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HOUSE BILL NO. 1873

Offered January 15, 1999

A *BILL to amend and reenact § 13.1-514 of the Code of Virginia, relating to securities; exemptions from registration.*

Patron—Callahan

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:**1. That § 13.1-514 of the Code of Virginia is amended and reenacted as follows:**

§ 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 *the Trust Subsidiary Act* (§ 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. *The Commission may by rule or order, as to any security issued pursuant to such plan, specify or designate persons eligible to participate in such 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

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60 has been outstanding in the hands of the public for the past five years, if the issuer in each of the past
61 three fiscal years has lawfully paid dividends on its common stock aggregating at least four percent of
62 its current market price;

63 3. Any transaction by a registered broker-dealer and its registered agent pursuant to an unsolicited
64 order or offer to buy;

65 4. Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage
66 or deed of trust or by an agreement for the sale of real estate or chattels, if the entire indebtedness
67 secured thereby is offered and sold as a unit;

68 5. Any transaction in his official capacity by a receiver, trustee in bankruptcy or other judicially
69 appointed officer selling securities pursuant to court order;

70 6. Any offer or sale to a corporation, investment company or pension or profit-sharing trust or to a
71 broker-dealer;

72 7. a. Any sale of its securities by an issuer or any sale of securities by a registered broker-dealer and
73 its registered agent acting on behalf of an issuer if, after the sale, such issuer has not more than
74 thirty-five security holders, and if its securities have not been offered to the general public by
75 advertisement or solicitation; or

76 b. To the extent the Commission by rule or order permits, any ~~offer or sale in a transaction involving~~
77 ~~the sale of its securities~~ by an issuer or any sale of securities by a registered broker-dealer and its
78 registered agent acting on behalf of an issuer to not more than thirty-five persons in the Commonwealth
79 during any period of twelve consecutive months, whether or not the issuer or any purchaser is then
80 present in the Commonwealth, if the issuer or broker-dealer reasonably believes that all the purchasers
81 in the Commonwealth are purchasing for investment, and if the securities have not been offered to the
82 general public by advertisement or general solicitation; ~~and the Commission may assess and collect in~~
83 ~~connection with any filing required by the rule or order. The Commission may, by rule or order, as to~~
84 ~~any security or transaction or any type of security or transaction, withdraw or further condition this~~
85 ~~exemption, increase or decrease the number of purchasers permitted, or waive the condition relating to~~
86 ~~their investment intent. The Commission may assess and collect in connection with any filing pursuant to~~
87 ~~this exemption a nonrefundable fee not to exceed \$250.~~

88 ~~The~~ With respect to this subdivision 7, and except to the extent the Commission by rule or order may
89 otherwise permit, the number of security holders of an issuer or the number of purchasers from an
90 issuer, as the case may be, shall not be deemed to include the security holders of any other corporation,
91 partnership, limited liability company, unincorporated association or trust unless it was organized to raise
92 capital for the issuer. Notwithstanding the provisions of subdivision 15, the merger or consolidation of
93 corporations, partnerships, limited liability companies, unincorporated associations or other entities shall
94 be a violation of this chapter if the surviving or new entity has more than thirty-five security holders or
95 purchasers and all the securities of the parties thereto were issued under this exemption, unless all of the
96 parties thereto have been engaged in transacting business for more than two years prior to the merger or
97 consolidation;

98 8. Any transaction pursuant to an offer to existing security holders of the issuer including holders of
99 transferable warrants issued to existing security holders and exercisable within ninety days of their
100 issuance, if either (i) no commission or other remuneration (other than a standby commission) is paid or
101 given directly or indirectly for soliciting any security holder in this Commonwealth, or (ii) the issuer
102 first notifies the Commission in writing of the terms of the offer and the Commission does not by order
103 disallow the exemption within five full business days after the date of the receipt of the notice;

104 9. Any offer (but not a sale) of a security for which registration statements have been filed under
105 both this chapter and the Securities Act of 1933; but this exemption shall not apply while a stop order is
106 in effect or, after notice to the issuer, while a proceeding or examination looking toward such an order
107 is pending under either act;

108 10. The issuance of not more than three shares of common stock to one or more of the incorporators
109 of a corporation and the initial transfer thereof;

110 11. Sales of an issue of bonds, aggregating \$150,000 or less, secured by a first lien deed of trust on
111 realty situated in Virginia, to thirty persons or less who are residents of Virginia;

112 12. Any offer or sale of any interest in any partnership, corporation, association or other entity
113 created solely to provide residential housing located in the Commonwealth, provided that such offer or
114 sale is by the issuer or by a real estate broker or real estate agent duly licensed in Virginia;

115 13. The Commission is authorized to create by rule a limited offering exemption, the purpose of
116 which shall be to further the objectives of compatibility with similar exemptions from federal securities
117 regulation and uniformity among the states; providing that such rule shall not exempt broker-dealers or
118 agents from the registration requirements of this chapter, except in the case of an agent of the issuer
119 who either (i) receives no sales commission directly or indirectly for offering or selling the securities or
120 (ii) effects transactions in a security exempt from registration under the Securities Act of 1933 pursuant
121 to rules and regulations promulgated under § 4 (2) thereof. Any filing made with the Commission

122 pursuant to any exemption created under this subdivision shall be accompanied by a \$250 fee;

123 14. The issuance of any security dividend, whether the corporation distributing the dividend is the
124 issuer of the security or not, if nothing of value is given by stockholders for the distribution other than
125 the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or
126 in a security;

127 15. Any transaction incident to a right of conversion or a statutory or judicially approved
128 reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split,
129 merger, consolidation, sale of assets, or exchange of securities;

130 16. Any offer or sale of a security issued by a Virginia church if the offer and sale are only to and
131 by its members who are Virginia residents and who do not receive remuneration or compensation
132 directly or indirectly for offering or selling the security;

133 17. Any offer or sale of securities issued by a professional business entity (as defined in subsection
134 A of § 13.1-1102) to a person licensed or otherwise legally authorized to render within this
135 Commonwealth the same professional services (as defined in subsection A of § 13.1-1102) rendered by
136 the professional business entity. Notwithstanding the foregoing, nothing in this subdivision shall be
137 deemed to provide that shares of stock, partnership or membership interests or other representations of
138 ownership in a professional business entity are securities except to the extent otherwise provided by
139 subsection A of this section;

140 18. Any offer that is communicated on the Internet, World Wide Web or similar proprietary or
141 common carrier electronic system and that is in compliance with requirements prescribed by rule or
142 order of the Commission-;

143 19. *To the extent the Commission by rule or order permits, any offer or sale to an accredited*
144 *investor, as defined by the Commission, if the issuer reasonably believes before the sale that the*
145 *accredited investor, either alone or with the accredited investor's representative, has such knowledge*
146 *and experience in financial and business matters as to be capable of evaluating the merits and risks of*
147 *the prospective investment. The Commission may assess and collect in connection with any filing*
148 *pursuant to this exemption a nonrefundable fee not to exceed \$250.*

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