VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 140

An Act to amend and reenact §§ 6.1-32.11, 6.1-32.14, 6.1-32.14:2, 6.1-32.18, 6.1-32.19, 6.1-32.20, 6.1-32.23, 6.1-32.24, 6.1-32.25, 6.1-32.26, 6.1-32.27 and 6.1-32.28 of the Code of Virginia and to repeal § 6.1-32.14:1 of the Code of Virginia, relating to banking and finance; trust companies.

[S 877]

Approved March 9, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-32.11, 6.1-32.14, 6.1-32.14:2, 6.1-32.18, 6.1-32.19, 6.1-32.20, 6.1-32.23, 6.1-32.24, 6.1-32.25, 6.1-32.26, 6.1-32.27 and 6.1-32.28 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-32.11. Definitions.

As used in this article:

"Affiliated trust company" means a trust company ~~of which five percent or more of any class of its capital stock is owned, directly or indirectly,~~ *that is controlled* by a trust company holding company. *For purposes of this article, a trust company holding company or other person has control of a trust company or other legal entity if the person owns twenty-five percent or more of the voting stock of the trust company or entity; if, pursuant to the definition of control in the Bank Holding Company Act of 1956, the person would be presumed to control the trust company or entity; or if the Commission determines that the person exercises a controlling influence over the management and policies of the trust company or entity.*

"Agent" shall have the same meaning assigned to that term in § 13.1-501 of the Virginia Securities Act (§ 13.1-501 et seq.).

"Broker-dealer" shall have the same meaning assigned to that term in § 13.1-501 of the Virginia Securities Act.

"Commission" means the State Corporation Commission of the Commonwealth of Virginia.

"Fiduciary" means executor, administrator, conservator, guardian, committee, or trustee.

"Investment advisor" shall have the same meaning assigned to that term in § 13.1-501 of the Virginia Securities Act.

"Investment advisor representative" shall have the same meaning assigned to that term in § 13.1-501 of the Virginia Securities Act.

"Investment company" shall have the same meaning assigned to that term in the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq.

"Operating plan" means a plan ~~of an affiliated trust company which establishes (i) the procedures such company will have in effect to ensure that no agent, broker-dealer, investment advisor, investment advisor representative, or investment company exercises improper influence over the investment activities it undertakes pursuant to its fiduciary responsibilities; (ii) how the fees, commissions or other compensation, by whatever name it may be called, which each trust will pay for the investment of its funds will be fair and reasonable; (iii) how any decision by such company to permit compensation for the investment of the funds it holds in trust on any basis other than a fixed percentage of the dollar amount of funds held in a trust will be made only if such compensation is in the best interest of the beneficiaries; and (iv) any other provision or information required by the Commission~~ *submitted by an applicant for a certificate of authority, which plan establishes the policies and procedures a trust company will have in effect when the institution opens for business and thereafter (i) to avoid or resolve conflicts of interests, (ii) to prevent improper influences from affecting the actions of the trustee, (iii) to ensure that trust accounts are handled in accordance with recognized standards of fiduciary conduct, and (iv) to assure compliance with applicable laws and regulations*.

"Person" means any individual, firm, corporation, partnership, association, trust, or legal or commercial entity or group of individuals, however organized.

"Principal" means any person who, directly or indirectly, owns or controls (i) ten percent or more of the outstanding stock of a stock corporation or (ii) a ten percent or greater interest in a nonstock corporation or a limited liability company.

"Trust business" means the holding out by a person or legal entity to the public at large by advertising, solicitation or other means that the person or legal entity is available to act as a fiduciary in the Commonwealth of Virginia or is accepting and undertaking to perform the duties of a fiduciary in the regular course of its business.

"Trust company" means a corporation, including an affiliated trust company, authorized to engage in the trust business under this article with powers expressly restricted to the conduct of general trust business.

"Trust company holding company" means a corporation which owns, directly or indirectly, five percent or more of any class of capital stock of a broker-dealer, investment advisor or investment company and *which* also ~~owns five percent or more of any class of capital stock of~~ *controls* a trust company. A trust company holding company shall not be deemed a financial institution holding company for any purpose under this title unless it ~~owns more than five percent of the voting shares of~~ *controls* a financial institution other than an affiliated trust company or ~~of~~ another financial institution holding company.

§ 6.1-32.14. Application for certificate; fee.

A. An application for a certificate shall be in writing, in such form as the Commission prescribes, verified under oath and supported by such information, data and records as the Commission may require. *The application shall include an operating plan.*

B. Each application for a certificate of authority shall be accompanied by an investigation fee of $10,000, made payable to the Treasurer of the Commonwealth.

§ 6.1-32.14:2. Certain transactions prohibited.

An affiliated trust company shall not, during the underwriting period, purchase from an affiliated broker-dealer, for any trust account or for its own account, any security that is being underwritten by that broker-dealer~~, other than investment grade fixed-income securities~~. An affiliated trust company may not purchase for any trust account or for its own account any security that is issued by a company that owns five percent or more of the capital stock of, or is affiliated with, the affiliated trust company.

§ 6.1-32.18. Procedure for granting or denying certificate.

Before any trust company shall begin business, it shall obtain from the Commission a certificate of authority authorizing it to do so. Prior to the issuance of such *a* certificate *to a trust company or affiliated trust company*, the Commission shall ascertain that:

1. All of the provisions of law have been complied with;

2. The trust company is formed for no other reason than a legitimate trust business;

3. Financially responsible persons have subscribed for capital stock, surplus and a reserve for operation in an amount deemed by the Commission to be sufficient to warrant successful operation, but the capital stock shall not be less than $500,000. *The Commission shall also ascertain that each principal of an applicant has the financial responsibility, character, reputation, and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law* ;

4. Oaths of all the directors have been taken and filed in accordance with § 6.1-32.22;

5. The moral fitness, financial responsibility and business qualifications of those named as officers and directors of the proposed trust company are such as to command the confidence of the community in which the trust company is proposed to be located. *If the applicant is an affiliated trust company, the Commission shall also determine that the trust company holding company of the applicant is qualified by virtue of its business record, experience, and financial responsibility to control a trust company*;

6. In its opinion, the public interest will be served by the formation of a trust company in the community where it is proposed. The addition of such trust company shall be deemed in the public interest if, based on all relevant evidence and information, advantages such as, but not limited to, increased competition, additional convenience, or gains in efficiency outweigh possible adverse effects such as, but not limited to, diminished or unfair competition, undue concentration of resources, conflicts of interests, or unsafe or unsound practices;

7. The operating plan ~~of an affiliated trust company~~ and any other relevant evidence and information ~~demonstrate that the conduct of the affiliated trust company's investment activities and the compensation paid for such investment activities will be consistent with the affiliated trust company's fiduciary responsibilities and will be in accordance with applicable law and regulations~~ *warrant belief that the trust company will conduct its business in accordance with generally accepted fiduciary standards*; and

8. Any other facts deemed pertinent *are present.*

§ 6.1-32.19. Acquisition of control; application.

A. Except as provided in this section, no person shall acquire directly or indirectly ten percent or more of the voting shares of a trust company unless such person first:

1. Files an application with the Commission in such form as the Commission may prescribe from time to time;

2. Delivers such other information to the Commission as the Commission may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors ~~and~~, senior officers *and principals* and of any proposed new directors ~~or~~, senior officers *and principals* of the trust company; and

3. Pays such application fee as the Commission may prescribe.

B. Upon the filing and investigation of an application, the Commission shall permit the acquisition, subject to § 6.1-32.20, if it finds that the applicant and its members if applicable, its directors ~~and~~, senior officers *and principals* and any proposed new directors ~~and~~ , senior officers *and principals* have the financial responsibility, character, reputation, experience and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. The

Commission shall grant or deny the application within sixty days from the date a completed application accompanied by the required fee is filed unless the period is extended by order of the Commission reciting the reasons for the extension. If the application is denied, the Commission shall notify the applicant of the denial and the reasons for the denial.

C. The foregoing provisions of this section shall not apply to a person owning ~~ten~~ *fifty-one* percent or more of the capital stock of the trust company at the time of the proposed acquisition; however, such person shall give the Commission thirty days advance written notice of the proposed acquisition and provide such additional information as the Commission may require.

§ 6.1-32.20. Restrictions on control, officers and directors.

A. None of the following individuals or entities shall be or become a control person of any trust company:

1. An agent;

2. A broker-dealer;

3. An investment advisor;

4. An investment advisor representative;

5. An investment company; or

6. Any corporation, limited liability company, partnership, business trust, association, or similar organization.

B. For the purposes of this provision, a "control person" means any individual or entity ~~(i)~~ owning, directly or indirectly, five percent or more of any class of *voting* capital stock of a trust company ~~or (ii) serving as an officer or director of a trust company~~.

C. Nothing in this section shall prohibit (i) a trust company holding company from owning, directly or indirectly, ~~five~~ *twenty-five* percent or more of any class of capital stock of a trust company or (ii) any officer, director or employee of a trust company holding company or a subsidiary of a trust company holding company ~~from serving as an officer or director of an affiliated trust company or~~ from owning, ~~directly or~~ indirectly, five percent or more of any class of capital stock of an affiliated trust company.

§ 6.1-32.23. Reports.

Each trust company *and each trust company holding company* shall file statements of condition and other reports with the Commission in accordance with ~~§ 6.1-93 and subject to § 6.1-114~~ *requirements established by regulation*.

§ 6.1-32.24. Investigations; examinations.

The Commission may, by its designated officers and employees, as often as it deems necessary, investigate and examine the affairs, business, premises and records of any trust company *and of any trust company holding company*. Examinations of such trust companies shall be conducted at least twice in each three-year period. In the course of such investigations and examination, the principals, officers, directors, and employees of such trust company *or trust company holding company* being investigated or examined shall, upon demand of the person making such investigation or examination, afford full access to all premises, books, records and information which the person making such investigation or examination deems necessary. For the foregoing purposes, the person making such investigation or examination shall have authority to administer oaths, examine under oath all the aforementioned persons, and compel the production of papers and objects of all kinds.

§ 6.1-32.25. Fees.

In order to defray the costs of their examination, supervision and regulation, every trust company shall pay a fee in the same amount as that prescribed for the supervision and regulation of trust departments by § 6.1-94. Each trust company *and each trust company holding company* shall also pay such additional or special costs as the Commission may incur in connection with its examination.

For investigating an application for authority to establish a branch office pursuant to § 6.1-32.21, the Commission shall charge a fee of $1,800.

For investigating an application to change the location of a principal office or branch office, the Commission shall charge a fee of $1,000.

For investigating an application made pursuant to § 6.1-32.19, the Commission shall charge a fee of $7,000.

§ 6.1-32.26. Regulations.

The Commission may promulgate such regulations as it deems appropriate to effect the purposes of this article. Before promulgating any such regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to be heard. *In promulgating regulations applicable to affiliated trust companies, the Commission shall be guided, where appropriate, by those standards and requirements concerning self-dealing and conflicts of interests that apply to banks, bank holding companies, and their subsidiaries when engaged in both trust and securities activities.*

§ 6.1-32.27. Audits.

The Commission may require ~~a~~ trust ~~company~~ *companies or trust company holding companies* to have ~~an audit~~ *audits* made of ~~its~~ *their* books, records and methods of operation~~,~~ *annually, or* whenever it appears to the Commission that the ~~trust company's system of~~ internal controls ~~is~~ *of a trust company or trust company holding company are* not adequate, that it is engaging in unsound practices, or that its

financial condition makes such audit necessary.

§ 6.1-32.28. Commission's remedial powers.

A. If the Commission finds that a trust company (i) has failed to fully observe the laws of this Commonwealth, (ii) is being operated in an unsafe or unsound manner, (iii) has failed to comply with any Commission order or regulation, (iv) is engaging in any irregular practices, *or* (v) is, or is about to become, insolvent or its capital has been, or is in danger of being, impaired, ~~or (vi) if the trust company is an affiliated trust company, has failed to comply with its operating plan~~ the Commission shall give notice thereof to the officers and directors of the company. If necessary to conserve the assets of the company or protect the public interest, the Commission may:

1. Close the company for a period not exceeding sixty days, which period may be further extended for a like period or periods as the Commission deems necessary;

2. Require that all orders and regulations of the Commission be complied with;

3. Require that the company make reports daily or at such other times as may be required as to the results achieved in carrying out the Commission's orders;

4. Require that any irregularities be promptly corrected;

5. Require that any impairment of capital be made good; or

6. Temporarily suspend the right of the company to receive any further property in a fiduciary capacity.

B. If the Commission determines that a receiver should be appointed for a trust company, the Commission may close the company; take charge of the books, assets and affairs of the company; and apply to any circuit court in the Commonwealth for the appointment of a receiver to take charge of the company's business, assets and affairs. Proceedings for appointment of a receiver for a trust company shall not be entertained by any court except on application of the Commission.

C. 1. The Commissioner of Financial Institutions may issue and serve upon a trust company a cease and desist order if, in the opinion of the Commissioner, the company is engaging, has engaged, or, there is reasonable cause to believe, is about to engage in an unsafe or unsound practice, irregularity, or any violation of law, rule or regulation applicable to the conduct of its business, *or*any Commission order~~, or, if the company is an affiliated trust company, its operating plan~~. The cease and desist order shall contain a statement of the facts upon which it is based and may require, in terms that may be mandatory or otherwise, the company and its directors, officers, employees and agents to cease and desist from the practice or violation. The order shall specify its effective date and shall notify the company of its right to request a hearing in accordance with the Commission's Rules of Practice and Procedure.

2. When the practice or violation specified in the order, or any continuation thereof, is likely to prejudice the company's stockholders, or persons having an interest in property held by the company in a fiduciary capacity, the Commissioner may make the order effective immediately. An order shall remain in effect until withdrawn by the Commissioner or terminated by the Commission after a hearing. A request for a hearing shall be given expeditious treatment on the Commission's docket, and the Commission need not allow ten days' notice to the company.

2. That § 6.1-32.14:1 of the Code of Virginia is repealed.

3. That an emergency exists and the provisions of this act shall become effective on April 1, 1995.