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## HOUSE BILL NO. 1680

Offered January 13, 1999

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

Patrons—Cantor, Bryant, Byron, Harris, Kilgore and McDonnell

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 (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 registered or required to be registered under § 203 of the Investment Advisers Act of 1940 as an "investment adviser."

"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

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60 newspaper, news column, newsletter, news magazine, or business or financial publication or service,  
61 whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of  
62 the rendering of advice on the basis of the specific situation of each client; (vi) any person that is a  
63 federal covered advisor; (vii) *any person who is exempt from registration pursuant to § 203 (b) (3) of*  
64 *the Investment Advisers Act of 1940 or by any rule or regulation promulgated by the United States*  
65 *Securities and Exchange Commission under that section;* or ~~(vii)~~ (viii) such other persons not within the  
66 intent of this definition, as the Commission may designate by rule or determine by order pursuant to  
67 § 13.1-525.

68 "Investment advisor representative" means any partner, officer, director of, or a person occupying a  
69 similar status or performing similar functions, or other individual, except clerical or ministerial  
70 personnel, who is employed by or associated with (a) an investment advisor registered or required to be  
71 registered under this chapter and who does any of the following: (i) makes any recommendations or  
72 otherwise renders advice regarding securities, (ii) manages accounts or portfolios of clients, (iii)  
73 determines which recommendations or advice regarding securities should be given, (iv) prepares reports  
74 or analyses concerning securities, (v) solicits, offers or negotiates for the sale of or sells investment  
75 advisory services, or (vi) supervises employees who perform any of the foregoing; or (b) a federal  
76 covered advisor, subject to the limitations of § 203 A of the Investment Advisers Act of 1940, as the  
77 Commission may designate by rule or order. "Investment advisor representative" does not include such  
78 other persons employed by or associated with either an investment advisor or a federal covered advisor  
79 not within the intent of this definition as the Commission may designate by rule or determine by order  
80 pursuant to § 13.1-525.

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

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

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

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

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

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

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

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

99 "Securities Act of 1933," "Securities Exchange Act of 1934," "Bank Holding Company Act of 1956,"  
100 "Investment Advisers Act of 1940," and "Investment Company Act of 1940" mean the federal statutes of  
101 those names as now or hereafter amended.

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

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

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

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

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