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HOUSE BILL NO. 439

House Amendments in [] — January 26, 1998

A BILL to amend and reenact §§ 13.1-501 and 13.1-504 of the Code of Virginia, relating to securities; investment advisors and representatives.

Patron—Purkey

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-501 and 13.1-504 of the Code of Virginia are 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 (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 [*engaged in the business of*] 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

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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; (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 (a) an investment advisor 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~~ recommendations 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; *or (b) a federal covered advisor, subject to the limitations of § 203 A of the Investment Advisers Act of 1940, as the Commission may designate by rule or order. "Investment advisor representative" does not include such other persons employed by or associated with either an investment advisor or a federal covered advisor not within the intent of this definition as the Commission may designate by rule or determine by order pursuant to § 13.1-525.*

"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 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; *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 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 (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.

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