

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 279

An Act to amend and reenact §§ 13.1-501, 13.1-504, 13.1-505, 13.1-505.1, 13.1-507, 13.1-514, 13.1-515, 13.1-518.1, 13.1-519, and 13.1-522 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 13.1-523.1, relating to securities; Securities Act; conforming to federal law.

[H 1957]

Approved March 12, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-501, 13.1-504, 13.1-505, 13.1-505.1, 13.1-507, 13.1-514, 13.1-515, 13.1-518.1, 13.1-519, and 13.1-522 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 13.1-523.1 as follows:

§ 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 selling any type of security other than an interest or unit in a condominium as defined in § 55-79.2 (c) 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 a bank, a trust subsidiary formed under Article 3.1 (§ 6.1-32.1 et seq.) of Chapter 2 of Title 6.1, an issuer or an agent.

"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 (i) registered or required to be registered under § 203 of the Investment Advisers Act of 1940 as an "investment adviser" or (ii) excepted from the definition of an "investment adviser" under § 202 (a)(11) of the Investment Advisers Act of 1940.

"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 3.1 (§ 6.1-32.1 et seq.) of Chapter 2 of Title 6.1, 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; ~~or~~ (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 an investment advisor*; ~~except clerical or ministerial personnel~~, *registered or required to be registered under this chapter, or who has a place of business located in this Commonwealth and is employed by or associated with a person registered or required to be registered as an investment advisor under § 203 of the Investment Advisers Act of 1940*; and who does any of the following: (i) makes any recommendation 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.

"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 ~~Advisors~~ *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.

§ 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; or (ii) an investment advisor or investment advisor representative unless he is so registered under this chapter. *Notwithstanding the exclusion provided by subdivision (vi) of § 13.1-501 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 a specified investment advisor registered under this chapter *or a specified 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 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 ~~an~~ (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*.

§ 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.

§ 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 ~~pursuant to 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.

§ 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 ~~or~~, (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.*

§ 13.1-514. 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 § 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;

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 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 offer or sale in a transaction involving the sale by an issuer to not more than thirty-five persons in the Commonwealth during any period of twelve consecutive months, whether or not the issuer or any purchaser is then present in the Commonwealth, if the issuer 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, and the Commission may assess and collect in connection with any filing required by the rule or order a nonrefundable fee not to exceed \$250.

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 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 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 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 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.

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

§ 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.

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

Every broker-dealer ~~and investment advisor~~ registered ~~in the Commonwealth under this chapter~~ shall ~~be required to file all reports made by such broker-dealers and all reports of audits of such broker-dealers by the National Association of Security Dealers, the Securities and Exchange Commission and any national stock exchange with the State Corporation Commission within ten days of the publication of such report or audit or investment advisors as the Commission, by rule, may require.~~

§ 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 and or a permanent injunctions~~ *injunction* against ~~violations any violation or attempted violations~~ *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.

§ 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.

§ 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.