

South Carolina Legislature

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South Carolina Code of Laws Unannotated

Title 35 - Securities

CHAPTER 1

South Carolina Uniform Securities Act of 2005

Editor's Note

The South Carolina Uniform Securities Act of 2005 replaced former Chapter 1, Uniform Securities, with a new Chapter 1, effective January 1, 2006, numbered in conformity with the Uniform Securities Act. The new chapter includes Official and South Carolina Reporters comments linking the old and new chapters.

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ARTICLE 1

General Provisions

SECTION 35-1-101. Short title.

This chapter may be cited as the South Carolina Uniform Securities Act of 2005.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-102. Definitions.

In this chapter, unless the context otherwise requires:

(1) "Administrator" means the Attorney General.

(2) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities, or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this chapter.

(3) "Bank" means:

(A) a banking institution organized under the laws of the United States;

(B) a member bank of the Federal Reserve System;

(C) any other banking institution, whether incorporated or not, doing business under the laws of a State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this chapter; and

(D) a receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph (A), (B), or (C).

(4) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

(A) an agent;

(B) an issuer;

(C) a bank or savings institution if its activities as broker-dealer are limited to those specified in Section 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(4) and (5)), or a bank that satisfies the conditions specified in Section 3(a)(4)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4));

(D) an international banking institution; or

(E) a person excluded by rule adopted or order issued under this chapter.

(5) "Depository institution" means:

(A) a bank; or

(B) a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a State or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a State or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include:

(i) an insurance company or other organization primarily engaged in the business of insurance;

(ii) a Morris Plan bank; or

(iii) an industrial loan company that is not an "insured depository institution" as defined in Section 3(c)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c)(2), or any

successor statute.

(6) "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940.

(7) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)) or rules or regulations adopted pursuant to that provision.

(8) "Filing" means the receipt under this chapter of a record by the Securities Commissioner or a designee of the Securities Commissioner.

(9) "Fraud", "deceit", and "defraud" are not limited to common law deceit.

(10) "Guaranteed" means guaranteed as to payment of all principal and all interest.

(11) "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

(A) a depository institution or international banking institution;

(B) an insurance company;

(C) a separate account of an insurance company;

(D) an investment company as defined in the Investment Company Act of 1940;

(E) a broker-dealer registered under the Securities Exchange Act of 1934;

(F) an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of ten million dollars or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;

(G) a plan established and maintained by a State, a political subdivision of a State, or an agency or instrumentality of a State or a political subdivision of a State for the benefit of its employees, if the plan has total assets in excess of ten million dollars or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;

(H) a trust, if it has total assets in excess of ten million dollars, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph (F) or (G), regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(I) an organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of ten million dollars;

(J) a small business investment company licensed by the Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. Section 681(c)) with total assets in excess of ten million dollars;

(K) a private business development company as defined in Section 202(a) (22) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with total assets in excess of ten million dollars;

(L) a federal covered investment adviser acting for its own account;

(M) a "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 C.F.R. 230.144A);

(N) a "major U.S. institutional investor" as defined in Rule 15a-6(b)(4) (i) adopted under the Securities Exchange Act of 1934 (17 C.F.R. 240.15a-6);

(O) any other person, other than an individual, of institutional character with total assets in excess of ten million dollars not organized for the specific purpose of evading this chapter; or

(P) any other person specified by rule adopted or order issued under this chapter.

(12) "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a State.

(13) "Insured" means insured as to payment of all principal and all interest.

(14) "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.

(15) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice regarding securities to others for compensation as part of a business or that holds itself out as providing investment advice regarding securities to others for compensation. The term does not include:

(A) an investment adviser representative;

(B) a lawyer, accountant, engineer, or teacher whose performance of investment advice regarding securities is solely incidental to the practice of the person's profession;

(C) a broker-dealer or its agents whose performance of investment advice regarding securities is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice regarding securities;

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

(E) a federal covered investment adviser;

(F) a bank or savings institution;

(G) any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser; or

(H) any other person excluded by rule adopted or order issued under this chapter.

(16) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages securities accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice regarding securities or holds herself or himself out as providing investment advice regarding securities, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice regarding securities, or supervises employees who perform any of the foregoing. The term does not include an individual who:

(A) performs only clerical or ministerial acts;

(B) is an agent whose performance of investment advice regarding securities is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;

(C) is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this State as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a) and is:

(i) an "investment adviser representative" as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a); or

(ii) not a "supervised person" as that term is defined in Section 202(a) (25) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); or

(D) is excluded by rule adopted or order issued under this chapter.

(17) "Issuer" means a person that issues or proposes to issue a security, subject to the following:

(A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

(B) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.

(C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

(18) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(19) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)).

(20) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(21) "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(A) an office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice regarding securities or solicits, meets with, or otherwise communicates with customers or clients; or

(B) any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice regarding securities or solicits, meets with, or otherwise communicates with customers or clients.

(22) "Predecessor chapter" means Chapter 1 of Title 35 of the South Carolina Code of Laws, 1976, prior to its amendment by the adoption of the South Carolina Uniform Securities Act of 2005.

(23) "Price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(24) "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

(25) "Record", except in the phrases "of record", "official record", and "public record", means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Sale" includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include:

(A) a security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;

(B) a gift of assessable stock involving an offer and sale; and

(C) a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

(27) "Securities and Exchange Commission" means the United States Securities and Exchange Commission.

(28) "Securities Commissioner" means the Attorney General.

(29) "Security" means any note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term:

(A) includes both a certificated and an uncertificated security;

(B) does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or other specified period;

(C) does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974;

(D) includes an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors; and

(E) "Investment contract" may include, among other contracts, an interest in a limited partnership and a limited liability company and shall include an investment in a viatical settlement or similar agreement.

(30) "Self-regulatory organization" means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934.

(31) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach or logically associate with the record an electronic symbol, sound, or process.

(32) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-103. References to federal statutes.

"Securities Act of 1933" (15 U.S.C. Section 77a et seq.), "Securities Exchange Act of 1934" (15 U.S.C. Section 78a et seq.), "Public Utility Holding Company Act of 1935" (15 U.S.C. Section 79 et seq.), "Investment Company Act of 1940" (15 U.S.C. Section 80a-1 et seq.), "Investment Advisers Act of 1940" (15 U.S.C. Section 80b-1 et seq.), "Employee Retirement Income Security Act of 1974" (29 U.S.C. Section 1001 et seq.), "National Housing Act" (12 U.S.C. Section 1701 et seq.), "Commodity Exchange Act" (7 U.S.C. Section 1 et seq.), "Internal Revenue Code" (26 U.S.C. Section 1 et seq.), "Securities Investor Protection Act of 1970" (15 U.S.C. Section 78aaa et seq.), "Securities Litigation Uniform Standards Act of 1998" (112 Stat. 3227), "Small Business Investment Act of 1958" (15 U.S.C. Section 661 et seq.), and "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. Section 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this chapter, or as later amended.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-104. References to federal agencies.

A reference in this chapter to an agency or department of the United States is also a reference to a successor agency or department.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-105. Electronic records and signatures.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)). This chapter authorizes the filing of records and signatures, when specified by provisions of this chapter or by a rule adopted or order issued under this chapter, in a manner consistent with Section 104(a) of that act (15 U.S.C. Section 7004(a)).

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

ARTICLE 2

Exemptions From Registration of Securities

Editor's Note

The South Carolina Uniform Securities Act of 2005 replaced former Chapter 1, Uniform Securities, with a new Chapter 1, effective January 1, 2006, numbered in conformity with the Uniform Securities Act. The new chapter includes Official and South Carolina Reporters comments linking the old and new chapters.

SECTION 35-1-201. Exempt securities.

The following securities are exempt from the requirements of Sections 35-1-301 through 35-1-306 and 35-1-504:

(1) a security, including a revenue obligation or a separate security as defined in Rule 131 (17 C.F.R. 230.131) adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States; by a State; by a political subdivision of a State; by a public authority, agency, or instrumentality of one or more States; by a political subdivision of one or more States; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing;

(2) a security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor;

(3) a security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:

(A) an international banking institution;

(B) a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a); or

(C) any other depository institution, unless by rule or order the Securities Commissioner proceeds under Section 35-1-204;

(4) a security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this State;

(5) a security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is:

(A) regulated in respect to its rates and charges by the United States or a State;

(B) regulated in respect to the issuance or guarantee of the security by the United States, a State, Canada, or a Canadian province or territory; or

(C) a public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that act;

(6) a federal covered security specified in Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)) or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this chapter; a put or a call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78i(b));

(7) a security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the Investment Company Act of 1940 (15 U.S.C. Section 80a-3(c) (10)(B)); except that with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a rule may be adopted under this chapter limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to paragraph (B) the scope of the exemption and the grounds for denial or suspension, and requiring an issuer:

(A) to file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the Securities Commissioner does not disallow the exemption within the period established by the rule;

(B) to file a request for exemption authorization for which a rule under this chapter may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with Section 35-1-611, and grounds for denial or suspension of the exemption; or

(C) to register under Section 35-1-304;

(8) a member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a State, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative; and

(9) an equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)).

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-202. Exempt transactions.

The following transactions are exempt from the requirements of Sections 35-1-301 through 35-1-306 and 35-1-504:

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

(2) a nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days, if, at the date of the transaction:

(A) the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(B) the security is sold at a price reasonably related to its current market price;

(C) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;

(D) a nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this chapter or a record filed with the Securities and Exchange Commission that is publicly available contains:

(i) a description of the business and operations of the issuer;

(ii) the names of the issuer's executive officers and the names of the issuer's directors, if any;

(iii) an audited balance sheet of the issuer as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(iv) an audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

(E) any one of the following requirements is met:

(i) the issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System;

(ii) the issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(iii) the issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or

(iv) the issuer of the security has total assets of at least two million dollars based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization;

(3) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;

(4) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m

or 78o(d));

(5) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security that:

(A) is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories; or

(B) has a fixed maturity or a fixed interest or dividend, if:

(i) a default has not occurred during the current fiscal year or within the three previous fiscal years or during the existence of the issuer and any predecessor if less than three fiscal years, in the payment of principal, interest, or dividends on the security; and

(ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(6) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase;

(7) a nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;

(8) a nonissuer transaction by a federal covered investment adviser with investments under management in excess of one hundred million dollars acting in the exercise of discretionary authority in a signed record for the account of others;

(9) a transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the Securities Commissioner after a hearing;

(10) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(11) a transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:

(A) the note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;

(B) a general solicitation or general advertisement of the transaction is not made; and

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this chapter as a broker-dealer or as an agent;

(12) a transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(13) a sale or offer to sell to:

(A) an institutional investor;

(B) a federal covered investment adviser; or

(C) any other person exempted by rule adopted or order issued under this chapter;

(14) a sale or an offer to sell securities by or on behalf of an issuer, if the transaction is part of a single issue in which:

(A) not more than twenty-five purchasers are present in this State during any twelve consecutive months, other than those designated in paragraph (13);

(B) a general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this chapter or an agent registered under this chapter for soliciting a prospective purchaser in this State; and

(D) the issuer reasonably believes that all the purchasers in this State, other than those designated in paragraph (13), are purchasing for investment;

(15) a transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this State;

(16) an offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(A) a registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 C.F.R. 230.165); and

(B) a stop order of which the offeror is aware has not been issued against the offeror by the Securities Commissioner or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;

(17) an offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

(A) a registration statement has been filed under this chapter, but is not effective;

(B) a solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the Securities Commissioner under this chapter; and

(C) a stop order of which the offeror is aware has not been issued by the Securities Commissioner under this chapter and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;

(18) a transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties;

(19) a rescission offer, sale, or purchase under Section 35-1-510;

(20) an offer or sale of a security to a person not a resident of this State and not present in this State if the offer or sale does not constitute a violation of the laws of the State or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter;

(21) employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

- (A) directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;
- (B) family members who acquire such securities from those persons through gifts or domestic relations orders;
- (C) former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and
- (D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than 50 percent of their annual income from those organizations;
- (22) a transaction involving:
- (A) a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;
- (B) an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or
- (C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 C.F.R. 230.162); or
- (23) a nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing, the Securities Commissioner, by rule adopted or order issued under this chapter, may revoke the designation of a securities exchange under this paragraph, if the Securities Commissioner finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-203. Additional exemptions and waivers.

A rule adopted or order issued under this chapter may exempt a security, transaction, or offer; a rule under this chapter may exempt a class of securities, transactions, or offers from any or all of the requirements of Sections 35-1-301 through 35-1-306 and 35-1-504; and an order under this chapter may waive, in whole or in part, any or all of the conditions for an exemption or offer under Sections 35-1-201 and 35-1-202.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-204. Denial, suspension, revocation, condition, or limitation of exemptions.

- (a) Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this chapter may deny, suspend application of, condition, limit, or revoke an exemption created under Section 35-1-201(3)(C), (7) or (8) or 35-1-202 or an exemption or waiver created under Section 35-1-203 with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in Section 35-1-306(d) or 35-1-604 and only prospectively.
- (b) A person does not violate Section 35-1-301, 35-1-303 through 35-1-306, 35-1-504, or 35-1-510 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

ARTICLE 3

Registration of Securities and Notice Filing of Federal Covered Securities

Editor's Note

The South Carolina Uniform Securities Act of 2005 replaced former Chapter 1, Uniform Securities, with a new Chapter 1, effective January 1, 2006, numbered in conformity with the Uniform Securities Act. The new chapter includes Official and South Carolina Reporters comments linking the old and new chapters.

SECTION 35-1-301. Securities registration requirement.

It is unlawful for a person to offer or sell a security in this State unless:

- (1) the security is a federal covered security;
- (2) the security, transaction, or offer is exempted from registration under Sections 35-1-201 through 35-1-203; or
- (3) the security is registered under this chapter.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-302. Notice filing.

(a) With respect to a federal covered security, as defined in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(2)), that is not otherwise exempt under Sections 35-1-201 through 35-1-203, a rule adopted or order issued under this chapter may require the filing of one or more of the following records:

- (1) before the initial offer of a federal covered security in this State, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 and a consent to service of process complying with Section 35-1-611 signed by the issuer and the payment of a fee set forth by the Securities Commissioner by rule or order;
- (2) after the initial offer of the federal covered security in this State, all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933; and
- (3) to the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this State, if the sales data are not included in records filed with the Securities and Exchange Commission and payment of a fee set forth by the Securities Commissioner by rule or order.
- (b) A notice filing under subsection (a) is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and

Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by rule or order under this chapter to be filed and by paying a renewal fee set forth by the Securities Commissioner by rule or order. A previously filed consent to service of process complying with Section 35-1-611 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) With respect to a security that is a federal covered security under Section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(4) (D)), a rule adopted or order issued under this chapter may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process complying with Section 35-1-611 signed by the issuer not later than fifteen days after the first sale of the federal covered security in this State and the payment of any applicable fee, including any fee for late filing.

(d) Except with respect to a federal security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)), if the Securities Commissioner finds that there is a failure to comply with a notice or fee requirement of this section, the Securities Commissioner may issue a stop order suspending the offer and sale of a federal covered security in this State. If the deficiency is corrected, the stop order is void as of the time of its issuance and a penalty for noncompliance may be imposed by the Securities Commissioner in an amount established by rule or order.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-303. Securities registration by coordination.

(a) A 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 under this section.

(b) A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in Section 35-1-305 and a consent to service of process complying with Section 35-1-611:

(1) a copy of the latest form of prospectus filed under the Securities Act of 1933;

(2) a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this chapter;

(3) copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the Securities Commissioner; and

(4) an undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the Securities and Exchange Commission.

(c) A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

(1) a stop order under subsection (d) or Section 35-1-306 or issued by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under Section 35-1-306; and

(2) the registration statement has been on file for at least twenty days or a shorter period provided by rule adopted or order issued under this chapter.

(d) The registrant shall promptly notify the Securities Commissioner in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the Securities Commissioner may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The Securities Commissioner shall promptly notify the registrant of an order by telegram, telephone, facsimile, or other electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

(e) If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the Securities Commissioner, the registration statement is automatically effective under this chapter when all the conditions are satisfied or waived. If the registrant notifies the Securities Commissioner of the date when the federal registration statement is expected to become effective, the Securities Commissioner shall promptly notify the registrant by telegram, telephone, facsimile, or other electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the Securities Commissioner intends the institution of a proceeding under Section 35-1-306. The notice by the Securities Commissioner does not preclude the institution of such a proceeding.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-304. Securities registration by qualification.

(a) A security may be registered by qualification under this section.

(b) A registration statement under this section must contain the information or records specified in Section 35-1-305, a consent to service of process complying with Section 35-1-611, and, if required by rule adopted under this chapter, the following information or records:

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

(2) with respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five years; the amount of securities of the issuer held by the person as of the thirtieth day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three years or proposed to be effected;

(3) with respect to persons covered by paragraph (2), the aggregate sum of the remuneration paid to those persons during the previous twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer;

(4) with respect to a person owning of record or owning beneficially, if known, ten percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph (2) other than the person's occupation;

(5) with respect to a promoter, if the issuer was organized within the previous three years, the information or records specified in paragraph (2), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;

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

(7) the capitalization and long term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security

outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two years or is obligated to issue its securities;

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

(9) the estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses 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, and the amount of those options held or to be held by each person required to be named in paragraph (2), (4), (5), (6), or (8) and by any person that holds or will hold ten percent or more in the aggregate of those options;

(11) the dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two years, and a copy of the contract;

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

(13) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with Section 35-1-202(17)(B);

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

(15) a signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

(16) a signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement;

(17) a balance sheet of the issuer as of a date within four months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; provided, however, that financial statements meeting the requirements of Regulation S-B shall be permitted to be substituted by issuers that are "small business issuers" as defined by Regulation S-B (17 C.F.R. part 228); and

(18) any additional information or records required by rule adopted or order issued under this chapter.

(c) A registration statement under this section becomes effective thirty days, or any shorter period provided by rule adopted or order issued under this chapter, after the date the registration statement or the last amendment other than a price amendment is filed, if:

(1) a stop order is not in effect and a proceeding is not pending under Section 35-1-306;

(2) the Securities Commissioner has not issued an order under Section 35-1-306 delaying effectiveness; or

(3) the applicant or registrant has not requested that effectiveness be delayed.

(d) The Securities Commissioner may delay effectiveness once for not more than ninety days if the Securities Commissioner determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The Securities Commissioner also may delay effectiveness for a further period of not more than thirty days if the Securities Commissioner determines that the delay is necessary or appropriate.

(e) A rule adopted or order issued under this chapter may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection (b) be sent or given to each person to which an offer is made, before or concurrently, with the earliest of:

(1) the first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;

(2) the confirmation of a sale made by or for the account of the person;

(3) payment pursuant to such a sale; or

(4) delivery of the security pursuant to such a sale.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-305. Securities registration filings.

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

(b) A person filing a registration statement shall pay a filing fee set forth by the Securities Commissioner by rule or order. If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under Section 35-1-306, the Securities Commissioner shall retain a fee set forth by the Securities Commissioner by rule or order.

(c) A registration statement filed under Section 35-1-303 or 35-1-304 must specify:

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

- (2) the States in which a registration statement or similar record in connection with the offering has been or is to be filed; and
- (3) any adverse order, judgment, or decree issued in connection with the offering by a State securities regulator, the Securities and Exchange Commission, or a court.
- (d) A record filed under this chapter or the predecessor chapter within five years preceding the filing of a registration statement or filed with the Securities and Exchange Commission and is available to the public without charge via the Internet may be incorporated by reference in the registration statement to the extent that the record is currently accurate.
- (e) In the case of a nonissuer distribution, information or a record may not be required under subsection (i) or Section 35-1-304, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.
- (f) A rule adopted or order issued under this chapter may require as a condition of registration that a security issued within the previous five years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this State be impounded until the issuer receives a specified amount from the sale of the security either in this State or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this chapter, but the Securities Commissioner may not reject a depository institution solely because of its location in another State.
- (g) A rule adopted or order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this chapter or preserved for a period specified by the rule or order, which may not be longer than five years.
- (h) Except while a stop order is in effect under Section 35-1-306, a registration statement is effective for one year after its effective date, or for any longer period designated in an order under this chapter during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the Securities Commissioner.
- (i) While a registration statement is effective, a rule adopted or order issued under this chapter may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current, and to disclose the progress of the offering.
- (j) A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the Securities Commissioner so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee set forth by the Securities Commissioner by rule or order. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the amendment is filed and the additional registration fee is paid.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-306. Denial, suspension, and revocation of securities registration.

- (a) The Securities Commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the Securities Commissioner finds that the order is in the public interest and that:
- (1) the registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under Section 35-1-305(j) as of its effective date, or a report under Section 35-1-305(i), is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;
- (2) this chapter or a rule adopted or order issued under this chapter or a condition imposed under this chapter has been wilfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; or a 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 by an underwriter;
- (3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this chapter applicable to the offering, but the Securities Commissioner may not institute a proceeding against an effective registration statement under this paragraph more than one year after the date of the order or injunction on which it is based, and the Securities Commissioner may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another State unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;
- (4) the issuer's enterprise or method of business includes or would include activities that are unlawful where performed;
- (5) with respect to a security sought to be registered under Section 35-1-303, there has been a failure to comply with the undertaking required by Section 35-1-303(b)(4);
- (6) the applicant or registrant has not paid the filing fee, but the Securities Commissioner shall void the order if the deficiency is corrected; or
- (7) the offering:
- (A) will work or tend to work a fraud upon purchasers or would so operate; or
- (B) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options.
- (b) To the extent practicable, the Securities Commissioner by rule adopted or order issued under this chapter shall publish standards that provide notice of conduct that violates subsection (a)(7).
- (c) The Securities Commissioner may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the Securities Commissioner when the registration statement became effective unless the proceeding is instituted within thirty days after the registration statement became effective.
- (d) The Securities Commissioner may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the Securities Commissioner shall promptly notify each person specified in subsection (e) that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within fifteen days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the Securities Commissioner, within thirty days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the Securities Commissioner, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.
- (e) A stop order may not be issued under this section without:

(1) appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;

(2) an opportunity for hearing; and

(3) findings of fact and conclusions of law in a record.

(f) The Securities Commissioner may modify or vacate a stop order issued under this section if the Securities Commissioner finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-307. Waiver and modification.

The Securities Commissioner may waive or modify, in whole or in part, any or all of the requirements of Sections 35-1-302, 35-1-303, and 35-1-304(b) or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to Section 35-1-305(i).

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

ARTICLE 4

Broker-Dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers

Editor's Note

The South Carolina Uniform Securities Act of 2005 replaced former Chapter 1, Uniform Securities, with a new Chapter 1, effective January 1, 2006, numbered in conformity with the Uniform Securities Act. The new chapter includes Official and South Carolina Reporters comments linking the old and new chapters.

SECTION 35-1-401. Broker-dealer registration requirement; exemptions.

(a) It is unlawful for a person to transact business in this State as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d).

(b) The following persons are exempt from the registration requirement of subsection (a):

(1) a broker-dealer without a place of business in this State if its only transactions effected in this State are with:

(A) the issuer of the securities involved in the transactions;

(B) a broker-dealer registered as a broker-dealer under this chapter or not required to be registered as a broker-dealer under this chapter;

(C) an institutional investor;

(D) a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars acting for the account of others pursuant to discretionary authority in a signed record;

(E) a bona fide preexisting customer whose principal place of residence is not in this State and the person is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the State in which the customer maintains a principal place of residence;

(F) a bona fide preexisting customer whose principal place of residence is in this State but was not present in this State when the customer relationship was established, if:

(i) the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the State in which the customer relationship was established and where the customer had maintained a principal place of residence; and

(ii) within forty-five days after the customer's first transaction in this State, the person files an application for registration as a broker-dealer in this State and a further transaction is not effected more than seventy-five days after the date on which the application is filed, or, if earlier, the date on which the Securities Commissioner notifies the person that the Securities Commissioner has denied the application for registration or has stayed the pendency of the application for good cause;

(G) not more than three customers in this State during the previous twelve months, in addition to those customers specified in subparagraphs (A) through (F) and under subparagraph (H), if the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the State in which the broker-dealer has its principal place of business; and

(H) any other person exempted by rule adopted or order issued under this chapter; and

(2) a person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision.

(c) It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this State, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this State if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the Securities Commissioner under this chapter, the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this chapter may modify or waive, in whole or in part, the application of the prohibitions of this subsection.

(d) A rule adopted or order issued under this chapter may permit:

(1) a broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this State to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(A) an individual from Canada or other foreign jurisdiction who is temporarily present in this State and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States;

(B) an individual from Canada or other foreign jurisdiction who is present in this State and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or

(C) an individual who is present in this State, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction; and

(2) an agent who represents a broker-dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in

this State as permitted for a broker-dealer described in paragraph (1).

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-402. Agent registration requirement and exemptions.

(a) It is unlawful for an individual to transact business in this State as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under subsection (b).

(b) The following individuals are exempt from the registration requirement of subsection (a):

(1) an individual who represents a broker-dealer in effecting transactions in this State limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)(2));

(2) an individual who represents a broker-dealer that is exempt under Section 35-1-401(b) or (d);

(3) an individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(4) an individual who represents an issuer and who effects transactions in the issuer's securities exempted by Section 35-1-202, other than Section 35-1-202(11) and (14);

(5) an individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(6) an individual who represents a broker-dealer registered in this State under Section 35-1-401(a) or exempt from registration under Section 35-1-401(b) in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars acting for the account of others pursuant to discretionary authority in a signed record;

(7) an individual who represents an issuer in connection with the purchase of the issuer's own securities;

(8) an individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or

(9) any other individual exempted by rule adopted or order issued under this chapter.

(c) The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this chapter or an issuer that is offering, selling, or purchasing its securities in this State.

(d) It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this State, to employ or associate with an agent who transacts business in this State on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).

(e) An individual may not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this chapter.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-403. Investment adviser registration requirement; exemptions.

(a) It is unlawful for a person to transact business in this State as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration as an investment adviser under subsection (b).

(b) The following persons are exempt from the registration requirement of subsection (a):

(1) a person without a place of business in this State that is registered under the securities act of the State in which the person has its principal place of business if its only clients in this State are:

(A) federal covered investment advisers, investment advisers registered under this chapter, or broker-dealers registered under this chapter;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this State if the investment adviser is registered under the securities act of the State in which the clients maintain principal places of residence; or

(D) any other client exempted by rule adopted or order issued under this chapter;

(2) a person without a place of business in this State if the person has had, during the preceding twelve months, not more than five clients that are resident in this State in addition to those specified under paragraph (1); or

(3) any other person exempted by rule adopted or order issued under this chapter.

(c) It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice regarding securities in this State if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this chapter, the Securities and Exchange Commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the Securities Commissioner, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

(d) It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this chapter as an investment adviser representative who transacts business in this State on behalf of the investment adviser unless the individual is registered under Section 35-1-404(a) or is exempt from registration under Section 35-1-404(b).

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-404. Investment advisor representative registration requirement; exemptions.

(a) It is unlawful for an individual to transact business in this State as an investment adviser representative unless the individual is registered under this chapter as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection (b).

(b) The following individuals are exempt from the registration requirement of subsection (a):

- (1) an individual who is employed by or associated with an investment adviser that is exempt from registration under Section 35-1-403(b) or a federal covered investment adviser that is excluded from the notice filing requirements of Section 35-1-405; and
- (2) any other individual exempted by rule adopted or order issued under this chapter.

(c) The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this chapter or a federal covered investment adviser that has made or is required to make a notice filing under Section 35-1-405.

(d) An individual may not transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser unless a rule adopted or order issued under this chapter allows an individual to act as an investment adviser representative for more than one investment adviser or federal covered investment adviser.

(e) It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this State on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this chapter, the Securities and Exchange Commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the Securities Commissioner, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

(f) An investment adviser registered under this chapter, a federal covered investment adviser that has filed a notice under Section 35-1-405, or a broker-dealer registered under this chapter is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this chapter, a federal covered investment adviser who has filed a notice under Section 35-1-405, or a broker-dealer registered under this chapter with which the individual is employed or associated as an investment adviser representative.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-405. Federal covered investment adviser notice filing requirement.

(a) Except with respect to a federal covered investment adviser described in subsection (b), it is unlawful for a federal covered investment adviser to transact business in this State as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (c).

(b) The following federal covered investment advisers are not required to comply with subsection (c):

(1) a federal covered investment adviser without a place of business in this State if its only clients in this State are:

(A) federal covered investment advisers, investment advisers registered under this chapter, and broker-dealers registered under this chapter;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this State; or

(D) other clients specified by rule adopted or order issued under this chapter;

(2) a federal covered investment adviser without a place of business in this State if the person has had, during the preceding twelve months, not more than five clients that are resident in this State in addition to those specified under paragraph (1); and

(3) any other person excluded by rule adopted or order issued under this chapter.

(c) A person acting as a federal covered investment adviser, not excluded under subsection (b), shall file a notice, a consent to service of process complying with Section 35-1-611, and such records as have been filed with the Securities and Exchange Commission under the Investment Advisers Act of 1940 required by rule adopted or order issued under this chapter and pay the fees specified in Section 35-1-410(a).

(d) The notice under subsection (c) becomes effective upon its filing.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006; 2006 Act No. 331, Section 1, eff upon approval (became law without the Governor's signature on June 7, 2006).

Effect of Amendment

The 2006 amendment, in subsection (c), substituted "Section 35-1-410(a)" for "Section 35-1-410(e)".

SECTION 35-1-406. Registration by broker-dealer, agent, investment adviser, and investment adviser representative.

(a) A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with Section 35-1-611, passing one or more examinations as required by the Securities Commissioner, paying the fee specified pursuant to Section 35-1-410, and paying any reasonable fees charged by the designee of the Securities Commissioner for processing the filing. The application must contain:

(1) the information or record required for the filing of a uniform application; and

(2) upon request by the Securities Commissioner, any other financial or other information or record that the Securities Commissioner determines is appropriate.

(b) If the information or record contained in an application filed under subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) If an order is not in effect and a proceeding is not pending under Section 35-1-412, registration becomes effective at noon on the forty-fifth day after a completed application is filed, unless the registration is denied. A rule adopted or order issued under this chapter may set an earlier effective date or may defer the effective date until noon on the forty-fifth day after the filing of any amendment completing the application.

(d) A registration is effective until midnight on December thirty-first of the year for which the application for registration is filed. Unless an order is in effect under Section 35-1-412, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this chapter, by meeting the filing fee and examination requirements specified pursuant to Section 35-1-410, and by paying costs charged by the designee of the Securities Commissioner for processing the filings.

(e) A rule adopted or order issued under this chapter may impose other conditions, not inconsistent with the National Securities Markets Improvement Act of 1996. An order issued under this chapter may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-407. Succession and change in registration of broker-dealer or investment adviser.

(a) A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to Section 35-1-401 or 35-1-403 or a notice pursuant to Section 35-1-405 for the unexpired portion of the current registration or notice filing.

(b) A broker-dealer or investment adviser that changes its form of organization or State of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this chapter. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this chapter shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within forty-five days after filing its amendment to effect succession.

(c) A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.

(d) A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this chapter.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-408. Termination of employment or association of agent and investment adviser representative; transfer of employment or association.

(a) If an agent registered under this chapter terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

(b) If an agent registered under this chapter terminates employment by or association with a broker-dealer registered under this chapter and begins employment by or association with another broker-dealer registered under this chapter; or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under Section 35-1-405 and begins employment by or association with another investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under Section 35-1-405; then upon the filing by or on behalf of the registrant, within thirty days after the termination, of an application for registration that complies with the requirement of Section 35-1-406(a) and payment of the filing fee required under Section 35-1-410, the registration of the agent or investment adviser representative is:

(1) immediately effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record does not contain a new or amended disciplinary disclosure within the previous twelve months; or

(2) temporarily effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record contains a new or amended disciplinary disclosure within the preceding twelve months.

(c) The Securities Commissioner may withdraw a temporary registration if there are or were grounds for discipline as specified in Section 35-1-412 and the Securities Commissioner does so within thirty days after the filing of the application. If the Securities Commissioner does not withdraw the temporary registration within the thirty-day period, registration becomes automatically effective on the thirty-first day after filing.

(d) The Securities Commissioner may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection (b)(1) or (2) based on the public interest and the protection of investors.

(e) If the Securities Commissioner determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this chapter may require the registration be canceled or terminated or the application denied. The Securities Commissioner may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-409. Withdrawal of registration of broker-dealer, agent, investment adviser, and investment adviser representative.

Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective sixty days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this chapter unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued under this chapter. The Securities Commissioner may institute a revocation or suspension proceeding under Section 35-1-412 within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-410. Examination and filing fee requirements.

(a) The Securities Commissioner shall establish fees by rule or order for:

(1) an initial filing of an application as a broker-dealer and renewal of an application by a broker-dealer for registration;

(2) an application for registration as an agent and renewal of registration as an agent;

(3) an application for registration as an investment adviser and renewal of registration as an investment adviser;

(4) an application for registration as an investment adviser representative, a renewal of registration as an investment adviser representative, and a change of registration as an investment adviser representative; and

(5) an initial fee and annual notice fee for a federal covered investment adviser required to file a notice under Section 35-1-405.

(b) A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this chapter.

(c) When an application or other filing fee is denied or withdrawn, the filing fee shall not be refunded, except upon order by the Securities Commissioner.

(d) A rule adopted or order issued under this chapter may require that an examination, including an examination developed or approved by an organization of securities

regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, an examination as to an individual and a rule adopted under this chapter may waive, in whole or in part, an examination as to a class of individuals if the Securities Commissioner determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-411. Postregistration requirements.

(a) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this chapter may establish minimum financial requirements for broker-dealers registered or required to be registered under this chapter and investment advisers registered or required to be registered under this chapter.

(b) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall file such financial reports as are required by a rule adopted or order issued under this chapter. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22):

(1) a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this chapter;

(2) broker-dealer records required to be maintained under paragraph (1) may be maintained in any form of data storage acceptable under Section 17(a) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78q(a)) if they are readily accessible to the Securities Commissioner; and

(3) investment adviser records required to be maintained under paragraph (1) may be maintained in any form of data storage required by rule adopted or order issued under this chapter.

(d) The records of a broker-dealer registered or required to be registered under this chapter and of an investment adviser registered or required to be registered under this chapter are subject to such reasonable periodic, special, or other audits or inspections by a representative of the Securities Commissioner, within or without this State, as the Securities Commissioner considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The Securities Commissioner may copy, and remove for audit or inspection copies of, all records the Securities Commissioner reasonably considers necessary or appropriate to conduct the audit or inspection. The Securities Commissioner may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this chapter may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount prescribed by rule or order. The Securities Commissioner may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this chapter whose net capital exceeds, or of an investment adviser registered under this chapter whose minimum financial requirements exceed, the amounts required by rule or order under this chapter. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in Section 35-1-509(j)(2).

(f) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this chapter may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(g) With respect to an investment adviser registered or required to be registered under this chapter, a rule adopted or order issued under this chapter may require that information or other record be furnished or disseminated to clients or prospective clients in this State as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(h) A rule adopted or order issued under this chapter may require an individual registered under Section 35-1-402 or 35-1-404 to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this chapter may require continuing education for an individual registered under Section 35-1-404.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-412. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration.

(a) If the Securities Commissioner finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

(b) If the Securities Commissioner finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may revoke, suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser. However, the Securities Commissioner may not:

(1) institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another State that is reported to the Securities Commissioner or a designee of the Securities Commissioner more than one year after the date of the order on which it is based; or

(2) under subsection (d)(5)(A) or (B), issue an order on the basis of an order issued under the securities act of another State unless the other order was based on conduct for which subsection (d) would authorize the action had the conduct occurred in this State.

(c) If the Securities Commissioner finds that the order is in the public interest and subsection (d)(1) through (6), (8), (9), (10), or (12) and (13) authorizes the action, an order under this chapter may censure, impose a bar, and/or impose a civil penalty in an amount not to exceed \$10,000 for each violation, on a registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

(d) A person may be disciplined under subsections (a) through (c) if the person:

(1) has filed an application for registration in this State under this chapter or the predecessor chapter within the previous 10 years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

- (2) wilfully violated or wilfully failed to comply with this chapter or the predecessor chapter or a rule adopted or order issued under this chapter or the predecessor chapter within the previous 10 years;
- (3) has been convicted of a felony or within the previous 10 years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;
- (4) is enjoined or restrained by a court of competent jurisdiction in an action instituted by the Securities Commissioner under this chapter or the predecessor chapter, a State, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;
- (5) is the subject of an order, issued after notice and opportunity for hearing by:
- (A) the securities or other financial services regulator of a State or the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;
- (B) the securities regulator of a State or the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;
- (C) the Securities and Exchange Commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;
- (D) a court adjudicating a United States Postal Service fraud order;
- (E) the insurance regulator of a State denying, suspending, or revoking registration as an insurance agent; or
- (F) a depository institution or financial services regulator suspending or barring the person from the depository institution or other financial services business;
- (6) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission; the Federal Trade Commission; a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a State that the person wilfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a State, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;
- (7) is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the Securities Commissioner may not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant;
- (8) refuses to allow or otherwise impedes the Securities Commissioner from conducting an audit or inspection under Section 35-1-411(d) or refuses access to a registrant's office to conduct an audit or inspection under Section 35-1-411(d);
- (9) has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor chapter or a rule adopted or order issued under this chapter or the predecessor chapter within the previous 10 years;
- (10) has not paid the proper filing fee within 30 days after having been notified by the Securities Commissioner of a deficiency, but the Securities Commissioner shall vacate an order under this paragraph when the deficiency is corrected;
- (11) after notice and opportunity for a hearing, has been found within the previous 10 years:
- (A) by a court of competent jurisdiction to have wilfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;
- (B) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or
- (C) to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;
- (12) is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a State;
- (13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years; or
- (14) is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by Section 35-1-410(d). The Securities Commissioner may require an applicant for registration under Section 35-1-402 or 35-1-404 who has not been registered in a State within the two years preceding the filing of an application in this State to successfully complete an examination.
- (e) Reserved
- (f) The Securities Commissioner may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the Securities Commissioner shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the Securities Commissioner within 30 days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the Securities Commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.
- (g) An order issued may not be issued under this section, except under subsection (f), without:
- (1) appropriate notice to the applicant or registrant;
- (2) opportunity for hearing; and
- (3) findings of fact and conclusions of law in a record.
- (h) A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the Securities Commissioner under subsections (a) through (c) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

(i) The Securities Commissioner may not institute a proceeding under subsection (a), (b), or (c) based solely on material facts actually known by the Securities Commissioner unless an investigation or the proceeding is instituted within one year after the Securities Commissioner actually acquires knowledge of the material facts.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

ARTICLE 5

Fraud and Liabilities

Editor's Note

The South Carolina Uniform Securities Act of 2005 replaced former Chapter 1, Uniform Securities, with a new Chapter 1, effective January 1, 2006, numbered in conformity with the Uniform Securities Act. The new chapter includes Official and South Carolina Reporters comments linking the old and new chapters.

SECTION 35-1-501. General fraud.

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

- (1) to employ a device, scheme, or artifice to defraud;
- (2) to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-502. Prohibited conduct in providing investment advice regarding securities.

(a) It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities:

- (1) to employ a device, scheme, or artifice to defraud another person; or
- (2) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

(b) A rule adopted under this chapter may define an act, practice, or course of business in connection with giving investment advice regarding securities as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent a person from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

(c) A rule adopted under this chapter may specify the contents of a contract entered into, extended, or renewed in connection with giving investment advice regarding securities.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-503. Evidentiary burden.

(a) In a civil action or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.

(b) In a criminal proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-504. Filing of sales and advertising literature.

(a) Except as otherwise provided in subsection (b), a rule adopted or order issued under this chapter may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice regarding securities, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this chapter.

(b) This section does not apply to sales and advertising literature specified in subsection (a) which relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by Section 35-1-201, 35-1-202, or 35-1-203 except as required pursuant to Section 35-1-201(7).

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-505. Misleading filings.

It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this chapter, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-506. Misrepresentations concerning registration or exemption.

The filing of an application for registration, a registration statement, a notice filing under this chapter, the registration of a person, the notice filing by a person, or the registration of a security under this chapter does not constitute a finding by the Securities Commissioner that a record filed under this chapter is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the Securities Commissioner has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-507. Qualified immunity.

A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by

the Securities Commissioner, or designee of the Securities Commissioner, the Securities and Exchange Commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-508. Criminal penalties.

(a) A person that wilfully violates this chapter, or a rule adopted or order issued under this chapter, except Section 35-1-504 or the notice filing requirements of Section 35-1-302 or 35-1-405, or that wilfully violates Section 35-1-505 knowing that the statement made is false or misleading in a material respect, is guilty of a:

- (1) felony and, upon conviction, must be fined not more than fifty thousand dollars or imprisoned not more than ten years, or both, if the person's actions result in loss to an investor of twenty thousand dollars or more;
 - (2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the person's actions result in loss to an investor of more than one thousand dollars but less than twenty thousand dollars;
 - (3) misdemeanor and, upon conviction, must be fined not more than thirty thousand dollars or imprisoned not more than three years, or both, if the person's actions result in loss to an investor of one thousand dollars or less, or if no losses are proven. An individual convicted of violating a rule or order under this chapter may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order.
- (b) The Securities Commissioner may refer that evidence as is available concerning violations of this chapter or of any rule or order under this chapter to the appropriate Division of the Attorney General's Office or other appropriate prosecution, law enforcement, or licensing authorities who may institute the appropriate proceedings under this chapter.

(c) This chapter does not limit the power of this State to punish a person for conduct that constitutes a crime under other laws of this State.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-509. Civil liability.

(a) Enforcement of civil liability under this section is subject to the Securities Litigation Uniform Standards Act of 1998.

(b) A person is liable to the purchaser if the person sells a security in violation of Sections 35-1-301 or 35-1-501 or, by means of an untrue statement of a material fact or an omission 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, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

- (1) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the legal rate of interest from the date of the purchase, costs, and reasonable attorneys' fees determined by the court, upon the tender of the security, or for actual damages as provided in paragraph (3).
- (2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in paragraph (3).
- (3) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest at the legal rate of interest from the date of the purchase, costs, and reasonable attorneys' fees determined by the court.

(c) A person is liable to the seller if the person buys a security in violation of Section 35-1-501 or by means of an untrue statement of a material fact or omission 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, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

- (1) The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorneys' fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in paragraph (3).
- (2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in paragraph (3).
- (3) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest at the legal rate of interest from the date of the sale of the security, costs, and reasonable attorneys' fees determined by the court.

(d) A person acting as a broker-dealer or agent that sells or buys a security in violation of Section 35-1-401(a), 35-1-402(a), or 35-1-506 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsections (b)(1) through (3), or, if a seller, for a remedy as specified in subsections (c)(1) through (3).

(e) A person acting as an investment adviser or investment adviser representative that provides investment advice regarding securities for compensation in violation of Section 35-1-403(a), 35-1-404(a), or 35-1-506 is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest at the legal rate of interest from the date of payment, costs, and reasonable attorneys' fees determined by the court.

(f) A person that receives directly or indirectly any consideration for providing investment advice regarding securities to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person. An action under this subsection is governed by the following:

- (1) The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the legal rate of interest from the date of the fraudulent conduct, costs, and reasonable attorneys' fees determined by the court, less the amount of any income received as a result of the fraudulent conduct.
- (2) This subsection does not apply to a broker-dealer or its agents if the investment advice regarding securities that is provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice regarding securities.

(g) The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (b) through (f):

- (1) a person that directly or indirectly controls a person liable under subsections (b) through (f), unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;
- (2) an individual who is a managing partner, executive officer, or director of a person liable under subsections (b) through (f), including an individual having a similar status

or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(3) an individual who is an employee, or a person occupying a similar status or performing a similar function, of a person liable under subsections (b) through (f) and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and

(4) a person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (b) through (f), unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

(5) a person who, with actual knowledge that a person is committing acts sufficient to violate Sections 35-1-501 and 35-1-502, nonetheless intentionally furthers the violation with actual awareness that the person is rendering substantial assistance to the person committing the violation of Sections 35-1-501 and 35-1-502, thereby becomes an aider and abettor of the violation, and is therefore jointly and severally liable with and to the same extent as the assisted person who engaged in the fraudulent activity, provided, however, this subsection (5) does not require any due diligence investigation nor impose liability for failure to perform any due diligence investigation otherwise required.

(h) A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

(i) A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(j) A person may not obtain relief:

(1) under subsection (b) for violation of Section 35-1-301, or under subsection (d) or (e), unless the action is instituted within three years after the violation occurred; or

(2) under subsection (b), other than for violation of Section 35-1-301, or under subsection (c) or (f), unless the action is instituted within the earlier of three years after discovery of the facts constituting the violation or five years after the violation.

(k) A person that has made, or has engaged in the performance of, a contract in violation of this chapter or a rule adopted or order issued under this chapter, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter, may not base an action on the contract.

(l) A condition, stipulation, or provision including, but not limited to, any choice of law provision directly or indirectly binding a person purchasing or selling a security or receiving investment advice regarding securities to waive compliance with this chapter or a rule adopted or order issued under this chapter is void.

(m) The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or Section 35-1-411(e).

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-510. Rescission offers.

A purchaser, seller, or recipient of investment advice regarding securities may not maintain an action under Section 35-1-509 if:

(1) The purchaser, seller, or recipient of investment advice regarding securities receives in a record, before the action is instituted:

(A) an offer stating the respect in which liability under Section 35-1-509 may have arisen and fairly advising the purchaser, seller, or recipient of investment advice regarding securities of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this chapter to be furnished to that person at the time of the purchase, sale, or investment advice regarding securities;

(B) if the basis for relief under this section may have been a violation of Section 35-1-509(b), an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, including without limitation all commissions and fees, and interest at the legal rate of interest from the date of the purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at the legal rate of interest from the date of the purchase in cash equal to the damages computed in the manner provided in this subsection;

(C) if the basis for relief under this section may have been a violation of Section 35-1-509(c), an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at the legal rate of interest from the date of the sale; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the legal rate of interest from the date of the sale;

(D) if the basis for relief under this section may have been a violation of Section 35-1-509(d); and if the customer is a purchaser, an offer to pay as specified in subparagraph (B); or, if the customer is a seller, an offer to tender or to pay as specified in subparagraph (C);

(E) if the basis for relief under this section may have been a violation of Section 35-1-509(e), an offer to reimburse in cash the consideration paid for the advice and interest at the legal rate of interest from the date of payment; or

(F) if the basis for relief under this section may have been a violation of Section 35-1-509(f), an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the legal rate of interest from the date of the violation causing the loss;

(2) the offer under paragraph (1) states that it must be accepted by the purchaser, seller, or recipient of investment advice regarding securities within 30 days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than three days, that the Securities Commissioner, by order, specifies;

(3) the offeror has the present ability to pay the amount offered or to tender the security under paragraph (1);

(4) the offer under paragraph (1) is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and

(5) the purchaser, seller, or recipient of investment advice that accepts the offer under paragraph (1) in a record within the period specified under paragraph (2) is paid in accordance with the terms of the offer.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

ARTICLE 6

Administration and Judicial Review

Editor's Note

The South Carolina Uniform Securities Act of 2005 replaced former Chapter 1, Uniform Securities, with a new Chapter 1, effective January 1, 2006, numbered in conformity with the Uniform Securities Act. The new chapter includes Official and South Carolina Reporters comments linking the old and new chapters.

SECTION 35-1-601. Administration.

(a) This chapter shall be administered by the Attorney General who shall be ex officio the Securities Commissioner and who may employ such additional assistants as he deems necessary. The Securities Commissioner may delegate any or all of his duties pursuant to this chapter to members of his staff, as he deems necessary or appropriate.

(b) It is unlawful for the Securities Commissioner or an officer, employee, or designee of the Securities Commissioner to use for personal benefit or the benefit of others records or other information obtained by or filed with the Securities Commissioner that are not public under Section 35-1-607(b). This chapter does not authorize the Securities Commissioner or an officer, employee, or designee of the Securities Commissioner to disclose the record or information, except in accordance with Section 35-1-602, 35-1-607(c), or 35-1-608.

(c) This chapter does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(d) The Securities Commissioner may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on responsible investing and on the prevention and detection of securities fraud. In developing and implementing these initiatives, the Securities Commissioner may collaborate with public and nonprofit organizations with an interest in investor education. The Securities Commissioner may accept grants or donations to develop and implement investor education initiatives. This subsection does not authorize the Securities Commissioner to require participation or monetary contributions of a registrant in an investor education program.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-602. Investigations and subpoenas.

(a) The Securities Commissioner may:

(1) conduct public or private investigations within or outside of this State which the Securities Commissioner considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this chapter or a rule adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter;

(2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the Securities Commissioner determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(3) publish a record concerning an action, proceeding, or an investigation under, or a violation of, this chapter or a rule adopted or order issued under this chapter if the Securities Commissioner determines it is necessary or appropriate in the public interest and for the protection of investors.

(b) For the purpose of an investigation under this chapter, the Securities Commissioner or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the Securities Commissioner considers relevant or material to the investigation.

(c) If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the Securities Commissioner under this chapter, the Securities Commissioner may apply to the Richland County Court of Common Pleas or a court of another State to enforce compliance. The court may:

(1) hold the person in contempt;

(2) order the person to appear before the Securities Commissioner;

(3) order the person to testify about the matter under investigation or in question;

(4) order the production of records;

(5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice regarding securities;

(6) impose a civil penalty of not less than \$500 and not greater than \$5,000 for each violation; and

(7) grant any other necessary or appropriate relief.

(d) This section does not preclude a person from applying to the Richland County Court of Common Pleas or a court of another State for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(e) An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the Securities Commissioner under this chapter or in an action or proceeding instituted by the Securities Commissioner under this chapter on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the Securities Commissioner may apply to the Richland County Court of Common Pleas to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

(f) At the request of the securities regulator of another State or a foreign jurisdiction, the Securities Commissioner may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other State or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The Securities Commissioner may provide the assistance by using the authority to investigate and the powers conferred by this section as the Securities Commissioner determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this chapter or other law of this State if occurring in this State. In deciding whether to provide the assistance, the Securities Commissioner may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its State or foreign jurisdiction to the Securities Commissioner on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this State; and the availability of resources and employees of the Securities Commissioner to carry out the request for assistance.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-603. Civil enforcement.

(a) If the Securities Commissioner believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the Securities Commissioner may maintain an action in the Richland County Court of

Common Pleas to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.

(b) In an action under this section and on a proper showing, the court may:

(1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) order other appropriate or ancillary relief, which may include:

(A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the Securities Commissioner, for the defendant or the defendant's assets;

(B) ordering the Securities Commissioner to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(C) imposing a civil penalty in an amount not to exceed ten thousand dollars for each violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor chapter or a rule adopted or order issued under this chapter or the predecessor chapter; and

(D) ordering the payment of prejudgment and postjudgment interest; or

(3) order such other relief as the court considers appropriate.

(c) The Securities Commissioner may not be required to post a bond in an action or proceeding under this chapter.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-604. Administrative enforcement.

(a) If the Securities Commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the Securities Commissioner may:

(1) issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter;

(2) issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under Section 35-1-401(b)(1)(D) or (F) or an investment adviser under Section 35-1-403(b)(1)(C); or

(3) issue an order under Section 35-1-204.

(b) An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the Securities Commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil penalty or costs of investigation the Securities Commissioner will seek, a statement of the reasons for the order, and notice that, within fifteen days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the Securities Commissioner within thirty days after the date of service of the order, the order, which may include a civil penalty or costs of the investigation if a civil penalty or costs were sought becomes final as to that person by operation of law. If a hearing is requested or ordered, the Securities Commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) If a hearing is requested or ordered pursuant to subsection (b), a hearing must be held. A final order may not be issued unless the Securities Commissioner makes findings of fact and conclusions of law in a record. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) In a final order under subsection (c), the Securities Commissioner may impose a civil penalty in an amount not to exceed ten thousand dollars for each violation.

(e) In a final order, the Securities Commissioner may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.

(f) If a petition for judicial review of a final order is not filed in accordance with Section 35-1-609, the Securities Commissioner may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court. A copy of a final order must be forwarded to the South Carolina Department of Revenue and the South Carolina Office of the Secretary of State.

(g) If a person does not comply with an order under this section, the Securities Commissioner may petition a court of competent jurisdiction to enforce the order. The court may not require the Securities Commissioner to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than five hundred dollars but not greater than five thousand dollars for each violation and may grant any other relief the court determines is just and proper in the circumstances.

(h) All orders issued under this section are public documents subject to the Freedom of Information Act and must be published on the Attorney General's website searchable by the name of the parties involved.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006; 2012 Act No. 251, Section 1, eff June 18, 2012.

Editor's Note

2012 Act No. 251, Section 2, provides as follows:

"SECTION 2. This act takes effect upon approval by the Governor and applies only to orders issued after the effective date of this act."

Effect of Amendment

The 2012 amendment inserted "A copy of a final order must be forwarded to the South Carolina Department of Revenue and the South Carolina Secretary of State's Office." in subsection (f); added subsection (h); and made other nonsubstantive changes.

SECTION 35-1-605. Rules, forms, orders, interpretative opinions and hearings.

(a) The Securities Commissioner may:

(1) issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this chapter and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;

- (2) by rule, define terms, whether or not used in this chapter, but those definitions may not be inconsistent with this chapter;
- (3) by rule, classify securities, persons, and transactions and adopt different requirements for different classes; and
- (4) establish fees for filings under Section 35-1-504, filings required or permitted by rule or order adopted pursuant to this section, and other miscellaneous filings for which no fees are otherwise specified by law.
- (b) Under this chapter, a rule or form may not be adopted or amended, or an order issued or amended, unless the Securities Commissioner finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this chapter. In adopting, amending, and repealing rules and forms, Section 35-1-608 applies in order to achieve uniformity among the States and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.
- (c) Subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisers Act of 1940, the Securities Commissioner may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this chapter. A rule adopted or order issued under this chapter may establish:
- (1) subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisors Act of 1940, the form and content of financial statements required under this chapter;
- (2) whether unconsolidated financial statements must be filed; and
- (3) whether required financial statements must be audited by an independent certified public accountant.
- (d) The Securities Commissioner may provide interpretative opinions or issue determinations that the Securities Commissioner will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. A rule adopted or order issued under this chapter may establish a reasonable charge for interpretative opinions or determinations that the Securities Commissioner will not institute an action or a proceeding under this chapter.
- (e) A penalty under this chapter may not be imposed for, and liability does not arise from conduct that is engaged in or omitted in good faith believing it conforms to a rule, form, or order of the Securities Commissioner under this chapter. The burden of proving good faith rests on the person claiming reliance.
- (f) A hearing in an administrative proceeding under this chapter must be conducted in public unless the Securities Commissioner for good cause consistent with this chapter determines that the hearing will not be so conducted.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-606. Administrative files and opinions.

- (a) The Securities Commissioner shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this chapter or the predecessor chapter; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or the predecessor chapter; and interpretative opinions or no action determinations issued under this chapter.
- (b) The Securities Commissioner shall make all rules, forms, interpretative opinions, and orders available to the public.
- (c) The Securities Commissioner shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted or order issued under this chapter may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the Securities Commissioner of a record's nonexistence is prima facie evidence of a record or its nonexistence.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-607. Public records; confidentiality.

- (a) Except as otherwise provided in subsection (b), records obtained by the Securities Commissioner or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.
- (b) The following records are not public records and are not available for public examination under subsection (a):
- (1) a record obtained by the Securities Commissioner in connection with an audit or inspection under Section 35-1-411(d) or an investigation under Section 35-1-602;
- (2) a part of a record filed in connection with a registration statement under Sections 35-1-301 and 35-1-303 through 35-1-305 or a record under Section 35-1-411(d) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;
- (3) a record that is not required to be provided to the Securities Commissioner or filed under this chapter and is provided to the Securities Commissioner only on the condition that the record will not be subject to public examination or disclosure;
- (4) a nonpublic record received from a person specified in Section 35-1-608(a);
- (5) any social security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed; and
- (6) a record obtained by the Securities Commissioner through a designee of the Securities Commissioner that a rule or order under this chapter determines has been:
- (A) expunged from the Securities Commissioner's records by the designee; or
- (B) determined to be nonpublic or nondisclosable by that designee if the Securities Commissioner finds the determination to be in the public interest and for the protection of investors.
- (c) If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in Section 35-1-608(a), the Securities Commissioner may disclose a record obtained in connection with an audit or inspection under Section 35-1-411(d) or a record obtained in connection with an investigation under Section 35-1-602.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-608. Uniformity and cooperation with other agencies.

- (a) The Securities Commissioner shall, in its discretion, cooperate, coordinate, consult, and, subject to Section 35-1-607, share records and information with the securities

regulator of another State, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, and a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, States, and foreign governments.

(b) In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this chapter, the Securities Commissioner shall, in its discretion, take into consideration in carrying out the public interest the following general policies:

- (1) maximizing effectiveness of regulation for the protection of investors;
 - (2) maximizing uniformity in federal and state regulatory standards; and
 - (3) minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.
- (c) The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes:
- (1) establishing or employing one or more designees as a central depository for registration and notice filings under this chapter and for records required or allowed to be maintained under this chapter;
 - (2) developing and maintaining uniform forms;
 - (3) conducting a joint examination or investigation;
 - (4) holding a joint administrative hearing;
 - (5) instituting and prosecuting a joint civil or administrative proceeding;
 - (6) sharing and exchanging personnel;
 - (7) coordinating registrations under Sections 35-1-301 and 35-1-401 through 35-1-404 and exemptions under Section 35-1-203;
 - (8) sharing and exchanging records, subject to Section 35-1-607;
 - (9) formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases;
 - (10) formulating common systems and procedures;
 - (11) notifying the public of proposed rules, forms, statements of policy, and guidelines;
 - (12) attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity; and
 - (13) developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-609. Judicial review.

A person aggrieved by a final order of the Securities Commissioner may obtain a review of the order in the Richland County Court of Common Pleas by filing in the court, within thirty days after entry of the order, a written petition praying that the order may be modified or set aside in whole or in part. The aggrieved person, upon filing a petition, may move before the court in which the petition is filed to stay the effectiveness of the Securities Commissioner's final order until such time as the court has reviewed the order. If the court orders a stay, the aggrieved person must post any bond set by the court in which a petition is filed. A copy of the petition must be served upon the Securities Commissioner, and the Securities Commissioner shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part. The findings of the Securities Commissioner as to the facts, if supported by competent, material, and substantial evidence, are conclusive.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-610. Jurisdiction.

- (a) Sections 35-1-301, 35-1-302, 35-1-401(a), 35-1-402(a), 35-1-403(a), 35-1-404(a), 35-1-501, 35-1-506, 35-1-509, and 35-1-510 do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this State or the offer to purchase or the purchase is made and accepted in this State.
- (b) Sections 35-1-401(a), 35-1-402(a), 35-1-403(a), 35-1-404(a), 35-1-501, 35-1-506, 35-1-509, and 35-1-510 do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in this State or the offer to sell or the sale is made and accepted in this State.
- (c) For the purpose of this section, an offer to sell or to purchase a security is made in this State, whether or not either party is then present in this State, if the offer:
 - (1) originates from within this State; or
 - (2) is directed by the offeror to a place in this State and received at the place to which it is directed.
- (d) For the purpose of this section, an offer to purchase or to sell is accepted in this State, whether or not either party is then present in this State, if the acceptance:
 - (1) is communicated to the offeror in this State and the offeree reasonably believes the offeror to be present in this State and the acceptance is received at the place in this State to which it is directed; and
 - (2) has not previously been communicated to the offeror, orally or in a record, outside this State.
- (e) An offer to sell or to purchase is not made in this State when a publisher circulates or there is circulated on the publisher's behalf in this State a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this State, or that is published in this State but has had more than two thirds of its circulation outside this State during the previous twelve months or when a radio or television program or other electronic communication originating outside this State is received in this State. A radio or television program, or other electronic communication is considered as having originated in this State if either the broadcast studio or the originating source of transmission is located in this State, unless:
 - (1) the program or communication is syndicated and distributed from outside this State for redistribution to the general public in this State;
 - (2) the program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this State for redistribution

to the general public in this State;

(3) the program or communication is an electronic communication that originates outside this State and is captured for redistribution to the general public in this State by a community antenna or cable, radio, cable television, or other electronic system; or

(4) the program or communication consists of an electronic communication that originates in this State, but which is not intended for distribution to the general public in this State.

(f) Sections 35-1-403(a), 35-1-404(a), 35-1-405(a), 35-1-502, 35-1-505, and 35-1-506 apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this State, whether or not either party is then present in this State.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-611. Service of process.

(a) A consent to service of process complying with this section required by this chapter must be signed and filed in the form required by a rule or order under this chapter. A consent appointing the Securities Commissioner the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under this chapter or a rule adopted or order issued under this chapter after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

(b) If a person, including a nonresident of this State, engages in an act, practice, or course of business prohibited or made actionable by this chapter or a rule adopted or order issued under this chapter and the person has not filed a consent to service of process under subsection (a), the act, practice, or course of business constitutes the appointment of the Securities Commissioner as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.

(c) Service under subsection (a) or (b) may be made by providing a copy of the process to the office of the Securities Commissioner, but it is not effective unless:

(1) the plaintiff, which may be the Securities Commissioner, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and

(2) the plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the Securities Commissioner in a proceeding before the Securities Commissioner, allows.

(d) Service pursuant to subsection (c) may be used in a proceeding before the Securities Commissioner or by the Securities Commissioner in a civil action in which the Securities Commissioner is the moving party.

(e) If process is served under subsection (c), the court, or the Securities Commissioner in a proceeding before the Securities Commissioner, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-612. Severability clause.

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

ARTICLE 7

Transition

Editor's Note

The South Carolina Uniform Securities Act of 2005 replaced former Chapter 1, Uniform Securities, with a new Chapter 1, effective January 1, 2006, numbered in conformity with the Uniform Securities Act. The new chapter includes Official and South Carolina Reporters comments linking the old and new chapters.

SECTION 35-1-701. Application of act to existing proceeding and existing rights and duties.

(a) The predecessor chapter exclusively governs all actions or proceedings that are pending on the effective date of this chapter or may be instituted on the basis of conduct occurring before the effective date of this chapter, but a civil action may not be maintained to enforce any liability under the predecessor chapter unless instituted within any period of limitation that applied when the cause of action accrued or within five years after the effective date of this chapter, whichever is earlier.

(b) All effective registrations under the predecessor chapter, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no action determinations, and conditions imposed on the registrations under the predecessor chapter remain in effect while they would have remained in effect if this chapter had not been enacted. They are considered to have been filed, issued, or imposed under this chapter, but are exclusively governed by the predecessor chapter.

(c) The predecessor chapter exclusively applies to an offer or sale made within one year after the effective date of this chapter pursuant to an offering made in good faith before the effective date of this chapter on the basis of an exemption available under the predecessor chapter.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006.

SECTION 35-1-702. Fees; portion of recovery in civil and administrative enforcement actions retained by Attorney General.

(a) Every applicant applying for registration as a broker-dealer, broker-dealer agent, investment adviser, or investment adviser representative and every person filing a securities registration statement or a notice filing for a federal covered security or a federal covered investment adviser shall pay the below specified fees and meet other requirements established by statute or otherwise set pursuant to this chapter. When an application is denied or withdrawn, the filing fee must not be refunded. The following fees are in effect for the filings designated until the Securities Commissioner promulgates a rule or order establishing different fees:

(1) For all initial and renewal notice filings of federal covered securities as defined in Section 18(b)(2) of the Securities Act of 1933: Five hundred forty-six dollars

(2) For all documents filed with respect to a federal covered security under Section 18(b)(3) or (4): Twenty-five dollars

(3) For all initial and subsequent notice filings of federal covered securities under Section 18(b)(4)(D) of the Securities Act of 1933 and all filings pursuant to Regulation D of the Securities Act of 1933: Three hundred dollars

- (4) For all registration statements pursuant to this chapter: Five hundred dollars
- (5) For all post-effective amendments to increase the number of securities to be offered or sold pursuant to a current registration statement: Five hundred dollars
- (6) Broker-Dealer (initial filing fee): Three hundred ten dollars
- (7) Broker-Dealer (renewal filing fee): Three hundred ten dollars
- (8) Broker-Dealer Agent (initial filing fee): One hundred ten dollars
- (9) Broker-Dealer Agent (renewal or change of registration filing fee): One hundred ten dollars
- (10) Investment Advisers (initial filing fee): Two hundred ten dollars
- (11) Investment Advisers (renewal filing fee): Two hundred ten dollars
- (12) Investment Adviser Representatives (initial filing fee): Fifty-five dollars
- (13) Investment Adviser Representatives (renewal or change of registration filing fee): Fifty-five dollars
- (14) Federal Covered Investment Advisers (initial fee): Two hundred ten dollars
- (15) Federal Covered Investment Advisers (renewal filing fee): Two hundred ten dollars.

(b) The Attorney General may retain the first one million five hundred thousand dollars from fee revenues collected pursuant to this chapter to be used for the operations of the Securities Division. The Attorney General may transfer to the South Carolina Law Enforcement Division two hundred thousand dollars after retaining the first one million five hundred thousand dollars collected pursuant to this chapter to be retained, expended, and carried forward for the provision of investigators for the State Grand Jury. The funds transferred to the State Law Enforcement Division must be used only for purposes of the State Grand Jury, and may not be transferred to another program or used for another purpose.

(c) The Attorney General may retain the first seven hundred fifty thousand dollars received by the Division of Securities in a fiscal year in settlement of litigation enforcement action and reimbursements of expenses arising from violations under this chapter to offset investigative, prosecutorial, and administrative costs of enforcing this chapter.

HISTORY: 2005 Act No. 110, Section 1, eff January 1, 2006; 2006 Act No. 331, Section 2, eff upon approval (became law without the Governor's signature on June 7, 2006).

Effect of Amendment

The 2006 amendment, in subparagraph (a)(9), substituted "One hundred ten" for "One hundred" dollars.

SECTION 35-1-703. Effective date.

This act takes effect on January 1, 2006.

HISTORY: 2005 Act No. 110, Sections 1, eff January 1, 2006.