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Chapter 6

Article 1 *General Provisions*

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## Section 8-6-1

### Short title.

This article may be cited as the "Alabama Securities Act."

(Acts 1959, No. 542, p. 1318, §22; Acts 1990, No. 90-527, p. 772, §1.)

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## Section 8-6-2

### Definitions.

When used in this article, unless the context otherwise requires, the following terms shall have the meanings respectively ascribed to them by this section:

- (1) Commission or Securities Commission. The securities commission.
- (2) Agent. Any individual other than a dealer who represents a dealer or issuer in effecting or attempting to effect sales of securities, but such term does not include an individual who represents an issuer in:
- Effecting a transaction in a security exempted by subdivisions (1), (2), (3), (4), (9) or (10) of Section 8-6-10;
  - Effecting transactions exempted by Section 8-6-11; or
  - Effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

A partner, officer, or director of a dealer or issuer is an agent if he otherwise comes within this definition.

- (3) Dealer. Any person engaged in the business of effecting transactions in securities for the account of others or for his own account. Such term does not include:
- An agent, issuer, bank, savings institution, savings and loan association, credit union, or trust company, or
  - A person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions and other dealers.
- (4) Guaranteed. Guaranteed as to payment of principal, interest, or dividends.
- (5) Issuer. Every person who proposes to issue, has issued, or shall hereafter issue any security. Any person who acts for a compensation or a consideration as a promoter for or on behalf of a corporation, trust, unincorporated association, or partnership of any kind to be formed shall be deemed to be an issuer.
- (6) Nonissuer. Not directly or indirectly for the benefit of the issuer.
- (7) Person. Such term shall include a natural person, a corporation created under the laws of this or any other state, country, sovereignty, or political subdivision thereof, a partnership, an association, a joint-stock company, a trust, and any unincorporated organization. As used herein the term "trust" shall not include a trust created or appointed under or by virtue of a last will and testament, by instrument of declaration or appointment by any person for the benefit of himself, relatives, friends, servants, or employees, by a court or any public charitable trust.
- (8) Sale, Sell, Offer and Offer to sell. "Sale" and "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt to offer or dispose of, or solicitation of an offer to buy, a security or interest in a security for value. 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. A purported gift of assessable stock is considered to involve an offer and sale. 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.

(9) Securities Act of 1933, Securities Exchange Act of 1934, Public Utility Holding Company Act of 1935, Investment Company Act of 1940, and Investment Advisers Act of 1940. The federal statutes of those names as amended at any time.

(10) Security. 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, annuity contract unless issued by an insurance company, bankers' shares, trustees' shares, investment participating bonds, investment trust debentures, units, shares, bonds and certificates in, for, respecting, or based upon any form of securities or collateral, subscriptions and contracts covering or pertaining to the sale or purchase on the installment plan of any security as herein defined, or subscription or contracts covering or pertaining to the sale or purchase of beneficial interest in title to property, profits or earnings, or any right to subscribe to any of the foregoing, or any instrument of any kind commonly known as a security.

(11) State. Any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(12) Underwriter. A person who agrees to take or contracts to dispose of a stipulated amount of securities, or a portion thereof, at a fixed price.

(13) Broker. A dealer, as hereinabove defined.

(14) Suspend. When used in relation to the registration of either a security, a dealer, an investment adviser, an agent, or an investment adviser representative, such term shall mean the temporary cessation or inoperativeness of such registration, whether by reason of operation of law or by reason of an order of the securities commission.

(15) Revoke. To vacate the registration of either a security, a dealer, an investment adviser, an agent, or an investment adviser representative for cause by order of the securities commission.

(16) Cancel. To terminate the registration of either a security, a dealer, an investment adviser, an agent, or an investment adviser representative upon application filed therefore as follows:

- a. In the case of a security, upon application therefore filed by the issuer thereof or the person who secured the registration of said security;
- b. In the case of a dealer, upon the application therefore filed by such dealer;
- c. In the case of an investment adviser, upon the application therefore filed by such investment adviser;
- d. In the case of an agent, upon the application therefore filed by either the issuer or dealer employing such agent; and
- e. In the case of an investment adviser representative, upon application therefore filed by the investment adviser employing such investment adviser representative.

(17) Fraud, Deceit and Defraud. These terms are not limited to common-law deceit.

(18) Investment adviser. Any person, who, for compensation, engages in the business of advising others, either

directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, 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 part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include:

- a. An investment adviser representative;
- b. A depository institution, which term includes a person organized, chartered, or holding an authorization certificate under the laws of this state or the United States which authorizes the person to receive deposits including a savings, share, certificate, or deposit account, and which is supervised and examined for the protection of depositors by an official or agency of this state or the United States; and a trust company or other institution authorized by federal or Alabama law to exercise fiduciary powers of the type a national bank is permitted to exercise under the authority of the Comptroller of the Currency and is supervised and examined by an official or agency of this state or the United States; but which does not include an insurance company or other organization primarily engaged in the insurance business, or a Morris Plan bank, industrial loan company, or a similar bank or company unless its deposits are insured by a federal agency;
- c. A lawyer, accountant, engineer, or teacher whose performance of investment advisory services is solely incidental to the practice of that person's profession;
- d. A broker-dealer or its agent whose performance of investment advisory services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for the investment advisory services;
- e. A publisher, employee, or columnist of a newspaper, news magazine, or business or financial publication, or an owner, operator, producer, or employee of a cable, radio or television network, station, or production facility if the financial or business news published or disseminated is made available to the general public and the content does not consist of rendering advice on the basis of the specific investment situation of each client;
- f. An insurance company, its employees, or agents who are engaged exclusively in the sale or distribution of life, health, or casualty insurance or insurance related products.

(19) *Investment adviser representative*. Any partner, officer, director of (or a person occupying a similar status or performing similar functions) or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

- a. Makes any recommendation or otherwise renders advice regarding securities,
- b. Manages accounts or portfolios of clients,
- c. Determines which recommendation or advice regarding securities should be given,
- d. Solicits, offers, or negotiates for the sale of or sells investment advisory services, unless the solicitation, offering, or selling activities are solely incidental to his or her profession and such person is a dealer or salesman registered under Section 8-6-3 and the person would not be an investment adviser representative except for the performance of activities described in subdivision (18)d. of this section, or
- e. Supervises employees who perform any of the foregoing.

(20) *Officer*. A president, vice-president, treasurer, secretary, comptroller, or any other person performing similar

functions with respect to any organization whether incorporated or unincorporated.

(21) *Applicant*. A person, natural or otherwise, executing or submitting an application for registration.

(22) *Registrant*. An applicant for whom a registration has been declared effective by the commission.

(23) *Affiliate*. A person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, an applicant or registrant.

(24) *Controlling person, Control, Controlling, Controlled by, Under common control with*. The possession, directly, or indirectly, or the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

(25) *Salesman*. An agent, as hereinabove defined.

(Acts 1959, No. 542, p. 1318, §9; Acts 1975, No. 1044, p. 2095, §1; Acts 1990, No. 90-527, p. 772, §1.)

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### Section 8-6-3

#### **Registration and bonds of dealers, agents, investment advisers, etc.**

(a) It is unlawful for any person to transact business in this state as a dealer or agent for securities unless he or she is registered under this article. It is unlawful for any dealer or issuer to employ an agent unless the agent is registered.

(b) It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless:

(1) He or she is so registered under this article;

(2) His or her only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, broker-dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than \$1,000,000, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commission; or

(3) He or she has no place of business in this state and during any period of 12 consecutive months does not direct business communications in this state in any manner to more than five clients, other than those specified in subdivision (2), whether or not he, she, or any of the persons to whom the communications are directed is then present in this state.

(c) It is unlawful for any investment adviser required to be registered to employ an investment adviser representative unless the investment adviser representative is registered under this article. The registration of an investment adviser representative is not effective during any period when he or she is not employed by an investment adviser registered under this article. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser shall promptly notify the commission.

(d) A dealer, agent, investment adviser, or investment adviser representative may apply for registration by filing with the securities commission, or its designee, an application, together with a consent to service of process

pursuant to Section 8-6-12 and payment of the fee prescribed in subsection (h) of this section. The application shall contain whatever information the commission 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 and, in the case of a 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 dealer or investment adviser;
  - (4) Any injunction or administrative order or conviction of a misdemeanor involving moral turpitude, a security or any aspect of the securities business, 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.
- (e) The commission shall by rule or order require all or any class of applicants to post surety bonds, or cash, in an amount not less than \$50,000, and shall determine their conditions.
- (f) If no order to the contrary is in effect and no proceeding is pending under subsection (j) of this section, registration becomes effective at 5:00 P.M. on the sixtieth day after an application is filed. The Securities Commission may specify an earlier effective date, and it may by order defer the effective date until 5:00 P.M. of the sixtieth day after the filing of any amendment. The commission shall require as conditions of registration that:
- (1) All or any class of applicants and, in the case of a corporation or partnership, the officers or partners, pass an examination, either written or oral, the form, content, and conduct of which the commission shall prescribe by rule or order.
  - (2) A dealer shall have and maintain a minimum net capital as the commission shall prescribe by rule or order. The commission may by rule establish minimum financial requirements for investment advisers, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.
  - (3) Every registration expires December 31 unless renewed as hereinafter provided.
- (g) Registration of a dealer, agent, investment adviser, or investment adviser representative may be renewed by filing with the Securities Commission, or its designee, prior to the expiration thereof, a renewal application. The renewal application shall contain such information as the commission may require to indicate any material change in the information contained in the original application or any renewal application for registration filed with the commission, or its designee, by the applicant, payment of the prescribed fee and a bond as provided in subsection (e) of this section, if the financial condition of the registrant requires such bond. In order to continue the effectiveness of registration and to entitle the dealer or adviser to a renewal thereof, such registrant shall file a financial statement prepared in accordance with generally accepted accounting principles and certified by an independent certified public accountant showing the financial condition of such registrant at the close of its fiscal period. This statement shall be filed with the commission, or its designee, within 60 days after the close of the registrant's fiscal period unless an extension of time is granted by the commission. The commission shall accept for filing a financial statement in the form required to be filed with the United States securities and exchange commission from those registrants who are registered therewith.
- (h) The fee for initial or renewal registration shall be two hundred fifty dollars (\$250) for a dealer, sixty dollars

(\$60) for an agent, two hundred fifty dollars (\$250) for an investment adviser and sixty dollars (\$60) for an investment adviser representative. The fee for initial or renewal registration of an investment adviser or investment adviser representative shall be deposited in the Alabama Securities Commission Fund in the State Treasury to be drawn upon by the commission for its use in administration of this article. When an application is denied or withdrawn, the Securities Commission shall retain the fee.

(i) Every registered dealer and investment adviser shall make and keep such accounts and other records as the Securities Commission by rule prescribes. All records so required shall be preserved for five years unless the commission prescribes otherwise for particular types of records. The commission may require that certain information be furnished or disseminated by a registrant as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the commission in its discretion, information furnished to clients or prospective clients of an investment adviser pursuant to the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement. All the records of any registrant are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the commission, within or without this state, as the commission deems necessary or appropriate in the public interest or for the protection of investors.

(j) The Securities Commission may by order deny, suspend, or revoke any registration, or censor or bar any applicant or registrant or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant, from employment with a dealer or investment adviser, or restrict or limit a registrant as to any function or activity of the business for which registration is required in this state if the commission finds that the order is in the public interest and that the applicant or registrant or, in the case of a 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 dealer or investment adviser:

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

(2) Has willfully violated or willfully failed to comply with any provisions of this article, or a predecessor act, or any rule or order under this article, or a predecessor act;

(3) Has been convicted of any misdemeanor involving moral turpitude, a security, or any aspect of the securities business or any felony;

(4) 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;

(5) Is the subject of an order of the commission denying, suspending, or revoking registration as a dealer, agent, investment adviser, or investment adviser representative;

(6) Is the subject of an order, adjudication, or determination entered within the past 10 years by a securities or commodities agency or a national securities exchange or association registered under the Securities Exchange Act of 1934, or an administrator of another state, or a court of competent jurisdiction that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the federal mail and wire fraud statutes, or the securities, investment adviser, or commodities law of any other state; but the commission may not enter any order under this subsection on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(7) Has engaged in dishonest or unethical practices in the securities business;



(8) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature, but the commission may not enter an order against a dealer or investment adviser under this subsection without a finding of insolvency as to the dealer or investment adviser;

(9) Has not complied with a condition imposed by the commission under subsection (f) of this section, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(10) Has failed reasonably to supervise his or her agents or employees if he or she is a dealer, or his or her investment adviser representatives or employees if he or she is an investment adviser to assure their compliance with this article; or

(11) Has failed to pay the proper filing fee, but the commission may enter only a denial order under this subsection, and it shall vacate any such order when the deficiency has been corrected.

The commission may by order summarily postpone or suspend registration pending final determination of any proceeding under this subsection.

(k) If the Securities Commission finds that any registrant or applicant for registration is no longer in existence, has ceased to do business as a dealer, agent, investment adviser, or investment adviser representative, 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 commission may by order cancel the registration or application.

*(Acts 1959, No. 542, p. 1318, §2; Acts 1969, No. 605, p. 1093, §1; Acts 1971, No. 2243, p. 3598, §§1, 2; Acts 1979, No. 79-462, p. 827, §1; Acts 1988, 1st. Ex. Sess., No. 88-722, p. 112; Acts 1990, No. 90-527, p. 772, §1; Act 2009-774, §1.)*

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## Section 8-6-4

### **Registration of securities — Required; exceptions.**

It is unlawful for any person to offer or sell any security in this state unless:

- (1) It is registered under this article;
- (2) The security is exempt from registration under Section 8-6-10; or
- (3) The transaction is exempt under Section 8-6-11.

*(Acts 1959, No. 542, p. 1318, §3; Acts 1990, No. 90-527, p. 772, §1.)*

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**Section 8-6-5****Registration of securities — Registration by notification.**

(a) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under Section 8-6-6:

- (1) Any security whose issuer and any predecessors have been in continuous operation for at least five years if:
  - a. There has been no default during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer, or any predecessor, with a fixed maturity or a fixed interest or dividend provision; and
  - b. The issuer and any predecessors during the past three fiscal years have had average net earnings determined in accordance with generally accepted accounting practices which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision and which:
    1. Equal at least five percent of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed, (as measured by the maximum offering price or the market price on a day selected by the registrant within 30 days before the date of filing the registration statement, whichever is higher, or, if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within 90 days of the date of filing the registration statement); or
    2. If the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for three full fiscal years, equal at least five percent of the amount (as measured by the maximum public offering price) of such securities which will be outstanding if all the securities being offered or proposed to be offered, whether or not they are proposed to be registered or offered in this state, are issued.
- (2) Any security, other than a 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, registered for nonissuer distribution if any security of the same class has ever been registered under this article, or a predecessor act, or the security being registered was originally issued pursuant to an exemption under this article, or a predecessor act.
- (3) Any national market system security under Section 11A of the Securities Exchange Act of 1934, including 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 designated or approved, and any warrant or right to purchase or subscribe to any of the foregoing; provided, however, that the Securities Commission may by rule limit the application of this subdivision (3) if it finds such action to be in the public interest.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in Section 8-6-8 and, if required under Section 8-6-12, a consent to service of process meeting the requirements of that section:

- (1) A statement demonstrating eligibility for registration by notification;
- (2) With respect to the issuer, its name, address, and form of organization, the state or foreign jurisdiction and the date of its organization, and the general character and location of its business;
- (3) A description of the securities being registered;
- (4) Total amount of securities to be offered and amount of securities to be offered in this state;
- (5) The price at which the securities are to be offered for sale to the public, any variation therefrom at which any portion of the offering is to be made to any person other than an underwriting and selling discounts or commissions, and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees, including cash, securities, or anything else of value;
- (6) Names and addresses of the managing underwriters and a description of the plan of distribution of any

securities which are to be offered otherwise than through an underwriter;

(7) Description of any options outstanding or to be created in connection with the securities being offered;

(8) Any adverse order or judgment previously entered in connection with the offering by any court or the securities and exchange commission;

(9) A copy of an offering circular or prospectus to be used in connection with the offering;

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

(c) If no order to the contrary is in effect and no proceeding is pending under Section 8-6-9, a registration statement under this section automatically becomes effective at 3:00 P.M. central standard time on the fifth full business day after the filing of the registration statement or the last amendment, or at such earlier time as the Securities Commission determines.

*(Acts 1959, No. 542, p. 1318, §4; Acts 1990, No. 90-527, p. 772, §1.)*

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## Section 8-6-6

### **Registration of securities — Registration of certain securities 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 payment of the registration fee prescribed in Section 8-6-8:

(1) Two copies of the prospectus filed under the Securities Act of 1933, together with all amendments thereto;

(2) If the Securities Commission requests, any other information or copies of any other documents filed under the Securities Act of 1933;

(3) The amount of securities to be offered in this state;

(4) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(5) Any adverse order or judgment previously entered in connection with the offering by any court or the Securities and Exchange Commission;

(6) An undertaking to forward promptly all amendments to the federal registration statement, other than an amendment which merely delays the effective date.

(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 order to the contrary is in effect;

(2) The registration statement has been on file with the securities commission for at least five full business 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 one full business day, or such shorter period as the commission permits by rule or otherwise, and the offering is made within those limitations. The registrant shall promptly notify the commission 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 posteffective 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.

(d) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment, the commission may enter an order denying effectiveness to the registration statement or suspending its effectiveness until compliance with subsection (c) of this section, if the commission 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 subsection (c) of this section as to notice and posteffective amendment, the order is void as of the time of its entry. The commission may by rule or otherwise waive either or both of the conditions specified in subdivisions (c) (2) and (c) (3) of this section. If the federal registration statement becomes effective before all these conditions 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 commission of the date when the federal registration statement is expected to become effective, the commission 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 8-6-9, but this advice by the commission does not preclude the institution of such a proceeding at any time.

*(Acts 1959, No. 542, p. 1318, §5; Acts 1990, No. 90-527, p. 772, §1.)*

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## Section 8-6-7

### **Registration of securities — 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 payment of the registration fee prescribed in Section 8-6-8 and, if required under Section 8-6-12, a consent to service of process meeting the requirements of that section:

(1) With respect to the issuer and any significant subsidiary, its name, address and form of organizations, the state or foreign jurisdiction and date of its organization, the general character and location of its business and a description of its physical properties and equipment;

(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 the date of the offering and a record of any securities of the issuer held by him previous to the filing of the application and the offering date and the remuneration paid to all such persons in the aggregate during the past 12 months and estimated to be paid during the next

12 months, directly or indirectly, by the issuer and its predecessors, parents, and subsidiaries;

(3) With respect to any person not named in subdivision (b) (2), owning of record, or beneficially if known, 10 percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in subdivision (b) (2) of this section other than his occupation;

(4) With respect to every promoter not named in subdivision (b) (2) of this section, if the issuer was organized within the past three years, the information specified in subdivision (b) (2), any amount paid to him and the consideration for any such payment;

(5) 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;

(6) The kind and amount of securities to be offered, the amount to be offered in this state, the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions, the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering, the estimated amounts of other selling expenses and legal, engineering and accounting expenses to be incurred by the issuer in connection with the offering, 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;

(7) 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 purpose stated, the amounts of any funds to be raised from other sources to achieve the purposes stated and 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 and the purchase price;

(8) 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 subdivisions (b) (2), (b) (3), (b) (4), (b) (5) or (b) (7) of this section and by any persons who hold or will hold 10 percent or more in the aggregate of any such options;

(9) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(10) Any adverse order or judgment previously entered in connection with the offering by any court or the securities and exchange commission 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;

(11) Six copies of any prospectus or circular intended as of the effective date to be used in connection with the offering;

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

registered;

(13) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered, which shall state whether the security when sold will be legally issued, fully paid and nonassessable, and, if a debt security, a binding obligation of the issuer;

(14) 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 predecessor's existence if less than three years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant.

(c) A registration statement under this section becomes effective when the securities commission so orders. The commission may require as a condition of registration under this section that a prospectus containing any designated part of the information specified in subsection (b) of this section to 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 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; but the commission shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder.

*(Acts 1959, No. 542, p. 1318, §6; Acts 1979, No. 79-462, p. 827, §2; Acts 1990, No. 90-527, p. 772, §1.)*

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## Section 8-6-8

### **Registration of securities - Registration statement; conditions precedent; bond; notice of action; fees; quarterly reports and financial statements; discharge from supervision.**

(a) A registration statement on securities may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered dealer. Any document filed under this article within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The commission may permit, by rule or otherwise, the omission of any item of information or document from any registration statement.

(b) The Securities Commission may require as a condition of registration by qualification or coordination that: (1) proceeds from the sale of the registered security be impounded until the issuer receives a specified amount, or (2) any security issued within the past three years, or to be issued, to a promoter for a consideration substantially different from the public offering price or to any person for a consideration other than cash be delivered in escrow to him or her or to some other depository satisfactory to him or her under an escrow agreement that the owners of such securities shall not be entitled to sell or transfer such securities or to withdraw such securities from escrow

until all other stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than six percent of the initial offering price shown to the satisfaction of the commission to have been actually earned on the investment in any common stock so held. The commission shall not reject a depository solely because of location in another state. In case of dissolution or insolvency during the time such securities are held in escrow, the owner of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full.

(c) The Securities Commission shall take official action on the application for registration by qualification within 60 days after the application has been filed and give written notice thereof, to the applicant or applicants. If the application is denied, the notice shall state the grounds for denial or, if action is delayed, the notice shall state the reasons for the delay.

(d) For the registration of securities there shall be paid to the Securities Commission a filing fee of \$40, plus a registration fee of one tenth of one percent of the aggregate offering price of the securities which are to be offered in this state, but the registration fee shall in no case be more than one thousand five hundred dollars (\$1,500) nor less than one hundred dollars (\$100). When a registration statement is withdrawn before the effective date or a pre-effective order is entered under Section 8-6-9, the commission shall retain the filing and registration fees. An open-end management company, a face amount certificate company, or a unit investment trust, as defined in the Investment Company Act of 1940, may register an indefinite amount of securities under a registration statement. Such registrant, at the time of filing, shall pay the filing fee of one hundred dollars (\$100) and a registration fee of one thousand five hundred dollars (\$1,500) and within 60 days after the end of each year during which its registration statement is effective, the registrant shall file a report on a form the commission, by rule, adopts, specifying its sale of securities to persons in this state during such year. Such registrant shall pay the same registration fee each year during which the registration statement remains in effect.

(e) When securities are registered, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered dealer. 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 nonexempted 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 dealer who is still offering part of an unsold allotment or subscription taken by him or her as a participant in the distribution, except during the time an order is in effect under Section 8-6-9. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction: (1) so long as the registration statement is effective, and (2) between the thirtieth day after the entry of any order suspending or revoking the effectiveness of the registration statement under Section 8-6-9, if the registration statement did not relate in whole or in part to a nonissuer distribution, and one year from the effective date of the registration statement. A registration statement which has become effective may not be withdrawn for a period of 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 commission.

(f) The Securities Commission may require the person who filed the registration statement to file reports, but not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to securities registered by coordination and notification; provided, however, that where a registration statement has been filed by a person other than the issuer or an affiliate of the issuer, the commission may require such person to file such reports on an annual basis only.

(g) Every issuer whose securities have been registered by qualification and the registration of whose securities has not been cancelled and who has not been discharged from filing further quarterly reports under the provisions of subsection (i) of this section shall file within 30 days after the close of business on December 31, March 31, June 30, and September 30 of each year and at such other reasonable times as may be required by the Securities Commission, a statement, verified under oath by some person having actual knowledge of the facts therein stated, setting forth, in such form as may be prescribed by the commission, the financial condition, the amount of assets

and liabilities of such issuer on the above date and such other information as the commission may require. If any issuer subject to the provisions of this subsection shall willfully fail or refuse to comply with any of the provisions of this subsection and shall continue to so fail or refuse for 30 days after notice or demand, the registration statement of the issuer's securities shall thereupon be revoked, and it shall thereafter be unlawful for any such issuer, his or her agent or agents, any dealer or salesman to sell such securities in this state.

(h) Any issuer, whose securities have been registered by qualification as provided in Section 8-6-7, who has completed the sale of the securities so registered, or who desires to discontinue the sale of said registered securities, and who desires to be discharged from further supervision of the Securities Commission or from further compliance with the Alabama securities law may file with the commission a notice in writing to such effect, and the commission may thereupon enter an order cancelling the registration of such securities; and such issuer shall thereupon be discharged from filing any financial report except as the commission may require up to and including the date of the filing of the notice as hereinabove provided. No such notice may be filed within one year after the effective date of the registration statement if any securities of the same class as those registered are outstanding.

*(Acts 1959, No. 542, p. 1318, §7; Acts 1969, No. 605, p. 1093, §2; Acts 1979, No. 79-462, p. 827, §3; Acts 1990, No. 90-527, p. 772, §1; Act 2009-774, §1.)*

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## **Section 8-6-9**

### **Registration of securities — Denial, suspension and revocation of registration.**

The Securities Commission shall issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement in the sale of securities if it finds that the order is in the public interest and that:

- (1) The registration statement, as of its effective date or as of any earlier date in the case of an order denying effectiveness, 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.
- (2) Any provision of this article or any rule, order, or condition lawfully imposed under this article has been willfully violated in connection with the offering by:
  - a. Any person filing the registration statement;
  - b. The issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or
  - c. Any underwriter.
- (3) 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 the issuer, or any underwriter has:
  - a. Willfully violated or willfully failed to comply with any provision of this article or any rule or order under this article, or any predecessor act; or
  - b. Has been convicted of a felony or any misdemeanor involving moral turpitude, a security, or any aspect of the securities business.



(4) The security registered or sought to be registered is the subject of a permanent injunction or temporary restraining order of any court of competent jurisdiction entered under any other federal or state act applicable to the offering, but:

a. The commission may not institute a proceeding against an effective registration statement under this subdivision more than one year from the date of the injunction relied on; and

b. It may not enter an order under this subdivision on the basis of an 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.

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

(6) The offering has worked or tended to work a fraud upon purchasers or would so operate.

(7) The offering is being made on terms that are unfair, unjust, or inequitable.

(8) When a security is sought to be registered by notification, it is not eligible for such registration.

(9) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by subdivision (b) (6) of Section 8-6-6.

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

(11) The applicant or registrant has failed to pay the proper registration fee, but the commission may enter only a denial order under this subdivision, and it shall vacate any such order when the deficiency has been corrected.

*(Acts 1959, No. 542, p. 1318, §8; Acts 1969, No. 605, p. 1093, §3; Acts 1990, No. 90-527, p. 772, §1.)*

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## **Section 8-6-10**

### **Registration of securities — Exempt securities.**

Sections 8-6-4 through 8-6-9 shall not apply to any of the following securities:

1. Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, any agency, corporate, or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing.
2. Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any province, any agency, 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 this state.

4. Any security issued by and representing an interest in, 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 this state.
5. 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 state.
6. Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is any of the following:
  - 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 a company within the meaning of that act.
  - c. Regulated in respect to its rates and charges by a governmental authority of the United States or any state.
  - d. Regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province.
7. Any national market system security under Section 11A of the Securities Exchange Act of 1934 (including 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 designated or approved; and any warrant or right to purchase or subscribe to any of the foregoing) which is so designated or approved for designation upon notice of issuance on an interdealer quotation system operated by a national securities association registered under Section 15A of the Securities Exchange Act of 1934, or any security (including 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 designated or approved; and any warrant or right to purchase or subscribe to any of the foregoing) which is listed or approved for listing upon notice of issuance on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, if the listing or designation criteria applicable to the issuer of that security provide minimum corporate governance standards substantially equivalent to those applicable to securities on the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers National Market System as of January 1, 1991. The commission may by order deny, revoke, or suspend the exemption of a specific issue of securities or by rule any category of securities when necessitated by the public interest and for the protection of investors.
8. 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, trade, or professional association, provided the issuer first files with the commission a written notice specifying the terms of the offer and the commission does not by order disallow the exemption within 15 days thereof.
9. 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 the paper which is likewise limited or any guarantee of the paper or of any renewal.
10. Any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan.

11. A security issued by an issuer registered as an open-end management investment company or unit investment trust under Section 8 of the Investment Company Act of 1940 if:
  - a. The Securities Commission has received prior to the offer or sale of the securities:
    1. A notice of intention to sell which has been executed by the issuer and which sets forth the name and address of the issuer and the description of the securities to be offered in this state; and
    2. A nonrefundable filing fee of three hundred fifty dollars (\$350) for an open-end management investment company with total net assets of \$25,000,000 or less; a nonrefundable filing fee of seven hundred dollars (\$700) for an open-end management investment company with total net assets of more than \$25,000,000 but less than \$100,000,000; a nonrefundable filing fee of one thousand two hundred dollars (\$1,200) for an open-end management investment company with total net assets equal to or greater than \$100,000,000; or a nonrefundable filing fee of \$200 for a unit investment trust. Fees collected under this section shall be deposited in the Alabama Securities Commission Fund in the State Treasury for the use of the Alabama Securities Commission in the administration of this article.
  - b. In the event any offer or sale of a security of an open-end management investment company is to be made more than 12 months after the date notice under paragraph (b) is received by the director, another notice and payment of the applicable fee shall be required.
  - c. For the purpose of this subdivision an investment adviser is affiliated with another investment adviser if it controls, is controlled by, or is under common control with the other investment adviser.

*(Acts 1959, No. 542, p. 1318, §10; Acts 1969, No. 605, p. 1093, §5; Acts 1990, No. 90-527, p. 772, §1; Acts 1991, No. 91-320, p. 584, §1; Acts 1992, No. 92-524, p. 1059, §1; Act 2009-774, §1.)*

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## Section 8-6-11

### **Registration of securities - Exempt transactions.**

- (a) Except as hereinafter in this section expressly provided, §§8-6-3 through 8-6-9 shall not apply to any of the following transactions:
- (1) Any isolated nonissuer transaction, whether effected through a dealer or not;
  - (2) Any nonissuer transaction in an outstanding security by a registered dealer if:
    - a. The issuer 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 Sections 13 or 15(d) of the Securities Exchange Act of 1934 for not less than 180 days before the transaction; or has filed and maintained with the commission for not less than 180 days before the transaction information, in such form as the commission, by rule, specifies, 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, or the securities have been the subject of an effective registration statement within 180 days before the transaction, or the issuer is required to file and has filed all reports under

Section 13 of the Securities Exchange Act of 1934, or the issuer is exempted from registration by Section 12(g)(3) of the Securities Exchange Act of 1934, it or its predecessor in interest has been in existence for at least five years, the security is listed for trading on a foreign securities exchange and has been trading for at least six months and continues to trade on such exchange, and the aggregate market value of shares, the ownership of which is unrestricted, is not less than \$500,000,000; or

b. The issuer is an investment company registered under the Investment Company Act of 1940 and has been subject to the reporting requirements of Section 30 of that act for not less than 180 days before the transaction; or

c. The security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year, within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years in the payment of principal, interest, or dividends on the security;

(3) Any nonissuer transaction effected by or through a registered dealer pursuant to an unsolicited order or offer to buy;

(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 sale or the offering for sale of any security at any judicial, executor's, administrator's, guardian, or conservator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy;

(7) Any transaction executed by a bona fide pledge without any purpose of evading this article;

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

(9) Any transaction which is part of an issue of which there are no more than 10 purchasers [other than those designated in subdivision (a)(8) of this section] wherever located, of securities from the issuer during any period of 12 consecutive months if:

a. The issuer reasonably believes that all the buyers are purchasing for investment and not with a view to distribution, and such issuer exercises reasonable care to assure this investment intent, which reasonable care shall be presumed if the following conditions are satisfied:

1. Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or herself or for other persons;

2. Written disclosure to each purchaser prior to sale that the securities have not been registered under the act and, therefore, cannot be resold unless they are registered under the act or unless an exemption from registration is available;

3. Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under the act and setting forth or referring

to the restrictions on transferability and sale of the securities; and

- b. No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; and
- c. No public advertising or general solicitation is used in connection with the issue of which the transaction in reliance on this exemption is a part.

§§8-6-3 through 8-6-9 shall not apply to any offer made pursuant to this subdivision (a)(9) in which no sale results.

But the Securities Commission 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 decrease or increase the number of purchasers permitted, or waive the conditions in paragraphs a. and b. of this subdivision (9) with or without the substitution of a limitation on remuneration.

(10) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants or transferable warrants exercisable within not more than 90 days of their issuance, if:

- 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 state; or
- b. The issuer first files a notice specifying the terms of the offer and the Securities Commission does not by order disallow the exemption within the next five full business days;

(11) Any offer, but not a sale, of a security for which registration statements have been filed under both this article and the Securities Act of 1933 if no order of denial, suspension, or revocation is in effect and no public proceeding or examination looking toward such an order is pending under either act;

(12) The issuance of 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 distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

(13) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets; or

(14) An offering of securities conducted solely in this state to residents of this state in which:

- a. The issuer of the security shall be a for-profit corporation or other for-profit entity, or business cooperative with its principal place of business in the state of Alabama and registered with the secretary of state.
- b. The transaction shall meet the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. § 77c(a) (11), and SEC rule 147. As such, securities must be offered to and sold only to persons who are residents of the state of Alabama at the time of purchase. Prior to any offer or sale pursuant to this exemption, the seller shall obtain documentary evidence from each prospective purchaser that provides the seller with a reasonable basis to believe that such investor is a resident of the state of Alabama.
- c. The sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption shall not exceed one million dollars (\$1,000,000), less the aggregate amount

received for all sales of securities by the issuer within the twelve months before the first offer or sale made in reliance upon this exemption.

d. The issuer shall not accept more than five thousand dollars (\$5,000) from any single purchaser unless the purchaser is an accredited investor as defined by Rule 501 SEC regulation D, 17 C.F.R. 230.501.

e. The issuer must reasonably believe that all purchasers of securities are purchasing for investment and not for sale in connection with a distribution of the security.

f. A commission or remuneration shall not be paid or given, directly or indirectly, for any person's participation in the offer or sale of securities for the issuer unless the person is registered as a broker-dealer or agent under the Act.

g. All funds received from investors shall be deposited into a bank or depository institution authorized to do business in Alabama, and all the funds shall be used in accordance with representations made to investors.

h. Not less than Ten days prior to the use of any general solicitation or within fifteen days after the first sale of the security pursuant to this exemption (provided no general solicitation has been used prior to such sale), whichever comes first, the issuer shall provide a notice to the commission in writing or electronically on Form CF1. The notice shall specify that the issuer is conducting an offering in reliance upon this exemption and shall contain the names and addresses of the following persons:

1. The issuer;
2. Officers, directors and any control person of the issuer;
3. All persons who will be involved in the offer or sale of securities on behalf of the issuer; and
4. The bank or other depository institution in which investor funds will be deposited.

i. The issuer shall not be, either before or as a result of the offering:

1. An investment company as defined in section 3 of the Investment Company Act of 1940, 15 U.S.C. § 80a-3, or subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m and 78o(d); or
2. An investment adviser as defined at Code of Alabama, 1975, § 8-6-2(18), nor a person who otherwise provides investment advice as a service or for a fee.

j. The issuer shall inform all purchasers that the securities have not been registered under the act and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under Code of Alabama, 1975, §§8-6-4 through 8-6-11. In addition, the issuer shall make the disclosures required by subsection (f) or SEC Rule 147, 17 C.F.R. 230.147(f).

k. This exemption shall not be used in conjunction with any other exemption under the Act except the exemption to institutional investors at § 8-6-11(a)(8) and for offers and sales to controlling persons of the issuer. Sales to controlling persons shall not count toward the limitation in paragraph (14)c.

l. This exemption shall not be available if the issuer, or any of its officers, controlling people or promoters is subject to a disqualifier enumerated at Code of Alabama 1975, §8-6-9.

m. Nothing in this exemption shall be construed to alleviate any person from the anti-fraud provisions at Code of Alabama, 1975, §8-6-17, nor shall such exemption be construed to provide relief from any other provisions of this Article other than as expressly stated.

n. Every notice of exemption provided for in paragraph h. above shall be accompanied by a non-refundable filing fee of \$150. Such filing fee shall be deposited in the Alabama Securities Commission Fund in the State Treasury to be drawn upon by the commission for its use in administration of this article.

But the Securities Commission may by rule or order, as to any security or transaction of any type of security or transaction, withdraw, further condition or expand this exemption.

(b) The Securities Commission may by order deny or revoke the exemption specified in this section with respect to a specific security if it finds the sale of such security would work or tend to work a fraud upon the purchasers thereof. No order under this subsection may operate retroactively. No person may be considered to have violated this article by reason of any offer or sale effected after the entry of an order under this subsection if he or she sustains the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the order. In any proceeding under this article, the burden of proving an exemption from a definition is upon the person claiming it.

(c) Any individual, corporation, partnership, or association who makes application to the Securities Commission for any exemption from full registration under subdivision (a)(9) of this section shall be assessed a filing fee in the amount of three hundred dollars (\$300) upon application for such exemption. The fee shall accompany the application and shall not be refunded whether the application is approved or rejected. Fees collected under this subsection shall be deposited in a special account in the State Treasury for the use of the commission in the administration of this article.

*(Acts 1959, No. 542, p. 1318, §11; Acts 1971, No. 2244, p. 3600; Acts 1975, No. 1044, p. 2095, §2; Acts 1979, No. 79-462, p. 827, §4; Acts 1990, No. 90-527, p. 772, §1; Acts 1991, No. 91-320, p. 584, §1; Act 2009-774, §1.)*

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## Section 8-6-12

### **Registration of securities — Applicability of provisions of article; consent to service of process on secretary of state.**

(a) The provisions of this article shall apply to persons who sell or offer to sell when

- (1) an offer to sell is made in this state, or
- (2) an offer to buy is made and accepted in this state.

(b) The provisions of this article shall apply to persons who buy or offer to buy when

- (1) an offer to buy is made in this state, or
- (2) an offer to sell is made and accepted in this state.

(c) An offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer

- (1) originates from this state, or
- (2) is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state)

in the case of a mailed offer).

(d) An offer to buy or to sell is accepted in this state when acceptance

(1) is communicated to the offeror in this state, and

(2) has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).

(e)

(1) Every applicant for registration as a dealer or salesman under this article and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the security commission, in such form as it prescribes, an irrevocable consent appointing the secretary of state to be his attorney to receive service of any lawful process in any noncriminal action or proceeding against him, or his successor, executor, or administrator, which arises under this article 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.

(2) A person who has filed such a consent in connection with a previous registration need not file another.

(3) Service may be made by leaving a copy of the process in the office of the secretary of state, but it is not effective unless:

a. The plaintiff, who may be the securities commission, in an 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 commission, and

b. The plaintiff's affidavit of compliance with this clause 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; provided however, that this subsection shall not apply to an issuer whose securities are registered by coordination with the commission.

*(Acts 1959, No. 542, p. 1318, §12; Acts 1979, No. 79-462, p. 827, §5; Acts 1990, No. 90-527, p. 772, §1.)*

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#### Section 8-6-14

##### Filing or registration not finding of truth, completeness, etc., of documents; representations concerning effect of registration or exemption.

(a) Neither the fact that an application for registration under Section 8-6-3 or a registration statement under Sections 8-6-5, 8-6-6 or 8-6-7 has been filed, nor the fact that a person or security is effectively registered constitutes a finding by the Securities Commission that any document filed under this article is true, complete, and not misleading.

(b) Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the Securities Commission has passed in any way upon the merits or qualifications of or recommended or given approval to any person, security, or transaction.

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

*(Acts 1959, No. 542, p. 1318, §14; Acts 1990, No. 90-527, p. 772, §1.)*

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#### Section 8-6-15

##### Investigations and subpoenas by commission.

(a) The Securities Commission, in its discretion, may:

(1) Make such public or private investigations within or outside of this state as he deems necessary to determine whether any registration in the sale of securities should be granted, denied, or revoked, whether any person has violated or is about



to violate any provision of this article or any rule or order hereunder, to aid in the enforcement of this article or in the prescribing of rules and forms hereunder;

(2) Require or permit any person to file a statement in writing, under oath, or otherwise as the commission may determine, as to all the facts and circumstances concerning the matter to be investigated; and

(3) Publish information concerning any violation of this article or any rule or order hereunder.

(b) For the purpose of any investigation or proceeding under this article, the Securities Commission or any officer designated by it 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 commission deems relevant or material to the inquiry.

(c) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction may issue, upon application by the Securities Commission, to that person an order requiring him to appear before the commission or the officer designated by it, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any 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 Securities Commission or in obedience to the subpoena of the commission or any officer designated by it, in any proceeding instituted by the commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but 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 so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

*(Acts 1959, No. 542, p. 1318, §15; Acts 1969, No. 605, p. 1093, §6; Acts 1990, No. 90-527, p. 772, §1.)*

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#### Section 8-6-16

**Administrative cease and desist authority to commission; injunctive relief; appointment of receivers or conservators for defendants or defendants' assets; court ordered rescission, restitution, or disgorgement for violations.**

Whenever it appears to the Securities Commission that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or any rule or order hereunder, it may, in its discretion, do either or both of the following:

(a) Issue a cease and desist order, with or without a prior hearing, against the person or persons engaged in the prohibited activities, directing them to cease and desist from engaging in the act or practice.

(b) Bring an action in its discretion in any court of competent jurisdiction to enjoin the act or practice and to enforce compliance with this article or any rule or order issued hereunder.

Upon a proper showing, a permanent injunction, temporary restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing by the commission, the court may enter an order of rescission, restitution, or disgorgement directed at any person who has engaged in an act constituting a violation of this article or any rule or order adopted or issued pursuant to this article. The Securities Commission shall not be required to post a bond.

*(Acts 1959, No. 542, p. 1318, §16; Acts 1990, No. 90-527, p. 772, §1; Acts 1992, No. 92-524, p. 1059, §1.)*

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#### Section 8-6-17

**Prohibited acts regarding offer, sale, or purchase of securities.**

(a) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to:

(1) Employ any device, scheme, or artifice to defraud;

(2) 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) Engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

(b) It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise,

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

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

(3) acting as principal for his own account, knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. The prohibitions of this subdivision shall not apply to any transaction with a customer of a dealer if such dealer is not acting as an investment adviser in relation to such transaction; or

(4) to engage in dishonest or unethical practices as the commission may define by rule.

(c) In the solicitation of advisory clients, it is unlawful for any person to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(d) Except as may be permitted by rule or order of the commission, it is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing,

(1) that the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

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

(3) that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(e) Subdivision (d)(1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in subdivision (d)(2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(f) It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if,

(1) the commission by rule prohibits custody; or

(2) in the absence of rule, the investment adviser fails to notify the commission that he has or may have custody.

(g) The commission may by rule or order adopt exemptions from subdivision (b)(3) and subdivisions (d)(1), (d)(2) and (d)(3) where such exemptions are consistent with the public interest and within the purposes fairly intended by the policy and provisions of this act.

*(Acts 1959, No. 542, p. 1318, §1; Acts 1990, No. 90-527, p. 772, §1.)*

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## Section 8-6-18

### Criminal penalties for violations of article; enforcement; scienter.

a) A person who willfully violates Section 8-6-3 or Section 8-6-4, upon conviction, shall be guilty of a Class C felony. A person that

willfully violates subsection (a), (b), or (c) of Section 8-6-17, upon conviction, shall be guilty of a Class B felony. The limitations period for any prosecution under this section does not commence or begin to accrue until the discovery of the facts constituting the deception, after which the prosecution shall be commenced within five years.

(b) A person who willfully violates any provision of this chapter, other than those noted in subsection (a), or a rule adopted or order issued under this chapter, upon conviction, shall be guilty of a Class A misdemeanor.

(c) The enforcement of the provisions of this article shall be vested in the commission. It shall be the duty of the commission to see that its provisions are at all times obeyed and to take such measures and to make such investigations as will prevent or detect the violation of any provision thereof. The commission shall at once lay before the district attorney of the proper county any evidence which shall come to its knowledge of criminality under this article. In the event of the neglect or refusal of the district attorney to institute and prosecute such violation, the commission shall be authorized to proceed therein with all the rights, privileges, and powers conferred by law upon district or court attorneys including the power to appear before grand juries and to interrogate witnesses before such grand juries.

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

(e) In any proceeding under this article, scienter need not be alleged and proved in prosecutions involving the sale of unregistered securities or in the failure to register as a dealer, agent, investment adviser, or investment adviser representative under this article.

*(Acts 1959, No. 542, p. 1318, §17; Acts 1969, No. 605, p. 1093, §7; Acts 1971, No. 2243, p. 3598, §3; Acts 1979, No. 79-462, p. 827, §6; Acts 1990, No. 90-527, p. 772, §1; Act 2009-774, §1; Act 2014-348, §1.)*

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## Section 8-6-19

### Civil liabilities of sellers, agents, etc.; remedies of purchasers.

(a) Any person who:

(1) Sells or offers to sell a security in violation of any provision of this article or of any rule or order imposed under this article or of any condition imposed under this article, or

(2) Sells or offers to sell 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 bring an action to recover the consideration paid for the security, together with interest at six percent per year from the date of payment, court 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 percent per year from the date of disposition.

(b)

(1) Any person who engages in the business of advising others, for compensation, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities in violation of subsection (b), (c), (d), (e), or (f) of Section 8-6-17, subsection (b) or (c) of Section 8-6-3, Section 8-6-14, is liable to that person, who may bring an action to recover the consideration paid for such advice and any loss due to such advice, together with interest at six percent per year from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such advice.

No person may maintain an action hereunder pursuant to a violation of subsection (c) of Section 8-6-3 based solely on the fact that an investment adviser representative other than the one from whom the person received advice is unregistered.

(2) Any person who receives, directly or indirectly, any consideration from another person for advice as to the value of securities or their purchase or sale, whether through the issuance of analyses, reports, or otherwise and employs any device, scheme, or artifice to defraud such other person or engages in any act, practice, or course of business which operates or would operate as a fraud or deceit on such other person, is liable to that person, who may bring an action to recover the consideration paid for such advice and any loss due to such advice, together with interest at six percent per

year from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such advice.

An action based on a violation of subsection (c) of Section 8-6-17 and this section may not prevail where the person accused of the violation sustains the burden of proof that he did not know, and in the exercise of reasonable care, could not have known of the existence of the facts by reason of which the liability is alleged to exist.

(c) Every person who directly or indirectly controls a person liable under subsections (a) or (b) of this section, including every partner, officer, or director of such a person, every person occupying a similar status or performing similar functions, every employee of such a person who materially aids in the conduct giving rise to the liability, and every dealer or agent who materially aids in such conduct is also liable jointly and severally with and to the same extent as the person liable under subsection (a) or (b), unless he is able to sustain 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.

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

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

(f) No person may obtain relief under this section in an action involving the failure to register unless suit is brought within two years from the date of sale. All other actions for relief under this section must be brought within the earlier of two years after discovery of the violation or two years after discovery should have been made by the exercise of reasonable care. No person may bring an action under subsection (a) of this section:

(1) If the buyer received a written offer, before the action 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 30 days of its receipt, or

(2) If the buyer received such an offer before the action and at a time when he did not own the security, unless he rejected the offer in writing within 30 days of its receipt.

(g) No person who has made or engaged in the performance of any contract in violation of any provision of this article 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 action on the contract.

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

(i) The rights and remedies provided by this article are in addition to any other rights or remedies that may exist.

(j)

(1) The commission may by order, if it finds such order to be in the public interest, impose an administrative assessment upon any person who violates any provision of this article or any rule or order issued under this article.

(2) Any administrative assessment imposed under this section shall not exceed \$5,000 for each act or omission that constitutes the basis for an order issued under this section, except that the amount of the administrative assessment may not exceed \$50,000 for any person subject to the order.

(3) For the purposes of determining the amount or extent of an administrative assessment, if any, to be imposed under this section, the commission shall consider among other factors, the frequency, persistence, and willfulness of the conduct constituting a violation of any provision of this article or any rule or order issued under this article, and the number of persons adversely affected by the conduct.

(4) The administrative assessment under this section is in addition to any other penalty, remedy, or sanction that may be imposed under this article.

(5) All assessments collected under this subsection (j) of Section 8-6-19 shall be deposited in the general fund of the state.

(k)

(1) The commission may charge, in addition to any administrative assessment, fine, penalty, remedy, or sanction imposed under this article, the actual cost of any investigation resulting from any violation of any provision of this article or any violation of any rule or order issued under this article or the actual cost of any examination made by the commission pursuant to this article, to the party or parties subject to such investigation or examination. Such charge may include, but is not limited to, a per diem prorated upon the salary cost of any employee of the commission together with actual travel, housing and any and all other reasonable expenses incurred as a result of such investigation or examination.

(2) All charges assessed for costs involved pursuant to subdivision (1) of subsection (k) of Section 8-6-19 shall be deposited in the Alabama Securities Commission Fund in the state treasury to be drawn upon by the commission for its use in the administration of this article.

*(Acts 1959, No. 542, p. 1318, §18; Acts 1990, No. 90-527, p. 772, §1.)*

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#### Section 8-6-21

##### **Commission authorized to swear out warrants of arrest; liability of commission for warrant.**

The Securities Commission is authorized and empowered to swear out warrants of arrest against any person violating the criminal provisions of this article, and it shall not be liable in damages or to an action for damages by reason of swearing out warrants or for causing the arrest and detention or imprisonment of any person or persons under such warrant or warrants.

*(Acts 1959, No. 542, p. 1318, §20; Acts 1990, No. 90-527, p. 772, §1.)*

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#### Section 8-6-22

##### **Duties of director; director empowered to swear out warrants of arrest; liability of director for warrant.**

The Director of the Securities Commission shall keep the records of the commission and generally perform such duties as the commission may direct. When ordered by the commission, he shall be authorized and empowered to swear out warrants of arrest against any person violating the criminal provisions of this article. He shall not be liable in damages or to an action for damages by reason of swearing out such warrant or warrants or for causing the arrest, detention, or imprisonment of any person or persons under such warrant or warrants.

*(Acts 1959, No. 542, p. 1318, §20; Acts 1990, No. 90-527, p. 772, §1.)*

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#### Section 8-6-23

##### **Making, amending, and rescinding rules and prescribing forms by commission.**

The Securities Commission may from time to time make, amend, and rescind such rules and prescribe such forms as are necessary and desirable to carry out the provisions of this article. No rules or forms may be made or prescribed unless the commission 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 article. In prescribing rules and forms the commission 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 article to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and forms of the commission shall be published.

*(Acts 1959, No. 542, p. 1318, §20; Acts 1990, No. 90-527, p. 772, §1.)*

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#### Section 8-6-24

##### **Liability for acts done or omitted in good faith under rules, forms, or orders.**

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

*(Acts 1959, No. 542, p. 1318, §20; Acts 1990, No. 90-527, p. 772, §1.)*

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**Section 8-6-25****Hearings to be public; requests for private hearings.**

Every hearing in an administrative proceeding shall be public unless the Securities Commission, in its discretion, grants a request joined in by all the respondents that the hearing be conducted privately.

*(Acts 1959, No. 542, p. 1318, §20; Acts 1990, No. 90-527, p. 772, §1.)*

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**Section 8-6-26****Document deemed filed when received.**

A document is deemed filed when it is received by the Securities Commission.

*(Acts 1959, No. 542, p. 1318, §20; Acts 1990, No. 90-527, p. 772, §1.)*

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**Section 8-6-27****Commission to keep register; register to be open for public inspection.**

The Securities Commission shall keep a register of all applications for registration and registration statements which are or have ever been effective under this article and all denial, suspension, or revocation orders which have ever been entered under this article. The register shall be open for public inspection. 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 commission prescribes.

*(Acts 1959, No. 542, p. 1318, §20; Acts 1990, No. 90-527, p. 772, §1.)*

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**Section 8-6-28****Commission to furnish copies of register entries or documents; certified copy deemed prima facie evidence.**

Upon request and at such reasonable charges as it prescribes, the Securities Commission shall furnish to any person photostatic or other copies, certified under its seal of office 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 article, any copy so certified is prima facie evidence of the contents of the entry or document certified.

*(Acts 1959, No. 542, p. 1318, §20; Acts 1990, No. 90-527, p. 772, §1.)*

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**Section 8-6-29****Interpretative opinions by commission.**

(a) The Securities Commission, in its discretion, may honor requests from interested persons for interpretative opinions and no-action letters.

(b) Any person who makes application to the Securities Commission for an interpretative opinion or no-action letter shall be assessed a non-refundable filing fee of \$150 upon application for such opinion or letter. Fees collected under this section shall be deposited in the Alabama Securities Commission Fund in the state treasury to be drawn upon by the commission for its use in the administration of this article.

*(Acts 1959, No. 542, p. 1318, §20; Acts 1990, No. 90-527, p. 772, §1.)*

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#### Section 8-6-30

##### **Burden of proving exemption or exception from definition.**

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

*(Acts 1959, No. 542, p. 1318, §21; Acts 1990, No. 90-527, p. 772, §1.)*

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#### Section 8-6-31

##### **Commission may issue warnings to public and publish information regarding orders.**

The Securities Commission may issue and give warnings to the public concerning securities being sold in this state and may in its discretion cause to be published information regarding any orders or rules issued by the commission in the implementation of its duties, including, without limitation, information pertaining to specific orders denying registration or prohibiting the sale of securities.

*(Acts 1959, No. 542, p. 1318, §25; Acts 1990, No. 90-527, p. 772, §1.)*

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#### Section 8-6-32

##### **Party aggrieved by order entitled to hearing before commission; appeals from action of commission.**

(a) Any person aggrieved by an order issued under this article shall be entitled to a hearing pursuant to the provisions of the Alabama Administrative Procedure Act (Section 41-22-1 et seq.) pertaining to "contested cases," if such person, within 28 days after delivery of the order, submits a written request for a hearing before the commission. The order shall disclose the right to a hearing upon written request within 28 days after delivery of the order. If no timely request for a hearing is made, the order shall constitute a final order of the commission.

(b) Any appeal from any final order of the commission shall be made to the circuit court of Montgomery County and shall be governed by the provisions of the Alabama Administrative Procedure Act pertaining to judicial review.

*(Acts 1959, No. 542, p. 1318, §19; Acts 1990, No. 90-527, p. 772, §1.)*

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#### Section 8-6-33

##### **Disposition of revenue.**

All moneys accruing to or collected by or through the Securities Commission shall be deposited when collected into the state treasury to the credit of the general fund, unless otherwise provided by law.

*(Acts 1959, No. 542, p. 1318, §27; Acts 1969, No. 605, p. 1093, §8; Acts 1971, No. 2243, p. 3598, §4; Acts 1990, No. 90-527, p. 772, §1.)*

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