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Statutes and Regulations

General Laws of Massachusetts: Chapter 110A. Uniform Securities Act.

Part I. Fraudulent and Other Prohibited Practices.

Chapter 110A: Section 101. Sales and Purchases.

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly

- (1) to employ any device, scheme, or artifice to defraud,
- (2) to make any untrue statement of a material fact or to omit 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, or
- (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Chapter 110A: Section 102. Advisory Activities

Section 102. It is unlawful for any person who receives, directly or indirectly, any consideration from another person primarily 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, or
- (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.

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PART II. Registration and Notice Filing Procedures of Broker-dealers, Agents, Investment Advisors, Federal Covered Advisors and Investment Advisor Representatives.

Chapter 110A: Section 201. Registration Requirement.

- (a) It is unlawful for any person to transact business in this commonwealth as a broker-dealer or agent unless he is registered under this chapter.
- (b) It is unlawful for any broker-dealer or issuer to employ an agent 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 chapter 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 secretary.
- (c) It is unlawful for any person to transact business in this commonwealth as an investment adviser or as an investment adviser representative unless he is so registered under this chapter.
- (d) It is unlawful for:
 - (i) any investment adviser required to be registered to employ an investment adviser representative unless the investment adviser representative is registered under this chapter, but the registration of an investment adviser representative shall not be effective during any period when he is not employed by an investment adviser registered under this chapter; or
 - (ii) any investment adviser representative, as defined in Rule 203A-3(a) under the Investment Adviser Act of 1940, with a place of business, as defined in Rule 203A-3(b) under the Investment Adviser Act of 1940, in the commonwealth, who is employed by a federal covered adviser to conduct business in the commonwealth, unless registered under this chapter.

When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser in the case of clause (i) of subsection (d), or the investment adviser representative in the case of clause (ii) of said subsection (d), shall promptly notify the secretary.

(e) Every annual registration under this section shall expire on December 31.

(f) It is unlawful for any federal covered adviser to conduct advisory business in the commonwealth unless the adviser complies with the provisions of paragraph (b) of section 202.

(Amended by 1993, 492, Sec. 1 eff. 4-14-94.)

Chapter 110A: Section 202. Registration Procedure.

(a) A broker-dealer, agent, investment adviser or investment adviser representative may obtain an initial or renewal registration by filing with the secretary or his designee an application together with a consent to service of process pursuant to paragraph (g) of section 414, and paying any reasonable costs charged for processing such filings. The application shall contain whatever information the secretary 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 the investment adviser;

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

(5) the applicant's financial condition and history; and

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

The secretary may by rule or order require an applicant for initial registration to publish an announcement of the application in 1 or more specified newspapers published in the commonwealth. If no denial order is in effect and no proceeding is pending under section 204, registration shall become effective at noon of the thirtieth day after an application is filed. The secretary may by rule or order specify an earlier effective date, and may by order defer the effective date until noon of the thirtieth day after the filing of any amendment. Registration of a broker-dealer or an investment adviser automatically constitutes registration of any agent or investment adviser representative, whichever is applicable, who is a partner, officer, or director, or a person occupying a similar status or performing similar functions. No person shall be designated as a partner, officer or director or a person occupying a similar status or performing similar functions, for the purpose of the automatic registration if the designation is solely for the purpose of avoiding registration as an agent or investment adviser representative.

(b) It is unlawful for a person to transact business in the commonwealth as a federal covered adviser unless the person has made a notice filing with the secretary or his designee consisting of (1) a copy of those documents that have been filed by the federal covered adviser with the Securities and Exchange Commission, (2) a consent to service of process, and (3) a filing fee, as the secretary prescribes by rule or order, not to exceed \$300.

A notice filing shall be effective upon the receipt of a complete filing by the secretary or his designee. The notice filing shall expire annually on December 31 and may be renewed by filing those documents that have been filed with the SEC that the secretary prescribes by rule together with a filing fee of \$300.

(c) (1) Broker-dealers and broker-dealer agents.

Every applicant for initial or renewal registration shall pay a registration fee, as the secretary prescribes by rule or order, not to exceed \$300 in the case of a broker-dealer and not to exceed \$50 in the case of an agent, including an agent automatically registered pursuant to paragraph (a). When an agent transfers an affiliation, the agent shall pay a fee, as the secretary prescribes by rule or order, not to exceed \$50. Any person required to pay a fee under this section may transmit through any designee any fee required by this section or the rules promulgated under this section.

(2) Investment advisers and investment adviser representatives.

Every applicant for initial or renewal registration shall pay a registration fee, as the secretary prescribes by rule or order, not to exceed \$300 in the case of an investment adviser and of \$50 in the case of an investment adviser representative, including an investment adviser representative automatically registered pursuant to paragraph (a). When an investment adviser representative transfers an affiliation, the investment adviser representative shall pay a fee, as the secretary prescribes by rule or order, not to exceed \$50.

(3) Federal covered advisers. Every person acting as a federal covered adviser in the commonwealth shall pay an initial or renewal notice filing fee, as the secretary prescribes by rule or order, not to exceed \$300.

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

(e) The secretary may, by rule or order, establish minimum financial requirements, including minimum capital and bonding requirements, for registered broker-dealers, subject to the limitations of section 15 of the Securities Exchange Act of 1934; and for investment advisers, subject to the limitations of section 222 of the Investment Advisers Act of 1940, which may include different requirements for those registered investment advisers who maintain custody of clients' funds or securities, who have discretionary authority over same or who require payment of more than \$500 in fees and more than 6 months in advance and those registered investment advisers who do not.

(f) The secretary may by rule provide that an applicant may submit 1 application for registration as both a broker-dealer agent and an investment adviser representative. Each applicant shall pay a registration fee, as the secretary prescribes by rule or order, not to exceed \$50.

(4) Any fee that is required to be paid pursuant to this section or the accompanying regulations may be transmitted through a designee.

Chapter 110A: Section 203. Post-Registration Provisions

(a) Every registered broker-dealer and investment adviser shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the secretary prescribes by rule or order, except as limited by section 15 of the Securities Exchange Act of 1934, in the case of a broker-dealer, and by section 222 of the Investment Advisers Act of 1940, in the case of an investment adviser. All records so required, with respect to an investment adviser, shall be preserved for such period as the secretary prescribes by rule or order.

(b) With respect to investment advisers, the secretary may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the secretary in his discretion, 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 rules thereunder may be used in whole or partial satisfaction of this requirement. The secretary may by rule or order require that such material be filed.

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

(d) If the information contained in any document filed with the secretary is or becomes inaccurate or incomplete in any material respect, the registrant or federal covered adviser shall file a correcting amendment promptly if the document is filed with respect to a registrant, or when the amendment is required to be filed with the Securities and Exchange Commission if the document is filed with respect to a federal covered adviser, unless notification of the correction has been given under subsection (b) of section 201.

(e) All the records referred to in subsection (a) are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the secretary, within or without the commonwealth, as the secretary deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the secretary, insofar as he deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

Chapter 110A: Section 203A. Document disclosing material facts

(a) Each investment adviser registered under this chapter shall disseminate to each client or prospective client a document disclosing material facts. The document shall include information concerning:

(1) compensation arrangements between the client and the investment adviser;

(2) the nature of services offered;

(3) business practices; and

(4) methods for obtaining information on disciplinary history and registration of the investment adviser and persons associated with the investment adviser.

(b) Each investment adviser and each of its representatives registered under this chapter shall disclose to each client before a purchase or sale is effected on behalf of the client:

(1) the total amount of sales commissions or other fees that may reasonably be expected to be charged or deducted in connection with the purchase or sale;

(2) that the adviser will receive the amount or a portion of the amount, or, in the case of a transaction to be effected through a broker-dealer that is a person associated or under common control with the adviser, that the broker-dealer is affiliated with the adviser and will receive the amount or portion of the amount; and

(3) the existence of any compensation arrangement with an issuer or other third party with respect to the recommended transaction. The disclosure shall be in writing if the purchase or sale was recommended in writing. The secretary may, by rule, permit a client to waive in writing, the right to a disclosure.

Chapter 110A: Section 204. Denial, Revocation, Suspension, Cancellation, and Withdrawal of Registration

(a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action 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:

(A) 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 light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor chapter

or any rule or order under this chapter or a predecessor chapter;

(C) has been convicted, within the past ten years, of any misdemeanor involving a security or any aspect of the securities business, or any felony;

(D) 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 business;

(E) is the subject of an order of the secretary denying, suspending or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative;

(F) is the subject of any of the following orders which are currently effective or which were issued within the last five years;

(i) an order by the securities agency or administrator of another state, Canadian province or territory, or the Securities and Exchange Commission, entered after notice and opportunity for hearing, denying, suspending, or revoking the person's license as a broker dealer, agent or investment advisor, or the substantial equivalent of those terms as defined in this chapter;

(ii) a suspension or expulsion from membership in an association with a self regulatory organization registered under the Securities Exchange Act of 1934 or the Commodities Exchange Act;

(iii) a United States Postal Service fraud order;

(iv) a cease and desist order entered after notice and opportunity for hearing by the secretary or the securities agency or administrator of any other state, Canadian province or territory, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or

(v) an order by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act;

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business;

(H) 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 secretary may not enter an order against a broker-dealer under this clause without a finding of insolvency as to the broker-dealer; or

(I) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (b). The secretary 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

(J) has failed reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with this chapter; or:

(K) has failed to pay the proper filing fee; but the secretary may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected.

The secretary may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within the next thirty days.

(b) The following provisions govern the application of section 204(a)(2)(I):

(1) The secretary may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than (A) the broker-dealer himself if he is an individual or (B) an agent of the broker-dealer.

(2) The secretary may not enter an order against any investment adviser on the basis of the lack of qualification of any person other than (a) the investment adviser himself if he is an individual or (b) an investment adviser representative.

(3) The secretary 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 secretary 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 and that an investment adviser representative who will work under the supervision of a registered investment adviser need not have the same qualifications as an investment adviser.

(5) The secretary may consider that a broker-dealer or an agent is not necessarily qualified to act in the capacity as an investment adviser solely on the basis of experience as an agent. When he finds that an applicant for initial or renewal registration as a broker-dealer or agent is not qualified to act in the capacity of an investment adviser, he may by order condition the applicant's registration as a broker-dealer upon his not transacting the business of an investment adviser in this state.

(6) The secretary 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.

(c) The secretary may by order summarily postpone or suspend registration, pending final determination of any proceeding under this section. Upon the entry of the order, the secretary shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If a hearing is requested or ordered, the secretary, after notice of and opportunity for hearing, may modify or vacate the order or extend it

until final determination.

(d) If the secretary 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 secretary may by order cancel the registration or application.

(e) Withdrawal from registration as a broker-dealer, agent, investment adviser, or investment adviser representative shall become effective thirty days after receipt of an application to withdraw or within such shorter period of time as the secretary may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or impose conditions upon withdrawal is instituted within thirty days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the secretary by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the secretary may nevertheless institute a revocation or suspension order proceeding under clause (B) of subsection (a) within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

(f) No order may be entered under any part of this section except the first sentence of subsection (c) without (1) appropriate prior notice to the applicant or registrant as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, (2) opportunity for hearing, and (3) written findings of fact and conclusions of law.

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Part III. Registration and Notice Filing Procedures for Securities.

Chapter 110A: Section 301. Registration Requirement.

It is unlawful for any person to offer or sell any security in the commonwealth unless

- (1) the security is registered under this chapter;
- (2) the security or transaction is exempted under section 402; or
- (3) the security is a federal covered security.

Chapter 110A: Section 302. Registration by Coordination

(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 304(c) and the consent to service of process required by section 414(g):

- (1) three copies of the latest form of prospectus filed under the Securities Act of 1933;
- (2) if the secretary by rule or otherwise requires, a copy of the articles of incorporation and by-laws, or their 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 secretary requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and
- (4) an undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly and 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 first occurs.

(c) A registration statement under this section automatically 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 under section 305; (2) the registration statement has been on file with the secretary for at least ten days; and (3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or such shorter period as the secretary permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the secretary by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. 'Price amendment' means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the secretary may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if it promptly notifies the registrant by telephone or telegram, and promptly confirms by letter or telegram when it notifies by telephone, 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 is void as of the time of its entry. The secretary may by rule or otherwise waive either or both of the conditions specified in clauses (2) and (3). If the federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the secretary of the date when the federal registration statement is expected to become effective, the secretary shall promptly advise the registrant

by telephone or telegram at the registrant's expense, whether all the conditions are satisfied and whether it then contemplates the institution of a proceeding under section 305; but this advice by the secretary does not preclude the institution of such a proceeding at any time.

Chapter 110A: Section 303. Registration by Qualification.

(a) 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 in addition to the information specified in section 304(c) and the consent to service of process required by section 414(g):

(1) 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;

(2) 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 thirty 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;

(3) with respect to persons covered by clause (2): the remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer, together with all predecessors, parents, subsidiaries, and affiliates, to all those persons in the aggregate;

(4) with respect to any person owning of record, or beneficiary if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: the information specified in clause (2) other than his occupation;

(5) with respect to every promoter if the issuer was organized within the past three years: the information specified in clause (2), any amount paid to him within that period or intended to be paid to him, and the consideration for any such payment;

(6) with respect to any person on whose behalf any part of the offering is to be made in a non-issuer 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; 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;

(7) 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;

(8) 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 proportion 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;

(9) 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;

(10) 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 clause (2), (4), (5), (6), or (8) and by any person who holds or will hold ten percent or more in the aggregate of any such options;

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

(12) 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;

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

(14) a signed or confirmed 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 non-assessable, and, if a debt security, a binding obligation of the issuer;

(15) 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;

(16) a balance sheet of the issuer as of a date within four months prior to the filing of the registration 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 predecessors' 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

(17) such additional information as the secretary requires by rule or order.

(c) A registration statement under this section becomes effective when the secretary so orders.

(d) The secretary may by rule or order require as a condition of registration under this section that a prospectus containing any designated part of the information specified in subsection (b) 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.

Chapter 110A: Section 304. Provisions Applicable to Registration Generally.

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

(b) Every person filing a registration statement shall pay a filing fee to be determined annually by the commissioner of administration under the provision of section three B of chapter seven.

(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 each state or by any court or the Securities and Exchange Commission.

(d) Any document filed under this chapter or a predecessor chapter may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

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

(f) In the case of a non-issuer distribution, information may not be required under section 303 or 304(h) unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(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 non-exempted 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 305. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any non-issuer 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 305, if the registration statement did not relate in whole or in part to a non-issuer 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 secretary.

(h) So long as a registration statement is effective, the secretary 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 secretary so orders. Every person filing such an amendment shall pay a filing fee to be determined annually by the commissioner of administration under the provision of section three B of chapter seven.

Chapter 110A: Section 305. Denial, Suspension, and Revocation of Registration.

(a) The secretary 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

(A) 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 section 304(i) as of its effective date, or any report under section 304(h) 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;

(B) any provision of this chapter or any rule, order, or condition lawfully imposed under this chapter has been willfully violated, in connection with the offering, by (i) the person filing the registration statement, (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (iii) any underwriter;

(C) 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 or state act applicable to the offering; but (i) the secretary may not institute a proceeding against an effective registration statement under clause (C) more than one year from the date of the order or injunction relied on, and (ii) he may not enter an order under clause (C) on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

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

(E) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(F) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

(G) when a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by section 302(b)(4); or

(H) the applicant or registrant has failed to pay the proper filing fee; but the secretary may enter only a denial order under this clause and he shall vacate any such order when the deficiency has been corrected.

The secretary may not institute a stop-order proceeding against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective unless the proceeding is instituted within the next thirty days.

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

(c) No stop order may be entered under any part of this section except the first sentence of subsection (b) without (1) appropriate prior notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered, (2) opportunity for hearing, and (3) written findings of fact and conclusions of law.

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

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Part IV. General Provisions.**Chapter 110A: Section 401. Definitions.**

When used in this chapter, unless the context otherwise requires:

(a) 'Secretary' means the state secretary or the secretary of the commonwealth.

(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' shall not include an individual who represents:

(1) an issuer in:

(A) effecting transactions in a security exempted by clause (1), (2), (3), (10) or (11) of subsection (a) of section 402;

(B) effecting transactions exempted by subsection (b) of said section 402;

(C) effecting transactions in a federal covered security as described in section 18(b)(3) and 18(b)(4)(D) of the

Securities Act of 1933:

(D) effecting transactions with existing employees, partners or director of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in the commonwealth; or

(2) a broker-dealer in effecting transactions in the commonwealth limited to those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.

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.

(c) 'Broker-dealer' means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. 'Broker-dealer' shall not include:

(1) an agent;

(2) an issuer;

(3) a bank, savings institution, trust company, or the Central Credit Union Fund, Inc., established by chapter 216 of the acts of 1932; or

(4) a person who has no place of business in the commonwealth if:

(A) he effects transactions in the commonwealth exclusively with or through:

(i) the issuers of the securities involved in the transactions;

(ii) other broker-dealers; or

(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

(B) during any period of 12 consecutive months he does not direct more than 15 offers to sell or buy into the commonwealth in any manner to persons other than those specified in clause (A), whether or not the offeror or any of the offerees is then present in the commonwealth.

(d) 'Fraud,' 'deceit,' and 'defraud' are not limited to common-law deceit.

(e) 'Guaranteed' means guaranteed as to payment of principal, interest, or dividends.

(f) '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 or participation in oil, gas, or mining titles or leases or in payments out of production under such titles or leases, there is not considered to be any 'issuer.'

(g) 'Non-issuer' means not directly or indirectly for the benefit of the issuer.

(h) '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 limited liability company, a limited liability partnership, a government, or a political subdivision of a government.

(i) (1) 'Sale' or 'sell' includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(2) 'Offer' or 'offer to sell' includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(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 do not include (A) any bona fide pledge or loan; (B) 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; (C) 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 (D) any act incident to a 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, if the terms and conditions of the issuance and exchange are approved, after a hearing upon their fairness at which all persons to whom it is proposed to issue securities in the exchange have the right to appear, by any court, any official or agency of the United States, or any state authority expressly authorized by

law to grant such approval.

(j) 'Securities Act of 1933', 'Securities Exchange Act of 1934', 'Public Utility Holding Company Act of 1935', 'Investment Advisers Act of 1940' and 'Investment Company Act of 1940' mean the federal statutes of those names as amended before or after the effective date of this chapter.

(k) 'Security' means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; 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, receipt 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 money either in a lump sum or periodically for life or some other specified period.

(l) 'State' means any state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

(m) 'Investment adviser' means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to 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. 'Investment adviser' also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. 'Investment adviser' shall not include:

(1) (A) an investment adviser representative;

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

(C) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession, or who does not exercise investment discretion with respect to the assets of clients or maintain custody of the assets of clients for the purpose of investing such assets, except when the person is acting as a bona fide fiduciary in a capacity, such as an executor, trustee, personal representative, estate or trust agent, guardian, conservator, or person serving in a similar fiduciary capacity; and who does not accept or receive, directly or indirectly, any commission, fee or other remuneration contingent upon the purchase or sale of any specific security by a client of such persons;

(D) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(E) a person whose only clients in this state are federal covered advisers, other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, employee benefit plans with assets of not less than \$5,000,000, governmental agencies or instrumentalities, or other financial institutions or institutional buyers, whether acting for themselves or as trustees with investment control;

(F) a registered broker-dealer or broker-dealer agent;

(G) a person who has no place of business in the commonwealth and who during the preceding 12 month period has had fewer than 6 clients, other than those listed in clause

(E), who are residents of the commonwealth; and

(H) other persons not within the intent of this subsection as the secretary may by rule or order designate; or

(2) a federal covered adviser.

(n) 'Investment adviser representative' means any partner, officer, 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:

(A) an investment adviser that is registered or required to be registered under this act, and who does any of the following:

(i) makes any recommendations or otherwise renders advice regarding securities;

(ii) manages accounts or portfolios of clients;

(iii) determines which recommendation or advice regarding securities should be given;

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

(v) supervises employees who perform any of the foregoing; or

(B) a federal covered adviser, subject to the limitations of section 203A of the Investment Advisers Act of 1940.

'Investment adviser representative' does not include such other persons employed by or associated with either an investment adviser or a federal covered adviser not within the intent of this subsection as the secretary may designate by rule or order.

(o) 'Federal covered adviser' means a person who is registered with the Securities and Exchange Commission under section 203 of the Investment Advisers Act of 1940. 'Federal covered adviser' shall not include any person who is excluded from the definition of 'investment adviser' pursuant to clauses (A) to (G), inclusive, of paragraph (1) of subsection (m).

(p) 'Federal covered security' means any security that is a covered security under section 18(b) of the Securities Act of 1933 or the regulations promulgated thereunder.

Chapter 110A: Section 402. Exemptions.

(a) The following securities are exempted from sections 301, 306 and 403:

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

(2) any security other than a revenue obligation 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 organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state;

(4) any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this commonwealth, or any corporation licensed to make small loans and subject to regulation by the commissioner of banks under chapter one hundred and forty;

(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 commonwealth;

(6) any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this commonwealth;

(7) any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (A) subject to the jurisdiction of the Interstate Commerce Commission; (B) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act; (C) regulated in respect of its rates and charges by a governmental authority of the United States or any state; or (D) 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 that is listed or approved for listing upon notice of issuance on the American Stock Exchange, the Boston Stock Exchange, the Chicago Stock Exchange, the New York Stock Exchange, the Pacific Stock Exchange, or any other stock exchange specified by the secretary; 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 any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association;

(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 nine 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' stock purchase, savings, pension, profit-sharing, or similar benefit plan if the secretary is notified in writing thirty days before the inception of the plan or, with respect to plans which are in effect on the effective date of this chapter, within sixty days thereafter, or within thirty days before they are reopened if they are closed on the effective date of this chapter;

(12) any security issued by a cooperative corporation organized under chapter one hundred and fifty-seven or organized under chapter one hundred and fifty-seven A if (A) its authorized capital stock does not exceed fifty thousand dollars and (B) no expenditure is made by or on its behalf in connection with the issuance or sale of its securities other than the actual expenses of organization, calling or holding meetings of incorporators or shareholders, printing, mailing, and taxes.

(b) The following transactions are exempted from sections 301, 306 and 403:

(1) any isolated non-issuer transaction, whether effected through a broker-dealer or not;

(2) any non-issuer transaction;

(A) by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days provided, at the time of the transaction:

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

- (ii) the security is sold at a price reasonably related to the current market price of the security;
- (iii) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;
- (iv) a nationally recognized securities manual designated by rule or order of the secretary or a document filed with the U.S. Securities & Exchange Commission hereinafter referred to as SEC which is publicly available through the SEC's Electronic Data Gathering and Retrieval System and contains:
 - (a) a description of the business and operations of the issuer;
 - (b) the names of the issuer's officers and the names of the issuer's directors, if any, or, in the case of a non-U.S. issuer, the corporate equivalents of such persons in the issuer's country of domicile;
 - (c) an audited balance sheet of the issuer as of a date within 18 months, or in the case of a reorganization or merger where parties to the reorganization or merger had such audited balance sheets, a pro forma balance sheet; and
 - (d) an audited income statement for each of the issuer's immediately preceding 2 fiscal years, or for the period of existence of the issuer, if in existence for less than 2 years or, in the case of a reorganization or merger where the parties to the reorganization or merger had such audited income statements, a pro forma income statement; and
 - (v) the issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless:
 - (a) the issuer of the security is a unit investment trust registered under the Investment Company Act of 1940; or
 - (b) the issuer of the security has been engaged in continuous business, including predecessors, for at least 3 years; or
 - (c) the issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18 months or, in the case of a reorganization or merger where parties to the reorganization or merger had such audited balance sheets, a pro forma balance sheet; or
- (B) in a security by a registered agent of a registered broker-dealer if:
 - (i) the issuer of the security is actually engaged in business and not in the organizational stage or in bankruptcy or receivership and is not a blank check, blind pool or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons; and
 - (ii) the security is senior in rank to the common stock of the issuer both as to payment of dividends or interest and upon dissolution or liquidation of the issuer and such security has been outstanding at least 3 years and the issuer or any predecessors has not defaulted within the current fiscal year or the 3 immediately preceding fiscal years in the payment of any dividend, interest, principal, or sinking fund installment on the security when due and payable; or
- (C) in an outstanding security if the issuer of the security has a class of securities subject to registration under section 12 of the Securities Exchange Act of 1934 and has been subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 for not less than 180 days before the transaction; or has a class of securities registered under the Investment Company Act of 1940; or has filed and maintained with the secretary for not less than 180 days before the transaction information substantially comparable to the information which the issuer would be required to file under section 12(b) or section 12(g) of the Securities Exchange Act of 1934 were the issuer to have a class of its securities registered under section 12 of the Securities Exchange Act of 1934, in such form as the secretary by rule provides; or
- (D) in a federal covered security pursuant to section 18(b)(4)(a) of the Securities Act of 1933 or the regulations promulgated thereunder.
 - (3) any non-issuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the secretary may by rule require that the customer acknowledge upon a specified form 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 in 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 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 chapter;
 - (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 profitsharing 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 pursuant to an offer directed by the offeror to not more than 25 persons other than those designated in clause (8) in the commonwealth during any period of 12 consecutive months, whether or not the offeror or any of the offerees is then present in the commonwealth, if: (A) the seller reasonably believes that all the buyers in the commonwealth, other than those designated in said clause (8), are purchasing for investment, and (B) insofar as an offer involves the payment directly or indirectly of any commission or other remuneration for soliciting any prospective buyer in the commonwealth, other than those designated in said clause (8), a notice is filed with the secretary at least 5 full business days before the offer, and the secretary does not by order disallow the exemption within the next 5 full business days; but, in any event, the secretary may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in subclauses (A) and (B) with or without the substitution of a limitation on remuneration.

(10) any offer or sale of a preorganization certificate or subscription if (A) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (B) the number of subscribers does not exceed ten, and (C) 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 ninety days of their issuance, if (A) no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this commonwealth, or (B) the issuer first files a notice specifying the terms of the offer and the secretary does not by order disallow the exemption within the next five full business days;

(12) any offer, but not a sale, of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under such chapter or act;

(13) any other transaction that the secretary by rule or order may exempt, conditionally or unconditionally, on a finding that registration is not necessary or appropriate in the public interest or for the protection of investors.

(c) The secretary may by order deny or revoke any exemption specified in clause (9) or (11) of subsection (a) or in subsection (b) with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the secretary 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 secretary shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the secretary, the order will remain in effect until it is modified or vacated by the secretary. If a hearing is requested or ordered, the secretary, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated section 301 or 403 by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

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

Chapter 110A: Section 403. Filing of Sales and Advertising Literature.

The secretary by rule or order may require the filing of any prospectus, pamphlet, circular, form lettered or guaranteed by the commonwealth or any political subdivision thereof 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 may require the issuer thereof to file sales literature, but no such rule or order, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, unless the security or transaction is exempted by section 402. A rule or order relating to any security including a revenue obligation issued shall require sales literature to be prepared or require affirmative approval or filing of sales literature before it is used or require issuers located outside the commonwealth to file any literature; nor shall violation of any such rule or order be subject to the penalties provided by paragraph (a) of section 409.

Chapter 110A: Section 404. Misleading Filings.

Section 404. It is unlawful for any person to make or cause to be made, in any document filed with the secretary or in any proceeding under this chapter, 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.

Chapter 110A: Section 405. Unlawful Representations Concerning Registration or Exemption.

(a) Neither (1) the fact that an application for registration under Part II or a registration statement under Part III has been filed nor (2) the fact that a person or security is effectively registered constitutes a finding by the secretary that any document filed under this chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the secretary 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).

Chapter 110A: Section 406. Administration of Chapter.

(a) This chapter shall be administered by the secretary.

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

(c) Every person who takes an examination under paragraph (6) of subsection (b) of section 204 shall pay whatever fee the secretary by rule specifies.

Chapter 110A: Section 407. Investigations and Subpoenas.

(a) The secretary in his discretion (1) may make such public or private investigations within or outside of the commonwealth as he deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter 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 secretary determines, as to all the facts and circumstances concerning the matter to be investigated, and (3) may publish information concerning any violation of this chapter or any rule or order hereunder.

(b) For the purpose of any investigation or proceeding under this chapter, the secretary 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 secretary deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court for the county in which the person is found or is an inhabitant or transacts business, upon application by the secretary, may issue to the person an order requiring him to appear before the secretary, 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. Failure to obey the order of the court may be punished by the court as a contempt of court.

(d) No person is excused from attending and testifying or from producing any document or record before the secretary, or in obedience to the subpoena of the secretary or any officer designated by him, or in any proceeding instituted by the secretary, 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 of forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(Amended by 1986, 557, Sec. 103.)

Chapter 110A: Section 407A. Violations; Cease and Desist Orders; Costs.

(a) If the secretary determines, after notice and opportunity for hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take such affirmative action, including the imposition of an administrative fine, the issuance of an order for an accounting, disgorgement or rescission or any other such relief as in his judgment may be necessary to carry out the purposes of this chapter. No administrative fine imposed pursuant to this chapter shall exceed \$25,000 for each violation and any fine collected shall be deposited in the Worker and Small Investor Protection Fund, established by section 68 of chapter 10.

(b) If the secretary makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under subsection (a), the secretary may issue a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the secretary shall promptly notify in writing the person subject to the order that such order has been entered, the reasons therefor, and that within twenty days after the receipt of a written request from such person the matter shall be set down for hearing to determine whether or not the order shall become permanent and final. If no hearing is requested and none is ordered by the secretary, the order shall remain in effect until it is modified or vacated by the secretary. If a hearing is requested or ordered, the secretary, after giving notice of and opportunity for a hearing to the person subject to the order, shall by written findings of fact and conclusions of law, vacate, modify, or make permanent the order.

(c) No order under this section, except an order issued pursuant to subsection (b), may be entered without prior notice of and opportunity for hearing. The secretary may vacate or modify an order under this section upon his finding that the conditions which required such an order have changed and that it is in the public interest to so vacate or modify.

An order issued pursuant to the provisions of this section shall be subject to review as provided in section four hundred and eleven.

(d) A registrant, applicant for registration, issuer or other person upon whom the secretary has conducted an examination, audit, investigation or adjudicatory proceeding who has been found to have violated the provisions of this chapter shall pay for all the costs incurred in the conduct of such examination, audit, investigation or proceeding. Such costs shall include, but not be limited to, the salaries and other compensation paid to clerical, administrative, investigative and legal personnel of the secretary in the conduct of such examination, audit, investigation or adjudicatory proceeding.

Chapter 110A: Section 408. Injunctions.

Whenever it appears to the secretary that any person has engaged or is about to engage in any act or practice

constituting a violation of any provision of this chapter or any rule or order hereunder, he may in his discretion bring an action in the superior court for the county in which the person is found or is an inhabitant or transacts business to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon a proper showing, the court may grant a preliminary or permanent injunction or a temporary restraining order and may order an accounting, disgorgement, rescission and such other relief as may be in the public interest, including but not limited to the appointment of a receiver or conservator for the defendant or the defendant's assets. The court may not require the secretary to post a bond.

Chapter 110A: Section 409. Criminal Penalties.

(a) Section 409. (a) Any person who willfully violates any provision of this chapter except section 404, or who willfully violates any rule or order under this chapter, or who willfully violates section 404 knowing the statement made to be false or misleading in any material respect, shall upon conviction be fined not more than \$100,000 or imprisoned not more than 10 years in the state prison, or both; but 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.

Fines collected under this subsection shall be immediately sent to the state treasurer for deposit in the Securities Fraud Prosecution Fund, established by section 69 of chapter 10.

(b) The secretary may refer such evidence as is available concerning violations of this chapter or of any rule or order hereunder to the attorney general, who may, with or without such a reference, institute the appropriate criminal proceedings under this chapter.

(c) Nothing in this chapter limits the power of the commonwealth to punish any person for any conduct which constitutes a crime by statute or at common law.

Chapter 110A: Section 410. Civil Liabilities.

(a) Any person who

(1) offers or sells a security in violation of section 201(a), 301, or 405(b), or of any rule or order under section 403 which requires the affirmative approval of sales literature before it is used, or of any condition imposed under section 303(d), or

(2) offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six per cent per year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, 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 six per cent per year from the date of disposition.

(b) Every person who directly or indirectly controls a seller liable under subsection (a), every partner, officer, or director of such a seller, every person occupying a similar status or performing similar functions, every employee of such a seller who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller, unless the non-seller who is so liable sustains the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

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

(d) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

(e) No person may sue under this section more than four years after the discovery by the person bringing the action of a violation of this chapter or any rule promulgated or order issued thereunder. No person may sue 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 six percent per year from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within thirty 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 thirty days of its receipt.

(f) No person who has made or engaged in the performance of any contract in violation of any provision of this chapter 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.

(g) Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this chapter or any rule or order hereunder is void.

(h) The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist at law or in equity, but this chapter does not create any cause of action not specified in this section.

Chapter 110A: Section 411. Judicial Review of Orders.

(a) Any person aggrieved by a final decision of the secretary in an adjudicatory proceeding may obtain judicial review pursuant to section fourteen of chapter thirty A.

(b) The commencement of proceedings under subsection (a) does not, unless specifically ordered by the court,

operate as a stay of the secretary's order.

Chapter 110A: Section 412. Rules, Forms, Orders, and Hearings.

- (a) The secretary may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this chapter, including rules and forms governing registration statements, applications, and reports, and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purpose of rules and forms, the secretary may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.
- (b) No rule, form, or order may be made, amended, or rescinded unless the secretary finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter. In prescribing rules and forms the secretary may cooperate 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 registration statements, applications, and reports wherever practicable.
- (c) The secretary may by rule or order prescribe (1) the form and content of financial statements required under this chapter, (2) the circumstances under which consolidated financial statements shall be filed, and (3) whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting practices.
- (d) All rules and forms of the secretary shall be published pursuant to sections six and six A of chapter thirty A.
- (e) No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the secretary, 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.
- (f) Every hearing in an administrative proceeding shall be public unless the secretary in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.
- (g) Assessments collected by the secretary pursuant to administrative actions may be used to assist investors. The assistance may include, but is not limited to, restitution for victims of financial fraud or other violations of this chapter.

Chapter 110A: Section 413. Administrative Files and Opinions.

- (a) A document is filed when it is received by the secretary.
- (b) The secretary shall keep a register of all notice filings made under subsection (b) of section 202 and section 306 and all applications for registration and registration statements which are or have ever been effective under this chapter and all denial, suspension, or revocation orders which have been entered under this chapter. 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 secretary prescribes.
- (d) Upon request and at such reasonable charges as he prescribes, the secretary shall furnish to any person photostatic or other copies, certified under the seal of the secretary if requested, of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.
- (e) The secretary in his discretion may honor requests from interested persons for interpretative opinions.

Chapter 110A: Section 414. Scope of the Act and Service of Process.

- (a) Sections 101, 201(a), 301, 405, and 410 apply to persons who sell or offer to sell when (1) an offer to sell is made in the commonwealth, or (2) an offer to buy is made and accepted in the commonwealth.
- (b) Sections 101, 201(a), and 405 apply to persons who buy or offer to buy when (1) an offer to buy is made in the commonwealth, or (2) an offer to sell is made and accepted in the commonwealth.
- (c) For the purpose of this section, an offer to sell or to buy is made in the commonwealth, whether or not either party is then present in the commonwealth, when the offer (1) originates from the commonwealth or (2) is directed by the offeror to the commonwealth and received at the place to which it is directed, or at any post office in the commonwealth in the case of a mailed offer.
- (d) For the purpose of this section, an offer to buy or to sell is accepted in the commonwealth when acceptance (1) is communicated to the offeror in the commonwealth and (2) has not previously been communicated to the offeror, orally or in writing, outside the commonwealth; and acceptance is communicated to the offeror in the commonwealth, whether or not either party is then present in the commonwealth, when the offeree directs it to the offeror in the commonwealth reasonably believing the offeror to be in the commonwealth and it is received at the place to which it is directed, or at any post office in the commonwealth in the case of a mailed acceptance.
- (e) An offer to sell or to buy is not made in the commonwealth when (1) the publisher circulates or there is circulated on his behalf in the commonwealth any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in the commonwealth, or which is published in the commonwealth but has had more than two-thirds of its circulation outside the commonwealth during the past twelve months, or (2) a radio or television program originating outside the commonwealth is received in the commonwealth.
- (f) Section 102 applies when any act instrumental in effecting prohibited conduct is done in the commonwealth,

whether or not either party is then present in the commonwealth

(g) Every applicant for registration under this chapter and every issuer which proposes to offer a security in the commonwealth through any person acting on an agency basis in the common-law sense shall file with the secretary, in such form as he by rule prescribes, an irrevocable consent appointing the secretary or his successor in office to be his attorney to receive service of any lawful process in any non-criminal suit, action, or proceeding against him or his successor, executor, or administrator which arises under this chapter 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 secretary but it is not effective unless (1) the plaintiff, who may be the secretary in a suit, action, or proceeding instituted by it, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the secretary, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(h) When any person, including any nonresident of the commonwealth, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, and he has not filed a consent to service of process under subsection (g) and personal jurisdiction over him cannot otherwise be obtained in the commonwealth, that conduct shall be considered equivalent to his appointment of the secretary or his successor in office to be his attorney to receive service of any lawful process in any non-criminal suit, action, or proceeding against him or his successor, executor, or administrator which grows out of that conduct and which is brought under this chapter 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 secretary, and it is not effective unless (1) the plaintiff, who may be the secretary in a suit, action, or proceeding instituted by it, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

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

Chapter 110A: Section 415. Statutory Policy.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of this chapter with the related federal regulation

Chapter 110A: Section 416. Short Title.

This chapter may be cited as the Uniform Securities Act.

Chapter 110A: Section 417. Severability of Provisions.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

William Francis Galvin, Secretary of the Commonwealth of Massachusetts

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