) or by qualification under section 14 of
11 P.L.1967, c.93 (C. 49:3-61):

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

14 (1) There has been no default during the current fiscal year or
15 within the three preceding fiscal years in the payment of principal,
16 interest, or dividends on any security of the issuer, or of any
17 predecessor thereof, with a fixed maturity or a fixed interest or
18 dividend provision; and

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

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

33 [(b)] (ii) Which average net earnings, if the issuer, and any
34 predecessors, have not had any security of the type specified in
35 subparagraph [(a)] (i) of this paragraph outstanding for three full
36 fiscal years, equal to at least 5% of the amount, as established in
37 subparagraph [(a)] (i) of this paragraph, of all securities which will be
38 outstanding if all of the securities being offered or proposed to be
39 offered, whether or not they are proposed to be registered or offered
40 in this State, are issued;

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

46 (1) A statement demonstrating eligibility for registration by

1 notification;

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

6 (3) With respect to any person on whose behalf any part of the
7 offering is to be made in a nonissuer distribution: his name and
8 address, the amount of securities of the issuer held by him as of the
9 date of the filing of the registration statement, and a statement of his
10 reasons for making the offering;

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

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

15 (6) In the case of any registration under paragraph (2) of
16 subsection a. of this section which does not satisfy the conditions of
17 paragraph (1) [,] of subsection a. of this section, a balance sheet of the
18 issuer as of a date within four months prior to the filing of the
19 registration statement, and a summary of earnings for each of the two
20 fiscal years preceding the date of the balance sheet and for any period
21 between the close of the last fiscal year and the date of the balance
22 sheet, or for the period of the issuer's and any predecessors' existence,
23 if less than two years.

24 c. If no stop order is in effect and no proceeding is pending against
25 any person directly or indirectly involved in the offering under
26 subsection (c) of section 3, section 17 or section 23 of P.L.1967, c.93
27 (C.49:3-50, 49:3-64 or 49:3-70) or section 29 of this act, a
28 registration statement under this section automatically becomes
29 effective at three o'clock Eastern Standard Time in the afternoon
30 of the second full business day after the filing of the registration

1 statement or the last amendment, or at such earlier time as the bureau
2 chief determines.

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

4

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

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

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

13 (c) Every registration statement shall specify (1) the amount of
14 securities to be offered in this State; (2) the states in which a
15 registration statement or similar document in connection with the
16 offering has been or is to be filed; and (3) any adverse order,
17 judgment, or decree entered in connection with the offering by the
18 regulatory authorities in any state or by any court or the Securities and
19 Exchange Commission.

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

24 (e) The bureau chief may by rule or order permit the omission of
25 any item of information or document from any registration statement.

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

34 (g) Every registration statement is effective for one year from its
35 effective date, or any longer period during which the security is being
36 offered or distributed in a nonexempt transaction by or for the account
37 of the issuer or other person on whose behalf the offering is being
38 made or by any underwriter or broker-dealer who is still offering part
39 of an unsold allotment or subscription taken by him as a participant in
40 the distribution, except during the time a stop order is in effect under
41 section 17 of [this act] P.L.1967, c.93 (C.49:3-64). All outstanding
42 securities of the same class as a registered security of the issuer are
43 considered to be registered for the purpose of any nonissuer
44 transaction (1) so long as the registration statement is effective and (2)
45 between the thirtieth day after the entry of any stop order suspending
46 or revoking the effectiveness of the registration statement under

1 section 17 of [this act] P.L.1967, c.93 (C.49:3-64) (if the registration
2 statement did not relate in whole or in part to a nonissuer distribution)
3 and one year from the effective date of the registration statement. A
4 registration statement may not be withdrawn for one year from its
5 effective date if any securities of the same class are outstanding. A
6 registration statement may be withdrawn otherwise only in the
7 discretion of the bureau chief.

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

13 (i) A registration statement relating to a security issued by a
14 face-amount certificate company or a redeemable security issued by an
15 open-end management company or unit investment trust, as those
16 terms are defined in the [Investment Company Act of 1940,]
17 "Investment Company Act of 1940," may be amended after its
18 effective date so as to increase the securities specified as proposed to
19 be offered. Such an amendment becomes effective when the bureau
20 chief so orders. Every person filing such an amendment shall pay a
21 filing fee, [calculated in the manner specified in subsection (b)] as may
22 be set by rule of the bureau chief, with respect to the additional
23 securities proposed to be offered.

24 j. Every registration statement shall be accompanied by an
25 undertaking by the registrant agreeing that, as a condition of
26 registration, the registrant will allow the bureau chief in the bureau
27 chief's discretion (subject in all cases to the constitutional or statutory
28 rights of the registrant, its agents and principals, if any) to (1) make
29 such investigations within or outside this State as the bureau chief
30 deems necessary to determine if the registrant, the registrant's agents,
31 or principals have violated or are about to violate any provision of this
32 act or any rule or order hereunder, or to aid in the enforcement of this
33 act or in the prescribing of rules and forms hereunder, or (2) require
34 or permit the registrant, the registrant's agents, and principals to file
35 a statement in writing, under oath or otherwise as the bureau chief
36 determines, as to all the facts and circumstances concerning the matter
37 to be investigated.

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

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

42
43 19. Section 16 of P.L.1967, c.3 (C.49:3-63) is amended to read as
44 follows:

45 16. The bureau chief may by rule or order require the filing of any
46 prospectus, pamphlet, circular, form letter, advertisement, or other

1 sales literature or advertising communication addressed or intended for
2 distribution to prospective investors, including clients or prospective
3 clients of an investment [advisor] adviser, unless the security is not
4 required to be registered by subsection (a) or (f) of section 13 of [this
5 act;

6 There shall be a filing fee of \$0.25 for each page of sales literature
7 filed with the bureau under any regulations adopted pursuant to this
8 section, but such fee shall not exceed \$25.00 for any prospectus,
9 pamphlet, circular, or other sales literature] P.L.1967, c.93 (C.49:3-
10 60) .

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

12

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

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

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

19 (2) that ;

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

28 (ii) Any provision of [the "Uniform Securities Law (1967)" as
29 amended or supplemented] this act or any rule, order, or condition
30 lawfully imposed thereunder has been willfully violated, in connection
31 with the offering by (A) the person filing the registration statement,
32 (B) the issuer, any partner, officer, or director of the issuer, any
33 person occupying a similar status or performing similar functions, or
34 any person directly or indirectly controlling or controlled by the issuer,
35 or (C) any underwriter; or

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

1 (iv) The issuer's enterprise or method of business includes or would
2 necessarily include activities which are illegal where performed; or
3 (v) (Deleted by amendment; P.L.1985, c.405);
4 (vi) (Deleted by amendment; P.L.1985, c.405);
5 (vii) The applicant or registrant has failed to pay the proper filing
6 fee [but he shall vacate any such order when the deficiency has been
7 corrected] , as set by rule of the bureau chief;
8 (viii) The issuer, any partner, officer or director of the issuer, any
9 person occupying a similar status or performing similar functions, or
10 any person directly or indirectly controlling or controlled by the issuer,
11 or any broker-dealer or other person involved directly or indirectly in
12 the offering (A) has been convicted of any crime of embezzlement
13 under state, federal or foreign law or any crime involving any theft,
14 forgery or fraudulent practices in regard to any state, federal or
15 foreign securities, investment advisory, banking, insurance, or
16 commodities trading laws or anti-fraud laws; (B) is permanently or
17 temporarily enjoined by any court of competent jurisdiction from
18 engaging in or continuing any conduct or practice involving any aspect
19 of the securities, commodities, banking, insurance or investment
20 advisory business; (C) is the subject of an effective order of the bureau
21 chief denying, suspending, or revoking securities registration,
22 registration as a broker-dealer, agent, [or] investment [advisor]
23 adviser or investment adviser representative; (D) is the subject of an
24 order entered [within the past five years] by [the] any federal or state
25 securities, commodities, banking, insurance or investment advisory
26 administrator [of any other state or by the Securities and Exchange
27 Commission] or self-regulatory organization denying or revoking any
28 securities, commodities, banking, insurance or investment advisory
29 license or registration under federal or state securities, commodities,
30 banking, insurance or investment advisory law, including, but not
31 limited to, registration as a broker-dealer, agent, [or] investment
32 [advisor]adviser, investment adviser representative , or the substantial
33 equivalent of those terms as defined in [the "Uniform Securities Law
34 (1967)," P.L.1967, c.93 (C.49:3-48 et seq.)]this act, or is the subject
35 of an order of the Securities and Exchange Commission, a self-
36 regulatory organization, the Commodity Futures Trading Commission,
37 an insurance commissioner, or a federal or state banking regulator,
38 suspending or expelling him from a national securities or commodities
39 exchange or national securities or commodities association registered
40 under the "Securities Exchange Act of 1934" [(15 U.S.C. s. 78a et
41 seq.)] or the "Commodity Exchange Act," or from engaging in the
42 banking or insurance business, or is the subject of a United States
43 Postal Service fraud order, except the bureau chief may not institute
44 a revocation or suspension proceeding pursuant to this
45 subparagraph (D) of this subparagraph more than [one year] two
46 years from the date of the order relied on and he may not enter an

1 order pursuant to this subsubparagraph (D) of this subparagraph on
2 the basis of an order under another state act unless that order was
3 based on facts which would currently constitute a ground for an order
4 under [the "Uniform Securities Law (1967)," P.L.1967, c.93
5 (C.49:3-48 et seq.)] New Jersey law; (E) has engaged in dishonest or
6 unethical practices in the securities business; or (F) is insolvent, either
7 in the sense that liabilities exceed assets or in the sense that obligations
8 cannot be met as they mature; or

9 (ix) The offering is a blind pool.

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

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

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

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

45 (d) No stop order may be entered pursuant to this section, except
46 as provided in subsection (c), without (1) appropriate [prior] notice

1 to the applicant or registrant, the issuer, and the person on whose
2 behalf the securities are to be offered, (2) opportunity for hearing, and
3 (3) written findings of fact and conclusions of law.

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

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

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

11

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

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

16 (b) The bureau shall keep a register of all applications for
17 registration and registration statements which are or have ever been
18 effective under this act and all denial, suspension, revocation or other
19 orders which have been entered under this act. The register shall be
20 open for public inspection;

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

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

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

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

33

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

36 19. (a) This [law] act shall be administered by the Bureau of
37 Securities [which is hereby created] in the Division of [Law of]
38 Consumer Affairs of the Department of Law and Public Safety. The
39 principal executive officer of the bureau shall be a chief who is
40 appointed by and serves at the pleasure of the Attorney General. The
41 chief of the bureau shall have power to employ such officers and
42 employees as may be necessary to carry out the purposes of this [law]
43 act and to define their duties;

44 (b) It shall be unlawful for any of the officers or employees of the
45 bureau to use for personal benefit any information which is filed with
46 or obtained by the bureau and which is not made public. No provision

1 of this [law] act authorizes any officers or employees of the bureau to
2 disclose any such information except among themselves or when
3 necessary or appropriate in a proceeding or investigation under this
4 [law] act. No provision of this [law] act either creates or derogates
5 from any privilege which exists at common law or otherwise when
6 documentary or other evidence is sought under subpoena directed to
7 any of the officers or employees of the bureau.

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

9

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

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

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

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

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

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

40

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

43 20. (a) The bureau chief may from time to time make, amend and
44 rescind such rules, forms and orders as are reasonably necessary to
45 carry out the provisions of this [law] act, including rules and forms
46 governing applications and reports, and defining any terms, whether

1 or not used in this [law] act, insofar as the definitions are not
2 inconsistent with the provisions of this [law] act. For the purpose of
3 rules and forms, the bureau chief may classify securities, persons and
4 matters within his jurisdiction, and prescribe different requirements for
5 different classes;

6 (b) No rule, form or order may be made, amended or rescinded
7 unless the bureau chief finds that the action is necessary and
8 appropriate (1) in the public interest, or (2) for the protection of
9 investors, or (3) consistent with the purposes fairly intended by the
10 policy and provisions of this act. In prescribing rules and forms the
11 bureau chief may co-operate with the securities administrators of the
12 other [States] states and the Securities and Exchange Commission
13 with a view to effectuating the policy of this statute to achieve
14 maximum uniformity in the form and content of applications and
15 reports wherever practicable;

16 (c) The bureau chief may by rule prescribe (1) the form and content
17 of financial statements required under this act; and (2) the
18 circumstances under which consolidated financial statements shall be
19 filed. All financial statements shall be prepared in accordance with
20 generally accepted accounting practices. The form and content of
21 financial statements shall conform, insofar as practicable, to those
22 prescribed by the Securities and Exchange Commission.

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

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

31

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

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

46 (b) For the purpose of any investigation or proceeding under this

1 [law] act, the bureau chief or any officer designated by him may
2 administer oaths and affirmations, subpoena witnesses, compel their
3 attendance, take evidence and require the production of any books,
4 papers, correspondence, memoranda, agreements or other documents
5 or records which the bureau chief deems relevant or material to the
6 inquiry. At his discretion, the bureau chief may make available private
7 investigative materials to representatives of domestic or foreign
8 governmental authorities, self-regulatory organizations, state or
9 federal law enforcement officers, state securities administrators, and
10 trustees in bankruptcy. The bureau may also disclose that information:
11 (i) in court proceedings; (ii) if ordered to do so by a court of
12 competent jurisdiction; or (iii) if appropriate, in furtherance of any
13 ongoing investigation or proceeding. The bureau chief may also
14 request and use private investigative materials provided to it by other
15 federal and State authorities, including authorities of other states and
16 foreign countries ;

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

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

1 for perjury, false swearing or contempt committed in testifying.

2 (e) When it shall appear to the bureau chief that the testimony of
3 any person is essential to an investigation instituted by him as provided
4 by this chapter, and that the failure of such person to appear and
5 testify may defeat the proper and effective conduct thereof, the bureau
6 chief, in addition to the other remedies provided for herein, may, by
7 petition verified generally, setting forth the facts, apply to the Superior
8 Court for a writ of ne exeat against such person. The court shall
9 thereupon direct the issuance of the writ against such person requiring
10 him to give sufficient bail conditioned to insure his appearance before
11 the bureau chief for examination under oath in such investigation and
12 that he will continue his appearance therein from time to time until the
13 completion of the investigation and will appear before the court if the
14 bureau chief shall institute any proceeding therein as a result of his
15 investigation.

16 The court shall cause to be indorsed on the writ of ne exeat, in
17 words at length, a suitable amount of bail upon which the person
18 named in the writ shall be freed, having a due regard to the nature of
19 the case and the value of the securities involved. All applications to
20 be freed on bail shall be on notice to the bureau chief and the
21 sufficiency of the bail given on the writ shall be approved by the court.
22 All recognizances shall be to the State and all forfeitures thereof shall
23 be declared by the court. The proceeds of the forfeitures shall be paid
24 into the State treasury.

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

26

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

37 (b) The bureau chief may proceed in an action in a summary
38 manner or otherwise, by issuing a cease and desist order, by denying,
39 revoking or suspending any registration or exemption under this act,
40 by assessing civil monetary penalties, or by any combination of these
41 actions he deems appropriate. Upon entry of such an order, the
42 bureau chief shall promptly notify each person subject thereto that it
43 has been entered and of the reasons therefor. In the case of an agent,
44 notice shall also be given to the broker-dealer with which the agent is
45 affiliated as shown on the Central Registration Depository, and in the
46 case of an investment adviser representative, notice shall also be given

1 to the investment adviser with which the investment adviser
2 representative is affiliated as shown on Form ADV, 17 C.F.R. §279.1,
3 or successor federal registration form;

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

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

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

27

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

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

46 (1) issue a cease and desist order against the persons engaged in

1 the prohibited activities directing them to cease and desist from further
2 illegal activity or doing any acts in furtherance thereof. Upon entry of
3 such an order, the bureau chief shall promptly notify each person
4 subject thereto that it has been entered and of the reasons therefor. In
5 the case of an agent, notice shall also be given to the broker-dealer
6 with which the agent is affiliated as shown on the Central Registration
7 Depository, and in the case of an investment adviser representative,
8 notice shall also be given to the investment adviser with which the
9 investment adviser representative is affiliated as shown on Form ADV,
10 17 C.F.R. §279.1, or successor federal registration form;

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

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

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

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

1 (b) If it [shall appear] appears to the court in the action that such
2 person has engaged in, is engaging in, or is about to engage in any act
3 or practice [declared to be illegal and prohibited by] constituting a
4 violation of any provision of this [law]act or any rule or order
5 hereunder, it may enjoin such person, and any agent, employee,
6 broker, partner, officer, director or stockholder thereof, from
7 continuing such practices or engaging therein or doing any acts in
8 furtherance thereof. The court may also enjoin the issuance, sale, offer
9 for sale, purchase, offer to purchase, promotion, negotiation,
10 advertisement or distribution from or within this State of any securities
11 by such persons, and any agent, employee, broker, partner, officer,
12 director or stockholder thereof, until the court shall otherwise order;

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

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

44 Upon the appointment of the receiver, all the real and personal
45 property of the corporation, partnership, company, association or
46 trust, and its franchises, rights, privileges and effects shall forthwith

1 vest in him and the corporation, partnership, company, association or
2 trust shall be divested of the title thereto.

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

8

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

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

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

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

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

40 (d) If the total value of all money or anything else of value paid by
41 or lost by victims of the violations of this act, resulting from the same
42 device, scheme or artifice, from the same untrue statement of a
43 material fact or failure to state a material fact, from the same act,
44 practice or course of business, or from any other fraud involving any
45 security is:

46 (1) less than \$75,000, or if no monetary value can be placed upon

1 the loss or if no person pays or loses anything of monetary value, the
2 offender is guilty of a crime of the third degree;

3 (2) \$75,000 or more, the offender is guilty of a crime of the second
4 degree;

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

7 (f) An indictment or information returned under this act shall be
8 subject to the limitations of N.J.S.2C:1-6. A violation is committed
9 when every element occurs or at the time when the course of conduct
10 or the actor's complicity therein is terminated

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

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

15

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

27

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

30 24. (a) Any person who

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

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

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

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

46 (5) engages in the business of advising others, for compensation,

1 either directly or through publications or writings, as to the value of
2 securities, or as to the advisability of investing in, purchasing or selling
3 securities, or who, for compensation and as a part of a regular
4 business, issues or promulgates analyses or reports concerning
5 securities (i) in willful violation of this act or of any rule or order
6 promulgated pursuant to this act, or (ii) employs any device, scheme
7 or artifice to defraud the other person or engages in any act, practice
8 or course of business or conduct which operates or would operate as
9 a fraud or deceit on the other person, is liable as set forth in subsection
10 (c) of this section:

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

18 (2) If any claim is brought for violation of paragraph (2), (3), (4) or
19 (5) of subsection (a) of this section involving a purchase of securities
20 by others or investment advice as to the selling of securities, the
21 person who sold the security or who received the investment advice to
22 sell the security shall sustain the burden of proof that that person
23 suffered a net loss with respect to that sale or investment advice taking
24 into account all transactions by that person in the same security or any
25 security convertible into that security within one year before or after
26 the sale or advice which is the basis of the claim;

27 (c) Any person who offered, sold or purchased a security or
28 engaged in the business of giving investment advice to a person in
29 violation of paragraph (1), (2), (3), (4) or (5) of subsection (a) of this
30 section is liable to [the]that person [buying the security from him],
31 who may [sue] bring an action either at law or in equity to recover the
32 consideration paid for the security or the investment advice and any
33 loss due to the advice, together with interest set at [12% per year] the
34 rate established for interest on judgments for the same period by the
35 Rules Governing the Courts of the State of New Jersey from the date
36 of payment of the consideration for the investment advice or security,
37 and costs, less the amount of any income received on the security,
38 upon the tender of the security and any income received [on it] from
39 the investment advice or on the security, or for damages if he no
40 longer owns the security [; provided, however, that the person buying
41 the security must sustain the burden of proof that the seller knew of
42 the untruth or omission and intended to deceive the buyer, and
43 provided further that the buyer has suffered a financial detriment].
44 Damages are the amount that would be recoverable upon a tender less
45 the value of the security when the buyer disposed of it and interest at
46 [12% per year] the rate established for interest on judgments for the

1 same period by the Rules Governing the Courts of the State of New
2 Jersey from the date of disposition;

3 (d) Every person who directly or indirectly controls a seller liable
4 under [paragraph] subsection (a) of this section, every partner, officer,
5 or director of such a seller, or investment adviser, every person
6 occupying a similar status or performing similar functions, every
7 employee of such a seller or investment adviser who materially aids in
8 the sale or in the conduct giving rise to the liability, and every
9 broker-dealer, investment adviser, investment ¹[adivser] adviser¹
10 representative or agent who materially aids in the sale or conduct are
11 also liable jointly and severally with and to the same extent as the
12 seller or investment adviser, unless the nonseller who is so liable
13 sustains the burden of proof that he did not know, and in the exercise
14 of reasonable care could not have known, of the existence of the facts
15 [by reason of which the liability is alleged to exist] under paragraphs
16 (1) through (5) of subsection (a) of this section which give rise to
17 liability. There is contribution as in cases of contract among the
18 several persons so liable;

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

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

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

38 [(f)] (h) No person who has made or engaged in the performance
39 of any contract in violation of any provision of this [law] act or any
40 rule or order hereunder, or who has acquired any purported right
41 under any such contract with knowledge of the facts by reason of
42 which its making or performance was in violation, may base any suit
43 on the contract;

44 [(g)] (i) Any condition, stipulation or provision binding any person
45 acquiring any security or receiving investment advice to waive
46 compliance with any provision of this [law] act or any rule or order

1 hereunder is void;

2 [(h)] (j) The rights and remedies provided by this act are in
3 addition to any other rights or remedies that may exist at law or in
4 equity, but this [law] act does not create any cause of action not
5 specified in this section or subsection (e) of section 10 [, paragraph
6 (e)] of P.L.1967, c.93 (C.49:3-57).

7 (cf: P.L.1997, c.3, s.1)

8

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

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

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

17

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

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

44 (b) [When] If any person, including any nonresident of this State,
45 engages in conduct prohibited or made actionable by this [law] act or
46 any rule or order authorized by this [law] act, and he has not filed a

1 consent to service of process under [paragraph] subsection (a) of this
2 section and personal jurisdiction over him cannot otherwise be
3 obtained in this State, that conduct shall be considered equivalent to
4 his appointment of the bureau chief or his successor in office to be his
5 attorney to receive service of any lawful process in any noncriminal
6 suit, action or proceeding against him or his successor, executor or
7 administrator which grows out of that conduct and which is brought
8 under this [law] act or any rule or order hereunder, with the same
9 force and validity as if served on him personally. Service may be made
10 by leaving a copy of the process in the office of the bureau, and it is
11 not effective unless the plaintiff, who may be the bureau chief in any
12 action instituted on his behalf by the Attorney General, forthwith
13 sends notice of the service and a copy of the process by certified or
14 registered mail to the defendant or respondent at his last known
15 address.

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

17

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

20 28. This [law]act shall be so construed as to effectuate its general
21 purpose to make uniform the law of those [States] states which enact
22 similar laws and to co-ordinate the interpretation and administration
23 of this [law] act with related [Federal] federal regulations. The bureau
24 chief and the bureau chief's designees may participate in private
25 investigations and enforcement proceedings and cooperate in sharing
26 information with other State authorities, and with authorities of other
27 states and of federal and foreign governments.

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

29

30 34. The following are repealed:

31 Sections 2 and 3 of P.L.1967, c.96 (C.49:3-45 and C.49:3-46); and

32 Sections 1 and 27 of P.L.1967, c.93 (C.49:3-48 and 49:3-74)

33

34 35. This act shall take effect immediately.

35

36

37

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