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SENATE BILL NO. 351

Offered January 8, 2014

Prefiled January 7, 2014

A BILL to amend and reenact § 13.1-514 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 13.1-514.3, relating to the Securities Act; Invest in Virginia Exemption.

Patron—Edwards

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 13.1-514 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 13.1-514.3 as follows:

§ 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

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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*; or*

21. Any offer or sale of a security by an issuer, or each individual who represents an issuer in an offer or sale, if the offer or sale qualifies as an Invest in Virginia Exemption pursuant to§ 13.1-514.3.

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

§ 13.1-514.3. Invest in Virginia Exemption.

A. As used in this section, unless the context requires otherwise, "individual" means a natural person residing in the Commonwealth or a corporation, trust, partnership, association, or any other legal entity duly organized under the laws of the Commonwealth, which natural person or entity does not:

1. Offer investment advice or recommendations;

2. Solicit purchases of, sales of, or offers to purchase the securities exempted by this section;

3. Compensate employees, agents, or other persons for the solicitation of purchases of, sales of, or offers to purchase the securities exempted by this section; or

4. Take custody of investor funds or securities.

B. The offer or sale of a security by an issuer, and each individual who represents an issuer in an offer or sale, shall be exempt from the securities, broker-dealer, and agent registration requirements of this chapter if the offer or sale is conducted in accordance with each of the following requirements:

1. The issuer of the security is a for-profit business entity formed under the laws of the Commonwealth;

2. The transaction meets the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(11), and 17 C.F.R. § 230.147;

3. The sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption does not exceed $1 million, less the aggregate amount received for all sales of securities by the issuer within the 12 months preceding the first offer or sale made in reliance upon this exemption;

4. The issuer does not accept more than $10,000 from any single purchaser unless the purchaser is an accredited investor as defined by 17 C.F.R. § 230.501;

5. All funds received from investors are required to be (i) deposited into a bank or depository institution authorized to do business in the Commonwealth and (ii) used in accordance with representations made to investors;

6. Before the use of any general solicitation or the twenty-fifth sale of the security, whichever occurs first, the issuer files a notice with the Commission in writing or in electronic form (i) specifying that the

issuer is conducting an offering in reliance upon this exemption and (ii) containing the names and addresses of the following persons:

a. The issuer;

b. All persons who will be involved in the offer or sale of securities on behalf of the issuer; and

c. The bank or other depository institution in which investor funds will be deposited;

7. The issuer shall not be, either before or as a result of the offering, an investment company as defined in Section 3 of the Investment Company Act of 1940, 15 U.S.C. § 80a-3, or subject to the reporting requirements of § 13 of the Securities Exchange Act of 1934, 15 U.S.C. § 78m, or § 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(d); and

8. The issuer shall inform all purchasers that the securities have not been registered under this chapter and that the securities are subject to the limitation on resales contained in subsection (e) of 17 C.F.R. § 230-147(e).

C. The exemption from the securities, broker-dealer, and agent registration requirements of this chapter created by this section shall not be used in conjunction with any other exemption under this chapter, except that offers and sales to the following persons shall not count toward the limitation in subdivision B 3:

1. An officer, director, partner, or trustee of the issuer or an individual occupying similar status with, or performing similar functions for, the issuer; or

2. A person owning 10 percent or more of the outstanding shares of any class or classes of securities of the issuer.

D. The exemption from the securities, broker-dealer, and agent registration requirements of this chapter created by this section shall not be available if the issuer; any predecessor of the issuer; any affiliate of the issuer; any member of the board of directors, officer, general partner, limited liability company manager, or managing member of the issuer; or any person that has been or will be paid, directly or indirectly, remuneration for solicitation of purchasers in connection with such sale of securities pursuant to the offering:

1. Has filed a registration statement which is the subject of any pending proceeding or examination under § 8 of the Securities Act of 1933 or has been the subject of any refusal order or stop order thereunder within five years prior to the offering;

2. Is subject to any pending proceeding under Securities and Exchange Commission Rule 258 promulgated under the Securities Act of 1933, or any similar section adopted under § 3(b) of the Securities Act of 1933, or to an order entered thereunder within five years prior to the offering;

3. Has been convicted within five years prior to the offering of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing related to the offer or sale of any security;

4. Is subject to any order, judgment, or decree of any court of competent jurisdiction or regulatory authority, including non-U.S. regulatory authorities, temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction or regulatory authority entered within five years prior to the offering permanently restraining or enjoining, such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing related to the offer or sale of any security; or

5. Is subject to a U.S. Postal Service false representation order entered under 39 U.S.C. § 3005 within five years prior to the offering, or is subject to a temporary restraining order or preliminary injunction entered under 39 U.S.C. § 3007 with respect to conduct alleged to have violated 39 U.S.C. § 3005.

E. The exemption authorized by this section shall be known and may be cited as the "Invest in Virginia Exemption."