

## CHAPTER 276

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

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

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

C.49:3-47 Title amended; "act" defined.

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

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

C.49:3-49 Definitions.

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

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

(b) "Agent" means any individual other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in (1) effecting transactions in a security exempted by paragraph (1), (2), (3), or (11) of subsection (a) of section 3 of P.L.1967, c.93 (C.49:3-50); (2) effecting transactions exempted by subsection (b) of section 3 of P.L.1967, c.93 (C.49:3-50); (3) effecting transactions with existing employees, partners, or directors of the issuer, if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this State; or (4) a broker-dealer in effecting transactions in this State limited to those transactions described in paragraph (2) of subsection (h) of section 15 of the "Securities Exchange Act of 1934," 15 U.S.C. s.78o(h)(2); or (5) such other persons not otherwise within the intent of this subsection (b), as the bureau chief may by rule or order designate. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition. The bureau chief may by rule or order, as to any transaction, waive the requirement of agent registration. The bureau chief may by rule define classes of persons as "agents," if those persons are regulated as "agents" by the Securities and Exchange Commission or any self-regulatory organization established pursuant to the laws of the United States;

(c) "Broker-dealer" means any person engaged in the business of effecting or attempting to effect transactions in securities for the accounts of others or for his own account. "Broker-dealer" does not include (1) an agent, (2) an issuer, (3) a person who effects transactions in this State exclusively in securities described in paragraphs (1) and (2) of subsection (a) of section 3 of P.L.1967, c.93 (C.49:3-50), (4) a bank, savings institution, or trust company, or (5) a person who effects transactions in this State exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the "Investment Company Act of 1940," pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees or (iv) such other persons not otherwise within the intent of this subsection (c), as the bureau chief may by rule or order designate;

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

(e) "Fraud," "deceit," and "defraud" are not limited to common-law fraud or deceit. "Fraud," "deceit" and "defraud" in addition to the usual construction placed on these terms and accepted in courts of law and equity, shall include the following, provided, however, that any promise, representation, misrepresentation or omission be made with knowledge and with intent to deceive or with reckless disregard for the truth and results in a detriment to the purchaser or client of an investment adviser:

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

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

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

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

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

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

(g) (1) "Investment adviser" means:

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

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

(2) "Investment adviser " does not include:

(i) a bank, savings institution, or trust company;

(ii) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice or conduct of the profession and who does not hold himself out as providing investment advisory or financial planning services, and who receives no special compensation for those investment advisory or financial planning services;

(iii) a broker-dealer registered under this act;

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

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

(vi) a person whose only clients in this State are other investment advisers, any person that is registered as an "investment adviser" under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3, or excluded from the definition of an "investment adviser" under paragraph (11) of subsection (a) of section 202 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-2(a)(11), broker-dealers, banks, bank holding companies, savings institutions, trust companies, insurance companies, investment companies as defined in the "Investment Company Act of 1940," pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

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

(viii) an investment adviser representative; or

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

Subject to applicable federal law, the bureau chief may by rule limit the exclusions set out in

this paragraph (2), except for those exclusions provided in subparagraph (i) of paragraph (2).

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

(h) "Issuer" means any person who issues or proposes to issue any security, except that (1) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and (2) with respect to certificates of interest in oil, gas, or mining titles or leases, there is not considered to be any "issuer";

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

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

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

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

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

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

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

(k) "Savings institutions" shall mean any savings and loan association or building and loan association operating pursuant to the "Savings and Loan Act (1963)," P.L.1963, c.144 (C.17:12B-2 et seq.), and any federal savings and loan association and any association or credit union organized under the laws of the United States or of any state whose accounts are insured by a federal corporation or agency;

(l) "Securities Act of 1933," 15 U.S.C. s.77a et seq.; "Securities Exchange Act of 1934," 15 U.S.C. s.78a et seq.; "Public Utility Holding Company Act of 1935," 15 U.S.C. s.79 et seq.; "Investment Advisers Act of 1940," 15 U.S.C. s.80b-1 et seq.; "Investment Company Act of 1940," 15 U.S.C. s.80a-1 et seq.; and "Commodity Exchange Act," 7 U.S.C. s.1 et seq. mean the federal statutes of those names;

(m) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement, including, but not limited to, certificates of interest or participation in real or personal property; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest in an oil, gas or mining title or lease; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract

under which an insurance company promises to pay a fixed or variable number of dollars either in a lump sum or periodically for life or some other specified period;

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

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

(p) "Accredited investor" means any person who is an "accredited investor" as defined by subsection (15) of section 2 of the "Securities Act of 1933," 15 U.S.C. s.77b(15), and 17 C.F.R. s.230.215 and s.230.501 or any successor rule promulgated pursuant to that act.

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

(q) "Direct participation security" means a security which provides for flow-through tax consequences (tax shelter), regardless of the structure of the legal entity or vehicle for distribution, including, but not limited to, a security representing an interest in gas, oil, real estate, agricultural property, cattle, a condominium, a Subchapter S corporation, a limited liability company and all other securities of a similar nature, regardless of the industry represented by the security, or any combination thereof. Excluded from this definition are real estate investment trusts, tax qualified pension and profit-sharing plans pursuant to sections 401 and 403(a) of the Internal Revenue Code of 1986, 26 U.S.C. §401 and 403(a), and individual retirement plans under section 408 of the Internal Revenue Code of 1986, 26 U.S.C. §408, tax sheltered annuities pursuant to the provisions of section 403(b) of the Internal Revenue Code of 1986, 26 U.S.C. §403(b), and any company including separate accounts registered pursuant to the "Investment Company Act of 1940;"

(r) "Blind pool" means an offering of securities in which, as to 65% or more of the proceeds of the offering, the prospectus discloses no specific purpose to which the proceeds of the offering will be put, or the prospectus discloses no specific assets to be purchased, projects to be undertaken, or business to be conducted, except for:

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

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

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

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

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

(2) manages accounts or portfolios of clients;

(3) determines recommendations or advice regarding securities;

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

(5) directly supervises any investment adviser representative or the supervisors of those investment adviser representatives. "Investment adviser representative" does not include a broker-dealer or an agent;

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

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

(v) "Federal covered security" means any security described as a covered security in

subsection (b) of section 18 of the "Securities Act of 1933," 15 U.S.C. §77r(b).

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

C.49:3-50 Exemptions of certain securities.

3. (a) The following securities are exempted from the provisions of sections 13 and 16 of:

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;

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

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

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any savings institution;

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

(6) (Deleted by amendment, P.L.1997, c.276.)

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (i) a registered holding company under the "Public Utility Holding Company Act of 1935" or a subsidiary of such a company within the meaning of that act; (ii) regulated in respect to its rates and charges by a governmental authority of the United States or any state; or (iii) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada or any Canadian province;

(8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange or the American Stock Exchange, and such other exchanges as the bureau chief may from time to time designate by rule or order; any security designated or approved for designation upon notice of issuance as a Nasdaq National Market security or any other national quotation system as the bureau chief from time to time may designate by rule or order; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;

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

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

(11) Any investment contract issued in connection with an employees' or professional stock purchase, savings, pension, profit-sharing, retirement or similar benefit plan and securities issued pursuant to an employee benefit plan;

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

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

- (1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;
- (2) (i) Any nonissuer transaction by a broker-dealer registered under this act of a security, which has been outstanding in the hands of the public for at least 90 days prior to the transaction and which is sold at a price reasonably related to the current market price of such securities, provided:
  - (A) the securities are of an issuer for which all reports required to be filed by section 13 or 15(d) of the "Securities Exchange Act of 1934," 15 U.S.C. s.78m or s.78o(d) have been filed; or
  - (B) the following information is published in a recognized securities manual: the names of the issuer's officers and directors; a balance sheet of the issuer as of a date not more than 18 months prior to the date of the sale; and profit and loss statements for a period of not less than two years next prior to the date of the balance sheet or for the period of the issuer's existence as of the date of the balance sheet if the period of existence is less than two years;
    - (ii) The exemption provided in this paragraph (2) does not apply if the sale constitutes a distribution and is made for the direct or indirect benefit of an issuer or controlling persons of that issuer or if those securities constitute the whole or part of an unsold allotment to, or subscription by, a broker-dealer as an underwriter of those securities. This exemption shall not be available for any securities which have been subject to a bureau stop order pursuant to section 17 of P.L.1967, c.93 (C.49:3-64), or a bureau order of denial of secondary trading pursuant to subsection (c) of this section;
    - (iii) Notwithstanding the foregoing, resale transactions by a sponsor of a unit investment trust registered pursuant to section 8 of the "Investment Company Act of 1940," 15 U.S.C. §80a-8, shall be exempt from registration in this State.
- (3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the bureau chief may by rule require that the customer acknowledge upon a form prescribed by the bureau chief that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;
- (4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
- (5) Any transaction on a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a single unit;
- (6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
- (7) Any transaction executed by a bona fide pledgee without any purpose of evading this act;
- (8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the "Investment Company Act of 1940," pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;
- (9) Any transaction which results in sales to not more than 10 persons (other than those persons designated in paragraph (8) of subsection (b) of this section in this State during any period of 12 consecutive months, whether or not the seller or any of the buyers is then present in this State, if (i) the seller reasonably believes that all buyers are purchasing for investment, and (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this State, and (iii) the securities are not offered or sold by general solicitation or any general advertisement; but the bureau chief may by rule or order, as to any transaction or class of transactions, withdraw or further condition this exemption, or increase or decrease the number of buyers permitted, or waive the conditions in subparagraph (i), (ii) or (iii) of this paragraph;
- (10) Any offer or sale of a preorganization certificate or subscription if (i) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (ii) the number of subscribers does not exceed 10, and (iii) no payment is made by any subscriber;
- (11) Any transaction pursuant to an offer to existing security holders of the issuer, including

persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this State;

(12) Any transaction by or on behalf of an issuer, or other person, if (i) the seller has reasonable grounds to believe and, after making reasonable inquiry, believes, immediately prior to making any sale, that there are no more than 35 purchasers of the issue in this State during any period of 12 consecutive months and that each purchaser, who is not an accredited investor, either alone or with his representative has the knowledge and experience in financial and business matters that he is or they are capable of evaluating the merits and risks of the prospective investment; (ii) a written offering statement or prospectus is furnished to each purchaser who is not an accredited investor containing substantially the same information as is required by subsection (b) of section 14 of P.L.1967, c.93 (C.49:3-61) or any applicable form of registration under federal law, and provided that if any purchaser is furnished with a written offering statement or prospectus, then all purchasers shall be furnished therewith; (iii) the securities shall not be offered or sold by general solicitation or any general advertisement; and (iv) a report of the offering is filed with the bureau not later than 15 days after the first sale of those securities in this State, setting forth the name and address of the issuer, the total amount of the securities sold under this paragraph (12), the price at which the securities were sold, the total number of purchasers of the securities, and the names and addresses of the purchasers of the securities who reside in this State, indicating the number and amount of the securities each purchased. Supplemental reports shall be filed promptly after the initial filing with the bureau whenever there are material changes to the information contained in the initial filing until the closing of the offering. A final report shall be filed at the closing of the offering if the information in the final report would be materially different from the last prior filing. The fee for filing the report with the bureau shall be established by regulation of the bureau chief. The information in the report of sale shall be deemed confidential and shall not be disclosed to the public except by order of the court or in court proceedings. In calculating the number of purchasers permitted under this paragraph, accredited investors shall be excluded;

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

(c) The bureau chief may by order deny or revoke any exemption specified in paragraph (9), (10) or (11) of subsection (a) of this section or in subsection (b) of this section with respect to a specific security or transaction. These exemptions may be denied or revoked for the grounds set forth in subsection (k) of section 9, section 11 and section 17 of P.L.1967, c.93 (C.49:3-56, 49:3-58 or 49:3-64). No such order may be entered without appropriate notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the bureau chief may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this subsection. Upon the entry of a summary order, the bureau chief shall promptly notify all interested parties that it has been entered and of the reasons therefor.

(1) Upon service of notice of the order issued by the bureau chief, the respondent shall have up to 15 days to respond to the bureau in the form of a written answer and written request for a hearing. The bureau chief shall, within five days of receiving the answer and a request for a hearing, either transmit the matter to the Office of Administrative Law for a hearing or schedule a hearing at the bureau. Orders issued pursuant to this subsection (c) shall be subject to an application to vacate upon 10 days' notice, and a preliminary hearing on the order shall be held in any event within 20 days after it is requested; and the filing of a motion to vacate the order shall toll the time for filing an answer and written request for a hearing.

(2) If a respondent fails to respond by either filing a written answer and written request for a hearing with the bureau or moving to vacate an order within the 15-day prescribed period, the respondent shall be deemed to have waived the opportunity to be heard. The order will remain

in effect until it is modified or vacated upon notice to all interested parties by the bureau chief. No order under this subsection may operate retroactively.

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

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

C.49:3-51 Applicability of act.

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

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

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

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

(e) (Deleted by amendment, P.L.1997, c.276.)

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

C.49:3-52.1 Prohibitions relative to securities.

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

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

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

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

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

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

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

section.

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

C.49:3-53 Prohibited practices relative to investment adviser.

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

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

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

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

(b) It shall be unlawful for any person acting as an investment adviser, whether required to be registered or not, to enter into, extend, or renew any investment advisory contract unless it provides in writing

(1) that no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(2) that the investment adviser shall notify the other party to the contract of any change in control of the investment adviser within a reasonable time after the change;

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

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

(e) Subsection (c) of this section does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in paragraph (1) of subsection (b) of this section, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business;

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

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

C.49:3-54 False, misleading statements.

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

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

C.49:3-55 Determination of validity of filed document.

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

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

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

C.49:3-56 Registration required.

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

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

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

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

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

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

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

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

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

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

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

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

(i) It shall be unlawful for any person to transact business in this State as an investment adviser unless (1) he is so registered under this act, is exempt from registration under this act, or is excluded from the definition of investment adviser under this act, or (2) he is registered as a broker-dealer without the imposition of a condition under paragraph (5) of subsection (b) of section 11 of P.L.1967, c.93 (C.49:3-58);

(j) It shall be unlawful for any investment adviser required to be registered pursuant to this section to employ an investment adviser representative, unless the investment adviser representative is also registered pursuant to this section. It is unlawful for any person registered or required to be registered as an investment adviser under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3, to employ, supervise, or associate with an investment adviser representative having a place of business located in this State, unless that investment adviser representative is registered under this act, or is exempt from registration. The registration of an investment adviser representative is not effective during any period when the investment adviser representative is not employed by an investment adviser registered pursuant to this section or registered under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3. When an investment adviser representative described in this subsection begins or terminates employment with an investment adviser, the investment adviser and the investment adviser representative shall promptly notify the bureau chief. When an investment adviser representative terminates his connection with a particular investment adviser, his authorization to engage in those activities which make him an investment adviser representative is terminated;

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

(l) Notwithstanding any other provision of this act, the bureau chief may bring an administrative or court action pursuant to section 29 of this act (C.49:3-70.1), to seek and obtain civil penalties for violations of this section;

(m) Every registration shall expire one year from its effective date unless renewed, except that the bureau chief may by rule provide that registrations shall all expire on the same date;

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

may require;

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

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

C.49:3-57 Obtaining initial, renewal registration.

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

(b) Every applicant for initial or renewal registration for broker-dealer, agent, investment adviser and investment adviser representative shall pay filing fees in the amounts as set by rule of the bureau chief. If an application is denied or withdrawn, the bureau shall retain the fee. Whenever any supplemental filing is made, for the purpose of keeping current the information furnished to the bureau chief, there may be a supplemental filing fee in an amount set by rule of the bureau chief;

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

(d) (1) The bureau chief may by rule require a minimum capital for registered broker-dealers not to exceed the limitations provided in section 15 of the "Securities Exchange Act of 1934," 15 U.S.C. s.78o. The minimum capital required for a registered broker-dealer shall be determined by rule of the bureau chief;

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

(e) The bureau chief may by rule require registered investment advisers who have custody of clients' funds or securities to post bonds in amounts not to exceed the limitations provided in section 222 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-18a and registered broker-dealers to post bonds in amounts not to exceed the limitations provided in section 15 of the "Securities Exchange Act of 1934," 15 U.S.C. s.78o, and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. Every bond shall provide for suit thereon by any person who has a cause of action under section 24 of P.L.1967, c.93 (C.49:3-71). Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within two years after the sale or other act upon which it is based, or within two years of the time when the person aggrieved knew or should have known of the existence of his cause of action, whichever is later. The dollar amount of the bonds shall be set by rule of the bureau chief;

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

(2) Each applicant for broker-dealer, agent, investment adviser or investment adviser representative who takes an examination provided pursuant to paragraph (1) of this subsection shall pay examination fees in the amounts as set forth by rule of the bureau chief;

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

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

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

C.49:3-58 Denial, suspension, revocation of registration.

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

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

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

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

(ii) has willfully violated or willfully failed to comply with any provision of this act or any rule or order authorized by this act or has willfully, materially aided others in such conduct;

(iii) has been convicted of any crime involving a security or any aspect of the securities, commodities, banking, insurance or investment advisory business or any crime involving moral turpitude; however, where the applicant can show by proof satisfactory to the bureau chief that

during the 10-year period preceding the application he has conducted himself in such a manner as to warrant his registration consistent with all other provisions of this act, the conviction shall not be a bar to registration;

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

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

(vi) is the subject of an order entered within the past five years by any federal or state securities, commodities, banking, insurance or investment advisory administrator or self-regulatory organization denying or revoking a securities, commodities, banking, insurance or investment advisory license or registration under federal or state securities, commodities, banking, insurance or investment advisory law, including, but not limited to registration as a broker-dealer, agent, investment adviser, investment adviser representative or issuer, or the substantial equivalent of those terms as defined in this act, or is the subject of an order of the Securities and Exchange Commission, a self-regulatory organization, the Commodity Futures Trading Commission, an insurance regulator, or a federal or state banking regulator, suspending or expelling him from a national securities or commodities exchange or national securities or commodities association registered under the "Securities Exchange Act of 1934," or the "Commodity Exchange Act," or from engaging in the banking or insurance business, or is the subject of a United States Post Office fraud order; but (A) the bureau chief may not institute a revocation or suspension proceeding under this subparagraph (vi) more than two years from the date of the order relied on and (B) he may not enter an order under this subparagraph (vi) on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under New Jersey law;

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

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

(ix) is not qualified on the basis of such factors as character, training, experience and knowledge of the securities business, except as otherwise provided in subsection (b) of this section;

(x) has failed to pass an examination under subsection (f) of section 10 of P.L.1967, 93 (C.49:3-57) if such an examination has been by rule provided for by the bureau chief;

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

(xii) has failed to pay the proper fees, as set by rule of the bureau chief.

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

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

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

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

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

(5) The bureau chief shall consider that an investment adviser is not necessarily qualified

solely on the basis of experience as a broker-dealer or agent. If he finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser, he may by order condition the applicant's registration as a broker-dealer upon his not transacting business in this State as an investment adviser.

(c) The bureau chief, for good cause shown, may by order summarily postpone, suspend, revoke or deny any registration pending final determination of any proceeding under this section. Upon entry of the order, the bureau chief shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or an investment adviser representative, that the order has been entered and of the reasons therefor.

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

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

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

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

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

(f) (Deleted by amendment, P.L.1997, c.276).

(g) Every hearing which this act requires to be held shall be held in accordance with the "Administrative Procedure Act, " P.L.1968, c.410 (C.52:14B-1 et seq.).

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

C.49:3-59 Maintenance of records, examination.

12. (a) (Deleted by amendment, P.L.1997, c.276.)

(b) Every registered broker-dealer and investment adviser shall make and keep those accounts, correspondence, memoranda, papers, books, and other records as the bureau chief by rule prescribes. Such books, records and accounts shall conform to those prescribed by the Securities and Exchange Commission. All records and books so required shall be accessible to the bureau and preserved for three years unless the bureau chief by rule prescribes otherwise;

(c) With respect to investment advisers, the bureau chief may require by rule that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and investment advisory clients. To the extent determined by the

bureau chief, information furnished to clients or prospective clients of an investment adviser that would be in compliance with the "Investment Advisers Act of 1940" and the regulations promulgated thereunder may be used in whole or partial satisfaction of this requirement;

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

(e) If the information contained in any document filed with the bureau is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under subsection (h) of section 9 of P.L.1967, c.93 (C.49:3-56);

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

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

C.49:3-60 Offer or sale of securities, lawful; conditions.

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

- (a) The security or transaction is exempt under section 3 of P.L.1967, c.93 (C.49:3-50);
- (b) (Deleted by amendment, P.L.1997, c.276.)
- (c) (Deleted by amendment, P.L. 1985, c. 405.)
- (d) (Deleted by amendment; P.L. 1985, c. 405.)
- (e) The security is registered under this act; or
- (f) It is a federal covered security for which a notice filing and fees have been submitted as required by section 14 of this act (C.49:3-60.1).

C.49:3-60.1 Documents required to be filed.

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

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

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

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

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

(5) That notice shall be effective on the later of date of its receipt by the bureau chief or effectiveness of the offering with the Securities and Exchange Commission and shall expire on June 30 of each year, unless renewed prior to expiration by filing an additional notice and fee, except that the bureau chief may by rule determine that such notice will automatically remain in effect in the case of unit investment trusts. A renewal notice shall take effect upon expiration of the notice filing being renewed. Only one notice and one fee needs to be filed for multiple portfolios, classes, trusts, or funds that are offered through one prospectus. In setting fees, the

bureau shall take into account whether the investment company issuing the shares is an open-end management company or unit investment trust and shall establish different fees for different types of investment companies. In no event shall the fee charged in any calendar year for claiming this exemption exceed the fee charged for registering securities with the bureau under subsection (b) of section 15 of P.L.1967, c.93 (C.49:3-62);

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

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

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

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

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

C.49:3-61 Registration of security by qualification.

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

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

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

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

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

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

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

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

(7) with respect to every promoter if the issuer was organized within the past three years: the information specified in paragraph (4) of this subsection, any amount paid to him within the

period or intended to be paid to him, and the consideration for any such payment;

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

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

(10) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any portion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined, and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

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

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

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

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

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

(16) a signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state

whether the security when sold will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer;

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

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

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

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

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

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

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

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

C.49:3-61.1 Coordination with federal registration.

7. a. Any security for which a registration statement has been filed under the "Securities Act of 1933," in connection with the same offering may be registered by coordination.

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

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

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

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

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

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

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

(1) No stop order is in effect and no proceeding is pending against any person directly or indirectly involved in the offering under subsection (c) of section 3, section 17 or 23 of P.L.1967, c.93 (C.49:3-50, 49:3-64 or 49:3-70 ) or section 29 of this act (C.49:3-70.1); and

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

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

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

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

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

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

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

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

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

C.49:3-61.2 Registration by notification.

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

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

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

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

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

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

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

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

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

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

(4) A description of the security being registered;

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

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

c. If no stop order is in effect and no proceeding is pending against any person directly or indirectly involved in the offering under subsection (c) of section 3, section 17 or section 23 of P.L.1967, c.93 (C.49:3-50, 49:3-64 or 49:3-70) or section 29 of this act (C.49:3-70.1), a registration statement under this section automatically becomes effective at three o'clock Eastern Standard Time in the afternoon of the second full business day after the filing of the registration statement or the last amendment, or at such earlier time as the bureau chief determines.

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

C.49:3-62 Filing of registration statement, fee.

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

(b) Every person filing a registration statement shall pay a filing fee for each registration

statement, as set by rule of the bureau chief. This fee shall not be refundable.

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

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

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

(f) (Deleted by amendment, P.L.1997, c.276.)

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

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

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

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

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

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

C.49:3-63 Filing of materials distributed to prospective investors.

16. The bureau chief may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication

addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, unless the security is not required to be registered by subsection (a) or (f) of section 13 of P.L.1967, c.93 (C.49:3-60).

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

C.49:3-64 Issuance of stop order.

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

(1) that the order is in the public interest: and

(2) that:

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

(ii) Any provision of this act or any rule, order, or condition lawfully imposed thereunder has been willfully violated, in connection with the offering by (A) the person filing the registration statement, (B) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, or (C) any underwriter; or

(iii) The security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal, foreign or State act applicable to the offering; but the bureau chief may not institute a proceeding against an effective registration statement under this subsection more than two years from the date of the order or injunction relied on; or

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

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

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

(vii) The applicant or registrant has failed to pay the proper filing fee, as set by rule of the bureau chief;

(viii) The issuer, any partner, officer or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, or any broker-dealer or other person involved directly or indirectly in the offering (A) has been convicted of any crime of embezzlement under state, federal or foreign law or any crime involving any theft, forgery or fraudulent practices in regard to any state, federal or foreign securities, investment advisory, banking, insurance, or commodities trading laws or anti-fraud laws; (B) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities, commodities, banking, insurance or investment advisory business; (C) is the subject of an effective order of the bureau chief denying, suspending, or revoking securities registration, registration as a broker-dealer, agent, investment adviser or investment adviser representative; (D) is the subject of an order entered by any federal or state securities, commodities, banking, insurance or investment advisory administrator or self-regulatory organization denying or revoking any securities, commodities, banking, insurance or investment advisory license or registration under federal or state securities, commodities, banking, insurance or investment advisory law, including, but not limited to, registration as a broker-dealer, agent, investment adviser, investment adviser representative, or the substantial equivalent of those terms as defined in this act, or is the subject of an order of the Securities and Exchange Commission, a self-regulatory organization, the Commodity Futures Trading Commission, an insurance commissioner, or a federal or state banking regulator, suspending or expelling him from a national securities or commodities exchange or national securities or commodities association registered under the "Securities Exchange Act of 1934" or the "Commodity Exchange Act," or

from engaging in the banking or insurance business, or is the subject of a United States Postal Service fraud order, except the bureau chief may not institute a revocation or suspension proceeding pursuant to this subparagraph (D) of this subparagraph more than two years from the date of the order relied on and he may not enter an order pursuant to this subparagraph (D) of this subparagraph on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under New Jersey law; (E) has engaged in dishonest or unethical practices in the securities business; or (F) is insolvent, either in the sense that liabilities exceed assets or in the sense that obligations cannot be met as they mature; or

(ix) The offering is a blind pool.

(b) (Deleted by amendment, P.L.1997, c.276.)

(c) The bureau chief may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding instituted pursuant to this section. Upon entry of such an order, the bureau chief shall promptly notify each person specified in subsection (d) of this section that it has been entered and of the reasons therefor.

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

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

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

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

(f) Notwithstanding any other provision of this act to the contrary, the bureau chief may bring an administrative or court action pursuant to section 29 of this act (C.49:3-70.1) to seek and obtain civil penalties for violations of this section.

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

C.49:3-65 Handling of filed documents.

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

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

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

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

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

et seq.).

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

C.49:3-66 Administration of act.

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

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

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

C.49:3-66.1 Continuation of "Securities Enforcement Fund," fees, annual accounting of transactions.

15. The "Securities Enforcement Fund" in the Division of Consumer Affairs of the Department of Law and Public Safety shall continue as a nonlapsing, revolving fund. All fees, penalties, costs, fines and other moneys collected pursuant to this act, shall be deposited in the fund. Moneys in the fund shall be used by the Director of the Division of Consumer Affairs to administer the provisions of this act and to investigate violations and to enforce the prohibitions of this act to protect the public. There shall be made available from the General Fund such additional amounts as may be required to carry out the provisions of this act.

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

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

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

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

C.49:3-67 Rules, forms, orders from bureau chief.

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

(b) No rule, form or order may be made, amended or rescinded unless the bureau chief finds that the action is necessary and appropriate (1) in the public interest, or (2) for the protection of investors, or (3) consistent with the purposes fairly intended by the policy and provisions of this act. In prescribing rules and forms the bureau chief may co-operate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of

applications and reports wherever practicable;

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

(d) All rules and forms promulgated by the bureau chief shall be filed as required pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Copies of the rules and samples of the forms shall be published in convenient form by the bureau for distribution to interested persons, subject to available appropriations.

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

C.49:3-68 Powers of bureau chief.

21. (a) The bureau chief in his discretion (1) may make such private investigations within or outside of this State as he deems necessary to determine whether any person has violated or is about to violate any provision of this act or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder, (2) may require or permit any person to file a statement in writing, under oath or otherwise as the bureau chief determines, as to all the facts and circumstances concerning the matter to be investigated, and (3) may publish information concerning any violation of this act or any rule or order hereunder;

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

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

(d) No person is excused from attending and testifying or from producing any document or record before the bureau or in obedience to the subpoena or order of the bureau chief or any officer designated by him, or in any proceeding instituted by the bureau, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but the testimony or evidence (documentary or otherwise) compelled from an individual who has claimed his privilege against self-incrimination, or the fruits thereof, may not be used to prosecute that individual or to subject that individual to any penalty or forfeiture, except that the individual testifying is not exempt from prosecution and punishment for perjury, false swearing or contempt committed in testifying;

(e) When it shall appear to the bureau chief that the testimony of any person is essential to an investigation instituted by him as provided by this chapter, and that the failure of such person

to appear and testify may defeat the proper and effective conduct thereof, the bureau chief, in addition to the other remedies provided for herein, may, by petition verified generally, setting forth the facts, apply to the Superior Court for a writ of ne exeat against such person. The court shall thereupon direct the issuance of the writ against such person requiring him to give sufficient bail conditioned to insure his appearance before the bureau chief for examination under oath in such investigation and that he will continue his appearance therein from time to time until the completion of the investigation and will appear before the court if the bureau chief shall institute any proceeding therein as a result of his investigation.

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

C.49:3-68.1 Restraints ordered by bureau chief.

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

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

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

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

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

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

C.49:3-69 Enforcement actions by bureau chief.

22. (a) If it appears to the bureau chief that any person has, or directly or indirectly controls another person who has engaged in, is engaging in, or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, or if it

appears that it will be against the public interest for any person to issue, sell, offer for sale, purchase, offer to purchase, promote, negotiate, advertise or distribute any securities from or within this State, the bureau chief may take, in addition to any other enforcement actions available under this act and in the bureau chief's discretion, either or both of the following actions:

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

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

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

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

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

(b) If it appears to the court in the action that such person has engaged in, is engaging in, or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, it may enjoin such person, and any agent, employee, broker, partner, officer, director or stockholder thereof, from continuing such practices or engaging therein or doing any acts in furtherance thereof. The court may also enjoin the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement or distribution from or within this State of any securities by such persons, and any agent, employee, broker, partner, officer, director or stockholder thereof, until the court shall otherwise order;

(c) If the court grants injunctive relief as provided for in subsection (b) of this section, it may appoint a receiver with power to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice constituting a violation of this act or any rule or order hereunder, including property with which such property has been mingled, if it cannot be identified in kind because of such commingling, and to sell, convey and assign the same and hold and dispose of the proceeds thereof under the direction of the court for the equal benefit of all who establish an interest therein by reason of the use and employment by the defendant of any practices

constituting a violation of this act or any rule or order hereunder. The receiver may retain an attorney with the consent of the Attorney General and the court. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as justice shall require;

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

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

The receiver shall settle the estate and distribute the assets, and have all the powers and duties conferred upon receivers by the provisions of Title 14A of the New Jersey Statutes, Corporations, General, so far as the provisions thereof are applicable.

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

C.49:3-70 Violations, penalties.

23. (a) Any person who knowingly violates any provision of this act, except section 7 or 13 of P.L.1967, c.93 (C.49:3-54 or C.49:3-60), or who knowingly violates any rule or order under this act, or who willfully violates section 7 of P.L.1967, c.93 (C.49:3-54), knowing the statement made to be false or misleading in any material respect, shall be guilty of a second or third degree crime, depending upon the amount of the loss as provided in subsection (d) of this section.

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

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

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

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

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

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

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

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

C.49:3-70.1 Violations, civil penalties.

29. Any person who violates any of the provisions of this act or who violates any rule or order under this act, shall be liable for the first violation to a penalty of not more than \$10,000; for a second violation to a penalty of not more than \$20,000; and for each subsequent violation to a penalty of not more than \$20,000 per violation. One or more violations may occur at the same time or be part of the same conduct or pattern of conduct. The penalty shall be entered,

with the requisite notice, sued for and recovered by and in the name of the bureau chief and shall be collected and enforced by summary proceeding pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq., or administratively.

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

C.49:3-71 Action for deceit; liability.

24. (a) Any person who

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

(2) Offers, sells or purchases a security by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the buyer not knowing of the untruth or omission), or

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

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

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

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

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

(c) Any person who offered, sold or purchased a security or engaged in the business of giving investment advice to a person in violation of paragraph (1), (2), (3), (4) or (5) of subsection (a) of this section is liable to that person, who may bring an action either at law or in equity to recover the consideration paid for the security or the investment advice and any loss due to the advice, together with interest set at the rate established for interest on judgments for the same period by the Rules Governing the Courts of the State of New Jersey from the date of payment of the consideration for the investment advice or security, and costs, less the amount of any income received on the security, upon the tender of the security and any income received from the investment advice or on the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at the rate established for interest on judgments for the same period by the Rules Governing the Courts of the State of New Jersey from the date of disposition;

(d) Every person who directly or indirectly controls a seller liable under subsection (a) of this section, every partner, officer, or director of such a seller, or investment adviser, every person occupying a similar status or performing similar functions, every employee of such a seller or investment adviser who materially aids in the sale or in the conduct giving rise to the liability,

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

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

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

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

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

(i) Any condition, stipulation or provision binding any person acquiring any security or receiving investment advice to waive compliance with any provision of this act or any rule or order hereunder is void;

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

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

C.49:3-72 Nonapplicability of act.

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

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

C.49:3-73 Consent to bureau chief as attorney for service of process.

26. (a) Every broker-dealer, agent or investment adviser applicant for registration under this act and every issuer who is required to file with the bureau to claim an exemption from registration or to register a security in this State shall file with the bureau, in such form as the bureau chief by rule prescribes, an irrevocable consent appointing the bureau chief or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which arises under this act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the bureau, but it is not effective unless the plaintiff, who may be the bureau chief, in a suit, action or proceeding instituted on his behalf by the Attorney General forthwith sends notice of the service and a copy of the process by certified

or registered mail to the defendant or respondent at his last address on file with the bureau. It is the responsibility of the registrant to maintain its current address on file with the bureau. If process was served on the last address on file with the bureau and is returned by the post office unclaimed, refused or not forwarded, that service will constitute valid service;

(b) If any person, including any nonresident of this State, engages in conduct prohibited or made actionable by this act or any rule or order authorized by this act, and he has not filed a consent to service of process under subsection (a) of this section and personal jurisdiction over him cannot otherwise be obtained in this State, that conduct shall be considered equivalent to his appointment of the bureau chief or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which grows out of that conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the bureau, and it is not effective unless the plaintiff, who may be the bureau chief in any action instituted on his behalf by the Attorney General, forthwith sends notice of the service and a copy of the process by certified or registered mail to the defendant or respondent at his last known address.

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

C.49:3-75 Construction of act.

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

Repealer.

34. The following are repealed:

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

35. This act shall take effect immediately.

Approved December 24, 1997.