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HOUSE BILL NO. 1424

Offered January 22, 1996

A BILL to amend and reenact § 13.1-501 of the Code of Virginia, relating to the Securities Act; sale of securities by banks.

Patron—Purkey

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:**1. That § 13.1-501 of the Code of Virginia is amended and reenacted 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 an issuer offering a security exempted by subdivision 1, 2, 3, 4, 7, 9, or 10 of subsection A of § 13.1-514.

"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.

"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) 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 employed by or associated with an

INTRODUCED

HB1424

60 investment advisor, except clerical or ministerial personnel, who (i) makes any recommendation or
61 otherwise renders advice regarding securities, (ii) manages accounts or portfolios of clients, (iii)
62 determines which recommendations or advice regarding securities should be given, (iv) prepares reports
63 or analyses concerning securities, (v) solicits, offers or negotiates for the sale of or sells investment
64 advisory services, or (vi) supervises employees who perform any of the foregoing.

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

66 1. With respect to certificates of deposit, voting trust certificates or collateral trust certificates, and
67 with respect to certificates of interest or shares in an unincorporated investment trust not having a board
68 of directors or persons performing similar functions, or of the fixed, restricted management or unit type,
69 the term "issuer" means the person or persons performing the acts and assuming the duties of manager;

70 2. With respect to equipment trust certificates or like securities, "issuer" means the person by whom
71 the equipment is or is to be used;

72 3. With respect to oil, gas or other mineral leases, rights or royalties or interests therein, "issuer"
73 means the owner of any such lease, right, royalty or interest (whether whole or fractional) who creates
74 financial interests therein for the purpose of offering to more than five persons.

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

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

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

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

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

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

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

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

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

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