

Code of Virginia

Securities Act

**§ 13.1-501. Definitions.**

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

"Agent" means any individual who, as a director, officer, partner, associate, employee or sales representative of a broker-dealer or issuer, effects or undertakes to effect sales of securities, otherwise than on behalf of (i) an issuer either offering a security exempted by subdivision 1, 2, 3, 4, 7, 9, or 10 of subsection A of § 13.1-514 or effecting a transaction with a "qualified purchaser" as defined by the United States Securities and Exchange Commission or (ii) a broker-dealer effecting in this Commonwealth transactions limited to those transactions described in § 15(h)(2) of the Securities Exchange Act of 1934.

"Broker-dealer" means any person engaged in the business of selling any type of security other than an interest or unit in a condominium as defined in subdivision (c) of § 55-79.2 or cooperative housing corporation for the account of others or for his own account otherwise than with or through a broker-dealer or agent, but does not include an issuer or an agent. A bank or trust subsidiary formed under Article 3 (§ 6.2-1047 et seq.) of Chapter 10 of Title 6.2 shall not be considered to be a broker-dealer because the bank or trust subsidiary formed under Article 3 (§ 6.2-1047 et seq.) of Chapter 10 of Title 6.2 engages in any one or more of the activities specified in subparagraph (i), (ii), (iii), (iv), (v), (vi), (viii), (ix) or (x) of § 3(a)(4)(B) or in § 3(a)(5)(C) of the Securities Exchange Act of 1934 under the conditions described in connection with such laws.

"Commission" means the State Corporation Commission.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

"Cooperative housing corporation" means a corporation in which each member is entitled, solely by reason of his membership in the corporation, to occupy for dwelling purposes a house or an apartment in a building owned or leased or to be owned or leased by the corporation or to purchase a dwelling constructed or to be constructed by the corporation. The corporation shall not be or intend to be engaged in any business or activity other than the ownership, leasing, management, or construction of residential properties for its members, except to the extent that such business or activity is incidental to the ownership, leasing, management, or construction of residential properties. The securities of the corporation shall be issued only in connection with the sale or lease of dwelling units to persons who are or thereupon become members of the corporation and shall be transferable by the purchasers only in connection with the transfer of such dwelling units or leases to other persons who are or thereupon become members.

"Federal covered advisor" means any person who is registered or required to be registered under § 203 of the Investment Advisers Act of 1940 as an "investment adviser."

"Federal covered security" means any security described as a "covered security" in § 18 of the Securities Act of 1933.

"Guaranteed" means guaranteed as to payment of principal, interest or dividends.

"Investment advisor" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. Investment advisor also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment advisor" does not include (i) an investment advisor representative; (ii) a bank, a bank holding company as defined in the Bank Holding Company Act of 1956 which is not an investment company, a trust subsidiary organized under Article 3 (§ 6.2-1047 et seq.) of Chapter 10 of Title 6.2, a savings institution, a credit union, or a trust company; (iii) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession; (iv) a broker-dealer or his agent whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them; (v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific situation of each client; (vi) any person that is a federal covered advisor; or (vii) such other persons not within the intent of this definition, as the Commission may designate by rule or determine by order pursuant to § 13.1-525.

"Investment advisor representative" means any partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, who is employed by or associated with (a) an investment advisor registered or required to be registered under this chapter and who does any of the following: (i) makes any recommendations or otherwise renders advice regarding securities, (ii) manages accounts or portfolios of clients, (iii) determines which recommendations or advice regarding securities should be given, (iv) prepares reports or analyses concerning securities, (v) solicits, offers or negotiates for the sale of or sells investment advisory services, or (vi) supervises employees who perform any of the foregoing; or (b) a federal covered advisor, subject to the limitations of § 203 A of the Investment Advisers Act of 1940, as the Commission may designate by rule or order. "Investment advisor representative" does not include such other persons employed by or associated with either an investment advisor or a federal covered advisor not within the intent of this definition as the Commission may designate by rule or determine by order pursuant to § 13.1-525.

"Issuer" means any person who issues or proposes to issue a security, except that:

1. With respect to certificates of deposit, voting trust certificates or collateral trust certificates, and with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions, or of the fixed, restricted management or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of manager;
2. With respect to equipment trust certificates or like securities, "issuer" means the person by whom the equipment is or is to be used;
3. With respect to oil, gas or other mineral leases, rights or royalties or interests therein, "issuer" means the owner of any such lease, right, royalty or interest (whether whole or fractional) who creates financial interests therein for the purpose of offering to more than five persons.

"Nonissuer distribution" means any transaction not directly or indirectly for the benefit of the issuer.

"Offer" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

"Person" means an individual, a partnership, a corporation, an unincorporated association, a government, a subdivision of a government, or a trust in which the interests of the beneficiaries are evidenced by securities.

"Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

"Securities Act of 1933," "Securities Exchange Act of 1934," "Bank Holding Company Act of 1956," "Investment Advisers Act of 1940," and "Investment Company Act of 1940" mean the federal statutes of those names as now or hereafter amended.

"Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral trust certificate; preorganization certificate of subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; oil, gas or other mineral lease, right or royalty, or any interest therein; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. However, this definition shall not apply to any insurance policy, endowment policy, annuity contract, variable annuity contract or any contract or agreement in relation to and in consequence of any such policy or contract, issued by an insurance company subject to the supervision or control of the Commission's Bureau of Insurance when the form of such policy or contract has been duly filed with the Bureau as now or hereafter required by law.

"State" means any state, territory or possession of the United States, including the District of Columbia and Puerto Rico.

B. For the purposes of Article 4 (§ [13.1-507](#) et seq.) of this chapter, the terms defined in this section shall not include negotiations or agreements between the issuer and any underwriter or among underwriters; or any transaction by the pledgee of a security unless made directly or indirectly for the benefit of the issuer.

C. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing shall be deemed to constitute part of the subject of the purchase and to have been offered and sold for value.

D. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same issuer or of another person, and every sale or offer, of a security which gives the holder thereof a present or future right or privilege to convert the security into another security of the same issuer or of another person, shall be deemed to include an offer of such other security.

Code 1950, § 13-106; 1956, c. 428; 1966, c. 186; 1974, cc. 409, 479; 1975, c. 75; 1976, c. 229; 1987, c. 678; 1988, c. 536; 1990, c. 5; 1991, cc. 223, 418; 1992, c. 19; 1997, c. [279](#); 1998, c. [22](#); 2001, c. [722](#).

### **§ 13.1-502. Unlawful offers and sales.**

It shall be unlawful for any person in the offer or sale of any securities, directly or indirectly,

(1) To employ any device, scheme or artifice to defraud, or

(2) To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) To engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser.

1956, c. 428.

**§ 13.1-503. Unlawful advice.**

A. It shall be unlawful for any person who receives directly or indirectly any consideration from another person primarily for advising such other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise,

1. To employ any device, scheme, or artifice to defraud such other person,

2. To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon such other person,

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

4. To engage in dishonest or unethical practices as the Commission may define by rule.

B. In the solicitation of advisory clients, it shall be unlawful for any person to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

C. Except as may be permitted by rule or order of the Commission, it shall be unlawful for any investment advisor to enter into, extend, or renew any investment advisory contract unless it provides in writing:

1. That the investment advisor shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

2. That no assignment of the contract may be made by the investment advisor without the consent of the other party to the contract; and

3. That the investment advisor, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

D. Subdivision 1 of subsection C of this section shall not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date.

E. "Assignment" as used in subdivision 2 of subsection C of this section includes any direct or indirect

transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. If the investment advisory is a partnership, no assignment of an investment advisory contract is considered to result from the death of withdrawal of a minority of the members of the investment advisor having only a minority interest in the business of the investment advisor, or from the admission to the investment advisor of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

F. The Commission may by rule or order adopt exemptions from subdivision 3 of subsection A and subdivisions 1, 2 and 3 of subsection C of this section where such exemptions are consistent with the public interest and within the purposes fairly intended by the policy and provisions of this chapter.

1956, c. 428; 1987, c. 678.

### **§ 13.1-504. Registration.**

A. It shall be unlawful for any person to transact business in this Commonwealth as (i) a broker-dealer or an agent, except in transactions exempted by subsection B of § 13.1-514, unless he is so registered under this chapter; (ii) an investment advisor or investment advisor representative unless he is so registered under this chapter; or (iii) a federal covered advisor unless he has filed such documents and paid such fee as the Commission by rule or order may require.

B. The registration of an agent shall be deemed effective only so long as he is connected with a specified broker-dealer registered under this chapter or a specified issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, both the agent and the broker-dealer or issuer shall promptly notify the Commission. An agent who changes his connection from one broker-dealer or issuer to another shall be required to file a new application for registration and pay the necessary fee in accordance with § 13.1-505. It shall be unlawful for any broker-dealer or issuer to employ an unregistered agent. No agent shall be employed by more than one broker-dealer or issuer, except pursuant to such rules or regulations as the Commission shall prescribe.

C. The registration of an investment advisor representative shall be deemed effective only so long as he is connected with an investment advisor registered under this chapter or a federal covered advisor. When an investment advisor representative begins or terminates a connection with an investment advisor, the investment advisor shall promptly notify the Commission. When an investment advisor representative begins or terminates a connection with a federal covered advisor, the investment advisor representative shall promptly notify the Commission. An investment advisor representative who changes his connection from one investment advisor or federal covered advisor to another shall be required to file a new application for registration and pay the necessary fee in accordance with § 13.1-505. It shall be unlawful for (i) any person who is required to be registered as an investment advisor under this chapter to employ an unregistered investment advisor representative or (ii) a federal covered advisor to employ, supervise, or associate with an unregistered investment advisor representative having a place of business in the Commonwealth. No investment advisor representative shall be employed by more than one investment advisor or federal covered advisor except pursuant to such rules or regulations as the Commission shall prescribe.

1956, c. 428; 1974, cc. 374, 479; 1979, c. 312; 1982, c. 407; 1987, c. 678; 1991, cc. 223, 281, 418; 1997, c. 279; 1998, cc. 22, 255; 2003, c. 595; 2007, c. 458.

#### **§ 13.1-504.1. Brokerage services of savings and loan associations, savings banks or service**

**corporations of either; when registration not required.**

A savings and loan association or a savings bank, or the service corporation of either, may enter into an agreement with any person or entity which is a registered broker-dealer under the applicable provisions of this chapter and under the Securities Exchange Act of 1934, for the purpose of making brokerage services available to customers of the association or savings bank. The existence of such an agreement shall not of itself be sufficient to require employees of the association, savings bank or service corporation to register as an agent under the provisions of this article, so long as the employees' activities with regard to such brokerage services are limited to the providing of clerical or ministerial services.

1984, c. 334.

**§ 13.1-504.2. Broker-dealer services provided by credit unions; when registration not required.**

A credit union may enter into an agreement with any person or entity which is a registered broker-dealer under this chapter and under the Securities Exchange Act of 1934, for the purpose of making brokerage services available to members of the credit union. The existence of such an agreement shall not of itself be sufficient to require employees of the credit union to register as an agent under the provisions of this article, so long as the employees' activities with regard to such brokerage services are limited to the providing of clerical or ministerial services.

1988, c. 338.

**§ 13.1-505. Procedure for registration.**

A. A broker-dealer, investment advisor, investment advisor representative or agent may be registered after filing with the Commission, or any entity designated by order or rule of the Commission, an application containing such relevant information as the Commission may require. He shall be registered if the Commission finds that:

1. He is a person (and, in the case of a corporation or partnership, the natural persons who are the officers, directors or partners or who otherwise control such corporation or partnership are persons) of good character and reputation;
2. He intends to maintain his business records in accordance with the rules of the Commission;
3. His business knowledge and conduct and his financial responsibility are such that he is a suitable person to engage in the business;
4. He has supplied all information required by the Commission;
5. He is not subject to the revocation provisions of § 13.1-506; and
6. He has paid the necessary fee.

B. The Commission may require as a condition of registration or renewal of registration the filing by a broker-dealer or investment advisor of a reasonable surety or other bond conditioned as the Commission may require for the protection of investors not in any case exceeding \$25,000 in penalty amount as evidence of financial responsibility except that no bond shall be required where the net worth of the broker-dealer or investment advisor exceeds \$25,000.



C. The Commission may require as a condition of registration the passing of a written examination as evidence of knowledge of the securities or investment advisory business.

D. All registrations and renewals thereof shall expire annually in accordance with rules and regulations promulgated by the Commission.

E. Each application for a renewal of a registration shall be filed with the Commission or any entity designated by order or rule of the Commission. Upon application for a renewal of a registration, the Commission shall have jurisdiction to determine, as of such time, the propriety of the renewal registration.

F. Each application for a registration or renewal of a registration as a broker-dealer or investment advisor shall be accompanied by a nonrefundable fee of \$200, payable to the Treasurer of Virginia or any entity designated by order or rule of the Commission.

G. Each application for a registration or renewal of a registration as an agent or investment advisor representative shall be accompanied by a nonrefundable fee of not less than thirty and not more than fifty dollars, as established by order or rule of the Commission, payable to the Treasurer of Virginia or any entity designated by order or rule of the Commission.

H. For the purposes of registration as a broker-dealer or an investment advisor, a partnership shall be treated as the same partnership so long as two or more members of the partnership named in the application continue the business without change of location, if the partnership, within one month after a change in the partnership, files with the Commission a copy of a certificate filed in compliance with § 50-74.

I. The Commission shall either grant or deny each application for registration within thirty days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the Commission may extend such period as much as ninety days by giving written notice to the applicant. No more than three such extensions may be made on any one application. An extension of the initial thirty-day period, not to exceed ninety days, shall be granted upon written request of the applicant.

J. A renewal of registration shall be granted as a matter of course upon receipt of the proper application and fee together with any surety bond that the Commission may pursuant to subsection B require unless the registration was, or the renewal would be, subject to revocation under § 13.1-506.

1956, c. 428; 1974, cc. 382, 479; 1980, c. 222; 1981, c. 244; 1984, c. 771; 1987, c. 678; 1990, c. 5; 1991, c. 281; 1992, c. 18; 1997, c. 279.

#### **§ 13.1-505.1. Post-registration provisions.**

With respect to investment advisors, the Commission may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the Commission in its discretion, information furnished to clients or prospective clients of an investment advisor that would be in compliance with the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

1987, c. 678; 1997, c. 279.

#### **§ 13.1-506. Revocation of registration.**

The Commission may, by order entered after a hearing on notice duly served on the defendant not less than thirty days before the date of the hearing, revoke the registration of a broker-dealer, investment advisor, investment advisor representative or agent, or refuse to renew a registration if an application for renewal has been or is to be filed, if it finds that such an order is in the public interest and that such broker-dealer, investment advisor or any partner, officer or director of such broker-dealer or investment advisor, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by such broker-dealer or investment advisor or that such agent or investment advisor representative:

1. Has engaged in any fraudulent transaction;
2. Is insolvent, or in danger of becoming insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature;
3. Is a person for whom a conservator or guardian has been appointed and is acting;
4. Has been convicted, within or without this Commonwealth, of any misdemeanor involving a security or any aspect of the securities or investment advisory business or any felony;
5. Has failed to furnish information or records requested by the Commission concerning his conduct of the securities or investment advisory business; or
6. [Repealed.]
7. Has failed to conduct his securities or investment advisory business in accordance with the rules of the Commission.

1956, c. 428; 1974, c. 479; 1981, c. 244; 1987, c. 678; 1997, c. 921.

### **§ 13.1-507. Registration requirement; exemptions.**

It shall be unlawful for any person to offer or sell any security unless (i) the security is registered under this chapter, (ii) the security or transaction is exempted by this chapter, or (iii) the security is a federal covered security.

Code 1950, § 13-110; 1956, c. 428; 1997, c. 279; 2003, c. 595.

### **§ 13.1-508. Registration by notification.**

A. The following securities may be registered by notification:

1. Any security whose issuer (which, for the purposes of this subsection, shall include any predecessor by merger, consolidation or acquisition of assets) has been in continuous operation for at least five years if there has been no default within the past three fiscal years in the payment of principal, interest or dividends on any security of the issuer with a fixed maturity or a fixed interest or dividend provision, and (where the security being registered does not have a fixed maturity or a fixed interest or dividend provision) (a) the issuer is a corporation which has assets of at least \$500,000 after deduction of depreciation and other reserves, which has a net worth of at least \$10,000, which is incorporated under the laws of this Commonwealth and which conducts a substantial portion of its business in this Commonwealth, or (b) the issuer during its past three fiscal years has had average net earnings applicable to all securities without a fixed maturity or a fixed interest or dividend provision (whether of



one or more classes) outstanding at the date when the registration statement is filed (i) aggregating at least five percent of the amount of such outstanding securities as measured by their maximum public offering price or their market price on a day within 30 days of the date of filing the registration statement, whichever is higher, or their book value on a day within 90 days of the date of filing the registration statement if there is neither a readily determinable market price nor a public offering price or (ii) if no such securities are outstanding, then aggregating at least five percent of the amount of such securities then offered for sale based upon the maximum price at which such securities are to be offered for sale; and all accounting determinations required by this section shall be made in accordance with generally accepted accounting practices. Noncumulative preferred stock shall be deemed for the purposes of this subsection a security with a fixed dividend provision.

2. Any security registered for nonissuer distribution if (i) any security of the same class has ever been registered or (ii) the security being registered was originally issued pursuant to an exemption in this chapter.

B. A registration statement under this section shall state the facts showing eligibility of the securities for registration by notification, the amount and maximum offering price of the securities proposed to be offered in this Commonwealth, and a copy of any prospectus to be used in connection with the offering. It shall be accompanied by a fee of 1/20 of one percent of the maximum offering price of the securities proposed to be offered in this Commonwealth; provided that the fee shall not be less than \$100 nor more than \$250.

C. If no stop order is in effect and no proceeding for the issuance of a stop order is pending, a registration statement under this section shall automatically become effective at three o'clock in the afternoon of the second full business day after filing of the registration statement or the last amendment thereto or at such earlier time as the Commission may determine by order, letter, telegram, or electronic means.

D. The Commission may require that a prospectus be used in connection with the offering. If the Commission requires the use of a prospectus, it shall be unlawful to sell any security registered under this section except upon delivery of a prospectus to each person to whom an offer is made. The prospectus shall contain such information specified in subsection (b) of § 13.1-510 as may be designated by the Commission as necessary for the protection of investors and such additional information as the Commission may require.

1956, c. 428; 1981, c. 168; 1984, c. 771; 1993, c. 179; 2003, c. 595.

### **§ 13.1-509. Registration by coordination.**

A. Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination if no stop order or refusal order is in effect against such registration statement and no proceeding looking toward such an order is pending.

B. A registration statement under this section shall consist of the prospectus filed under the Securities Act of 1933 together with all amendments or supplements thereto and a statement of the amount and maximum offering price of the securities proposed to be offered in this Commonwealth. The Commission may require that it also include the articles of incorporation and bylaws, any agreements with underwriters, any indenture or any other instrument governing the issuance of the security to be registered, a specimen of the security and any other information documents filed under the Securities Act of 1933. The registration statement shall be accompanied by a fee of one-twentieth of one percent of the maximum aggregate offering price of the securities proposed to be offered in this Commonwealth;

provided that the fee shall not be less than \$200 nor more than \$700, except that in the case of a unit investment trust, as that term is defined in the Investment Company Act of 1940, the fee shall not be less than \$400 nor more than \$1,000.

C. A registration statement under this section shall automatically become effective at the moment the federal registration statement becomes effective if all of the following conditions are satisfied: (i) No stop order is in effect and no proceeding for the issuance of a stop order is pending and (ii) the registration statement and all amendments other than a final amendment (hereinafter termed the "price amendment") which is limited substantially to information concerning the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price have been on file with the Commission, or any entity designated by order or rule of the Commission, for at least three full business days. Unless the definitive information concerning price and other matters dependent thereon has been so on file with the Commission or such entity, the registrant shall promptly notify the Commission by telephone, telegram, or electronic means of the date and time when the federal registration statement became effective and the content of the federal price amendment, if any, and shall promptly file a post-effective amendment containing the information in the federal price amendment but exclusive of exhibits. Failure to receive such notification or such post-effective amendment if required shall be grounds for the entry of a stop order retroactively denying effectiveness to the registration statement, without notice or hearing, if the Commission promptly notifies the registrant by telephone, telegram, or electronic means (and promptly confirms by letter, telegram, or electronic means when it notifies by telephone) of the issuance of such an order. If the registrant proves that he complied with the requirements of this subsection as to notice and post-effective amendment, the stop order shall be void as of the time of its entry. The Commission may, by order, letter, telegram, or electronic means, accelerate the effectiveness of any registration statement and may waive any or all of the conditions specified in clause (ii) above. If the federal registration has become effective before all of such conditions have been satisfied and they are not so waived, the registration statement under this section shall automatically become effective as soon as all of such conditions have been satisfied.

1956, c. 428; 1984, c. 771; 1990, c. 90; 1994, c. 10; 2003, c. 595.

### **§ 13.1-510. Registration by qualification.**

(a) Any security may be registered by qualification.

(b) A registration statement under this section shall contain that part of the following information as required by the Commission:

(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 of its business; and a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

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

- (3) With respect to persons covered by subdivision (2) of this subsection: the remuneration paid during the past twelve months and estimated to be paid during the ensuing twelve months, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries and affiliates) to all such persons in the aggregate;
- (4) With respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: the information specified in subdivision (2) of this subsection other than his occupation;
- (5) With respect to every promoter if the issuer was organized within the past three years: the information specified in subdivision (2) of this subsection, any amount paid to him within such period or intended to be paid to him and the consideration for any such payment;
- (6) With respect to any person other than the issuer on whose behalf any part of the offering is to be made: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected; and a statement of his reasons for making the offering;
- (7) The capitalization and long term debt (on both a current and a pro forma basis) of the issuer and any subsidiary, including (i) a description of each class of security outstanding or being registered or otherwise offered, and (ii) a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill or anything else) for which the issuer or any such subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;
- (8) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any portion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than cash; the estimated aggregate underwriting and selling discounts or commissions and finder's fees (including separately cash, securities, contracts or anything else of value to accrue to the underwriters in connection with the offering) or, if such discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering and accounting charges; the name and address of every underwriter and every recipient of a finders' fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;
- (9) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which such proceeds are to be used by the issuer; the amount to be used for each purpose; the order of 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 such purposes; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with such acquisition and the amounts of such commissions and any other expense in connection with such acquisition (including the cost of borrowing money to finance such acquisition);

- (10) A description of any stock options (or other security options) outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subdivisions (2), (4), (5), (6) or (8) of this subsection and by any person who holds or will hold ten percent or more in the aggregate of any such options;
- (11) The dates of, parties to and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);
- (12) A copy of any prospectus, pamphlet, circular, form letter, advertisement or sales literature intended as of the effective date to be used in connection with the offering;
- (13) A specimen of the security being registered; a copy of the issuer's articles of incorporation and bylaws (or their substantial equivalents) as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;
- (14) An opinion of counsel as to the legality of the security being registered which shall state whether the security when sold will be legally issued, fully paid and nonassessable, and, if a debt security, a binding obligation of the issuer;
- (15) A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if such business were the registrant;
- (16) Such additional information as the Commission may require.
- (c) A registration statement shall state the amount of securities to be offered in this Commonwealth and shall be accompanied by a filing fee of one-tenth of one percent of the maximum aggregate offering price at which the securities are proposed to be offered in this Commonwealth; provided that the fee shall not be less than \$250 nor more than \$500.
- (d) A registration statement under this section shall become effective when the Commission so orders.
- (e) It shall be unlawful to sell any security registered under this section that constitutes the whole or a part of an unsold allotment or subscription by a broker-dealer as a participant in the underwriting of such securities except upon delivery to the purchaser of a prospectus. The prospectus shall contain such part of the information specified in subsection (b) as may be designated by the Commission as necessary for the protection of investors.
- (f) The Commission shall have authority in its discretion to require that sales be made only pursuant to a subscription contract the form of which shall have been filed as an exhibit to the registration statement. If the Commission requires a subscription contract, it shall be unlawful to sell any security registered under this section except pursuant to such a subscription contract duly signed by the purchaser, a copy of which shall be delivered to him.

(g) [Repealed.]

(h) If any prospectus, document or exhibit filed as provided in this section discloses that any of the securities sought to be registered by qualification, or as much as twenty-five percent of any class of the securities of the issuer to be outstanding, were or are intended to be issued for any patent right, copyright, trademark, process, formula, goodwill or other intangible assets, or for organization or promotion fees or expenses, the Commission may require that such securities shall be delivered in escrow to some satisfactory depository under an escrow agreement. The owners of such securities shall not be entitled to sell or transfer such securities or to withdraw such securities from escrow until the issuer in any period of thirty-six consecutive months earns an annual average of six percent of the public offering price times all shares of common stock then outstanding plus those to be outstanding through the exercise of warrants or options as computed under normal and customary accounting procedures or upon order of the Commission, when no circumstance is apparent which, in the opinion of the Commission, would warrant continuation of the escrow. In case of dissolution or insolvency during the time such securities are held in escrow, the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full. If any securities sought to be registered by qualification are to be sold for the account of the issuer, and not by underwriters who have or at the time of offering shall have purchased such securities from the issuer, the Commission may require that the proceeds from the sale of such securities be delivered in escrow to some satisfactory depository until all or a reasonable portion of the total securities originally proposed to be offered and sold shall have been sold and paid for.

For the purposes of this section, such securities shall be deemed to have been sold and paid for at such time as the subscribers therefor deliver to, or for the benefit of, the issuer, an amount equal to the purchase price specified for such securities either in cash, a draft, check or note (other than any such instrument which is drawn without recourse) or any combination thereof.

1956, c. 428; 1982, c. 362; 1983, c. 517; 1984, c. 771; 1993, c. 180 .

#### **§ 13.1-511. Effectiveness and reports.**

A registration statement filed under this article may be filed by the issuer, any other person on whose behalf the offer is to be made or by any registered broker-dealer. When securities are registered, they may be offered and sold by the issuer, by such other person or by any registered broker-dealer, whether or not named in the registration statement. Every registration statement shall remain effective until revoked by the Commission or until terminated upon request of the registrant with the consent of the Commission. So long as a registration statement remains effective, all outstanding securities of the same class shall be considered to be registered for the purpose of any nonissuer distribution. So long as the registration statement remains effective, the Commission may require the registrant to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement. The Commission may require such information to be included in the prospectus.

1956, c. 428; 1991, c. 223; 2003, c. 595.

#### **§ 13.1-512. Repealed.**

Repealed by Acts 2003, c. 595.

#### **§ 13.1-513. Stop orders.**

(a) The Commission may issue a stop order denying effectiveness to, or revoking the effectiveness of, any registration statement if it finds that such an order is in the public interest and that:

(1) The registration statement together with any amendments, or any report filed by the registrant or any other document filed in connection with the registration statement contained any statement which was, at the time and in the circumstances in which it was made, false or misleading with respect to any material fact or omitted to state any material fact required to be stated therein;

(2) The applicant or registrant or any agent, partner, officer or director of the applicant or registrant (or any person occupying a similar status or performing similar functions) or any person directly or indirectly controlling or controlled by the applicant or registrant has violated, in connection with the offering, any provision of this chapter or of any other law applicable to the offering, or any rule, order or condition lawfully imposed under this chapter;

(3) Any person specified in subdivision (2) of this subsection has failed to furnish any information lawfully requested by the Commission;

(4) The right to sell the securities which are the subject of the registration statement has been denied or revoked or is suspended under any federal act applicable to the offering (and such denial, revocation or suspension is still in effect);

(5) The issuer is insolvent, either in the sense that its liabilities exceed its assets or in the sense that it cannot meet its obligations as they mature;

(6) The issuer's business includes or probably will include activities which are forbidden by law;

(7) The offering has worked or tended to work a fraud upon investors or probably will so operate; or

(8) Where a security is to be or has been registered by notification, it is not eligible for such registration.

(b) No stop order shall be entered without reasonable notice to the applicant or registrant.

(c) In any proceeding under this section, the Commission may refrain from issuing or, after issuing, may revoke a stop order on condition that the persons against whom it is directed correct the matters complained of on which it is based.

1956, c. 428; 1960, c. 71.

### **§ 13.1-514. Exemptions.**

A. The following securities are exempted from the securities registration requirements of this chapter:

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

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

3. Any security issued by and representing an interest in or a debt of, or guaranteed by, the International



Bank for Reconstruction and Development, or any national bank, or any bank or trust company organized under the laws of any state or trust subsidiary organized under the provisions of Article 3 (§ [6.2-1047](#) et seq.) of Chapter 10 of Title 6.2;

4. Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association or savings bank, or by any savings and loan association or savings bank which is organized under the laws of this Commonwealth;
  5. Any security issued or guaranteed by an insurance company licensed to transact insurance business in this Commonwealth;
  6. Any security issued by any credit union, industrial loan association or consumer finance company which is organized under the laws of this Commonwealth and is supervised and examined by the Commission;
  7. Any security issued or guaranteed by any railroad, other common carrier or public service company supervised as to its rates and the issuance of its securities by a governmental authority of the United States, any state, Canada or any Canadian province;
  8. Any security which is listed or approved for listing upon notice of issuance on the New York Stock Exchange or the American Stock Exchange or any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants admitted to trading in any of said exchanges; or any warrant or right to subscribe to any of the foregoing securities;
  9. Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months after the date of issuance, exclusive of days of grace, or any renewal thereof which is likewise limited, or any guaranty of such paper or of any such renewal;
  10. Any security issued in connection with an employee's stock purchase, savings, pension, profit-sharing or similar benefit plan. The Commission may by rule or order, as to any security issued pursuant to such plan, specify or designate persons eligible to participate in such plan;
  11. Any security issued by a cooperative association organized as a corporation under the laws of this Commonwealth;
  12. Any security listed on an exchange registered with the United States Securities and Exchange Commission or quoted on an automated quotation system operated by a national securities association registered with the United States Securities and Exchange Commission and approved by regulations of the State Corporation Commission;
  13. Any security issued by any issuer organized under the laws of any foreign country and approved by rule or regulation of the Commission.
- B. The following transactions are exempted from the securities, broker-dealer and agent registration requirements of this chapter except as expressly provided in this subsection:
1. Any isolated transaction by the owner or pledgee of a security, whether effected through a broker-dealer or not, which is not directly or indirectly for the benefit of the issuer;
  2. Any nonissuer distribution by a registered broker-dealer and its registered agent of a security that has

been outstanding in the hands of the public for the past five years, if the issuer in each of the past three fiscal years has lawfully paid dividends on its common stock aggregating at least four percent of its current market price;

3. Any transaction by a registered broker-dealer and its registered agent pursuant to an unsolicited order or offer to buy;

4. Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels, if the entire indebtedness secured thereby is offered and sold as a unit;

5. Any transaction in his official capacity by a receiver, trustee in bankruptcy or other judicially appointed officer selling securities pursuant to court order;

6. Any offer or sale to a corporation, investment company or pension or profit-sharing trust or to a broker-dealer;

7. a. Any sale of its securities by an issuer or any sale of securities by a registered broker-dealer and its registered agent acting on behalf of an issuer if, after the sale, such issuer has not more than 35 security holders, and if its securities have not been offered to the general public by advertisement or solicitation; or

b. To the extent the Commission by rule or order permits, any sale of its securities by an issuer or any sale of securities by a registered broker-dealer and its registered agent acting on behalf of an issuer to not more than 35 persons in the Commonwealth during any period of 12 consecutive months, whether or not the issuer or any purchaser is then present in the Commonwealth, if the issuer or broker-dealer reasonably believes that all the purchasers in the Commonwealth are purchasing for investment, and if the securities have not been offered to the general public by advertisement or general solicitation. The Commission may, by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, increase or decrease the number of purchasers permitted, or waive the condition relating to their investment intent. The Commission may assess and collect in connection with any filing pursuant to this exemption a nonrefundable fee not to exceed \$250.

With respect to this subdivision 7, and except to the extent the Commission by rule or order may otherwise permit, the number of security holders of an issuer or the number of purchasers from an issuer, as the case may be, shall not be deemed to include the security holders of any other corporation, partnership, limited liability company, unincorporated association or trust unless it was organized to raise capital for the issuer. Notwithstanding the provisions of subdivision 15, the merger or consolidation of corporations, partnerships, limited liability companies, unincorporated associations or other entities shall be a violation of this chapter if the surviving or new entity has more than 35 security holders or purchasers and all the securities of the parties thereto were issued under this exemption, unless all of the parties thereto have been engaged in transacting business for more than two years prior to the merger or consolidation;

8. Any transaction pursuant to an offer to existing security holders of the issuer including holders of transferable warrants issued to existing security holders and exercisable within 90 days of their issuance, if either (i) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this Commonwealth or (ii) the issuer first notifies the Commission in writing of the terms of the offer and the Commission does not by order

disallow the exemption within five full business days after the date of the receipt of the notice;

9. Any offer (but not a sale) of a security for which registration statements have been filed, but are not effective, under both this chapter and the Securities Act of 1933; but this exemption shall not apply while a stop order is in effect or, after notice to the issuer, while a proceeding or examination looking toward such an order is pending under either act;

10. The issuance of not more than three shares of common stock to one or more of the incorporators of a corporation and the initial transfer thereof;

11. Sales of an issue of bonds, aggregating \$150,000 or less, secured by a first lien deed of trust on realty situated in Virginia, to 30 persons or less who are residents of Virginia;

12. Any offer or sale of any interest in any partnership, corporation, association or other entity created solely to provide residential housing located in the Commonwealth, provided that such offer or sale is by the issuer or by a real estate broker or real estate agent duly licensed in Virginia;

13. The Commission is authorized to create by rule a limited offering exemption, the purpose of which shall be to further the objectives of compatibility with similar exemptions from federal securities regulation and uniformity among the states; providing that such rule shall not exempt broker-dealers or agents from the registration requirements of this chapter, except in the case of an agent of the issuer who either (i) receives no sales commission directly or indirectly for offering or selling the securities or (ii) effects transactions in a security exempt from registration under the Securities Act of 1933 pursuant to rules and regulations promulgated under § 4(2) thereof. Any filing made with the Commission pursuant to any exemption created under this subdivision shall be accompanied by a \$250 fee;

14. The issuance of any security dividend, whether the corporation distributing the dividend is the issuer of the security or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or in a security;

15. Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, sale of assets, or exchange of securities;

16. Any offer or sale of a security issued by a Virginia church if the offer and sale are only to its members and the security is offered and sold only by its members who are Virginia residents and who do not receive remuneration or compensation directly or indirectly for offering or selling the security;

17. Any offer or sale of securities issued by a professional business entity (as defined in subsection A of § 13.1-1102) to a person licensed or otherwise legally authorized to render within this Commonwealth the same professional services (as defined in subsection A of § 13.1-1102) rendered by the professional business entity. Notwithstanding the foregoing, nothing in this subdivision shall be deemed to provide that shares of stock, partnership or membership interests or other representations of ownership in a professional business entity are securities except to the extent otherwise provided by subsection A of this section;

18. Any offer that is communicated on the Internet, World Wide Web or similar proprietary or common carrier electronic system and that is in compliance with requirements prescribed by rule or order of the Commission;

19. To the extent the Commission by rule or order permits, any offer or sale to an accredited investor, as defined by the Commission, if the issuer reasonably believes before the sale that the accredited investor, either alone or with the accredited investor's representative, has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the prospective investment. The Commission may assess and collect in connection with any filing pursuant to this exemption a nonrefundable fee not to exceed \$250;

20. Any transaction by a bank pursuant to an unsolicited offer or order to buy or sell any security, provided such transaction is not effected by an employee of the bank who is also an employee of a broker-dealer;

21. (Expires July 1, 2020) To the extent the Commission by rule or order permits, any security issued by an entity formed, organized, or existing under the laws of the Commonwealth, if:

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

b. The offer and sale of the security are made only to residents of Virginia;

c. The aggregate price of securities in an offering under this exemption does not exceed \$2 million, which sum the Commission, by rule or order, may increase or decrease;

d. The total consideration paid by any purchaser of securities in an offering under this exemption does not exceed \$10,000, unless the purchaser is an accredited investor as defined by Rule 501 of the U.S. Securities and Exchange Commission's Regulation D (17 C.F.R. § 230.501). The Commission, by rule or order, may increase or decrease such limit on the total consideration to be paid by any purchaser of securities in an offering under this exemption;

e. No compensation is paid to employees, agents, or other persons for the solicitation of, or based on the sale of, securities in connection with an offering of securities under this exemption to any person who is not registered as a broker-dealer or agent, except to the extent permitted by rule or order of the Commission;

f. Neither the issuer nor any person related to the issuer is subject to disqualification as established by the Commission by rule or order; and

g. The security is sold in an offering conducted in compliance with any conditions established by rule or order of the Commission, which may include:

(1) Restrictions on the nature of the issuer;

(2) Limitations on the number and manner of offerings;

(3) Disclosures required to be provided to investors, including disclosures of risk factors related to the issuer and the offering;

(4) Requirements that all proceeds received from purchasers be placed in escrow in a depository institution located in the Commonwealth until the minimum amount of the offering is raised;

(5) Filings with the Commission of notices and other materials related to the offering; and

(6) Requirements regarding the preparation and submission of the issuer's financial statements,

including (i) the form and content of such statements and (ii) whether such statements are required to be audited or reviewed by an independent certified public accountant in accordance with generally accepted accounting principles.

The Commission may assess and collect in connection with any filing pursuant to this exemption a nonrefundable fee in an amount to be set by the Commission by rule or order, provided such amount shall not exceed \$500; and

22. Any offer or sale of securities conducted in accordance with Tier 2 of federal Regulation A (17 CFR 230.251 to 230.263) promulgated under § 3(b)(2) of the Securities Act of 1933 (U.S. Securities and Exchange Commission Release No. 33-9741, 80 Fed. Reg. 21806) to the extent such securities are preempted from the registration requirements of this chapter pursuant to Tier 2 of federal Regulation A. The Commission shall by rule or order prescribe any filings with the Commission of notices, renewals, and other materials. The Commission may assess and collect in connection with any filing pursuant to this exemption a nonrefundable filing fee not to exceed \$500. The Commission shall provide information on its website regarding the differences between the exemption provided pursuant to this subdivision and the exemption provided pursuant to subdivision 21.

C. In any proceeding under this chapter, the burden of proving an exemption shall be upon the person claiming it.

Code 1950, § 13-113; 1956, c. 428; 1966, c. 186; 1970, c. 286; 1972, c. 683; 1974, cc. 86, 830; 1975, cc. 75, 500; 1976, c. 656; 1977, c. 111; 1978, c. 397; 1981, cc. 347, 356, 362; 1982, c. 262; 1983, cc. 231, 516; 1984, cc. 298, 771; 1989, c. 388; 1990, c. 6; 1991, c. 223; 1993, c. 75; 1995, cc. 208, 213, 235; 1996, c. 16; 1997, cc. 279, 538; 1999, c. 92; 2001, c. 722; 2003, c. 595; 2007, c. 457; 2015, cc. 354, 400; 2016, c. 260.

### **§ 13.1-514.1. Exemption of certain securities by order of Commission.**

A. The Commission may by order exempt from the other provisions of this chapter any security that the Commission finds:

1. Is to be offered and sold as part of a community undertaking to attract new business or industry to the community, or to establish or continue financial assistance to an existing business or industry in the community;
2. Is sponsored by the local chamber of commerce, by a local industrial development corporation or by other groups of representative local businessmen; and
3. Is to be sold mainly to persons interested in the development of the community by salesmen who receive no compensation for offering and selling the security.

B. The Commission may also exempt any security it finds that is to be offered and sold by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes, or as a chamber of commerce or trade or professional association.

C. The Commission may, by rule, exempt an offer, but not a sale, of a security from the securities and agent registration requirements of this chapter made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus (or its equivalent) for the security. The rulemaking proceeding shall give due consideration to the provisions of the national pilot project of the North American Securities Administrators Association, Inc., relating to the solicitations of indications of

interest prior to the filing of a registration statement. The written documents, broadcasts and oral representations related to solicitation of an indication of interest made to potential investors are subject to the anti-fraud provisions of § 13.1-502. If the Commission determines that such exemption should not be granted, it shall set forth the findings and conclusions upon which its decision is based in its order.

1960, c. 71; 1976, c. 656; 1993, c. 75; 1994, cc. 184, 355; 1995, c. 245; 1997, c. 289.

### **§ 13.1-514.2. Primacy of Virginia law to be maintained.**

A. Pursuant to section 6(c) of the federal Philanthropy Protection Act of 1995, Pub. L. 104-62, the laws of the Commonwealth of Virginia, which are referred to in subsections (a) and (b) of section 6 of the aforementioned federal law, shall not be preempted by such section.

B. On and after July 1, 1997, the provisions of this chapter together with any subsequent amendments thereto shall retain primacy and shall apply in all administrative and judicial actions.

1997, c. 145.

### **§ 13.1-515. Advertising.**

The Commission may require, subject to the limitations of § 222 of the Investment Advisers Act of 1940, in any particular case, any person who has published or circulated any advertisement or sales literature regarding a security, other than a federal covered security as defined in § 18(b)(2) of the Securities Act of 1933, or an investment advisory service to file copies thereof with the Commission.

1956, c. 428; 1987, c. 678; 1997, c. 279.

### **§ 13.1-516. Misleading filings.**

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

1956, c. 428.

### **§ 13.1-517. Consent to service of process.**

Every nonresident registered as a broker-dealer, investment advisor, investment advisor representative or agent shall appoint in writing the clerk of the Commission as his agent upon whom may be served any process, notice, order or demand. Every nonresident issuer of a security registered hereunder who sells such security in this Commonwealth shall be deemed to have appointed the clerk of the Commission as his agent upon whom may be served, in any matter arising under this chapter, any process, notice, order or demand. Service may be made on the clerk in accordance with § 12.1-19.1. A foreign corporation that has complied with § 13.1-759 or § 13.1-767 need not comply with this section.

Code 1950, §§ 13-144, 13-145; 1956, c. 428; 1958, c. 564; 1987, c. 678; 1990, c. 263; 1991, c. 672 .

### **§ 13.1-518. Investigations; confidentiality of information and documents.**

A. The Commission may make such investigations within or outside of this Commonwealth as it deems necessary to determine whether any person has violated or is about to violate the provisions of this chapter or any order, rule or injunction of the Commission, and may require any broker-dealer,



investment advisor, investment advisor representative, issuer or agent subject to the investigation to pay the actual costs of the investigation. The Commission shall have power to issue subpoenas and subpoenas duces tecum to require the attendance of any person and the production of any papers for the purposes of such investigation. No person shall be excused from testifying on the ground that his testimony would tend to incriminate him, but if, after asserting his claim of the privilege, he is required to testify, he shall not be prosecuted or penalized on account of any transactions concerning which he does testify.

B. Information or documents obtained or prepared by any member, subordinate or employee of the Commission in the course of any examination or investigation conducted pursuant to the provisions of this chapter shall be deemed confidential and shall not be disclosed to the public. However, nothing contained herein shall be interpreted to prohibit or limit (i) the publication of the findings, decisions, orders, judgments or opinions of the Commission; (ii) the use of any such information or documents in proceedings by or before the Commission or a hearing examiner appointed by the Commission; (iii) the disclosure of any such information or documents to any quasi-governmental entity substantially associated with law enforcement or the securities or investment advisory business approved by rule of the Commission; or (iv) the disclosure of any such information or documents to any governmental entity approved by rule of the Commission, or to any attorney for the Commonwealth, or to the Attorney General of Virginia.

Code 1950, § 13-134; 1956, c. 428; 1979, c. 379; 1987, c. 678; 1992, c. 157 .

### **§ 13.1-518.1. Broker-dealers and investment advisors to file certain reports with Commission.**

Every broker-dealer and investment advisor registered under this chapter shall file all reports made by such broker-dealers or investment advisors as the Commission, by rule, may require.

1974, c. 381; 1997, c. 279.

### **§ 13.1-519. Injunctions.**

The Commission shall have all the power and authority of a court of record as provided in Article IX, Section 3 of the Constitution of Virginia to issue a temporary or a permanent injunction against any violation or attempted violation of any provision of this chapter or any order, rule, or regulation of the Commission issued pursuant to this chapter. For the violation of any injunction or order issued under this chapter it shall have the same power to punish for contempt as a court of equity.

Code 1950, § 13-137; 1956, c. 428; 1971, Ex. Sess., c. 1; 1992, c. 468; 1997, c. 279.

### **§ 13.1-520. Crimes.**

A. Any person who shall knowingly and willfully make, or cause to be made, any false statement in any book of account or other paper of any person subject to the provisions of this chapter, or knowingly and willfully exhibit any false paper to the Commission, or who shall knowingly and willfully commit any act declared unlawful by this chapter, with the intent to defraud any purchaser of securities or user of investment advisory services or with intent to deceive the Commission as to any material fact for the purpose of inducing the Commission to take any action or refrain from taking any action pursuant to this chapter, shall be guilty of a Class 4 felony.

B. Any person who shall knowingly make or cause to be made any false statement in any book of account

or other paper of any person subject to the provisions of this chapter or exhibit any false paper to the Commission or who shall commit any act declared unlawful by this chapter shall be guilty of a Class 1 misdemeanor.

C. Prosecutions under this section shall be instituted by indictments in the courts of record having jurisdiction of felonies within three years from the date of the offense.

Code 1950, §§ 13-152, 13-155; 1956, c. 428; 1977, c. 484; 1987, c. 678.

**§ 13.1-520.1. Commission may transmit record or complaint to locality where violation occurred.**

The Commission may transmit the record of any proceeding or any complaint involving any violation of this Act to the attorney for the Commonwealth in the county or city wherein the violation occurred.

1974, c. 253.

**§ 13.1-521. Violations punishable by the Commission.**

A. The Commission may, by judgment entered after a hearing on 30 days' notice to the defendant, if it is proved that the defendant has knowingly made any misrepresentation of a material fact for the purpose of inducing the Commission to take any action or to refrain from taking action, or has violated any provision of this chapter or any order, rule, or regulation of the Commission issued pursuant to this chapter, impose a civil penalty not exceeding \$10,000, which shall be collectible by the process of the Commission as provided by law.

B. In addition to imposing the penalty set forth in subsection A, or without imposing such penalty, the Commission may, in any such case, revoke any authority or registration issued by the Commission to or at the instance of the defendant.

C. Each sale of a security contrary to the provisions of this chapter shall constitute a separate violation. The Commission may in any such case under subsection A order the seller to rescind any such sale and to make restitution to the purchaser and the Commission shall consider such rescission and restitution in determining whether a penalty should be imposed on him on account of that illegal sale, and if so, the amount of such penalty.

D. Each investment advisory contract, transaction or activity contrary to the provisions of this chapter shall constitute a separate violation. The Commission may in any such case under subsection A order the investment advisor or investment advisor representative to rescind any such contract or transaction and to make restitution to the user of the investment advisory service and the Commission shall consider such rescission and restitution in determining whether a penalty should be imposed on him on account of that illegal contract, transaction or activity and, if so, the amount of such penalty.

E. The provisions of subsections C and D of this section regarding rescission and restitution apply only to this chapter.

Code 1950, § 13-153; 1956, c. 428; 1987, c. 678; 1990, c. 31; 2000, c. 166; 2009, c. 566.

**§ 13.1-522. Civil liabilities.**

A. Any person who: (i) sells a security in violation of §§ 13.1-502, 13.1-504 A, 13.1-507 (i) or (ii), 13.1-510

(e) or (f), or (ii) sells a security by means of an untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable to the person purchasing such security from him who may sue either at law or in equity to recover the consideration paid for such security, together with interest thereon at the annual rate of six percent, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of such security, or for the substantial equivalent in damages if he no longer owns the security.

B. Any person who (i) engages in the business of advising others, for compensation, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities in willful and material violation of § 13.1-503, subsection A of § 13.1-504, or of any rule or order under § 13.1-505.1, or (ii) receives, directly or indirectly, any consideration from another person for advice as to the value of securities or their purchase or sale, whether through the issuance of analyses, reports or otherwise and employs any device, scheme, or artifice to defraud such other person or engages in any act, practice or course of business which operates or would operate as a fraud or deceit on such other person, shall be liable to that person who may sue either at law or in equity to recover the consideration paid for such advice and any loss due to such advice, together with interest thereon at the annual rate of six percent from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such advice and any other economic advantage.

C. Every person who directly or indirectly controls a person liable under subsection A or B of this section, including every partner, officer, or director of such a person, every person occupying a similar status or performing similar functions, every employee of such a person who materially aids in the conduct giving rise to the liability, and every broker-dealer, investment advisor, investment advisor representative or agent who materially aids in such conduct shall be liable jointly and severally with and to the same extent as such person, unless able to sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution as in cases of contract among the several persons so liable.

D. No suit shall be maintained to enforce any liability created under this section unless brought within two years after the transaction upon which it is based; provided, that, if any person liable by reason of subsection A, B or C of this section makes a written offer, before suit is brought, to refund the consideration paid and any loss due to any investment advice provided by such person, together with interest thereon at the annual rate of six percent, less the amount of any income received on the security or resulting from such advice, or to pay damages if the purchaser no longer owns the security, no purchaser or user of the investment advisory service shall maintain a suit under this section who has refused or failed to accept such offer within thirty days of its receipt.

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

F. Any condition, stipulation or provision binding any person acquiring any security or receiving any investment advice to waive compliance with any provision of this chapter or of any rule or order thereunder shall be void.

G. The rights and remedies provided by this chapter shall be in addition to any and all other rights and

remedies that may exist at law or in equity.

Code 1950, § 13-150; 1956, c. 428; 1987, c. 678; 1997, c. 279.

**§ 13.1-523. Rules and forms.**

A. The Commission shall have authority from time to time to make, amend and rescind such rules and forms as may be necessary to carry out the provisions of this chapter, including rules and forms governing registration statements, applications and reports, and defining accounting, technical and trade terms used in this chapter insofar as such definitions are not inconsistent with the provisions of this chapter. Among other things, the Commission shall have authority, for the purposes of this chapter, to prescribe the content and form of financial statements and to direct whether they should be certified by independent public or certified accountants. For the purpose of rules and forms, the Commission may classify securities, persons and matters within its jurisdiction and prescribe different requirements for different classes.

B. All such rules and forms shall be available for distribution at the office of the Commission either in printed or electronic format.

C. No provision of this chapter imposing any liability shall apply to any act done or omitted in conformity with any rule of the Commission, notwithstanding that such rule may, after such act or omission, be amended, rescinded or found for any reason to be invalid.

1956, c. 428; 2003, c. 595.

**§ 13.1-523.1. Commission authority to regulate securities and investment advisory activities.**

The Commission shall have all the power, authority and jurisdiction reserved to or conferred upon the states by the federal National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (1996)) to regulate securities and investment advisory activities, including the authority to require the registration of persons and securities, the filing of documents, notices, reports and information, and the payment of fees, and to exercise its administrative, investigative, judicial and legislative powers with respect thereto. The Commission shall have the authority to make, amend and rescind such rules and forms in conformance with the National Securities Markets Improvement Act of 1996 as may be necessary for the regulation of securities and investment advisory activities and transactions within its jurisdiction.

1997, c. 279.

**§ 13.1-524. Certain records of Commission available to public; admissibility of copies; destruction.**

The information contained in or filed with any registration statement, application or report shall be available to the public at the office of the Commission. Copies thereof certified by the clerk under the seal of the Commission shall be admissible in evidence in lieu of the originals, and the originals shall not be removed from the office of the Commission. But papers, documents and files may be destroyed by the Commission when, in its opinion, they no longer serve any useful purpose.

1956, c. 428.

### **§ 13.1-525. Official interpretations.**

The Commission shall have jurisdiction, upon written application, payment of a filing fee of \$500 and submission of such data as may be necessary for the purpose, to determine whether or not (i) a particular security or transaction is exempt from the registration requirements of this chapter, (ii) the offer or sale of a particular security would be lawful, or (iii) a person is an investment advisor or an investment advisor representative. Its determination shall be made by order, which, subject to the right of appeal, shall be conclusive on the same state of facts in any court in which the matter may come for adjudication, whether in a civil or a criminal case.

Code 1950, § 13-112; 1956, c. 428; 1984, c. 771; 1992, c. 19 .

#### **§ 13.1-525.1. Fees to cover expense of regulation.**

The fees paid into the state treasury under this chapter, except for fees and funds collected for the Literary Fund, shall be deposited into a special fund and specifically accounted for and used by the State Corporation Commission to defray the costs of supervising, implementing, and administering the provisions of this chapter and Chapters 6 (§ 13.1-528 et seq.) and 8 (§ 13.1-557 et seq.) of this title, and Chapters 6.1 (§ 59.1-92.1 et seq.) and 7 (§ 59.1-93 et seq.) of Title 59.1. Included in the Commission's costs shall be a reasonable margin in the nature of a reserve fund. All excesses of fees collected exceeding these costs shall revert to the general fund.

1987, c. 434.

#### **§ 13.1-526. Transition.**

Registrations of dealers and agents under prior law shall continue as registrations as broker-dealers and agents under this chapter until April 30 following the effective date of this chapter. Licenses issued under § 13-128 of the Code of 1950 shall continue in effect until April 30 following the effective date of this chapter. The exemption provided for regularly established dealers by § 13-113 (11), whenever the requirements of §§ 13-116 to 13-121 inclusive have been complied with prior to the effective date of this chapter, shall continue in effect until April 30 following the effective date of this chapter and all securities for which a registration is in effect pursuant to that exemption on the effective date of the repeal of § 13-113 (11) shall be deemed to have been registered by notification under this chapter. But such registrations, licenses and exemptions may be terminated by the Commission for causes justifying termination of registrations under this chapter.

1956, c. 428.

#### **§ 13.1-527. Short title.**

This chapter may be cited as the Securities Act.

1956, c. 428.

#### **§ 13.1-527.01. Repealed.**

Repealed by Acts 2015, c. 709, cl. 2.

#### **§ 13.1-527.1. Division created; duties.**

There is hereby created in the office of the Attorney General a Division of Securities Counsel.

The duties of such Division shall be to provide legal and technical assistance to an attorney for the Commonwealth, in the preparation for a prosecution of and the prosecution of a violation of this title; provided, however, such assistance shall be rendered only upon the request of the attorney for the Commonwealth.

1974, c. 253.

**§ 13.1-527.2. Attorneys, employees and consultants.**

The Attorney General may employ and fix the salaries of such attorneys, employees and consultants, within the amounts appropriated to the Attorney General for providing legal service for the Commonwealth, as he may deem necessary for the operation of the Division of Securities Counsel to carry out its functions.

1974, c. 253.

**§ 13.1-527.3. Commission to provide technical assistance.**

The State Corporation Commission shall provide technical assistance to the Division of Securities Counsel in its investigation and preparation of a prosecution under the provisions of this title.

1974, c. 253.