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## Article – Corporations and Associations

### 11-101. Definitions.

(a) In this title, unless the context requires otherwise, the following words have the meanings indicated.

(b) (1) “Agent” means an individual other than a broker–dealer who represents a broker–dealer or issuer in effecting or attempting to effect the purchase or sale of securities.

(2) “Agent” includes a partner, officer, or director of a broker–dealer or issuer, or a person occupying a similar status or performing similar functions, only if the person otherwise comes within this definition.

(3) “Agent” does not include an individual who represents:

(i) An issuer in:

1. Effecting a transaction in a security exempted by § 11-601(1), (2), (3), (9)(i), (10), (11), or (14)(i) of this title;

2. Effecting a transaction exempted by § 11-602 of this title;

3. Effecting a transaction with an existing employee, partner, or director of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting a person in this State; or

4. Effecting a transaction in a federal covered security under § 18(b)(3) or § 18(b)(4)(D) of the Securities Act of 1933 if no commission or other remuneration is paid or given directly or indirectly for soliciting a person in this State; or

(ii) A broker–dealer in effecting a transaction described in § 15(h)(2) of the Securities Exchange Act of 1934.

(c) (1) “Broker–dealer” means a person engaged in the business of effecting transactions in securities for the account of others or for his own account.

(2) “Broker–dealer” does not include:

(i) An agent;

- (ii) An issuer;
- (iii) A bank, savings institution, or trust company; or
- (iv) A person who has no place of business in this State if:

1. He effects transactions in this State exclusively with or through the issuer of the securities involved in the transactions, another broker–dealer, or a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit–sharing trust, or other financial institution or institutional buyer, whether acting for itself or as trustee; or

2. During any period of 12 consecutive months, he does not direct more than 15 offers to sell or buy into the State in any manner, other than to the persons specified in paragraph (2)(iv)1 of this subsection, whether or not the offeror or any offeree is then present in the State.

(d) “Commissioner” means the Securities Commissioner of the Division of Securities.

(e) “Federal covered adviser” means a person who is registered under § 203 of the Investment Advisers Act of 1940.

(f) “Federal covered security” means a covered security under § 18(b) of the Securities Act of 1933.

(g) “Guaranteed” means guaranteed as to payment of principal, interest, or dividends.

(h) (1) “Investment adviser” means a person who, for compensation:

(i) 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; or

(ii) 1. Provides or offers to provide, directly or indirectly, financial and investment counseling or advice, on a group or individual basis;

2. Gathers information relating to investments, establishes financial goals and objectives, processes and analyzes the information gathered, and recommends a financial plan; or

3. Holds out as an investment adviser in any way, including indicating by advertisement, card, or letterhead, or in any other manner indicates that the person is, a financial or investment “planner”, “counselor”, “consultant”, or any other similar type of adviser or consultant.

(2) “Investment adviser” does not include:

(i) An investment adviser representative;

(ii) A bank, savings institution, or trust company;

(iii) A lawyer, certified public accountant, engineer, insurance producer, or teacher whose performance of investment advisory services is solely incidental to the practice of the profession, provided that the performance of such services is not solely incidental unless:

1. The investment advisory services rendered are connected with and reasonably related to the other professional services rendered;

2. The fee charged for the investment advisory services is based on the same factors as those used to determine the fee for other professional services; and

3. The lawyer, certified public accountant, engineer, insurance producer, or teacher does not hold out as an investment adviser;

(iv) A broker–dealer or its agent whose performance of these services is solely incidental to the conduct of business as a broker–dealer and who receives no special compensation for them;

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

(vi) A federal covered adviser; or

(vii) Any other person not within the intent of this subsection as the Commissioner by rule or order designates.

(i) (1) “Investment adviser representative” or “representative” means any partner, officer, director of (or a person occupying a similar status or



performing similar functions) or other individual who is employed by or associated with an investment adviser, or who has a place of business located in this State and is employed by or associated with a federal covered adviser, and who:

(i) Makes any recommendations or otherwise renders investment advice to clients;

(ii) Represents an investment adviser in rendering the services described under subsection (h)(1) of this section;

(iii) Manages accounts or portfolios of clients;

(iv) Determines which recommendation or investment advice should be given with respect to a particular client account;

(v) Solicits, offers or negotiates for the sale of or sells investment advisory services;

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

(vii) Holds out as an investment adviser.

(2) “Investment adviser representative” or “representative” does not include:

(i) Any other person not within the intent of this subsection as the Commissioner designates by rule or order; or

(ii) Clerical or ministerial personnel.

(j) “Investment Company Act of 1940” and “Investment Advisers Act of 1940” mean the federal statutes of those names, as amended.

(k) “Issuer” means any person who issues or proposes to issue a security, except that:

(1) With respect to certificates of deposit, voting–trust certificates, or collateral–trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term “issuer” means the person performing the acts and assuming the duties of depositor or manager under the provisions of the trust or other agreement or instrument under which the security is issued; and

(2) With respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payments out of production under the titles or leases, there is not considered to be any “issuer”.

(l) “Nonissuer distribution” and “nonissuer transaction” mean a distribution or transaction, as the case may be, not directly or indirectly for the benefit of the issuer.

(m) “Offer” or “offer to sell”, except as provided in § 11–102(a) of this subtitle, includes every attempt or offer to dispose of or solicitation of an offer to buy, a security or interest in a security for value.

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

(o) “Public Utility Holding Company Act of 1935” means the federal statute of that name, as amended.

(p) “Sale” or “sell”, except as provided in § 11–102(a) of this subtitle, includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(q) “Securities Act of 1933” and “Securities Exchange Act of 1934” mean the federal statutes of those names, as amended.

(r) (1) “Security” means any:

- (i) Note;
- (ii) Stock;
- (iii) Treasury stock;
- (iv) Bond;
- (v) Debenture;
- (vi) Evidence of indebtedness;
- (vii) Certificate of interest or participation in any profit-sharing agreement;

- (viii) Collateral–trust certificate;
  - (ix) Preorganization certificate or subscription;
  - (x) Transferable share;
  - (xi) Investment contract;
  - (xii) Voting–trust certificate;
  - (xiii) Certificate of deposit for a security;
  - (xiv) Certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under the title or lease;
  - (xv) In general, any interest or instrument commonly known as a “security”; or
  - (xvi) Certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the preceding.
- (2) “Security” does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum, periodically for life, or some other specified period.
- (s) “State” means any state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

#### **11–102. Rules of Interpretation.**

- (a) The terms “offer”, “offer to sell”, “sale”, and “sell”, as defined in § 11–101(m) and (p) of this subtitle, do not include:
- (1) Any bona fide pledge or loan;
  - (2) Any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash, property, or stock;
  - (3) Any act incident to a class vote by stockholders, under the certificate of incorporation or the applicable corporation statute, on a merger,

consolidation, split-up, spin-off, share exchange, reclassification of securities, or transfer of corporate assets in consideration of the issuance, in whole or in part, of securities of another corporation;

(4) Any act incident to a judicially approved reorganization in which a security is issued:

(i) In exchange for one or more outstanding securities, claims, or property interests; or

(ii) Partly in such exchange and partly for cash; or

(5) Any act as to which the Commissioner by rule or order finds that:

(i) Application of § 11-101(m) and (p) of this subtitle is not necessary or appropriate for the protection of investors; and

(ii) The finding is consistent with the public interest and within the purposes fairly intended by the policy and provisions of this title.

(b) As used in this title, “fraud”, “deceit”, and “defraud” are not limited to common-law deceit.

(c) 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.

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

(e) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and 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.

### **11-103. No preemption by Philanthropy Protection Act.**

In accordance with § 6 of the federal Philanthropy Protection Act of 1995, the federal Philanthropy Protection Act of 1995 does not preempt the laws of this State.

**11-201. Administration of title.**

(a) There is a Division of Securities in the Office of the Attorney General. The Division shall administer this title.

(b) (1) The principal executive officer of the Division of Securities shall be the Securities Commissioner to be appointed by the Attorney General, who also shall have the power to employ those officers and employees necessary to carry out the purposes of this title.

(2) The Securities Commissioner shall be a practicing lawyer of this State in good standing, shall hold his office at the pleasure of the Attorney General, and shall receive the salary provided in the State budget.

(c) The Attorney General also shall appoint an assistant securities commissioner who, after appointment, shall hold that position subject generally to the provisions of Division I of the State Personnel and Pensions Article. If a vacancy occurs in the position of assistant securities commissioner, the vacancy shall be filled by a person appointed by the Attorney General subject to the provisions of Division I of the State Personnel and Pensions Article. Each person appointed shall hold his position subject generally to those provisions.

**11-203. Rules, forms and orders.**

(a) (1) The Commissioner from time to time may make, amend, and rescind the rules, forms, and orders necessary to carry out the provisions of this title, including rules and forms governing registration statements, notice filings, applications, and reports and defining any terms, whether or not used in this title, to the extent that the definitions are not inconsistent with the provisions of this title.

(2) The Commissioner may by rule classify securities, persons, and matters within his jurisdiction, and prescribe different requirements for different classes.

(b) (1) A rule, form, or order may not be made, amended, or rescinded unless the Commissioner 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 title.

(2) In prescribing rules and forms the Commissioner may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of this statute to

achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(c) (1) The Commissioner by rule or order may prescribe:

(i) The form and content of financial statements required under this title;

(ii) The circumstances under which consolidated financial statements shall be filed; and

(iii) Whether any required financial statements shall be certified by independent certified public accountants.

(2) All financial statements shall be prepared in accordance with generally accepted accounting practices.

(d) All rules and forms of the Commissioner shall be published.

(e) A provision of this title imposing any liability does not apply to any act done or omitted in good faith in conformity with any rule, form, or order of the Commissioner, notwithstanding that the rule, form, or order may later be amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

#### **11-204. Hearings to be public.**

Every hearing in an administrative proceeding shall be public unless the Commissioner in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.

#### **11-205. Filing of sales and advertising literature.**

The Commissioner by rule or order may require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication, whether communicated in hard copy, electronic means, or otherwise, addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, unless the security or transaction is exempted by Subtitle 6 of this title or the security is a federal covered security or the transaction is with respect to a federal covered security.

#### **11-206. Administrative files and opinions.**

(a) A document is filed when it is received by the Commissioner.

(b) (1) The Commissioner shall keep a register of every application for registration, every notice filing, and every registration statement which is or has ever been effective under this title and every denial, suspension, or revocation order which is entered under this title.

(2) The register shall be open for public inspection.

(c) The information contained in or filed with any registration statement, application, notice filing, or report may be made available to the public under the rules which the Commissioner prescribes.

(d) (1) On request and at the reasonable charges which he prescribes, the Commissioner shall furnish to any person photostatic or other copies, certified under his seal of office if requested, of any entry in the register or any document which is a matter of public record.

(2) In any proceeding or prosecution under this title, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(e) The Commissioner may honor requests from interested persons for interpretative opinions. The fee for issuance of an interpretative opinion is \$100.

**11-207. Use or disclosure of information.**

(a) It is unlawful for the Commissioner or any of the officers or employees in the Division of Securities to use for personal benefit any information which is filed with or obtained by the Commissioner and which is not made public.

(b) No provision of this title authorizes the Commissioner or any of his officers or employees to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this title.

(c) No provision of this title either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the Commissioner or any of his officers or employees.

**11-301. Offers, sales, or purchases.**

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 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 on any person.

**11-302. Advisory activities.**

(a) 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, or for acting as an investment adviser or representative under § 11-101(h) and (i) of this title, whether through the issuance of analyses, reports, or otherwise, to:

- (1) Employ any device, scheme, or artifice to defraud the other person;
- (2) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit on the other person;
- (3) Engage in dishonest or unethical practices as the Commissioner may define by rule; or
- (4) When acting as principal for the person's own account knowingly sell any security to or purchase any security from a client, or when acting in an agency capacity for a person other than such client knowingly 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 the person is acting and obtaining the consent of the client to such transaction.

(b) The prohibitions of subsection (a)(4) of this section do not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction or to transactions by a federal covered adviser who is otherwise subject to the limitations on principal trades under the federal securities laws.

(c) In the solicitation of or in dealings with advisory clients, it is unlawful for any person knowingly 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) (1) The Commissioner by rule or order may require that certain information be furnished or disseminated by investment advisers as appropriate in the public interest or for the protection of investors and advisory clients.

(2) To the extent determined by the Commissioner in the Commissioner's discretion, information furnished to clients or prospective clients of an investment adviser that would be in compliance with the disclosure requirements of the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

(e) (1) Except as permitted by rule or order of the Commissioner, it is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract, unless it provides in writing that:

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

(ii) An assignment of the contract may not be made by the investment adviser without the consent of the other party to the contract; and

(iii) 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.

(2) Paragraph (1)(i) of this subsection does not prohibit an investment advisory contract which provides for compensation based on the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date.

(3) "Assignment", as used in paragraph (1)(ii) of this subsection, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of controlling block of the assignor's outstanding voting securities by a security holder of the assignor, but, if the investment adviser is a partnership, an assignment of an investment advisory contract is not 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 Commissioner by rule prohibits custody; or

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

(g) The Commissioner by rule or order may adopt exemptions from subsections (a)(4), and (e)(1)(i), (ii), and (iii) of this section, where such exemptions are consistent with the public interest and within the purposes fairly intended by the policy and provisions of this title.

**11-303. Misleading filings.**

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

**11-304. Unlawful representations concerning registration, notice filing, or exemption.**

(a) (1) Neither the fact that an application for registration under Subtitle 4 of this title or a registration statement or notice filing under Subtitle 5 of this title has been filed, nor the fact that a person or security is effectively registered constitutes a finding by the Commissioner that any document filed under this title is true, complete, and not misleading.

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

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

**11-305. Senior investment protection.**

(a) It is unlawful for any person to use a senior or retiree credential or designation in a way that is or would be misleading in connection with:

(1) The offer, sale, or purchase of securities;

(2) Receiving, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale; or

(3) Acting as a broker–dealer, agent, investment adviser, or investment adviser representative.

(b) The Commissioner by rule or order shall define what constitutes a misleading use of a senior or retiree credential or designation for purposes of subsection (a) of this section.

(c) A violation of a rule or order adopted under subsection (b) of this section also constitutes a dishonest or unethical practice for purposes of § 11–302(a)(3) of this subtitle and § 11–412(a)(7) of this title.

(d) The Commissioner by rule or order may provide exemptions from subsections (a) and (c) of this section, where such exemptions are consistent with the public interest and within the purposes fairly intended by the policy and provisions of this title.

(e) This section does not limit any powers of the Commissioner granted under this title.

**11–401. Transaction of business by unregistered person unlawful.**

(a) A person may not transact business in this State as a broker–dealer or agent unless the person is registered under this subtitle.

(b) A person may not transact business in this State as an investment adviser or as an investment adviser representative unless:

(1) The person is registered as an investment adviser or an investment adviser representative under this subtitle; or

(2) The person’s only clients in this State are investment companies as defined in the Investment Company Act of 1940, or insurance companies; or

(3) The person has no place of business in this State; and

(i) The person’s only clients in this State are investment companies as defined in the Investment Company Act of 1940, other investment advisers, federal covered 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 or fiduciaries with investment control, or other institutional investors as are designated by rule or order of the Commissioner; or

(ii) During the preceding 12-month period, the person has had no more than five clients who:

1. Are residents of the State; and
2. Are not the types of clients described in item (i) of this paragraph.

(c) A federal covered adviser may not conduct advisory business in this State unless the federal covered adviser conducts the advisory business in accordance with § 11-405(b) of this subtitle or subsection (b)(2) or (3) of this section.

(d) By rule or order, the Commissioner may modify the requirements of this section or exempt any broker-dealer, investment adviser, or federal covered adviser from the requirements of this section if the Commissioner determines that:

(1) Compliance with this section is not necessary or appropriate for the protection of investors; and

(2) The exemption is consistent with the public interest and within the purposes fairly intended by the policy and provisions of this title.

#### **11-402. Agent required to be registered.**

(a) (1) A broker-dealer or issuer may not employ or associate with an agent unless the agent is registered.

(2) When an agent terminates a connection with a broker-dealer or issuer or terminates those activities which make the individual an agent, the agent and the broker-dealer or issuer shall promptly notify the Commissioner.

(b) (1) An investment adviser required to be registered may not employ or associate with an investment adviser representative unless the representative is registered under this subtitle.

(2) An investment adviser representative who has a place of business located in this State may not transact business on behalf of a federal covered adviser, unless the investment adviser representative is registered or exempt from registration under this subtitle.

(3) The registration of a representative is not effective during any period when the representative is not employed by or associated with:

(i) A registered investment adviser; or

(ii) A federal covered adviser that has filed a notice under § 11-405(b) of this subtitle.

(4) When an investment adviser representative begins or terminates a connection with a registered investment adviser or terminates those activities that make the representative an investment adviser representative, the investment adviser shall promptly notify the Commissioner.

(5) When an investment adviser representative begins or terminates a connection with a federal covered adviser or terminates those activities that make the representative an investment adviser representative, the investment adviser representative shall promptly notify the Commissioner.

(c) By rule or order, the Commissioner may modify the requirements of this section or exempt any broker-dealer, agent, investment adviser, federal covered adviser, or investment adviser representative from the requirements of this section if the Commissioner determines that:

(1) Compliance with this section is not necessary or appropriate for the protection of investors; and

(2) The exemption is consistent with the public interest and within the purposes fairly intended by the policy and provisions of this title.

#### **11-403. Expiration.**

Unless sooner terminated under other provisions of this title, the registration of each broker-dealer, agent, investment adviser, and investment adviser representative and the notice filing of each federal covered adviser expires December 31, unless renewed.

#### **11-404. Agent or representative terminating connection with broker-dealer, issuer or investment adviser; beginning connection with another principal.**

(a) (1) The registration of an agent expires when the agent terminates a connection with a registered broker-dealer or with an issuer.

(2) The registration of an investment adviser representative expires when the representative terminates a connection with:

(i) An investment adviser registered under this subtitle; or

(ii) A federal covered adviser subject to notice filing under § 11-405(b) of this subtitle.

(b) (1) When a person who is currently registered as an agent under this subtitle begins a connection with another broker-dealer or issuer, the person shall file an application for initial registration as provided in § 11-405 of this subtitle and shall pay the fee required by § 11-407 of this subtitle.

(2) When a person who is currently registered as an investment adviser representative under this subtitle begins a connection with another investment adviser or federal covered adviser, the person shall file an application for initial registration as provided in § 11-405 of this subtitle and pay the fee required by § 11-407 of this subtitle.

(c) Unless the Commissioner takes action under §§ 11-412 through 11-414 of this subtitle to deny or suspend the registration, the agent or investment adviser representative registration shall become effective 30 days after receipt of the application by the Commissioner and shall continue in effect until it expires under the provisions of § 11-403 of this subtitle or under the provisions of this section, whichever would occur earlier. The Commissioner may waive the 30-day period or any portion of it at the Commissioner's discretion.

**11-405. Application; effective date of registration.**

(a) A broker-dealer, agent, investment adviser, or investment adviser representative may obtain an initial registration by filing with the Commissioner, or any entity the Commissioner designates by rule or order, an application together with a consent to service of process under § 11-802(a) of this title. The application shall contain whatever information the Commissioner by rule or order requires.

(b) (1) This subsection does not apply to a federal covered adviser who conducts advisory business in accordance with § 11-401(b)(2) or (3) of this subtitle.

(2) Before acting as a federal covered adviser in this State, a person shall pay the fee required by § 11-407 of this subtitle and shall file the following documents as the Commissioner may require by rule or order:

(i) The documents that the person filed with the Securities and Exchange Commission; and

(ii) A consent to service of process under § 11–802(a) of this title.

(c) Notwithstanding the provisions of subsection (a) of this section, a registered broker–dealer who is also a registered investment adviser in this State may effect the initial registration of any or all of its registered agents in this State as investment adviser representatives by the filing of:

(1) A notice with the Commissioner designating the registered agents as representatives of the investment adviser;

(2) A consent to service of process under § 11–802(a) of this title;  
and

(3) Such other information as the Commissioner by rule or order may require.

(d) Notwithstanding the provisions of subsection (a) of this section, a registered broker–dealer who is also a federal covered adviser that has filed a notice under subsection (b) of this section may effect the initial registration of its registered agents with a place of business in this State as investment adviser representatives by the filing of:

(1) A notice with the Commissioner designating the registered agents as representatives of the federal covered adviser;

(2) A consent to service of process under § 11–802(a) of this title;  
and

(3) Such other information as the Commissioner by rule or order may require.

(e) The Commissioner in the Commissioner’s discretion may publish an announcement of the applicants for registration in the newspapers the Commissioner determines.

(f) If a denial order is not in effect and a proceeding is not pending under §§ 11–412 through 11–414 of this subtitle, registration becomes effective at noon of the 30th day after an application is filed. The Commissioner by rule or order may specify an earlier effective date, and the Commissioner by order may defer the effective date until noon of the 30th day after the filing of any amendment.

**11-406. Renewal registration.**

(a) A broker-dealer or investment adviser may obtain a renewal registration by filing with the Commissioner or any entity the Commissioner designates by rule or order an application containing whatever information the Commissioner by rule requires to keep current the information contained in the application for initial registration.

(b) A broker-dealer or issuer may obtain a renewal registration for the agents associated with it by filing with the Commissioner or any entity the Commissioner designates by rule or order an application containing the names of the agents associated with it and a certification that, to the best knowledge, information, and belief of the broker-dealer or issuer:

(1) There has been no change in the information contained in the agents' applications for the registration then currently in effect; or

(2) If there has been any such change, specifying the change.

(c) A federal covered adviser who has filed a notice under § 11-405(b) of this subtitle or an investment adviser may obtain a renewal registration for the investment adviser representatives associated with it by filing with the Commissioner or any entity the Commissioner designates by rule or order an application containing the names of the representatives associated with it and a certification that, to the best knowledge, information, and belief of the federal covered adviser or the investment adviser:

(1) There has been no change in the information contained in the investment adviser representatives' applications for the registration currently in effect; or

(2) If there has been any such change, specifying the change.

(d) An application for renewal registration is effective on receipt by the Commissioner of the proper application and fee or on the expiration of the previous registration, whichever date is later.

**11-407. Filing fee.**

(a) (1) An applicant for initial or renewal registration as a broker-dealer shall pay a fee of \$250.

(2) An applicant for initial or renewal registration or transfer of registration as an agent shall pay a fee of \$35.



(b) (1) An applicant for initial or renewal registration as an investment adviser shall pay a fee of \$300.

(2) A federal covered adviser filing notice under § 11–405(b) of this subtitle shall pay an initial fee of \$300 and a renewal fee of \$300.

(3) An applicant for initial or renewal registration or transfer of registration as an investment adviser representative shall pay a fee of \$50.

(c) The Commissioner by rule may waive or reduce for any class of applicant the application of the fee requirements set forth in subsection (b) of this section.

(d) If an application is denied or an application or notice filing is withdrawn, the Commissioner shall retain the fee.

#### **11–408. Successors.**

(a) A registered broker–dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There is no fee.

(b) The registration of a predecessor remains effective as the registration of a successor for 60 days after the succession, if:

(1) A broker–dealer or investment adviser succeeds to and continues the business of a registered broker–dealer or investment adviser; and

(2) The successor files an application for registration within 30 days after the succession.

(c) A federal covered adviser who has filed a notice under § 11–405(b) of this subtitle may file a notice filing of a successor for the unexpired portion of the year, whether or not the successor is in existence at the time of the filing. There is no fee.

(d) The notice filing of a federal covered adviser stands as the notice filing of a successor for 60 days after the succession if:

(1) The federal covered adviser succeeds to and continues the business of a federal covered adviser that has filed a notice under § 11–405(b) of this subtitle; and

(2) The successor files a notice filing within 30 days after the succession.

(e) (1) Each registered agent of a broker–dealer and each registered representative of an investment adviser whose successor is registered in accordance with subsection (a) or (b) of this section shall continue to be registered in accordance with rules that the Commissioner adopts.

(2) A registered investment adviser representative of a federal covered adviser whose successor has filed in accordance with subsection (d) of this section shall continue to be registered in accordance with rules that the Commissioner adopts.

**11–409. Capital and Financial requirements.**

(a) The Commissioner may require by rule or order:

(1) A minimum capital for a registered broker–dealer, subject to the limitations of § 15 of the Securities Exchange Act of 1934; and

(2) Minimum financial requirements for an investment adviser, subject to the limitations of § 222 of the Investment Advisers Act of 1940.

(b) These financial requirements may include different requirements for those investment advisers who maintain custody of clients’ funds or securities, or who require payment more than 6 months in advance of fees in excess of \$500, and those investment advisers who do not.

**11–410. Surety.**

(a) (1) The Commissioner may require by rule or order a registered broker–dealer or agent to post a bond or deposit cash or any other equivalent form of security in amounts that the Commissioner may require.

(2) The Commissioner’s authority to adopt rules or issue orders under paragraph (1) of this subsection is subject to the limitations of § 15 of the Securities Exchange Act of 1934.

(3) The Commissioner may require by rule or order a registered investment adviser or representative who has custody of client funds or securities or requires payments of more than 6 months in advance of fees in excess of \$500 to post a bond or deposit cash or any other equivalent form of security in amounts that the Commissioner requires.

(4) The Commissioner's authority to adopt rules or issue orders under paragraph (3) of this subsection is subject to the limitations of § 222 of the Investment Advisers Act of 1940.

(b) The condition of such bond or equivalent form of security shall be that the registrant will comply with the provisions of this title and the rules and regulations issued under this title.

(c) The bond or equivalent form of security may be drawn to cover the original registration and any renewals of the registration.

(d) Every bond or equivalent form of security shall provide that:

(1) A suit may not be maintained to enforce any liability on the bond or equivalent form of security unless brought within two years after the contract of sale or other act on which the suit is based; and

(2) The liability of the surety on each bond or equivalent form of security to all persons aggrieved may not in any event exceed in the aggregate the penal sum of the bond.

#### **11-411. Post-registration provisions.**

(a) (1) A registered broker-dealer shall make and keep correspondence, memoranda, papers, books, and other records that the Commissioner requires by rule.

(2) The Commissioner's authority to adopt rules under paragraph (1) of this subsection is subject to the limitations of § 15 of the Securities Exchange Act of 1934.

(3) A registered investment adviser shall make, keep, and preserve accounts, correspondence, memoranda, papers, books, and other records that the Commissioner requires by rule.

(4) The Commissioner's authority to adopt rules under paragraph (3) of this subsection is subject to the limitations of § 222 of the Investment Advisers Act of 1940.

(b) (1) With respect to investment advisers, the Commissioner by rule or order may require that certain information be furnished or disseminated as appropriate in the public interest or for the protection of investors and advisory clients.

(2) To the extent determined by the Commissioner in the Commissioner's discretion, information furnished to clients or prospective clients of an investment adviser that would be in compliance with the disclosure requirements of the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

(c) (1) A registered broker-dealer shall file financial reports that the Commissioner requires by rule or order.

(2) The Commissioner's authority to adopt rules under paragraph (1) of this subsection is subject to the limitations of § 15 of the Securities Exchange Act of 1934.

(3) A registered investment adviser shall file the financial reports that the Commissioner requires by rule or order.

(4) The Commissioner's authority to adopt rules under paragraph (3) of this subsection is subject to the limitations of § 222 of the Investment Advisers Act of 1940.

(d) A registrant shall promptly file a correcting amendment, if:

(1) The information contained in any document filed with the Commissioner is or becomes inaccurate or incomplete in any material respect; and

(2) The registrant has not provided notification of the correction under § 11-402 of this subtitle.

(e) A federal covered adviser shall promptly file a correcting amendment with the Commissioner, if:

(1) The information contained in any document filed with the Commissioner by the federal covered adviser is or becomes inaccurate in any material respect; and

(2) The Securities and Exchange Commission requires the correcting amendment.

(f) (1) All the records referred to in subsection (a) of this section are subject at any time or from time to time to the reasonable periodic, special, or other examinations by representatives of the Commissioner, within or without this State, which the Commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(2) For the purpose of avoiding unnecessary duplication of examinations, the Commissioner, to the extent the Commissioner considers it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

**11-412. Denial, revocation, or suspension of registration.**

(a) The Commissioner by order may deny, suspend, or revoke any registration if the Commissioner finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

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

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

(3) Has been convicted, within the last 10 years, of a felony, or of an offense that:

(i) Involves the taking of a false oath, the making of a false report, bribery, perjury, burglary, or attempt or conspiracy to commit any of those offenses;

(ii) Arises out of the conduct of business as, or employment by or association with, a broker-dealer, municipal or government securities broker or dealer, investment adviser, bank, savings institution, trust company, credit union, savings and loan association, insurance company or insurance producer, fiduciary, investment company, accountant, or real estate agent or broker, or any entity or person required to be registered under the Commodity Exchange Act; or

(iii) Involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or

misappropriation of funds or securities, or an attempt or conspiracy to commit any of those offenses;

(4) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practices involving any aspect of the securities or investment advisory or any other financial services business;

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

(6) Is the subject of an order entered within the past five years by the securities administrator or any other financial services regulator of any state or by the Securities and Exchange Commission denying or revoking registration as a broker–dealer, investment adviser, investment adviser representative, or agent or the substantial equivalent of those terms as defined in this title, or any other financial services license or registration, or is the subject of an order by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act, or is suspended or expelled from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 either by action of a national securities exchange or national securities association, the effect of which action has not been stayed by appeal or otherwise, or by order of the Securities and Exchange Commission, or is the subject of a United States post office fraud order, but:

(i) The Commissioner may not institute a revocation or suspension proceeding under this item (6) more than one year from the date of the order or action relied on; and

(ii) The Commissioner may not enter an order under this item (6) on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under this section;

(7) Has engaged in dishonest or unethical practices in the securities or investment advisory or any other financial services business;

(8) Is insolvent, either in the sense that the person’s liabilities exceed assets or in the sense that the person cannot meet obligations as they mature, but the Commissioner may not enter an order against a broker–dealer or investment adviser under this item (8) without a finding of insolvency as to the broker–dealer or investment adviser;

(9) Is not qualified on the basis of factors such as training, experience, and knowledge of the securities or investment advisory or any other financial services business, except as otherwise provided in subsection (c) of this section;

(10) Has failed reasonably to supervise the broker–dealer’s agents, if the person is a broker–dealer, or the investment adviser’s representatives, if the person is an investment adviser; or

(11) Has failed to pay the proper fee, but the Commissioner may enter only a denial order under this item (11), and the Commissioner shall vacate the order when the deficiency is corrected.

(b) (1) In this subsection, “final administrative order” does not include an order that is stayed or subject to further review or appeal.

(2) If an applicant for initial registration discloses the existence of a final judicial or administrative order to the Commissioner before the effective date of the initial registration, the Commissioner may not institute a suspension or revocation proceeding based solely on the judicial or administrative order unless the proceeding is initiated within 90 days immediately following the effective date of the applicant’s initial registration.

(c) The following provisions govern the application of subsection (a)(9) of this section:

(1) The Commissioner may not enter an order against a broker–dealer on the basis of the lack of qualification of any person other than that broker–dealer if the broker–dealer is an individual, or an agent of the broker–dealer;

(2) The Commissioner may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than that investment adviser if the investment adviser is an individual, or an investment adviser representative of the investment adviser;

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

(4) The Commissioner shall consider that an agent who will work under the supervision of a registered broker–dealer need not have the same qualifications as a broker–dealer and that an investment adviser representative who will work under the supervision of a registered investment adviser need not have the same qualifications as an investment adviser;

(5) The Commissioner shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker–dealer or agent. When the Commissioner finds that an applicant for initial or renewal registration as a broker–dealer is not qualified as an investment adviser, the Commissioner by order may condition the applicant’s registration as a broker–dealer upon the broker–dealer not transacting business in this State as an investment adviser; and

(6) The Commissioner by rule may provide for an examination, which may be written, oral, or both, to be taken by any class of or all applicants. The Commissioner by rule or order may waive the examination requirement as to a person or class of persons if the Commissioner determines that the examination is not necessary or appropriate in the public interest or for the protection of investors.

**11–413. Summary postponement or suspension.**

(a) The Commissioner by order summarily may postpone or suspend registration pending final determination of any proceeding under § 11–412 of this subtitle.

(b) On the entry of the order, the Commissioner promptly shall notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative:

(1) That it has been entered;

(2) The reasons for its entry; and

(3) That within 15 days after the receipt of a written request the matter will be set down for hearing.

(c) (1) If a hearing is not requested and one is not ordered by the Commissioner, the order will remain in effect until it is modified or vacated by the Commissioner.

(2) If a hearing is requested or ordered, the Commissioner, after notice and opportunity for hearing, may modify or vacate the order or extend it until final determination.

**11–414. Cancellation of registration or application; abandonment of notice filing.**



(a) By order, the Commissioner may cancel a registration or application, if the Commissioner finds that the applicant or registrant:

- (1) Has abandoned the application;
- (2) Is no longer in existence;
- (3) Has ceased to do business as a broker–dealer, agent, investment adviser, or investment adviser representative;
- (4) Is subject to an adjudication of mental incompetence or the control of a committee, conservator, or guardian; or
- (5) Cannot be located after reasonable search.

(b) The Commissioner may deem abandoned a notice filing that a federal covered adviser has filed under § 11–405 of this subtitle, if the Commissioner finds that the federal covered adviser:

- (1) Has abandoned the notice filing;
- (2) Is no longer in existence;
- (3) Has ceased to do business as a federal covered adviser;
- (4) Is subject to adjudication of mental incompetence or to the control of a committee, conservator, or guardian; or
- (5) Cannot be located after a reasonable search.

**11–415. Withdrawal from registration.**

(a) Withdrawal from registration as a broker–dealer, agent, investment adviser, or investment adviser representative becomes effective 90 days after receipt of an application to withdraw or within any shorter period of time which the Commissioner determines, unless:

- (1) A revocation or suspension proceeding is pending when the application is filed; or
- (2) A proceeding to revoke, suspend, or impose conditions on the withdrawal is instituted within 90 days after the application is filed.

(b) If a proceeding is pending or instituted, withdrawal becomes effective at the time and on the conditions the Commissioner by order determines.

(c) If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Commissioner nevertheless may institute a revocation or suspension proceeding under § 11–412(a)(2) of this subtitle within 2 years after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

**11–416. Prerequisites to order.**

An order may not be entered under any part of §§ 11–412 through 11–415 of this subtitle, except § 11–413(a), without:

- (1) Appropriate prior notice to the applicant or registrant, or person submitting a notice filing, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative;
- (2) Opportunity for hearing; and
- (3) Written findings of fact and conclusions of law.

**11–417. Fine for violation of title.**

On notice and hearing as provided in § 11–416 of this subtitle, the Commissioner may fine any broker–dealer, agent, investment adviser, or investment adviser representative up to a maximum amount of \$5,000 for any single violation of this title.

**11–418. Lists of registered broker-dealers and investment advisers.**

(a) By August 31 of each year, the Commissioner shall provide to the Department of Assessments and Taxation a list of broker–dealers and investment advisers registered as broker–dealers or investment advisers during the previous fiscal year, to assist the Department of Assessments and Taxation in identifying new businesses within the State.

- (b) The list provided under this section shall:
- (1) Be provided free of charge; and
  - (2) Include, for each person on the list:

- (i) The name and mailing address of the person; and
- (ii) The federal tax identification number of the person or, if the person does not have a federal tax identification number, the Social Security number of the person.

**11-501. Registration requirement.**

A person may not offer or sell any security in this State unless:

- (1) The security is registered under this title;
- (2) The security or transaction is exempted under Subtitle 6 of this title; or
- (3) The security is a federal covered security.

**11-502. Registration by notification.**

(a) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under § 11-503 of this subtitle:

(1) Any security whose issuer and any predecessor have been in continuous operation for at least five years if:

(i) 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

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

1. Are applicable to all securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed and equal at least 5 percent of the amount of the outstanding securities, as measured by the maximum offering price or the market price on a day selected by the registrant, within 30 days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant within 90 days of the date of filing the registration statement, to the

extent that there is neither a readily determinable market price nor a cash offering price; or

2. If the issuer and any predecessor has not had any security of the type specified in paragraph (1)(ii)1 of this subsection outstanding for three full fiscal years, equal at least 5 percent of the amount, as measured in paragraph (1)(ii)1 of this subsection, of all 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 the State, are issued; and

(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:

(i) Any security of the same class has ever been registered under this title; or

(ii) The security being registered was originally issued pursuant to an exemption under this title.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to the information specified in § 11-507(a) of this subtitle and the consent to service of process required by § 11-802(a) of this title:

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

(2) With respect to the issuer and any significant subsidiary:

(i) Its name, address, and form of organization;

(ii) The state or foreign jurisdiction and the date of its organization; and

(iii) The general character and location of its business;

(3) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution:

(i) His name and address;

(ii) The amount of securities of the issuer held by him as of the date of the filing of the registration statement; and

- (iii) A statement of his reasons for making the offering;
- (4) A description of the security being registered;
- (5) The information and documents specified in § 11-504(b)(2), (4), (7), (8), (9), (10), and (12) of this subtitle;
- (6) A balance sheet of the issuer as of a date within four months before the filing of the registration statement;
- (7) A summary of earnings:
  - (i) 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
  - (ii) For the period of existence of the issuer and any predecessor, if less than two years; and
- (8) Two copies of the prospectus required by subsection (c) of this section.

(c) (1) As a condition of registration under this section, a prospectus containing any designated part of the information specified in subsection (b) of this section shall be sent or given to each person to whom an offer is made before or concurrently with the first to occur of:

- (i) The first written offer to him, other than by means of a public advertisement, by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution;
- (ii) The confirmation of any sale made by or for the account of the person;
- (iii) Payment under the sale; or
- (iv) Delivery of the security under the sale.

(2) Paragraph (1)(i) of this subsection may be satisfied by the use of a preliminary prospectus, so designated and bearing the legend which the Commissioner prescribes, if a final prospectus is sent or given to each recipient of

the preliminary prospectus before or concurrently with whichever event in paragraph (1)(ii), (iii), and (iv) first occurs.

(d) If a stop order is not in effect and a proceeding is not pending under §§ 11–511 through 11–513 of this subtitle, a registration statement under this section automatically becomes effective at:

(1) 3 o'clock eastern standard time in the afternoon of the 10th full business day after the filing of the registration statement or the last amendment; or

(2) At any earlier time which the Commissioner determines.

### **11–503. Registration by coordination.**

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

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to the information specified in § 11–507(a) of this subtitle and the consent to service of process required by § 11–802(a) of this title:

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

(2) If the Commissioner by rule or otherwise requires:

(i) A copy of the articles of incorporation and bylaws or their substantial equivalents, as currently in effect;

(ii) A copy of any agreements with or among underwriters;

(iii) A copy of any indenture or other instrument governing the issuance of the security to be registered; and

(iv) A specimen or copy of the security;

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

(4) An undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business

day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(c) (1) 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:

(i) A stop order is not in effect and a proceeding is not pending under §§ 11–511 through 11–513 of this subtitle;

(ii) The registration statement has been on file with the Commissioner for at least ten business days; and

(iii) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or any shorter period which the Commissioner permits by rule or otherwise, and the offering is made within those limitations.

(2) The registrant promptly shall notify the Commissioner in writing, by facsimile transmission, telegram, or by any other means that the Commissioner by rule or order may deem appropriate, of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and promptly shall file a post-effective amendment containing the information and documents in the price amendment.

(3) “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 on the offering price.

(4) On failure to receive the required notification and post-effective amendment with respect to the price amendment, the Commissioner may enter a stop order without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if he promptly notifies the registrant by telephone or telegram, and promptly confirms by letter, facsimile transmission, or telegram when he notifies by telephone, of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order is void as of the time of its entry.

(5) The Commissioner by rule or otherwise may waive either or both of the conditions specified in paragraphs (1)(ii) and (iii) of this subsection.

(6) If the federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the Commissioner of the date when the federal registration statement is expected to become effective, the Commissioner promptly shall advise the registrant by telephone, facsimile transmission, or telegram, at the expense of the registrant, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under §§ 11–511 through 11–513 of this subtitle, but this advice by the Commissioner does not preclude the institution of the proceeding at any time.

(d) (1) Any security for which the documents required by any regulation adopted by the Securities and Exchange Commission under § 3(b) or § 3(c) of the Securities Act of 1933 have been filed with the Commission in connection with the same offering may be registered by coordination on compliance with subsections (b) and (c) of this section in the manner the Commissioner by rule or order may prescribe.

(2) For purposes of this subsection, the terms “federal registration statement” and “federal prospectus” include the documents, including the offering circular, if any, which may be filed with the Securities and Exchange Commission in accordance with any such regulation.

(e) The Commissioner by rule or order may waive or modify the application of a requirement of this section if a provision or an amendment, repeal or other alteration of the provisions of the Securities Act of 1933, or the regulations adopted under that act, render the waiver or modification appropriate for further coordination of State and federal law.

#### **11–503.1. Filing of documents and fees required; stop orders.**

(a) A person may not offer or sell a federal covered security in this State unless the documents required by this section are filed and the fees required by § 11–506 or § 11–510.1 of this subtitle are paid.

(b) With respect to a federal covered security specified in § 18(b)(2) of the Securities Act of 1933, the Commissioner may require, by rule, order, or otherwise, the filing of the following documents:

(1) Before the initial offer of the federal covered security in this State:



(i) A notice in a form that the Commissioner requires or the documents filed with the Securities and Exchange Commission under the Securities Act of 1933;

(ii) A consent to service of process signed by the issuer; and

(iii) The fee required under § 11–510.1 of this subtitle; and

(2) After the initial offer of the federal covered security in this State:

(i) Any document that is part of an amendment filed with the Securities and Exchange Commission under the Securities Act of 1933; and

(ii) As necessary to compute fees, an annual or periodic report of the value of the federal covered securities offered or sold in this State together with any fee required under § 11–510.1(b) and (c) of this subtitle.

(c) With respect to a security that is a federal covered security specified in § 18(b)(3) or (4) of the Securities Act of 1933, the Commissioner may require, by rule, order, or otherwise, the issuer to file:

(1) A consent to service of process signed by the issuer;

(2) The fee required under § 11–506 of this subtitle; and

(3) Any document filed with the Securities and Exchange Commission under the Securities Act of 1933.

(d) Except for a federal covered security specified in § 18(b)(1) of the Securities Act of 1933, the Commissioner may issue a stop order suspending the offer and sale of a federal covered security, if the Commissioner finds that:

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

(2) There is a failure to comply with any condition established under this section.

(e) The Commissioner may waive, by rule, order, or otherwise, the filing of any document required under this section.

#### **11–504. Registration by qualification.**

(a) Any security may be registered by qualification.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to the information specified in § 11–507(a) of this subtitle and the consent to service of process required by § 11–802(a) of this title:

(1) With respect to the issuer and any significant subsidiary:

(i) Its name, address, and form of organization;

(ii) The state or foreign jurisdiction and date of its organization;

(iii) The general character and location of its business;

(iv) A description of its physical properties and equipment;  
and

(v) A statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions:

(i) His name, address, and principal occupation for the past five years;

(ii) The amount of securities of the issuer held by him as of a specified date within 30 days of the filing of the registration statement;

(iii) The amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and

(iv) A description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;

(3) With respect to every person covered by item (2) of this subsection, the remuneration paid during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, together with every predecessor, parent, subsidiary and affiliate, to all those persons in the aggregate;

(4) With respect to any person owning of record or, if known, beneficially 10 percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in item (2) of this subsection other than his occupation;

(5) With respect to every promoter, if the issuer was organized within the past three years:

(i) The information specified in item (2) of this subsection;

(ii) Any amount paid to him within that period or intended to be paid to him; and

(iii) The consideration for the payment;

(6) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution:

(i) His name and address;

(ii) The amount of securities of the issuer held by him as of the date of the filing of the registration statement;

(iii) A description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected; and

(iv) A statement of his reasons for making the offering;

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

(8) (i) The kind and amount of securities to be offered;

(ii) The proposed offering price or the method by which it is to be computed;

(iii) Any variation from the price or method at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of the person or class;

(iv) The basis on which the offering is to be made if other than for cash;

(v) The estimated aggregate underwriting and selling discounts or commissions and finders' fees, including, separately, cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts, the estimated amounts of other selling expenses, including legal, engineering, and accounting charges;

(vi) The name and address of every underwriter and every recipient of a finder's fee;

(vii) A copy of any underwriting or selling-group agreement under which the distribution is to be made, or the proposed form of any agreement whose terms have not yet been determined; and

(viii) A description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(9) (i) The estimated cash proceeds to be received by the issuer from the offering;

(ii) The purposes for which the proceeds are to be used by the issuer;

(iii) The amount to be used for each purpose;

(iv) The order or priority in which the proceeds will be used for the purposes stated;

(v) The amounts of any funds to be raised from other sources to achieve the purposes stated;

(vi) The names of the funds; and

(vii) If any part of the proceeds is to be used to acquire any property, including goodwill, other than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons

who have received commissions in connection with the acquisition, and the amounts of the commissions and any other expense in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(10) A description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of the options held or to be held by every person required to be named in items (2), (4), (5), (6), or (8) of this subsection and by any person who holds or will hold 10 percent or more in the aggregate of the options;

(11) (i) The dates of, parties to, and general effect concisely stated of every management or other material contract made or to be made other than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and

(ii) A description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets, including any such litigation or proceeding known to be contemplated by governmental authorities;

(12) Two copies of the prospectus required by subsection (d) of this section, together with a copy of any other prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

(13) (i) A specimen or copy of the security being registered;

(ii) A copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, as currently in effect; and

(iii) A copy of any indenture or other instrument covering the security to be registered;

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

(15) The written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation, other

than a public and official document or statement, which is used in connection with the registration statement;

(16) (i) A balance sheet of the issuer as of a date within four months before the filing of the registration statement;

(ii) 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 existence of the issuer and any predecessor if less than three years; and

(iii) If any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

(17) Any additional information which the Commissioner requires by rule or order.

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

(d) (1) As a condition of registration under this section, a prospectus containing any designated part of the information specified in subsection (b) of this section shall be sent or given to each person to whom an offer is made before or concurrently with the first to occur of:

(i) The first written offer made to him, other than by means of a public advertisement, by or for the account of the issuer or any other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution;

(ii) The confirmation of any sale made by or for the account of the person;

(iii) Payment under the sale; or

(iv) Delivery of the security under the sale.

(2) Paragraph (1)(i) of this subsection may be satisfied by the use of a preliminary prospectus, so designated and bearing the legend which the Commissioner prescribes, if a final prospectus is sent or given to each recipient of

the preliminary prospectus before or concurrently with whichever event in paragraph (1)(ii), (iii), and (iv) first occurs.

**11-505. Filing of registration statement.**

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

(b) A registration statement may be filed in the manner and form designated by rule or order of the Commissioner, including filing by electronic transmission.

**11-506. Filing fee.**

(a) *In general.* - Except as provided in § 11-510.1 of this subtitle, a person filing an application to register securities shall pay a fee of 0.1 percent of the maximum aggregate offering price at which the securities are to be offered in this State, but the fee may not be less than \$500 or more than \$1,500.

(b) *Filing in accordance with exemption; notice regarding federal covered securities.* - (1) Except as provided in paragraph (2) of this subsection, a person required to submit a filing in accordance with an exemption granted under this title shall pay a fee of \$400 for each filing.

(2) A person required to submit a filing in accordance with the exemption granted under § 11-601(16) of this title shall pay a fee of \$100 for each filing.

(3) A person required to submit a notice of the offer or sale of federal covered securities under § 11-503.1(c) of this subtitle shall pay a fee of \$100 for each filing.

(c) *Retention of fee by Commissioner.* - The Commissioner shall retain the fee, if:

(1) An application to register securities is withdrawn before the effective date;

(2) A notice of the offer or sale of a federal covered security is withdrawn; or

(3) A preeffective stop order is entered under §§ 11-511 through 11-513 of this subtitle.

**11-507. Matters required to be specified in registration statement.**

(a) Every registration statement shall specify:

(1) The amount of securities to be offered in this State;

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

(3) Any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state, any court, or the Securities and Exchange Commission.

(b) Any document filed under this subtitle may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

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

**11-508. Effective period of registration statement; withdrawal of registration statement; abandonment of registration statement.**

(a) A registration statement remains effective for 1 year after its effective date unless the Commissioner by rule or order extends the period of effectiveness. A registration statement is not effective while a stop order is in effect under §§ 11-511 through 11-513 of this subtitle.

(b) A registration statement may be withdrawn only in the discretion of the Commissioner.

(c) A registration statement that has not been made effective within 1 year from the date of initial filing may be deemed abandoned by the Commissioner.

**11-509. Reports by person filing registration statement.**

As long as a registration statement registered by qualification or notification is effective, the Commissioner by rule or order may require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.



**11-510. Amendment of registration statement to increase securities proposed to be offered.**

(a) A registration statement relating to a security registered under § 11-502, § 11-503, or § 11-504 of this subtitle may be amended after its effective date so as to increase the securities specified as proposed to be offered.

(b) The amendment becomes effective when the Commissioner so orders.

(c) The person filing the amendment shall pay a filing fee, calculated in the manner specified in § 11-506 of this subtitle, with respect to the additional securities proposed to be offered.

**11-510.1. Registration of indefinite amount of securities.**

(a) A face-amount certificate company, an open-end management company, a closed-end management company that is not a federal covered security under § 18(b)(1) of the Securities Act of 1933, or a unit investment trust, as those terms are defined in the Investment Company Act of 1940, shall comply with the requirements of this section, if the company or trust files:

(1) A notice under § 11-503.1 of this subtitle of the offer or sale in this State of an indefinite amount of federal covered securities specified in § 18(b)(2) of the Securities Act of 1933; or

(2) An application to register under § 11-503 of this subtitle the offer and sale in this State of an indefinite amount of securities.

(b) (1) A face-amount certificate company or an open-end management company, at the time of filing, shall pay an initial fee of \$500 and within 60 days after the issuer's fiscal year end during which its registration statement is effective or notice required by § 11-503.1(b) of this subtitle is filed:

(i) Pay a fee of \$1,300; or

(ii) 1. File a report on a form the Commissioner by rule adopts, reporting all sales of securities to persons within this State during the fiscal year; and

2. Pay a fee of 0.1 percent of the maximum aggregate offering price at which the securities were sold in this State.

(2) (i) When calculating the fee in accordance with paragraph (1)(ii)2 of this subsection, the initial fee of \$500 shall be deducted from the aggregate fee due.

(ii) Except as provided in subsection (d) of this section, the aggregate fee due under this paragraph may not exceed \$1,500.

(iii) If the amount due under paragraph (1)(ii)2 of this subsection is less than \$500, no additional amount may be payable, and no credit or refund may be allowed or returned.

(c) (1) At the time of filing, a unit investment trust, or a closed-end management company that is not a federal covered security under § 18(b)(1) of the Securities Act of 1933, shall pay an initial fee of \$500.

(2) Within 60 days after the anniversary of the date on which the issuer's offer became effective or its notice filed under § 11-503(b) of this subtitle was accepted, a unit investment trust, or a closed-end management company that is not a federal covered security under § 18(b)(1) of the Securities Act of 1933, shall:

(i) Pay a fee of \$1,300; or

(ii) 1. File a report on a form the Commissioner by rule adopts, reporting all sales of securities to persons within this State during the effective period of the registration statement or the acceptance period of the notice filed under § 11-503.1(b) of this subtitle; and

2. Pay a fee of 0.1 percent of the maximum aggregate offering price at which the securities were sold in this State.

(3) (i) When calculating the fee in accordance with paragraph (1)(ii)2 of this subsection, the initial \$500 fee shall be deducted from the aggregate fee due.

(ii) Except as provided in subsection (d) of this section, the aggregate fee due under this paragraph may not exceed \$1,500.

(iii) Except as provided in subsection (d) of this section, if the amount due under paragraph (1)(ii)2 of this subsection is less than \$500, no additional amount may be payable, and no credit or refund may be allowed or returned.

(d) (1) The Commissioner, by rule, order, or otherwise, may extend the length of the renewal period to a period not exceeding 2 years for the effectiveness of a registered offering or for a notice filed under § 11-503.1 of this subtitle.

(2) If the Commissioner extends a renewal period in excess of 1 year, the fee shall be prorated to the extended renewal period.

#### **11-511. Denial, suspension, and revocation of registration.**

(a) The Commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he 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, any amendment under § 11-510 of this subtitle as of its effective date, or any report under § 11-509 of this subtitle 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 title or any rule, order, or condition lawfully imposed under this title has been willfully violated, in connection with the offering, by:

(i) The person filing the registration statement;

(ii) The issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or

(iii) Any underwriter;

(3) The security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or State act applicable to the offering, but:

(i) The Commissioner may not institute a proceeding against an effective registration statement under this item (3) more than one year from the date of the order or injunction relied on; and

(ii) He may not enter an order under this item (3) on the basis of an order or injunction entered under any other State act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

(4) The enterprise or method of business of the issuer includes or would include activities which are illegal where performed;

(5) The offering has worked or tended to work a fraud on purchasers or would so operate;

(6) If a security is sought to be registered by notification, it is not eligible for the registration;

(7) If a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by § 11-503(b)(4) of this subtitle; or

(8) The applicant or registrant has failed to pay the proper filing fee, but the Commissioner may enter only a denial order under this item (8) and he shall vacate the order when the deficiency is corrected.

(b) The Commissioner may not institute a stop-order proceeding against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective unless the proceeding is instituted within the next 30 days.

#### **11-512. Summary postponement or suspension.**

(a) The Commissioner by order summarily may postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under § 11-511 of this subtitle.

(b) On the entry of the order, the Commissioner promptly shall notify each person specified in § 11-513 of this subtitle:

(1) That it has been entered;

(2) The reasons for its entry; and

(3) That within 15 days after the receipt of a written request the matter will be set down for hearing.

(c) (1) If a hearing is not requested and one is not ordered by the Commissioner, the order will remain in effect until it is modified or vacated by the Commissioner.

(2) If a hearing is requested or ordered, the Commissioner, after notice of and opportunity for hearing to each person specified in § 11-513 of this subtitle, may modify or vacate the order or extend it until final determination.

**11-513. Prerequisites to stop order.**

A stop order may not be entered under any part of § 11-503.1, § 11-511, or § 11-512 of this subtitle, except § 11-512(a) of this subtitle, without:

- (1) Appropriate prior notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;
- (2) Opportunity for hearing; and
- (3) Written findings of fact and conclusions of law.

**11-514. Vacation or modification of stop order.**

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

**11-601. Exempt securities.**

The following securities are exempted from §§ 11-205 and 11-501 of this title:

(1) (i) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporation or other instrumentality of one or more of them; or

(ii) Any certificate of deposit for any of these securities;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of the province, any agency, corporate, or other instrumentality of one or more of them, or any other foreign government with which the United

States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

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

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by any federal savings and loan association, or any building and loan or similar association organized and supervised under the laws of any state and authorized to do business in this State;

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

(6) 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;

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

(i) A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that Act;

(ii) Regulated in respect of its rates and charges by a governmental authority of the United States or any state; or

(iii) Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(8) (i) Any security listed or approved for listing on notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Philadelphia Stock Exchange, or any other exchange which the Commissioner designates by order to have substantially the same standards for listing as required by these exchanges;

(ii) Any other security of the same issuer which is of senior or substantially equal rank;

(iii) Any security called for by subscription rights or warrants so listed or approved; or

(iv) Any warrant or right to purchase or subscribe to any of these;

(9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce, local industrial development corporation, or trade or professional association, if:

(i) Such security is offered and sold as part of an issue having an aggregate offering price not in excess of such amount as the Commissioner by rule or order may prescribe and is offered and sold without payment of any commission or remuneration for soliciting any prospective buyer; or

(ii) 10 days prior to the first sale of such security there is filed with the securities division such notice as the Commissioner may by rule or order prescribe, no offers or sales are made in this State by persons other than a broker-dealer or agent registered in this State, and no commission or remuneration for soliciting any prospective buyer is paid except to a broker-dealer or agent registered in this State;

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

(11) Any investment contract or other security issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if, in the case of plans which are not qualified under § 401 of the Internal Revenue Code and which provide for contributions by employees, the Commissioner is notified in writing 30 days before the inception of the plan in this State;

(12) Any security traded pursuant to the National Association of Securities Dealers Automated Quotations (NASDAQ)

systems for which the Commissioner by rule has determined that registration is not necessary for the protection of investors;

(13) Any option issued by a clearing agency that is both designated by the Commissioner by rule and registered under the Securities Exchange Act of 1934, other than an off-exchange futures contract or substantially similar arrangement, if the security, currency, commodity, or other interest underlying the option:

(i) Is registered under § 11-502, § 11-503, or § 11-504 of this title;

(ii) Is exempt under § 11-601 or § 11-602 of this subtitle; or

(iii) Is not otherwise required to be registered under this title;

(14) A security exempt under § 3(a)(12)(A)(v) of the Securities Exchange Act of 1934, if:

(i) The security is offered and sold as part of an issue having an aggregate offering price not in excess of an amount that the Commissioner may require, by rule, order, or otherwise, and is sold without payment of any commission or remuneration for soliciting a prospective buyer; or

(ii) 10 days prior to the first sale of the security there is filed with the Commissioner notice that the Commissioner may require by rule, order, or otherwise, that no offers or sales are made in this State by persons other than a broker-dealer or agent registered in this State, and no commission or remuneration for soliciting a prospective buyer is paid except to a broker-dealer or agent registered in this State;

(15) (i) A note, bond, or other evidence of indebtedness issued to the United States or an agency or instrumentality of the United States by a cooperative, as defined in § 5-601 of this article, or by a foreign corporation doing business in the State under Title 5, Subtitle 6 of this article;

(ii) A mortgage, deed of trust, or other instrument executed to secure a note, bond, or other evidence of indebtedness described in item (1) of this item; and



(iii) A membership certificate issued by a cooperative, as defined in § 5-601 of this article, or by a foreign corporation doing business in the State under Title 5, Subtitle 6 of this article;

(16) To the extent the Commissioner by rule or order may permit, any security issued by an entity formed, organized, or existing under the laws of the State if:

(i) The offering of the security is conducted in accordance with §3(a)(11) of the Securities Act of 1933 and Rule 147 adopted under the Securities Act of 1933;

(ii) The offer and sale of the security are made only to residents of the State;

(iii) The aggregate price of securities in an offering under this item does not exceed \$100,000;

(iv) The total consideration paid by any purchaser of securities in an offering under this item does not exceed \$100;

(v) No commission or other remuneration is paid in connection with an offering of securities under this item to any person who is not registered as required under this title;

(vi) Neither the issuer nor any of its related persons is subject to a disqualification as defined by the Commissioner by rule or order; and

(vii) The security is sold in an offering conducted in compliance with any conditions established by rule or order of the Commissioner, which may include:

1. Restrictions on the nature of the issuer;
2. Limitations on the number and manner of offerings;
3. Required disclosures to investors, including risk factors related to the issuer and the offering; and
4. Required filing with the Commissioner of notices and other materials related to the offering; and

(17) Any security as to which the Commissioner by rule or order finds that:

(i) Compliance with §§ 11-205 and 11-501 of this title is not necessary or appropriate for the protection of investors; and

(ii) The exemption is consistent with the public interest and within the purposes fairly intended by the policy and provisions of this title.

### **11-602. Exempt transactions.**

The following transactions are exempt from §§ 11-205 and 11-501 of this title:

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

(2) Any nonissuer distribution of an outstanding security if:

(i) A recognized securities manual contains the names of the officers and directors of the issuer, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations; or

(ii) The security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessor 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 broker-dealer under an unsolicited order or offer to buy, but the Commissioner by rule may require that:

(i) The customer acknowledge on a specified form that the sale was unsolicited; and

(ii) A signed copy of each form be preserved by the broker-dealer for a specified period;

(4) Any transaction:

(i) Between the issuer or other person on whose behalf the offering is made and an underwriter; or

(ii) Among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage, deed of trust, or 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 by it, is offered and sold as a unit;

(6) Any transaction by a personal representative, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

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

(8) Any offer or sale to an investment company as defined in the Investment Company Act of 1940, an investment adviser with assets under management of not less than \$1,000,000, a broker-dealer, bank, trust company, savings and loan association, insurance company, employee benefit plan with assets of not less than \$1,000,000, or governmental agency or instrumentality, whether acting for itself or as a trustee or a fiduciary with investment control, or other institutional investor as designated by rule or order of the Commissioner;

(9) To the extent the Commissioner by rule or order permits, any offer or sale in a transaction involving the sale by an issuer to not more than 35 persons, other than those designated in item (8) of this section, in this State during any period of 12 consecutive months, whether or not the seller or any purchaser is then present in this State, if the seller reasonably believes that all the purchasers in this State, other than those designated in item (8) of this section, are purchasing for investment, and if the securities have not been offered to the general public by advertisement or general solicitation but the Commissioner by rule or order, as to any security or transaction or any type of security or transaction, may withdraw or further condition this exemption, increase or decrease the number of purchasers permitted, or waive the condition relating to their investment intent;

(10) Any offer or sale of a preorganization certificate or subscription if:

(i) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;

(ii) The number of subscribers does not exceed ten; and

(iii) No payment is made by any subscriber;

(11) Any transaction under 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:

(i) No commission or other remuneration, other than a stand-by commission, is paid or given directly or indirectly for soliciting any security holder in this State; or

(ii) The issuer first files a notice specifying the terms of the offer and the Commissioner does not by order disallow the exemption within the next five full business days;

(12) (i) Any offer, but not a sale, of a security for which a registration statement has been filed under both this title and the Securities Act of 1933 if a stop order or refusal order is not in effect and a public proceeding or examination looking toward such an order is not pending under either this title or the Securities Act of 1933;

(ii) Any offer, but not a sale, of a security for which a registration statement has been filed under this title if a stop order or refusal order is not in effect and a public proceeding or examination looking toward such an order is not pending, and if the offeror complies with § 11-502(c) or § 11-504(d) of this title;

(13) Any offer or sale of a security by or through a registered broker-dealer if:

(i) The offer or sale is not directly or indirectly for the benefit of the issuer or a person who is known or who reasonably should be known to the broker-dealer to be the record or beneficial owner of 10 percent or more of the outstanding voting securities of the issuer;

(ii) The security is not part of an unsold allotment or subscription taken by a participant in a distribution directly or indirectly for the benefit of the issuer or a person who is known or who reasonably should be known to the broker-dealer to be the record or beneficial owner of 10 percent or more of the outstanding voting securities of the issuer; and

(iii) An administrative stop order or similar order or permanent or temporary injunction of any court of competent jurisdiction is not in

effect under this title or under any federal or State act against the offering or sale of the security or any security of the same class;

(14) Any sale of securities to an employee stock ownership plan trust, as defined in the Internal Revenue Code, any accrual of interests of participants in the plan, and any distribution made under the plan to participants or beneficiaries of the plan;

(15) To the extent permitted by rule or order of the Commissioner, any offer or sale within this State by an issuer now or hereafter exempted from Section 5 of the Securities Act of 1933 by virtue of a rule or regulation adopted by the United States Securities and Exchange Commission under Section 3(b) or Section 4(2) of that Act; if the issuer files with the Commissioner a notice of intent to claim exemption under this paragraph, at such time or times, in such form, and containing such information as the Commissioner determines;

(16) Any offer or sale of units of fractional undivided interests in a unit investment trust registered under the Investment Company Act of 1940 if:

(i) The units have been the subject of a previously effective registration statement under this title or were exempt from registration;

(ii) The units are offered or sold by a broker–dealer registered under this title; and

(iii) The broker–dealer is a sponsor or depositor of the unit investment trust or is an affiliate of the sponsor or depositor; and

(17) Any transaction as to which the Commissioner by rule or order finds that:

(i) Compliance with §§ 11–205 and 11–501 of this title is not necessary or appropriate for the protection of investors; and

(ii) The exemption is consistent with the public interest and within the purposes fairly intended by the policy and provisions of this title.

### **11–603. Denial or revocation of exemption.**

(a) (1) The Commissioner by order may deny or revoke any exemption specified in § 11–601(9), (11), or (16) or § 11–602 of this subtitle with respect to a specific security or transaction.

(2) The order may not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the Commissioner by order summarily may deny or revoke any of the specified exemptions pending final determination of any proceeding under this subsection.

(b) On the entry of a summary order, the Commissioner promptly shall notify every interested party:

(1) That it has been entered;

(2) The reasons for its entry; and

(3) That within 15 days of the receipt of a written request the matter will be set down for hearing.

(c) (1) If a hearing is not requested and one is not ordered by the Commissioner, the order will remain in effect until it is modified or vacated by the Commissioner.

(2) If a hearing is requested or ordered, the Commissioner, after notice of and opportunity for hearing to every interested person, may modify or vacate the order or extend it until final determination.

(3) An order under this section may not operate retroactively.

(4) A person may not be considered to have violated § 11–205 or § 11–501 of this title by reason of any offer or sale effected after the entry of an order under this section if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

#### **11–604. Burden of proof.**

(a) In a civil or administrative proceeding under this title, a person claiming an exemption or an exception from a definition has the burden of proving the exemption or exception.

(b) In a criminal proceeding under this title, the burden of going forward with evidence of a claim or exemption or exception from a definition is on the person claiming it.

#### **11–701. Investigations and subpoenas.**

(a) In his discretion, the Commissioner may:

(1) Make public or private investigations within or outside of this State as he considers necessary to:

(i) Determine whether any person has violated or is about to violate any provision of this title or any rule or order under this title; or

(ii) Aid in the enforcement of this title or in the prescribing of rules and forms under this title;

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

(3) Publish information concerning any violation of this title or any rule or order under this title.

(b) For the purpose of any investigation or proceeding under this title, the Commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Commissioner considers relevant or material to the inquiry.

(c) (1) In case of contumacy by or refusal to obey a subpoena issued to any person, the circuit court of the county in which the person resides or transacts business, on application by the Commissioner, may issue to the person an order requiring him to appear before the Commissioner or the officer designated by him to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question.

(2) Failure to obey the order of the court may be punished by the court as a contempt of court.

(d) A person is not excused from attending and testifying or from producing any document or record before the Commissioner, or in obedience to the subpoena of the Commissioner or any officer designated by him, or in any proceeding instituted by the Commissioner, 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. However, an individual may not be prosecuted or subjected to any penalty or forfeiture for or on account of any specific subject concerning which he is compelled, after claiming his privilege against self-incrimination as to that specific subject, to testify or produce evidence, documentary

or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

**11-701.1. Actions to be taken by Commissioner.**

(a) Whenever the Commissioner determines that a person has engaged or is about to engage in any act or practice constituting a violation of any provision of this title or any rule or order under this title, and that immediate action against such person is in the public interest, the Commissioner may in his discretion issue, without a prior hearing, a summary order directing such person to cease and desist from engaging in such activity, provided that the summary cease and desist order gives the person:

(1) Notice of the opportunity for a hearing before the Commissioner to determine whether the summary cease and desist order should be vacated, modified, or entered as final; and

(2) Notice that the summary cease and desist order will be entered as final if such person does not request a hearing within 15 days of receipt of the summary cease and desist order.

(b) Whenever the Commissioner determines after notice and a hearing (unless the right to notice and a hearing is waived) that a person has engaged in any act or practice constituting a violation of any provision of this title or any rule or order under this title, the Commissioner may in his discretion and in addition to taking any other action authorized under this title:

(1) Issue a final cease and desist order against such person;

(2) Censure such person if such person is registered under this title;

(3) Bar such person from engaging in the securities business or investment advisory business in this State;

(4) Issue a penalty order against such person imposing a civil penalty up to the maximum amount of \$5,000 for any single violation of this title; or

(5) Take any combination of the actions specified in this subsection.

**11-702. Remedies.**

(a) Whenever it appears to the Commissioner that any person is about to engage in any act or practice constituting a violation of any provision of this title or



any rule or order under this title, he may in his discretion bring an action to obtain 1 or more of the following remedies:

- (1) A temporary restraining order; or
- (2) A temporary or permanent injunction.

(b) Whenever it appears to the Commissioner that any person has engaged in any act or practice constituting a violation of any provision of this title or any rule or order under this title, the Commissioner may in the Commissioner's discretion bring an action to obtain one or more of the following remedies:

- (1) A temporary restraining order;
- (2) A temporary or permanent injunction;
- (3) A civil penalty up to a maximum amount of \$5,000 for any single violation of this title;
- (4) A declaratory judgment;
- (5) The appointment of a receiver or conservator for the defendant or the defendant's assets;
- (6) A freeze of the defendant's assets;
- (7) Rescission;
- (8) Restitution; and
- (9) Any other relief as the court deems just.

(c) The Commissioner may not be required to post a bond in any action under this section.

**11-703. Civil liabilities.**

(a) (1) A person is civilly liable to the person buying a security from him if he:

(i) Offers or sells the security in violation of § 11-304(b), § 11-401(a), § 11-402(a), or § 11-501 of this title, or of any rule or order under § 11-205 of this title which requires the affirmative approval of sales literature before it is used; or

(ii) Offers or sells the 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 if he 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.

(2) A person is civilly liable to the person selling a security to him if he offers to purchase or purchases the 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 light of the circumstances under which they are made, not misleading, the seller not knowing of the untruth or omission, and if he 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.

(3) A person is civilly liable to another person if the person:

(i) Acts as an investment adviser or representative in violation of § 11–302(c), § 11–401(b), § 11–402(b), or § 11–304(b) of this title or any rule or order promulgated under it, except that an action based on a violation of § 11–402(b) of this title may not be maintained except by those persons who directly received advice from the unregistered investment adviser representative; or

(ii) Receives, directly or indirectly, any consideration from another person for advice as to the value of securities or their purchase or sale or for acting as an investment adviser or representative under § 11–101(h) and (i) of this title, 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.

(b) (1) A buyer may sue either at law or in equity:

(i) On tender of the security, to recover the consideration paid for the security, together with interest at the rate provided for in § 11–107(a) of the Courts and Judicial Proceedings Article, as amended, from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security; or

(ii) If he no longer owns the security, for damages.

(2) A seller may sue either at law or in equity:

(i) On tender of the consideration paid for the security, to recover the security, together with the amount of any income received on the security, costs, and reasonable attorneys' fees; or

(ii) If the buyer no longer owns the security, for damages.

(3) For the purposes of subsection (b)(1)(ii) of this section, damages are the amount that would be recoverable on a tender less the value of the security when the buyer disposed of it and interest at the rate provided for in § 11-107(a) of the Courts and Judicial Proceedings Article, as amended, from the date of disposition.

(4) (i) In any action brought under subsection (a)(3) of this section a person may sue either at law or in equity for the rescission of the advisory contract and any damages resulting from the violation, together with interest at the rate provided for in § 11-107(a) of the Courts and Judicial Proceedings Article, as amended, from the date of payment of the consideration, costs, and reasonable attorneys' fees, less the amount of any income received from such advice.

(ii) An action based on a violation of § 11-302(c) of this title 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) (1) Every person who directly or indirectly controls a person liable under subsection (a) of this section, every partner, officer, or director of the person liable, every person occupying a similar status or performing similar functions, every employee of the person liable who materially aids in the conduct giving rise to the liability, and every broker-dealer or agent who materially aids in such conduct are also liable jointly and severally with and to the same extent as the person liable, unless 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.

(2) There is contribution as in cases of contract among the several persons so liable.

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

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

(f) (1) A person may not sue under subsections (a)(1) and (2) of this section after the earlier to occur of 3 years after the contract of sale or purchase or the time specified in paragraph (2) of this subsection.

(2) An action may not be maintained:

(i) To enforce any liability created under subsection (a)(1)(i) of this section, unless brought within one year after the violation on which it is based; or

(ii) To enforce any liability created under subsection (a)(1)(ii) or (2) of this section, unless brought within one year after the discovery of the untrue statement or omission, or after the discovery should have been made by the exercise of reasonable diligence.

(3) A person may not sue under subsection (a)(3) of this section more than 3 years after the date of the advisory contract or the rendering of investment advice, or the expiration of 2 years after the discovery of the facts constituting the violation, whichever first occurs.

(4) A person may not sue under this section:

(i) If the buyer received a written offer, before suit and at a time when he owned the security or asset, to refund the consideration paid together with interest at the rate provided for in § 11–107(a) of the Courts and Judicial Proceedings Article, as amended, from the date of payment, less the amount of any income received on the security or asset, and he failed to accept the offer within 30 days of its receipt;

(ii) If the buyer received the offer before suit and at a time when he did not own the security or asset, unless he rejected the offer in writing within 30 days of its receipt; or

(iii) If the seller received a written offer from the buyer, before suit, to return the security or asset, together with the amount of any income received on the security, less interest at the rate provided for in § 11–107(a) of the Courts and Judicial Proceedings Article, as amended, from the date of payment, and he failed to accept the offer within 30 days of its receipt.

(g) A person may not base any suit on any contract if he:

(1) Has made or engaged in the performance of the contract in violation of any provision of this title or any rule or order under this title; or

(2) Has acquired any purported right under the contract with knowledge of the facts by reason of which its making or performance was in violation.

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

(i) The rights and remedies provided by this title are in addition to any other rights or remedies that may exist at law or in equity, but this title does not create any cause of action not specified in this section or § 11–410 of this title.

#### **11–704. Judicial review of orders.**

(a) Any person aggrieved by a final order of the Commissioner may obtain a review of the order in conformity with the procedure prescribed in the Maryland Rules and in the Administrative Procedure Act.

(b) The commencement of proceedings under subsection (a) of this section, unless specifically ordered by the court, does not operate as a stay of the Commissioner's order.

#### **11–705. Penalties.**

(a) (1) Any person who willfully violates any provision of this title, except § 11–303 or § 11–305 of this title or who willfully violates any rule or order under this title except a rule or order under § 11–305 of this title, or who willfully violates § 11–303 of this title knowing the statement made to be false or misleading in any material respect, on conviction is subject to a fine not exceeding \$50,000 or imprisonment not exceeding 3 years or both.

(2) Any person who willfully violates § 11–305 of this title or who willfully violates a rule or order under § 11–305 of this title, on conviction is subject to a fine not exceeding \$100,000 or imprisonment not exceeding 5 years or both.

(3) A person may not be imprisoned for the violation of any rule or order if the person proves that the person had no knowledge of the rule or order.

(4) An indictment or information may not be returned under this title more than 5 years after the alleged violation.

(b) The Commissioner may refer available evidence concerning violations of this title or of any rule or order under this title to the State's Attorney or the

Attorney General who, with or without the reference, may institute the appropriate criminal proceedings under this title.

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

**11-801. Scope of title.**

(a) Sections 11-301, 11-302, 11-303, 11-304, 11-401, 11-501, and 11-703 of this title apply to any person who:

(1) Sells or offers to sell if:

(i) The offer to sell is made in this State; or

(ii) The offer to buy is made and accepted in this State; or

(2) Offers or provides investment advisory services if:

(i) The contract for the investment advisory services is executed in this State;

(ii) The investment advisory services are rendered in this State; or

(iii) Any action instrumental in effecting prohibited conduct is taken in this State, whether or not either party is then present in this State.

(b) Sections 11-301, 11-302, 11-303, 11-304, 11-401, and 11-703 of this title apply to any person who:

(1) Buys or offers to buy if:

(i) The offer to buy is made in this State; or

(ii) The offer to sell is made and accepted in this State; or

(2) Offers or provides investment advisory services if:

(i) The contract for the investment advisory services is executed in this State;

(ii) The investment advisory services are rendered in this State; or

(iii) Any action instrumental in effecting prohibited conduct is taken in this State, whether or not either party is then present in this State.

(c) For the purpose of this section, an offer to sell or to buy is made in this State, whether or not either party is then present in this State, if 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, in the case of a mailed offer, at any post office in this State.

(d) (1) For the purpose of this section, an offer to buy or to sell is accepted in this State if acceptance:

(i) Is communicated to the offeror in this State; and

(ii) Has not been communicated previously to the offeror, orally or in writing, outside this State.

(2) For purposes of this section, acceptance is communicated to the offeror in this State, whether or not either party is then present in this State, if 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, in the case of a mailed acceptance, at any post office in this State.

(e) An offer to sell or to buy, or to provide investment advisory services, is not made in this State if:

(1) The publisher circulates or there is circulated on his behalf in this State any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this State, or which is published in this State but has had more than two thirds of its circulation outside this State during the past 12 months; or

(2) A radio or television program originating outside this State is received in this State.

(f) Sections 11–302 and 11–401(b) of this title, as well as § 11–304 of this title so far as investment advisers and investment adviser representatives are concerned, apply if any act instrumental in effecting prohibited conduct is done in this State, whether or not either party is then present in this State.

**11-802. Appointment of attorney to receive service of process.**

(a) (1) Every issuer filing an application for registration under this title and every issuer filing an application for, request for, or notice of an exemption from registration under this title, or a notice under § 11-503.1 of this title shall file with the Commissioner, in the form which the Commissioner by rule prescribes, an irrevocable consent appointing the Commissioner or the Commissioner's successor in office to be the issuer's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the issuer or the issuer's successor or personal representative which arises under this title or any rules or order under this title 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 the consent in connection with a previous filing need not file another.

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

(i) The plaintiff, who may be the Commissioner, in a suit, action, or proceeding instituted by him, immediately sends notice of the service and a copy of the process by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, to the defendant or respondent at the defendant's or respondent's last address on file with the Commissioner; and

(ii) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within any further time the court allows.

(b) (1) If any person, including any nonresident of this State, engages in conduct prohibited or made actionable by this title or any rule or order under this title, and he has not filed a consent to service of process under subsection (a) of this section and personal jurisdiction over him cannot otherwise be obtained in this State, that conduct is equivalent to his appointment of the Commissioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor or personal representative which grows out of that conduct and which is brought under this title or any rule or order under this title, with the same force and validity as if served on him personally.

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



(i) The plaintiff, who may be the Commissioner, in a suit, action, or proceeding instituted by him, immediately sends notice of the service and a copy of the process by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice; and

(ii) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within any further time the court allows.

(c) When process is served under this section, the court or the Commissioner in a proceeding before him, shall order the continuance necessary to afford the defendant or respondent reasonable opportunity to defend.

#### **11-804. Uniformity of interpretation.**

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

#### **11-805. Short title.**

This title may be cited as the Maryland Securities Act.

### **Article – Business Regulation**

#### **14-101. Definitions.**

(a) In this subtitle the following words have the meanings indicated.

(b) “Business opportunity” means an arrangement between a buyer and seller in which:

(1) the seller or a person recommended or referred by the seller provides to the buyer products, equipment, supplies, or services that enable the buyer to start a business;

(2) the buyer is required to pay the seller or a person recommended or referred by the seller \$300 or more during the period beginning any time before

commencing operations and ending 6 months after commencing operations of the business; and

(3) the seller represents, directly or indirectly, orally or in writing, that:

(i) the seller or a person recommended or referred by the seller will help the buyer in finding locations for the use or operation of vending machines, racks, display cases, or other similar devices on premises that are not owned or leased by the buyer or seller;

(ii) the seller or a person recommended or referred by the seller will help the buyer in finding outlets or accounts for the buyer's products or services;

(iii) the seller or a person specified by the seller will buy products made, produced, fabricated, grown, bred, or modified by the buyer;

(iv) the seller guarantees that the buyer will receive from the business income an amount that exceeds the price paid to the seller;

(v) if the buyer is not satisfied with the business, the seller will refund all or part of the price paid to the seller, or repurchase any of the products, equipment, or supplies provided by the seller or a person recommended or referred by the seller; or

(vi) the seller will provide a marketing plan.

(c) "Buyer" means a person who buys or leases products, equipment, supplies, or services in connection with a business opportunity.

(d) "Commissioner" means the Securities Commissioner in the Office of the Attorney General.

(e) "Marketing plan" means advice or training that a seller or a person recommended or referred by the seller provides to the buyer, relating to the sale of any products, equipment, supplies, or services, and the advice or training includes preparing or providing:

(1) promotional literature, brochures, pamphlets, or advertising materials;

(2) training regarding the promotion, operation, or management of the business opportunity; or

(3) operational, managerial, or financial guidelines or assistance.

(f) “Seller” means a person who sells or leases products, equipment, supplies, or services in connection with a business opportunity.

**14–102. Legislative policy.**

The General Assembly finds that:

(1) the sale of business opportunities is a field in which investment problems and deceptive practices are common; and

(2) this subtitle is needed to regulate this field adequately and prevent these deceptive practices.

**14–103. Scope of subtitle.**

(a) This subtitle applies to an offer to sell or sale of a business opportunity if:

(1) the offeree or buyer is a resident of the State;

(2) the business opportunity will be or is operated in the State;

(3) the offer to sell is made in the State; or

(4) the offer to buy is accepted in the State.

(b) (1) For purposes of this section, an offer to sell is made in the State, whether or not either party is then present in the State, if the offer:

(i) originates from the State; or

(ii) is directed by the offeror to the State and is received at:

1. the place to which it is directed; or

2. a post office in the State.

(2) For purposes of this section, an offer to sell is not made in the State only because the publisher circulates or there is circulated on the publisher’s behalf in the State:

(i) a newspaper or other publication of general, regular, and paid circulation that:

1. is not published in the State; or
2. is published in the State but has had more than two-thirds of its circulation outside the State during the past 12 months; or

(ii) a radio or television program that originates outside the State and is received in the State.

(3) For purposes of this section, an offer to buy is accepted in the State if acceptance:

- (i) is communicated to the offeror in the State; and
- (ii) has not been communicated previously to the offeror, orally or in writing, outside the State.

(4) For purposes of this section, acceptance is communicated to the offeror in the State, whether or not either party is then present in the State, if:

- (i) the offeree directs acceptance to the offeror in the State reasonably believing the offeror to be in the State; and
- (ii) the acceptance is received at:
  1. the place to which it is directed; or
  2. a post office in the State.

#### **14-104. Exclusions.**

(a) This subtitle does not apply to:

- (1) a sale of an ongoing business if the owner of the business sells and intends to sell only that one business opportunity;
- (2) a not-for-profit sale, for less than \$500, of sales demonstration equipment, materials, or samples;
- (3) an offer to sell or sale of a franchise registered or exempt from registration under Subtitle 2 of this title;

(4) an offer to sell or sale of a business if the offer or sale is regulated under the Maryland Gasohol and Gasoline Products Marketing Act or the federal Petroleum Marketing Practices Act;

(5) an offer to sell or sale of a business opportunity with a marketing plan made in conjunction with the licensing of a federally registered trademark or service mark, provided that the seller has a minimum net worth of \$1,000,000 as determined on the basis of the seller's most recent audited financial statement prepared within 13 months of the first offer that the seller makes in the State; or

(6) any other sale or transaction if the Commissioner:

(i) exempts the sale or transaction, by regulation or order, as not being within the purposes of this subtitle; and

(ii) finds the registration of the sale or transaction to be unnecessary, inappropriate, not in the public interest, or not for the protection of investors.

(b) Net worth may be determined on a consolidated basis if:

(1) at least 80% of the seller is owned by one person; and

(2) the person that owns at least 80% of the seller expressly guarantees the obligations of the seller with regard to the offer or sale of a business opportunity that the seller seeks to exclude under this paragraph.

#### **14-105. Delegation.**

The Commissioner may delegate any power or duty of the Commissioner under this subtitle.

#### **14-106. Orders, regulations, and forms.**

To enforce this subtitle, the Commissioner may pass orders and adopt regulations and forms.

#### **14-107. Publication of information.**

The Commissioner may:

(1) publish information about violations of this subtitle and of regulations adopted and orders passed under it;

(2) report to the appropriate law enforcement officer information about violations of this subtitle; and

(3) help, develop, and hold programs of public education and information about this subtitle.

**14-108. Investigations.**

The Commissioner may investigate in or outside the State to:

(1) determine if a person has violated this subtitle;

(2) adopt regulations or forms under this subtitle; or

(3) enforce this subtitle.

**14-109. Hearings.**

(a) The Commissioner may hold public hearings in connection with an investigation under this subtitle.

(b) Unless otherwise provided in this subtitle or in regulations adopted under it, the Commissioner shall hold hearings authorized by this subtitle in accordance with Title 10 of the State Government Article.

**14-110. Civil enforcement of subtitle.**

(a) (1) Whenever the Commissioner determines that a person has engaged or is about to engage in an act or practice that constitutes a violation of this subtitle or a violation of a regulation adopted or order passed under this subtitle, the Commissioner may, without a prior hearing, pass a summary order directing the person to cease and desist from engaging in the activity that constitutes a violation.

(2) The summary order shall provide:

(i) notice of the opportunity for a hearing before the Commissioner to determine whether the cease and desist order should be vacated, modified, or entered as final; and

(ii) notice that the Commissioner shall enter the order as final if the person subject to the cease and desist order fails to request a hearing within 15 days after the receipt of the cease and desist order.

(3) Whenever the Commissioner determines after notice and a hearing that a person has engaged in any act or practice constituting a violation of this subtitle, the Commissioner may in the discretion of the Commissioner and in addition to taking any other action authorized under this subtitle:

(i) pass a final cease and desist order against the person;

(ii) bar the person from engaging in the offer and sale of business opportunities in the State; or

(iii) take any combination of the actions specified in this section.

(b) (1) The person subject to the cease and desist order may waive the right to a hearing.

(2) If a person subject to a cease and desist order waives the right to a hearing, the Commissioner is not required to hold a hearing to take any action under subsection (a)(3) of this section.

(c) (1) Whenever the Commissioner determines that any person has engaged in or is about to engage in an act or practice constituting a violation of this subtitle or a violation of a regulation or order under this subtitle, the Commissioner may sue in the circuit court to obtain one or more of the following remedies:

(i) a temporary restraining order;

(ii) a temporary or permanent injunction;

(iii) a declaratory judgment;

(iv) the appointment of a receiver or conservator for the defendant or the defendant's assets;

(v) a freeze of the defendant's assets;

(vi) a civil penalty up to a maximum amount of \$5,000 for any single violation of this subtitle;

(vii) restitution;

(viii) rescission; or

(ix) any other relief as the court finds just.

(2) The Commissioner may not be required to post a bond in any action under this section.

**14–111. Miscellaneous powers.**

In connection with a hearing, investigation, or other proceeding under this subtitle, the Commissioner may:

(1) administer oaths;

(2) receive evidence; and

(3) issue subpoenas for the attendance of witnesses to testify or to produce evidence.

**14–112. Privilege against self-incrimination.**

(a) A person is not excused from attending, testifying, or producing evidence before the Commissioner, in a proceeding brought by the Commissioner, or in obedience to a subpoena of the Commissioner on the ground that the testimony or evidence may:

(1) tend to incriminate the person; or

(2) subject the person to a penalty or forfeiture.

(b) (1) If a person claims the privilege against self-incrimination as to a specific subject, and is then compelled to testify or produce evidence on that subject, the person may not be prosecuted or subjected to a penalty or forfeiture in connection with that subject.

(2) A person who testifies is not exempt from prosecution and punishment for perjury or contempt committed while testifying.



**14–113. Registration of business opportunity required.**

A person may not sell or offer to sell any business opportunity in the State or to any prospective buyer in the State unless the business opportunity is registered under this subtitle.

**14–113.1. Registration of business opportunity.**

(a) In order to register a business opportunity, the seller shall file with the Commissioner one of the following disclosure documents:

(1) a uniform franchise offering circular prepared in accordance with the guidelines adopted by the North American Securities Administrators Association, Inc., as amended through January 1, 1996;

(2) a disclosure document prepared in accordance with the Federal Trade Commission rule entitled “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures” under 16 C.F.R. Part 436;

(3) a disclosure document prepared in accordance with § 14–114 of this subtitle; or

(4) any other document that the Commissioner specifies by regulation or order.

(b) The seller shall attach to the disclosure document filed in accordance with subsection (a) of this section:

(1) the cover sheet required under § 14–114(b) of this subtitle;

(2) the consent to service of process required under subsection (c) of this section; and

(3) the filing fee required under subsection (d) of this section.

(c) (1) Every seller shall file, in a form that the Commissioner requires, an irrevocable consent appointing the Commissioner as the seller’s registered agent in any noncriminal suit, action, or proceeding against the seller or the successor or personal representative of the seller that arises under this subtitle.

(2) After the consent has been filed, the consent has the same force and validity as if served personally on the person filing the consent.

(3) Service may be made by delivering a copy of the process to the office of the Commissioner.

(4) Service made under paragraph (3) of this subsection is not effective unless:

(i) the plaintiff or petitioner, who may be the Commissioner, promptly sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent, at the address on file with the Commissioner; and

(ii) the plaintiff's affidavit of compliance under this subsection is filed in the noncriminal suit, action, or proceeding on or before the return date of the process, if any, or within further time as the court allows.

(d) The initial fee to file an application to register a business opportunity offering is \$250.

(e) (1) A business opportunity offering registration becomes effective at midnight on the 10th business day after the day on which the seller files all required documents for registration, provided that no order has been passed or proceeding is pending under § 14-119 of this subtitle.

(2) By order, the Commissioner:

(i) may waive or reduce the time period between the date of the filing and the date that the registration is effective if the seller has filed all required documents for registration; or

(ii) may postpone the date that the registration becomes effective at midnight on the 10th business day after the day on which the seller files an amendment to the registration.

(f) The registration is effective for 1 year from the date of effectiveness.

(g) The Commissioner may by regulation require the filing of all proposed literature or advertising prior to its use.

(h) The Commissioner may by regulation require the filing of sales reports.

**14-114. Disclosure statement.**

(a) A person may not sell or offer to sell a business opportunity unless a written disclosure document, filed under § 14–113.1(a) of this subtitle, is delivered to the buyer at least 10 full business days before the buyer executes a contract or an agreement that imposes a binding legal obligation on the buyer or the payment by a buyer of any consideration in connection with the sale or offer to sell a business opportunity.

(b) The disclosure statement shall include a cover sheet that contains only:

(1) a heading, in boldface capital letters in 10–point or larger type, that states “disclosure required by Maryland law”;

(2) under the heading, in 10–point or larger type, the following statement: “The State of Maryland has not reviewed and does not approve, recommend, endorse, or sponsor any business opportunity. The information in this disclosure statement has not been verified by the State. If you have any questions about this investment, see an attorney before you sign a contract or contact the Division of Securities in the Office of the Attorney General. You are to be given 10 business days to review this document before signing any contract or agreement or making any payment to the seller or the seller’s representative.”; and

(3) the current address and telephone number of the Division of Securities.

(c) After the cover sheet, the disclosure statement shall include the following information:

(1) the name and address of the seller;

(2) whether the seller is doing business as an individual, partnership, or corporation;

(3) the names under which the seller has done, is doing, or intends to do business;

(4) the name of any parent or affiliated company that will engage in business transactions with buyers or that takes responsibility for statements of the seller;

(5) the name, address, and title of each of the seller’s officers, directors, trustees, general partners, general managers, principal executives, and others responsible for the seller’s activities that relate to the sale of business opportunities;

(6) the names and residential addresses of the salespersons who engage in the sale or offer to sell a business opportunity in the State;

(7) prior business experience of the seller relating to business opportunities, including:

(i) the name, address, and a description of any business opportunity previously offered by the seller;

(ii) the length of time the seller has offered each business opportunity; and

(iii) the length of time the seller has conducted the business opportunity currently being offered to the buyer;

(8) a full and detailed description of the acts and services that the seller agrees to perform for the buyer;

(9) (i) whether the seller or any person described in item (5) of this subsection has been convicted of a felony, has pleaded nolo contendere to a felony charge, or has been adjudged liable in a civil action, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; and

(ii) if so, the court, date of the conviction or the judgment, and any penalty imposed or damages assessed;

(10) (i) whether the seller or any person described in item (5) of this subsection is subject to:

1. a currently effective order of the Federal Trade Commission; or

2. a currently effective order that enjoins or restricts business activity as a result of an action brought by a public agency, including an action that affects a license as a real estate broker, associate real estate broker, or real estate salesperson; and

(ii) if so, the date, nature, and issuer of the order and any penalty imposed;

(11) whether the seller or any person identified in item (5) of this subsection has filed for bankruptcy, been adjudged bankrupt, been reorganized due

to insolvency, or was an owner, principal officer, or general partner of any other person that has filed bankruptcy, been adjudged bankrupt, or was reorganized due to insolvency during or within the last 7 years;

(12) a copy of the form of agreement proposed;

(13) the conditions of any financing arrangement offered directly or indirectly by the seller or an agent or affiliate of the seller;

(14) whether the buyer receives an exclusive territory;

(15) a complete description of any training that the seller promises, including the length of the training;

(16) a complete description of:

(i) any services that the seller promises will be performed in connection with the placement of the buyer's products, equipment, or supplies at various locations; and

(ii) the kind of agreement to be made with the owner or manager of each location;

(17) a complete description of any licenses or permits that are necessary in order for the buyer to operate or engage in the business opportunity;

(18) if the seller gets a surety bond under § 14–115 of this subtitle, the following statement, or a similar statement required by the Commissioner: “As required by Maryland law, the seller has secured a bond issued by \_\_\_\_\_ (name and address of surety company), a surety company authorized to do business in the State. Before signing a contract to buy this business opportunity, you should ask the surety company about the current status of the bond.”;

(19) if the seller establishes a trust account under § 14–115 of this subtitle, the following statement, or a similar statement required by the Commissioner: “As required by Maryland law, the seller has established a trust account \_\_\_\_\_ (account number) with \_\_\_\_\_ (name and address of bank or savings institution). Before signing a contract to buy this business opportunity, you should ask the bank or savings institution about the current status of the trust account.”;

(20) the following statement: “If the seller fails to deliver the products, equipment, or supplies necessary to begin substantial operation of the business within 45 days after the delivery date stated in your contract, you may notify the seller in writing and demand that the contract be canceled.”;

(21) if the seller makes a statement about sales, earnings, or range of sales or earnings that may be made through the business opportunity, a statement of:

(i) the total number of buyers who have bought from the seller, within 3 years before the date of the disclosure statement, business opportunities that involve the products, equipment, supplies, or services being offered; and

(ii) to the seller's knowledge, the total number of those buyers who have actually received earnings in the amount or range specified;

(22) a statement of:

(i) the total number of business opportunities that are the same or similar in nature to those that have been sold or organized by the seller;

(ii) the names and addresses of buyers who have requested a refund or rescission from the seller within the last 12 months and the number of those buyers who have received the refund or rescission; and

(iii) the total number of business opportunities that the seller intends to sell in the State within the next 12 months;

(23) a copy of the most recent audited financial statement of the seller, prepared within 13 months after the date of the first offer in the State, together with a statement of any material changes in the financial condition of the seller from the date of the most recent audited financial statement;

(24) a list of states in which this business opportunity is registered;

(25) a list of states in which the disclosure statement is on file;

(26) a list of states that have denied, suspended, or revoked the registration of this business opportunity;

(27) a section entitled "Risk Factors" containing a series of concise statements summarizing the principal factors that make this business opportunity a high risk or of a speculative nature, each statement including a cross-reference to the page on which further information regarding that risk factor may be found in the disclosure document; and

(28) any other information that the Commissioner requires by regulation or order.

**14-115. Bond or trust account.**

(a) If a seller guarantees that a buyer will derive from a business opportunity income that will exceed the price paid for the business opportunity or represents that the seller will refund all or part of the price paid or repurchase the products, equipment, or supplies sold or leased by the seller if the buyer is not satisfied with the business opportunity, the seller shall:

(1) get a surety bond in favor of the State from a surety company authorized to do business in the State; or

(2) establish a trust account in favor of the State with an insured bank or savings institution in the State.

(b) The amount of the bond or trust account shall be at least \$50,000.

(c) (1) A person may bring an action against the bond or trust account to recover damages resulting from:

(i) a violation of this subtitle; or

(ii) the seller's breach of the contract for the sale of a business opportunity.

(2) The surety or trustee is liable only for actual damages up to the amount of the bond or trust account.

**14-116. Amendments to documents.**

The seller shall:

(1) file with the Commissioner an amendment to the documents previously submitted to the Commissioner whenever a material change in the required information occurs; and

(2) pay a fee of \$50 for filing the amendment.

**14-117. Renewal.**

(a) Unless the registration of a business opportunity is renewed for a 1-year term as provided in this section, the registration expires on the first anniversary of its effective date.

(b) Before the registration expires, the registrant periodically may renew it for an additional 1-year term, if the registrant:

(1) files with the Commissioner:

(i) a renewal application on the form that the Commissioner provides;

(ii) a current disclosure document along with any other documents or information that the Commissioner may require by order or regulation; and

(iii) proof that the seller has satisfied the bond and trust account requirements under § 14-115 of this subtitle; and

(2) pays a renewal fee of \$100.

(c) The Commissioner shall renew the registration of a business opportunity if the registrant complies with the requirements of this section.

**14-118. Contracts for the sale of business opportunities.**

(a) Each contract for the sale of a business opportunity shall be in writing.

(b) The contract shall include:

(1) the terms and conditions of payment;

(2) a full and detailed description of the acts or services that the seller agrees to perform for the buyer;

(3) the address of the seller's principal office;

(4) the name and address of the seller's resident agent; and

(5) the approximate date that the seller will deliver to the buyer any products, equipment, or supplies.

(c) When a buyer signs a contract for the sale of a business opportunity, the seller shall give the buyer a copy of the contract.



**14-119. Denial of effectiveness to registration, suspension or revocation of registrations.**

(a) The Commissioner may pass an order denying effectiveness to, or suspending or revoking the effectiveness of, any registration if the Commissioner finds that the order is in the public interest and that:

(1) (i) the registration 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 made that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(ii) an amendment as of its effective date is incomplete in any material respect or contains any statement made that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; or

(iii) a report is incomplete in any material respect or contains any statement made that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) any provision of this subtitle or any order or condition lawfully imposed under this subtitle has been violated, in connection with the business opportunity by:

(i) the person filing the registration;

(ii) a seller, any partner, officer, or director of the seller, or any person occupying a similar status or performing similar functions as the seller; or

(iii) a person that directly or indirectly controls or is controlled by the seller if the person filing the registration is directly or indirectly controlled by or acting for the seller;

(3) except as provided in paragraph (4) of this subsection, the business opportunity registered or sought to be registered is the subject of an order denying, suspending, or revoking a registration or a permanent or temporary injunction of any court of competent jurisdiction;

(4) the seller's enterprise or method of business, or that of the business opportunity, includes or would include activities that are illegal where performed;

(5) the business opportunity or the offering of a business opportunity has worked or tended to work a fraud upon purchasers or would so operate;

(6) there has been a failure to file any documents or information required by § 14–113.1 of this subtitle; or

(7) the seller's literature or advertising is misleading, incorrect, incomplete, or deceptive.

(b) (1) The Commissioner may enter a denial order if the Commissioner finds that the order is in the public interest and the seller has failed to pay the proper registration fee.

(2) The Commissioner shall vacate any such order when the deficiency has been corrected.

(c) The Commissioner may not:

(1) institute a proceeding against an effective registration under subsection (a)(3) of this section more than 1 year after the date of the order or injunction relied on; or

(2) pass an order under subsection (a)(3) of this section on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute grounds for an order under this section.

(d) By order, the Commissioner summarily may postpone or suspend the effectiveness of the registration pending final determination of any proceeding under this section.

(e) Upon the entry of the order, the Commissioner shall promptly notify the seller:

(1) that the order has been entered;

(2) the basis for the order; and

(3) that within 15 days after the day on which the Commissioner receives a written request by the seller, the matter will be set down for a hearing.

(f) If the seller fails to request a hearing and the Commissioner fails to order a hearing, the order shall remain in effect until the Commissioner modifies or vacates the order.

(g) If the seller requests a hearing or the Commissioner orders a hearing, the Commissioner, after providing notice of an opportunity for hearing to the seller, may modify or vacate the order or extend it until final determination.

(h) The Commissioner may not enter an order described under subsection (b) of this section without first providing to the seller notice in accordance with subsection (e) of this section, an opportunity for hearing, and written findings of fact and conclusions of law.

(i) If the Commissioner finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest, the Commissioner may vacate or modify an order passed under this section.

**14-120. Untrue statements or omissions of material facts.**

In connection with an offer to sell or sale of a business opportunity, a person may not make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading.

**14-121. Fraud or deceit.**

In connection with an offer to sell or sale of a business opportunity, a person may not engage in any act, practice, or course of business or employ any device, scheme, or artifice to defraud that operates or would operate as a fraud or deceit on another person.

**14-122. Representations of income or earning potential.**

In connection with an offer to sell or sale of a business opportunity, a person may not represent that the business opportunity provides income or earning potential of any kind unless:

(1) the seller has documentation to substantiate the representation;  
and

(2) the person discloses the documentation to the prospective buyer when the representation is made.

**14–123. Use of commercial symbol.**

In connection with an offer to sell or sale of a business opportunity, a person may not use the trademark, service mark, trade name, logotype, advertising, or other commercial symbol of a business unless:

- (1) the business controls the ownership interest in the seller;
- (2) the business accepts responsibility for each representation that the seller makes about the business opportunity; or
- (3) it is clear from the circumstances that the owner of the commercial symbol is not involved in the sale of the business opportunity.

**14–124. Reference to compliance.**

In connection with an offer to sell or sale of a business opportunity, a person may not make or authorize making a reference to compliance with this subtitle in an advertisement or other contact with prospective buyers other than by use of the disclosure statement or other disclosure documents required by this subtitle.

**14–125. Failure to deliver products, equipment, or supplies.**

(a) In connection with an offer to sell or sale of a business opportunity, a person may not fail to deliver products, equipment, or supplies necessary to begin substantial operation of the business within 45 days after the delivery date stated in the contract for the sale of the business opportunity.

(b) This section does not apply if the Commissioner or a court in a civil proceeding finds that the failure is due to the conditions stated in § 2–615 of the Commercial Law Article.

**14–126. Remedies for violation.**

(a) (1) If a seller violates a provision of §§ 14–120 through 14–125 of this subtitle, the buyer, within 1 year after the date of a contract for the sale of a business opportunity:

- (i) may void the contract; and

(ii) is entitled to receive from the seller a refund of any money paid to the seller.

(2) On receipt of the refund, the buyer shall make available to the seller any products, equipment, or supplies received from the seller at:

(i) the buyer's address; or

(ii) the place where the products, equipment, or supplies were located when notice to void the contract was given.

(3) However, the buyer may not be unjustly enriched by exercising a remedy under this subsection.

(b) A buyer may sue for damages, including reasonable attorney's fees, if the buyer is injured by:

(1) a violation of this subtitle; or

(2) the seller's breach of a contract for the sale of a business opportunity.

(c) On complaint that a seller has violated this subtitle, the circuit court may enjoin the seller from further violation.

(d) The remedies in this section are in addition to any other remedy provided by law or in equity.

**14-127. False or misleading statement or omission of material fact.**

(a) A person who sells a business opportunity may not, in a disclosure statement or amendment to it, willfully make a false or misleading statement of a material fact or willfully omit to state a material fact required or necessary to make the statements in a disclosure statement not misleading.

(b) A person who violates this section is guilty of a felony and, on conviction, is subject for each violation to a fine not exceeding \$10,000 or imprisonment not exceeding 5 years or both.

**14-128. General penalty.**

A person who violates this subtitle is guilty of a misdemeanor and, unless another criminal penalty is specifically provided elsewhere, on conviction, is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both.

**14-129. Short title.**

This subtitle is the Maryland Business Opportunity Sales Act.

**14-201. Definitions.**

- (a) In this subtitle the following words have the meanings indicated.
- (b) “Advertisement” means a communication that:
  - (1) is published in connection with an offer to sell or sale of a franchise; and
  - (2) is:
    - (i) written or printed;
    - (ii) made by means of a recorded telephone message; or
    - (iii) spoken on radio, television, or similar communications media.
- (c) “Area franchise” means an agreement between a franchisor and subfranchisor in which, for consideration, the subfranchisor is granted the right to sell or negotiate the sale of franchises in the name of or for the franchisor.
- (d) “Commissioner” means the Securities Commissioner in the Office of the Attorney General.
- (e) (1) “Franchise” means an expressed or implied, oral or written agreement in which:
  - (i) a purchaser is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by the franchisor;
  - (ii) the operation of the business under the marketing plan or system is associated substantially with the trademark, service mark, trade name,

logotype, advertising, or other commercial symbol that designates the franchisor or its affiliate; and

(iii) the purchaser must pay, directly or indirectly, a franchise fee.

(2) “Franchise” includes an area franchise.

(f) (1) “Franchise fee” means a charge or payment that a franchisee or subfranchisor is required or agrees to pay for the right to enter into a business under a franchise agreement.

(2) “Franchise fee” includes payment for goods or services.

(3) “Franchise fee” does not include:

(i) the purchase of or agreement to purchase goods at a wholesale price;

(ii) the payment of a reasonable service charge to the issuer of a credit card by an establishment that accepts the credit card;

(iii) the amount paid to a licensed trading stamp company by a person issuing trading stamps in connection with the retail sale of goods or services;

(iv) the purchase of or agreement to purchase goods on consignment, if the proceeds remitted by the franchisee from the sale are the wholesale price of the goods;

(v) the repayment by a franchisee of a bona fide loan that the franchisor has made to the franchisee;

(vi) the purchase of or agreement to purchase goods at a retail price subject to a commission or compensation plan that in substance is a wholesale transaction;

(vii) the purchase of or agreement to purchase, at their fair market value, supplies or fixtures that are needed to enter into the business or continue the business under a franchise agreement;

(viii) the purchase or lease of or agreement to purchase or lease, at its fair market value, real property that is needed to enter into the business or continue the business under a franchise agreement; and

(ix) the amount paid for sales demonstration material and equipment, sold at no profit by the seller, for use in making sales and not for resale.

(g) “Franchisee” means a person to whom a franchise is granted.

(h) “Franchisor” means a person who grants a franchise.

(i) “Subfranchisor” means a person to whom an area franchise is granted.

#### **14–202. Legislative Policy**

(a) The General Assembly finds that:

(1) the widespread sale of franchises has created many investment and business problems; and

(2) franchisees have suffered substantial losses when the franchisor or its representative has not given complete information about:

(i) the franchisor–franchisee relationship;

(ii) the franchise agreement; and

(iii) the business experience of the franchisor or its representative.

(b) The intent of this subtitle is to:

(1) give each prospective franchisee necessary information about any franchise offer;

(2) prohibit the sale of franchises if the sale would lead to fraud or a likelihood that the franchisor’s representations would not be fulfilled; and

(3) protect the franchisor–franchisee relationship.

#### **14–203. Scope of subtitle.**

(a) This subtitle applies to an offer to sell or sale of a franchise if:

(1) the franchisee must pay a franchise fee of more than \$100; and



- (2) (i) the offeree or franchisee is a resident of the State;
- (ii) the franchised business will be or is operated in the State;
- (iii) the offer to sell is made in the State; or
- (iv) the offer to buy is accepted in the State.

(b) (1) For purposes of this section, an offer to sell is made in the State if the offer:

- (i) originates from the State; or
- (ii) is directed by the offeror to the State and is received at the place to which it is directed.

(2) For purposes of this section, an offer to sell is not made in the State only because the franchisor circulates or there is circulated on the franchisor's behalf in the State an advertisement in:

- (i) a newspaper or other publication of general, regular, and paid circulation that has had two-thirds of its circulation outside the State during the past 12 months; or
- (ii) a radio or television broadcast that originates outside the State and is received in the State.

(3) For purposes of this section, an offer to buy is accepted in the State when acceptance is communicated to the offeror in the State.

(4) For purposes of this section, acceptance is communicated to the offeror in the State when:

- (i) the offeree directs acceptance to the offeror in the State reasonably believing the offeror to be in the State; and
- (ii) the acceptance is received at the place to which it is directed.

(c) This subtitle does not apply to the renewal or extension of an existing franchise if there is no interruption in the operation of the franchised business.

**14-204. Subtitle in addition to other law.**

The powers, remedies, procedures, and penalties of this subtitle are in addition to and not in limitation of any other powers, remedies, procedures, and penalties provided by law.

**14-205. Delegation.**

The Commissioner may delegate any power or duty of the Commissioner under this subtitle.

**14-206. Regulations.**

The Commissioner may adopt and enforce regulations to administer and enforce this subtitle.

**14-207. Publication of information.**

(a) The Commissioner may publish information about violations of this subtitle.

(b) Under regulations that the Commissioner adopts, the Commissioner may make available to any person any information submitted to the Commissioner.

**14-208. Investigations.**

The Commissioner may:

- (1) investigate in or outside the State to:
  - (i) determine if a person has violated this subtitle or a regulation adopted or order passed under it;
  - (ii) adopt regulations or forms under this subtitle; or
  - (iii) enforce this subtitle; and
- (2) require or allow a person to submit a written statement, under oath or otherwise as the Commissioner determines, about the matter being investigated.

**14-209. Interpretive opinions.**

- (a) On request, the Commissioner may issue an interpretive opinion.
- (b)
  - (1) A request for an interpretive opinion shall be in writing.
  - (2) The requester shall pay a fee of \$100.

**14-210. Civil enforcement of subtitle.**

(a) (1) Whenever the Commissioner finds that a person has violated or is about to violate this subtitle or a regulation adopted or order passed under it, the Commissioner may order the person to cease and desist from the further offer to sell or sale of the franchise until the offer or sale complies with this subtitle.

(2) After passage of a cease and desist order, the alleged violator may submit to the Commissioner a written request for a hearing.

(3) The hearing shall begin:

(i) within 15 business days after the Commissioner receives the request for a hearing; or

(ii) at a later date, with the consent of the alleged violator.

(4) Unless there is a timely hearing, the cease and desist order is rescinded.

(b) (1) Whenever the Commissioner finds that a person has violated or is about to violate this subtitle or a regulation adopted or order passed under it, the Commissioner may sue in the circuit court to enjoin the violation or enforce this subtitle or the regulation or order.

(2) The court shall:

(i) determine if a violation of this subtitle has been or is about to be committed; and

(ii) if so, pass any order the court considers necessary to prevent the violation or remove the effects of the violation and prevent it from continuing or being renewed in the future.

(3) The court may exercise all equitable powers necessary for this purpose, including:

(i) injunction;

(ii) revocation, forfeiture, or suspension of the charter authority or privileges of a business organization operating under the laws of the State;

(iii) dissolution of a corporation or association organized under the laws of the State;

(iv) suspension or termination of the right of a corporation or association organized under the laws of another state or country to do business in the State;

(v) restitution;

(vi) restraining order;

(vii) award of damages to be paid by a franchisor or subfranchisor to a person injured by a violation of this subtitle; and

(viii) appointment of a receiver or conservator.

(4) The court may not require the Commissioner to post bond.

(c) The Commissioner may not exercise a power under this section more than 3 years after the violation occurs.

#### **14-211. Criminal proceedings authorized.**

(a) (1) The Commissioner may refer to the State's Attorney evidence of a criminal violation of this subtitle.

(2) With or without the referral of evidence, a State's Attorney may bring appropriate criminal proceedings under this subtitle.

(b) A criminal proceeding may not be brought more than 3 years after the alleged violation.

#### **14-212. Miscellaneous powers.**

In connection with an investigation or proceeding under this subtitle, the Commissioner may:

(1) administer oaths;

- (2) receive evidence; and
- (3) issue subpoenas for the attendance of witnesses to:
  - (i) testify; or
  - (ii) produce evidence.

**14–213. Privilege against self-incrimination.**

(a) A person is not excused from attending, testifying, or producing evidence before the Commissioner, in a proceeding brought by the Commissioner, or in obedience to a subpoena of the Commissioner on the ground that the testimony or evidence may:

- (1) tend to incriminate the person; or
- (2) subject the person to a penalty or forfeiture.

(b) (1) If a person claims the privilege against self–incrimination as to a specific subject, and is then compelled to testify or produce evidence on that subject, the person may not be prosecuted or subjected to a penalty or forfeiture in connection with that subject.

(2) A person who testifies is not exempt from prosecution and punishment for perjury or contempt committed while testifying.

**14–214. Registration required; exemptions.**

(a) Except as otherwise provided in this subtitle, a person must register the offer of a franchise with the Commissioner before the person offers to sell, through advertisement or otherwise, or sells the franchise in the State.

(b) The registration requirement of this section does not apply to:

- (1) a transaction by an executor, administrator, sheriff, receiver, trustee in bankruptcy, guardian, or conservator;
- (2) an offer to sell or sale of a franchise that is substantially similar to a franchise already owned by the offeree or buyer; and

(3) any other transaction that the Commissioner exempts by regulation because:

(i) the transaction is not within the purpose of this subtitle;  
and

(ii) the registration of the transaction is not necessary or appropriate in the public interest or for the protection of investors.

(c) (1) The registration requirement of this section does not apply to the offer to sell or sale of a franchise by a franchisee for the franchisee's own account, or the offer to sell or sale of the entire area franchise owned by a subfranchisor for the subfranchisor's own account.

(2) A sale is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove a different franchisee.

(d) (1) The Commissioner may require by regulation that a franchisor or subfranchisor who claims under subsection (b)(3) of this section to be exempt from the registration requirements of this section:

(i) file with the Commissioner a notice of claim of exemption in the form that the Commissioner requires; and

(ii) pay a fee of \$250.

(2) The franchisor or subfranchisor shall sign and verify the notice of claim of exemption.

**14-215. Applications for registration.**

(a) Except as otherwise provided in this section, an applicant for registration shall:

(1) file with the Commissioner:

(i) an application in the form that the Commissioner requires; and

(ii) a prospectus for the franchise; and

(2) pay an application fee of \$500.

(b) Instead of the application for registration and prospectus described in subsection (a) of this section, the Commissioner may accept an application for registration and prospectus that:

(1) are found by the Commissioner to include disclosure requirements similar to those of this subtitle; and

(2) are:

(i) required by a unit of the federal government or another state government; or

(ii) approved by an association of administrators of state franchise laws.

(c) The applicant shall sign and verify the application for registration.

#### **14-216. Prospectus.**

(a) The prospectus shall contain:

(1) the material information set forth in the application for registration, as required by regulation of the Commissioner; and

(2) any other disclosures that the Commissioner requires.

(b) The prospectus shall state, in 10-point or larger bold type, that registration is not approval, recommendation, or endorsement by the Commissioner.

(c) The prospectus shall include the following information:

(1) the name of the franchisor;

(2) the name under which the franchisor does or intends to do business;

(3) the name of any parent or affiliated company that engages in business transactions with franchisees;

(4) the address of the principal office of the franchisor;

(5) the name and address of the resident agent of the franchisor;

(6) whether the franchisor does business as an individual, partnership, or corporation;

(7) information about the identity and business experience of persons affiliated with the franchisor, as the Commissioner requires;

(8) (i) whether any person identified in the prospectus has been convicted of a felony, has pleaded nolo contendere to a felony charge, or has been adjudged liable in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; and

(ii) if so, the court, date of the conviction or the judgment, and any penalty imposed or damages assessed;

(9) (i) whether any person identified in the prospectus is subject to:

1. a currently effective order of the Securities and Exchange Commission, or the securities administrator of a state, that denies registration to or suspends or revokes the registration of the person as a securities broker, securities dealer, or investment adviser;

2. a currently effective order of a national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, that suspends or expels the person from membership in the Association or Exchange;

3. a currently effective order of the Federal Trade Commission; or

4. a currently effective order that enjoins or restricts business activity as a result of an action brought by a public agency, including an action that affects a license as a real estate broker, associate real estate broker, or real estate salesperson; and

(ii) if so, the date, nature, and issuer of the order and any penalty imposed;

(10) the length of time the franchisor has:

(i) conducted business of the type to be operated by a franchisee;



- (ii) granted franchises for that business; and
- (iii) granted franchises in other lines of business;

(11) a recent financial statement of the franchisor and a statement of each material change in the financial condition of the franchisor since the financial statement was made;

(12) a copy of the typical franchise agreement used or proposed for use in the State;

(13) the franchise fee or, if the franchise fee is not the same in each case, the formula that the franchisor uses to set the amount of the franchise fee and the way the franchisor will apply the franchise fee;

(14) any payment other than a franchise fee that the franchisee or subfranchisor must pay to the franchisor, including any royalty or payment that the franchisor collects wholly or partly for a third party;

(15) the conditions under which the franchisor may terminate, refuse to renew, or repurchase the franchise;

(16) a description of all goods, fixtures, and services that, under the franchise agreement or by practice, the franchisee or subfranchisor must buy from the franchisor or a designee of the franchisor;

(17) whether, under the franchise agreement or by practice, the franchisee is limited in the goods or services that the franchisee may offer to customers;

(18) the conditions of any financing arrangement offered directly or indirectly by the franchisor or an agent or affiliate of the franchisor;

(19) any past or present practice or any intent of the franchisor to sell, assign, or discount to a third party, wholly or partly, a note, contract, or other obligation of the franchisee or subfranchisor;

(20) a copy of any statement of estimated or projected franchisee earnings prepared for presentation to prospective franchisees, subfranchisors, or others and a statement of the information on which the estimation or projection is based;

(21) any compensation or other benefit given or promised to a public figure that arises wholly or partly from:

(i) the use of the public figure in the name or symbol of the franchise; or

(ii) the endorsement or recommendation of the franchise by the public figure;

(22) the number of franchises currently operating or proposed to be sold, as the Commissioner requires by regulation;

(23) whether franchisees or subfranchisors receive an exclusive territory or area franchise;

(24) an authorization for the Commissioner to examine the applicant's financial records that relate to the sale of franchises;

(25) an irrevocable consent to be sued in the State;

(26) appointment of the Commissioner as attorney to receive service of process for the franchisor;

(27) any other information that the franchisor wants to give; and

(28) any other information that the Commissioner reasonably requires.

(d) If the applicant is a subfranchisor, the application shall include the same information about the subfranchisor as is required from the franchisor under this section.

(e) The Commissioner by regulation may:

(1) set the form and content of financial statements required under this subtitle;

(2) state the circumstances under which consolidated financial statements may be submitted; and

(3) state the circumstances under which financial statements shall be audited by an independent certified public accountant or other public accountant.

**14-217. Escrow requirements.**

(a) If the Commissioner finds that it is necessary and appropriate for the protection of prospective franchisees or subfranchisors because a franchisor has not made adequate financial arrangements to fulfill the franchisor's obligations under an offering, the Commissioner may require the franchisor to escrow franchise fees or other money paid by a franchisee or subfranchisor until the obligations have been satisfied.

(b) (1) At the option of the franchisor, the franchisor may post an adequate surety bond as provided by regulations of the Commissioner.

(2) The total liability of the surety under the bond may not exceed the penal sum of the bond.

**14-218. Issuance and effective date of registration.**

(a) The Commissioner shall register an offer of a franchise if it meets the requirements of this subtitle.

(b) Unless a stop order is in effect, registration of the offer of a franchise automatically takes effect at:

(1) noon on the 30th business day after an application for registration or the last amendment to it is filed; or

(2) an earlier time that the Commissioner sets.

**14-219. Term and renewal of registration.**

(a) (1) Unless registration of an offer of a franchise is renewed for a 1-year term as provided in this section, the registration expires on the first anniversary of its effective date.

(2) However, the Commissioner by regulation or order may set a different term of registration.

(b) (1) Before registration expires, the registrant periodically may renew it for an additional 1-year term, if the registrant:

(i) at least 15 business days before the expiration of registration files with the Commissioner:

1. a renewal application on the form that the Commissioner provides; and

2. a prospectus;

(ii) otherwise is entitled to be registered; and

(iii) pays a renewal fee of \$250.

(2) The registrant shall sign and verify the renewal application.

(3) The Commissioner by order may allow a registrant to submit a renewal application after the 15th business day before expiration of the registration.

(c) The Commissioner shall renew the registration of an offer of a franchise if it meets the requirements of this section.

(d) Unless a stop order or other order is in effect under this subtitle, renewal of the registration of the offer of a franchise automatically takes effect at:

(1) noon on the day when the previous registration is due to expire;

or

(2) an earlier time that the Commissioner sets.

**14-220. Amendments to registration.**

(a) If there is a material change in the information that a registrant previously filed with the Commissioner, the franchisor shall:

(1) file promptly with the Commissioner an application to amend the registration; and

(2) pay a fee of \$100.

(b) The registrant shall sign and verify the application to amend the registration.

(c) The Commissioner by regulation may state:

(1) what constitutes a material change; and

(2) the circumstances under which a revised prospectus shall accompany an application to amend the registration.

(d) If the Commissioner approves the amendment to the registration, the amendment takes effect on the date the Commissioner sets after considering the public interest and the protection of franchisees.

**14–221. Grounds for issuing stop order.**

The Commissioner summarily may pass a stop order to deny, suspend, or revoke a registration if the Commissioner finds that:

(1) there has been a violation of this subtitle or a regulation adopted under it;

(2) the offer to sell or sale of the franchise would constitute misrepresentation to, deceit of, or fraud on the buyer;

(3) a person identified in an application has been convicted of an offense or has had a civil judgment entered against the person as described in § 14–216(c)(8) of this subtitle or is subject to an order described in § 14–216(c)(9) of this subtitle, and the involvement of the person in the sale or management of the franchise creates an unreasonable risk to prospective franchisees;

(4) the prospectus or amendment to it is incomplete or inaccurate in any material respect;

(5) the prospectus or amendment to it includes a false or misleading statement of a material fact or omits to state a material fact required to be stated in the prospectus or amendment or necessary to make the statements in the prospectus or amendment not misleading;

(6) in connection with an offer to sell or sale of a franchise, a person in the State is engaging or is about to engage in a false, fraudulent, or deceptive practice or in a device, scheme, or artifice to defraud; or

(7) the financial condition of the franchisor affects or will affect the ability of the franchisor to meet an obligation under the franchise or other agreement and the franchisor is not able or willing to comply or has failed to comply with a regulation, order, or administrative determination of the Commissioner under § 14–217 of this subtitle.

**14–222. Notice; hearing; vacating or modifying stop order.**

(a) After passing a stop order, the Commissioner promptly shall send to the applicant or registrant a notice that:

- (1) states that the stop order has been passed;
- (2) states the reasons for the stop order; and
- (3) informs the applicant or registrant of the right to a hearing under this section.

(b) (1) The applicant or registrant may submit to the Commissioner a written request for a hearing on the stop order.

(2) The Commissioner shall schedule a hearing within 15 business days after the Commissioner receives the request unless the applicant or registrant consents to a later date.

(3) The Commissioner may schedule a hearing even if the applicant or registrant does not request a hearing.

(c) (1) If a hearing is not requested and is not scheduled by the Commissioner and therefore is not held, the stop order remains in effect until the Commissioner modifies or vacates it.

(2) If a hearing is held, after the hearing, the Commissioner may modify or vacate the stop order or extend it until the Commissioner makes a final determination.

(3) The Commissioner may modify or vacate a stop order if the Commissioner finds that:

- (i) conditions have changed; or
- (ii) it is otherwise in the public interest to vacate or modify the stop order.

**14-223. Copies of documents to franchisees.**

A franchisor may not sell a franchise in the State without first giving a prospective franchisee a copy of the offering prospectus and a copy of each proposed agreement that relates to the sale of the franchise at the earlier of:

- (1) 14 calendar days before the execution by the prospective franchisee of any binding agreement with the franchisor;

(2) 14 calendar days before payment of any consideration that relates to the franchise relationship; or

(3) a reasonable request by a prospective franchisee to receive a copy of the offering prospectus.

**14-224. Records required.**

Each franchisor or subfranchisor shall keep a complete set of records of each sale of a franchise.

**14-225. Advertisements offering franchises.**

A person may not publish an advertisement offering to sell a franchise subject to registration under this subtitle unless:

(1) the person submits a copy of the advertisement to the Commissioner for review at least 7 business days before the first publication of the advertisement unless the Commissioner by regulation or order allows a later submission; or

(2) the advertisement is exempted from review by regulation of the Commissioner.

**14-226. Release from liability as condition of sale.**

As a condition of the sale of a franchise, a franchisor may not require a prospective franchisee to agree to a release, assignment, novation, waiver, or estoppel that would relieve a person from liability under this subtitle.

**14-227. Civil liability.**

(a) (1) A person who sells or grants a franchise is civilly liable to the person who buys or is granted a franchise if the person who sells or grants a franchise offers to sell or sells a franchise:

(i) without the offer of the franchise being registered under this subtitle; or

(ii) by means of an untrue statement of a material fact or any omission 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, if the person who buys or is granted a franchise does not know of the untruth or omission.

(2) In determining liability under this subsection, the person who sells or grants a franchise has the burden of proving that the person who sells or grants a franchise did not know and, in the exercise of reasonable care, could not have known of the untruth or omission.

(b) The person who buys or is granted a franchise may sue under this section to recover damages sustained by the grant of the franchise.

(c) A court may order the person who sells or grants a franchise to:

(1) rescind the franchise; and

(2) make restitution to the person who buys or is granted a franchise.

(d) (1) Joint and several liability under this section extends to:

(i) each person who directly or indirectly controls a person liable under this section;

(ii) each partner in a partnership liable under this section;

(iii) each principal officer or director of a corporation liable under this section;

(iv) each other person that has a similar status or performs similar functions as a person liable under this section; and

(v) each employee of a person liable under this section, if the employee materially aids in the act or transaction that is a violation under this subtitle.

(2) However, liability under this subsection does not extend to a person who did not have knowledge of or reasonable grounds to believe in the existence of the facts by which the liability is alleged to exist.

(e) An action under this section must be brought within 3 years after the grant of the franchise.

**14-228. Offer or sale of franchise without registration.**



(a) Except as otherwise provided in this subtitle, a person may not offer to sell, through advertisement or otherwise, or sell a franchise in the State unless the offer of the franchise has been registered under this subtitle.

(b) A person who willfully sells a franchise knowingly violating this section is guilty of a felony and, on conviction, is subject for each violation to a fine not exceeding \$10,000 or imprisonment not exceeding 5 years or both.

**14-229. Fraud or deceit; untrue statements or omissions of material fact.**

(a) In connection with an offer to sell or sale of a franchise, a person, directly or indirectly, may not:

(1) employ a device, scheme, or artifice to defraud;

(2) make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading; or

(3) engage in an act, practice, or course of business that operates or would operate as a fraud or deceit on another person.

(b) A person who willfully sells a franchise knowingly violating this section is guilty of a felony and, on conviction, is subject for each violation to a fine not exceeding \$10,000 or imprisonment not exceeding 5 years or both.

**14-230. False or misleading statement or omission in prospectus or amendment.**

(a) In a prospectus or amendment to it, a person may not willfully make a false or misleading statement of a material fact or willfully omit to state a material fact required to be stated in the prospectus or amendment or necessary to make the statements in the prospectus or amendment not misleading.

(b) A person who violates this section is guilty of a felony and, on conviction, is subject for each violation to a fine not exceeding \$10,000 or imprisonment not exceeding 5 years or both.

**14-231. Untrue statements or omissions of material fact in applications, notices or reports.**

(a) A person may not make or cause to be made an untrue statement of a material fact or omit to state a material fact in an application for registration, to amend registration, or for renewal or in a notice or report filed with the Commissioner under this subtitle.

(b) A person who willfully sells a franchise knowingly violating this section is guilty of a felony and, on conviction, is subject for each violation to a fine not exceeding \$10,000 or imprisonment not exceeding 5 years or both.

**14-232. Failure to notify Commissioner of material change.**

(a) A person may not fail to notify the Commissioner promptly of a material change as required by § 14-220 of this subtitle.

(b) A person who willfully sells a franchise knowingly violating this section is guilty of a felony and, on conviction, is subject for each violation to a fine not exceeding \$10,000 or imprisonment not exceeding 5 years or both.

**14-233. Short title.**

This subtitle is the Maryland Franchise Registration and Disclosure Law.

**14-301. “Multilevel distribution company” defined.**

In this subtitle, “multilevel distribution company” means a person who, for consideration, distributes goods or services through independent agents, contractors, or distributors at different levels of distribution with rates of pricing or discounting that differ from 1 level to another.

**14-302. Repurchases required.**

(a) A multilevel distribution company may not require a participant in its marketing program to buy goods or services or pay any other consideration to participate in the marketing program unless the multilevel distribution company agrees to repurchase the goods:

(1) that are in resalable condition; and

(2) that the participant has been unable to sell 3 months after receipt of the goods first ordered.

(b) A multilevel distribution company shall state in writing in each contract of participation in its marketing program that:

(1) a participant may cancel the contract for any reason within 3 months after the date of receipt of goods or services first ordered by written notice to the multilevel distribution company; and

(2) on cancellation, the multilevel distribution company shall repurchase the goods.

(c) The repurchase price shall be at least 90% of the original price paid by the participant.

**14-303. Representations of earnings.**

A multilevel distribution company may not represent directly or indirectly that participants in its marketing program may or will earn a stated gross or net amount or represent in any way the past earnings of participants unless the stated gross amount, net amount, or past earnings:

(1) are those of a substantial number of participants in the community or geographic area where the representation is made; and

(2) accurately reflect the average earnings of participants under circumstances similar to those of the participant or prospective participant to whom the representation is made.

**14-304. Injunctive relief.**

(a) The Attorney General or a State's Attorney may sue to enjoin, wholly or partly, the activities of a multilevel distribution company that violate this subtitle.

(b) At least 10 days before seeking injunctive relief, the Attorney General or State's Attorney shall send written notice of the alleged violation by certified mail to the principal place of business of the multilevel distribution company.

**14-305. Penalties.**

(a) A person who violates this subtitle is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$10,000.

(b) Each officer and each director of a corporation that violates this subtitle, each partner of a partnership that violates this subtitle, and the owner of a sole proprietorship that violates this subtitle is also subject to the penalty under this section.

## **Article – Criminal Law**

### **8–404. Pyramid Promotional Schemes.**

(a) (1) In this section the following words have the meanings indicated.

(2) “Compensation” includes payment based on a sale or distribution made to a person who:

(i) is a participant in a plan or operation; or

(ii) on making a payment, is entitled to become a participant.

(3) “Consideration” does not include:

(i) payment for purchase of goods or services furnished at cost for use in making sales to persons who are not participants in the scheme and who are not purchasing in order to participate in the scheme;

(ii) time or effort spent in pursuit of sales or recruiting activities; or

(iii) the right to receive a discount or rebate based on the purchase or acquisition of goods or services by a bona fide cooperative buying group or association.

(4) “Promote” means to induce one or more persons to become a participant.

(5) “Pyramid promotional scheme” means a plan or operation by which a participant gives consideration for the opportunity to receive compensation to be derived primarily from any person’s introduction of others into participation in the plan or operation rather than from the sale of goods, services, or other intangible property by the participant or others introduced into the plan or operation.

(b) A person may not establish, operate, advertise, or promote a pyramid promotional scheme.

(c) It is not a defense to a prosecution under this section that:

(1) the plan or operation limits the number of persons who may participate or limits the eligibility of participants; or

(2) on payment of anything of value by a participant, the participant obtains any other property in addition to the right to receive compensation.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$10,000 or both.