

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 595

An Act to amend and reenact §§ 13.1-504, 13.1-507, 13.1-508, 13.1-509, 13.1-511, 13.1-514, and 13.1-523 of the Code of Virginia, and to repeal § 13.1-512 of the Code of Virginia, relating to the Virginia Securities Act.

[H 1827]

Approved March 18, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-504, 13.1-507, 13.1-508, 13.1-509, 13.1-511, 13.1-514, and 13.1-523 of the Code of Virginia are amended and reenacted as follows:

§ 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. ~~Notwithstanding the exclusion provided by clause (vi) of § 13.1-504 in the definition of "investment advisor," for the period ending three years from October 11, 1996, the Commission may require the registration as an investment advisor of any federal covered advisor who fails or refuses to pay a fee required by this chapter or rule promulgated pursuant to this chapter; provided, that a delay in payment or an underpayment of a fee that is remedied within fifteen days after receipt of notice from the Commission shall not constitute a failure or refusal to pay the fee.~~

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.

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.

§ 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. ~~Notwithstanding the provisions of subdivision (iii), for the period ending three years from October 11, 1996, the Commission may require the registration of a federal covered security issued by any issuer who refuses to pay a fee required by this chapter or rule promulgated pursuant to this chapter; provided, that a delay in payment or an underpayment of a fee that is remedied within fifteen days after receipt of notice from the Commission shall not constitute a refusal to pay the fee.~~

§ 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)~~ (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)~~ (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 ~~thirty~~ 30 days of the date of filing the registration statement, whichever is higher, or their book value on a day within ~~ninety~~ 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 ~~or~~, 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.

§ 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 ~~or~~, 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 ~~or~~, telegram, *or electronic means* (and promptly confirms by letter ~~or~~, 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 ~~or~~, 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.

§ 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, ~~except one subject to the provisions of § 13.1-512,~~ 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.

§ 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 the Trust Subsidiary Act (§ 6.1-32.1 et seq.);

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 ~~thirty-five~~ 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 ~~thirty-five~~ 35 persons in the Commonwealth during any period of ~~twelve~~ 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 ~~thirty-five~~ 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 ~~ninety~~ 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 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 ~~thirty~~ 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 ~~and~~ ~~by~~ 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.

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

§ 13.1-523. Rules and forms.

(a) 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) B. All such rules and forms shall be ~~printed or mimeographed~~ available for distribution at the office of the Commission *either in printed or electronic format*.

(c) 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.

2. That § 13.1-512 of the Code of Virginia is repealed.