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SENATE BILL NO. 564

Offered January 14, 2004

A BILL to amend and reenact §§ 2.2-3101, 2.2-4508, 6.1-32.11, 6.1-194.2, 6.1-302, 12.1-20, 13.1-561.1, 13.1-775.1, 13.1-936.1, 19.2-215.1, 30-101, 30-103, 38.2-6016, 55-79.90, 55-79.97, 55-374.1, 55-482, 55-512, 56-71, 56-231.43, 58.1-2030, 59.1-92.20, 59.1-95.1, 59.1-199, 59.1-263, 59.1-321, and 63.2-1931 of the Code of Virginia, to amend the Code of Virginia by adding in Title 13.1 a chapter numbered 5.1, consisting of sections numbered 13.1-527.4 through 13.1-527.56, and to repeal Chapter 5 (§§ 13.1-501 through 13.1-527.3) of Title 13.1 of the Code of Virginia, relating to the Uniform Securities Act.

Patron—Stosch

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3101, 2.2-4508, 6.1-32.11, 6.1-194.2, 6.1-302, 12.1-20, 13.1-561.1, 13.1-775.1, 13.1-936.1, 19.2-215.1, 30-101, 30-103, 38.2-6016, 55-79.90, 55-79.97, 55-374.1, 55-482, 55-512, 56-71, 56-231.43, 58.1-2030, 59.1-92.20, 59.1-95.1, 59.1-199, 59.1-263, 59.1-321, and 63.2-1931 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 13.1 a chapter numbered 5.1, consisting of sections numbered 13.1- 527.4 through 13.1-527.56, as follows:

§ 2.2-3101. Definitions.

As used in this chapter:

"Advisory agency" means any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

"Affiliated business entity relationship" means a relationship, other than a parent-subsidiary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that may be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person owns or manages the two entities, there are common or commingled funds or assets, the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis, or there is otherwise a close working relationship between the entities.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Contract" means any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency that involves the payment of money appropriated by the General Assembly or political subdivision, whether or not such agreement is executed in the name of the Commonwealth, or some political subdivision thereof. "Contract" includes a subcontract only when the contract of which it is a part is with the officer's or employee's own governmental agency.

"Dependent" means a son, daughter, father, mother, brother, sister or other person, whether or not related by blood or marriage, if such person receives from the officer or employee, or provides to the officer or employee, more than one-half of his financial support.

"Employee" means all persons employed by a governmental or advisory agency, unless otherwise limited by the context of its use.

"Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, broker-dealer as defined in § ~~13.1-501~~*13.1-527.5*, or investment company or advisor registered under the federal Investment Advisors Act or Investment Company Act of 1940.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" shall not include any offer of a ticket or other admission or pass unless the ticket, admission, or pass is used. "Gift" shall not include honorary degrees and presents from relatives. For the purpose of this definition, "relative" means the donee's spouse, child, uncle, aunt,

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niece, or nephew; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, or sister; or the donee's brother's or sister's spouse.

"Governmental agency" means each component part of the legislative, executive or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties. Corporations organized or controlled by the Virginia Retirement System are "governmental agencies" for purposes of this chapter.

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

"Officer" means any person appointed or elected to any governmental or advisory agency including local school boards, whether or not he receives compensation or other emolument of office. Unless the context requires otherwise, "officer" includes members of the judiciary.

"Parent-subsidiary relationship" means a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation.

"Personal interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, $10,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, $10,000 annually; (iv) ownership of real or personal property if the interest exceeds $10,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of (i) or (iv) above.

"Personal interest in a contract" means a personal interest that an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business that is a party to the contract.

"Personal interest in a transaction" means a personal interest of an officer or employee in any matter considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to any individual or business and such property, business or represented or served individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction. Notwithstanding the above, such personal interest in a transaction shall not be deemed to exist where an elected member of a local governing body serves without remuneration as a member of the board of trustees of a not-for-profit entity and such elected member or member of his immediate family has no personal interest related to the not-for-profit entity.

"State and local government officers and employees" shall not include members of the General Assembly.

"Transaction" means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

§ 2.2-4508. Investment of certain public moneys in certain mutual funds.

Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, other than sinking funds that are governed by the provisions of § 2.2-4500, in one or more open-end investment funds, provided that the funds are registered under the *Uniform* Securities Act ~~(§ 13.1-501 et seq.)~~ *(§ 13.1-527.4 et seq.)* of the Commonwealth or the Federal Investment Co. Act of 1940, and that the investments by such funds are restricted to investments otherwise permitted by law for political subdivisions as set forth in this chapter, or investments in other such funds whose portfolios are so restricted.

§ 6.1-32.11. Definitions.

As used in this article:

"Affiliated trust company" means a trust company that is controlled by a trust company holding company. For purposes of this article, a trust company holding company or other person has control of a trust company or other legal entity if the person owns ~~twenty-five~~ *25* percent or more of the voting stock of the trust company or entity; if, pursuant to the definition of control in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), the person would be presumed to control the trust company or entity; or if the Commission determines that the person exercises a controlling influence

over the management and policies of the trust company or entity.

"Agent" shall have the same meaning assigned to that term in ~~§ 13.1-501~~ *§ 13.1-527.5* of the ~~Virginia~~ *Uniform* Securities Act ~~(§ 13.1-501 et seq.)~~ *(§ 13.1-527.4 et seq.)*.

"Broker-dealer" shall have the same meaning assigned to that term in ~~§ 13.1-501~~ *§ 13.1-527.5* of the ~~Virginia~~ *Uniform* Securities Act.

"Commission" means the State Corporation Commission of the Commonwealth of Virginia.

"Fiduciary" means executor, administrator, conservator, guardian of a minor, committee, or trustee.

"Investment advisor" shall have the same meaning assigned to that term in ~~§ 13.1-501~~ *§ 13.1-527.5* of the ~~Virginia~~ *Uniform* Securities Act.

"Investment advisor representative" shall have the same meaning assigned to that term in ~~§ 13.1-501~~ *§ 13.1-527.5* of the ~~Virginia~~ *Uniform* Securities Act.

"Investment company" shall have the same meaning assigned to that term in the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.).

"Operating plan" means a plan submitted by an applicant for a certificate of authority, which plan establishes the policies and procedures a trust company will have in effect when the institution opens for business and thereafter (i) to avoid or resolve conflicts of interests, (ii) to prevent improper influences from affecting the actions of the trustee, (iii) to ensure that trust accounts are handled in accordance with recognized standards of fiduciary conduct, and (iv) to assure compliance with applicable laws and regulations.

"Person" means any individual, firm, corporation, partnership, association, trust, or legal or commercial entity or group of individuals, however organized.

"Principal" means any person who, directly or indirectly, owns or controls (i) ten percent or more of the outstanding stock of a stock corporation or (ii) a ten percent or greater interest in a nonstock corporation or a limited liability company.

"Trust business" means the holding out by a person or legal entity to the public at large by advertising, solicitation or other means that the person or legal entity is available to act as a fiduciary in the Commonwealth of Virginia or is accepting and undertaking to perform the duties of a fiduciary in the regular course of its business.

"Trust company" means a corporation, including an affiliated trust company, authorized to engage in the trust business under this article with powers expressly restricted to the conduct of general trust business.

"Trust company holding company" means a corporation which owns, directly or indirectly, five percent or more of any class of capital stock of a broker-dealer, investment advisor or investment company and which also controls a trust company. A trust company holding company shall not be deemed a financial institution holding company for any purpose under this title unless it controls a financial institution other than an affiliated trust company or another financial institution holding company.

§ 6.1-194.2. Definitions.

As used in this chapter, the following definitions shall apply unless a different meaning is required by the context:

"Account" means any account with a savings institution and includes a checking, time, interest, or savings account.

"Association" means a savings and loan association, building and loan association or building association which is authorized by law to accept deposits and to hold itself out to the public as engaged in the savings and loan business.

"Branch office" means an office of a savings institution where, in addition to conducting other business activities of the institution, the institution accepts deposits.

"Commission" means the State Corporation Commission.

"Commissioner" means the Commissioner of Financial Institutions.

"Federal savings institution" means a savings institution incorporated or organized in accordance with the laws of the United States.

"Financial institution" means a savings institution, commercial bank, trust company, industrial loan association or credit union.

"Foreign savings institution" means a savings institution incorporated under the laws of a state, territory or possession of the United States, other than the Commonwealth of Virginia, whose principal business office is located outside the territorial limits of the Commonwealth. The term "foreign savings institution" does not include a savings institution incorporated under the laws of the United States.

"Home loan" means a real estate loan the security for which is a lien on real estate comprising a single-family dwelling or a dwelling unit for four or fewer families in the aggregate.

"Insured savings institution" means a savings institution whose accounts are insured by the Federal Deposit Insurance Corporation or other federal insurance agency.

"Liquid assets" means cash on hand; cash on deposit in Federal Home Loan Banks, Federal Reserve Banks, savings institutions, or in commercial banks, which is withdrawable upon not more than ~~thirty~~ *30* days' notice and which is not pledged as security for indebtedness; the liquid asset fund of the United States League of Saving Institutions; obligations of, or obligations which are fully guaranteed as to principal and interest by, the United States; or any other asset which the Commissioner designates as a liquid asset. Any deposits in financial institutions under the control or in the possession of any supervisory authority shall not be considered as liquid assets.

"Main office" means the office where a savings institution first commences to do business or, where the savings institution has more than one office, the office designated by the institution's board of directors as the institution's main office.

"Manufactured building" means a manufactured home or other building or structure designed for use as a dwelling or business facility which is manufactured and assembled at a location other than the site where such manufactured home, building or structure is placed for use as a dwelling or business facility, or both.

"Member" means a person holding a savings account of a mutual association, and a person borrowing from or assuming or obligated upon a loan or interest therein held by such association, or a person purchasing real estate securing a loan or interest therein held by such association. A joint and survivorship or other multiple owner or borrower relationship constitutes a single membership.

"Mutual association" means an association which is organized and operated exclusively for the benefit of its members and which does not issue shares of capital stock.

"Mutual savings institution" means a savings institution which is organized and operated exclusively for the benefit of its members and which does not issue shares of capital stock.

"Real estate loan" means a loan on the security of any instrument, whether a mortgage, deed of trust, or land contract, which makes the interest in real estate described therein, whether in fee or in a leasehold or subleasehold extending or renewable automatically or at the option of the holder, or at the option of the savings institution, for a period of at least ~~ten~~ *10* years beyond the maturity of the loan, specific security for the payment of the obligations secured by such instrument. The term also includes a loan, or interest therein, secured by cooperative housing units on the security of (i) a security interest in the stock or membership certificate issued to a tenant-stockholder or resident member of a cooperative housing corporation ~~(as defined in § 13.1-501)~~ coupled with (ii) the assignment by way of security of the borrower's interest in the proprietary lease or other right of tenancy in the property owned by such corporation.

"Savings account" means an interest-bearing account not subject to withdrawal by check or other negotiable instrument.

"Savings institution" means a savings and loan association, a building and loan association, building association, or savings bank, whether organized as a capital stock corporation or a nonstock corporation which is authorized by law to accept deposits and to hold itself out to the public as engaged in the savings institution business.

"Service corporation" means a stock corporation whose entire stock is owned directly by one or more savings institutions, or any such corporation which is owned indirectly through a subsidiary or subsidiaries of one or more savings institutions.

"State association" means a savings and loan association or building and loan association incorporated under the laws of the Commonwealth of Virginia. "State association" includes such an association which uses the term "savings bank" as a part of its corporate name.

"Stock association" means an association which issues shares of capital stock.

"Stock institution" means a savings institution which issues shares of capital stock.

"Withdrawal value" means the amount credited to an account less lawful deductions therefrom, as shown by the records of the savings institution.

§ 6.1-302. Regulations and orders.

A. The Commission is empowered to promulgate rules and regulations for the enforcement of this chapter, in addition thereto and consistent therewith, in the manner required by law. Every regulation, every administrative ruling, and every requirement of general application shall be in writing and be entered and maintained as a public record in an indexed permanent book with the date of each suitably indicated. A copy of each regulation and order promulgating it shall be mailed to all licensees at least ~~ten~~ *10* days before the effective date thereof, and a copy of each other order affecting persons other than licensees shall be mailed to the person or persons immediately affected thereby but without a required period of notice except as and when other procedure is required by law.

B. The Commission is also empowered to promulgate rules or regulations prescribing disclosures which must be made in connection with the offer or sale of any "security," as that term is defined in ~~§ 13.1-501~~ *§ 13.1-527.5* of the ~~Virginia~~ *Uniform* Securities Act ~~(§ 13.1-501 et seq.)~~ *(§ 13.1-527.4 et seq.)*, issued by any licensee organized under the laws of this Commonwealth.

C. The disclosures required by subsection B shall contain substantially the following language: "This

security or these securities are being offered in Virginia pursuant to an exemption from the registration requirements of the ~~Virginia~~ *Uniform* Securities Act. The State Corporation Commission does not pass upon the adequacy or accuracy of the security or this offering circular or upon the merits of this security or this offering. These securities are not insured or guaranteed by any state or federal agency." The disclosures shall be printed in bold, ten-point type.

§ 12.1-20. Facts to be certified by clerk upon request; signing and sealing; fees.

The clerk of the Commission shall, when requested, certify any one or more of the following facts:

1. That a named domestic corporation is organized and existing under and by virtue of the laws of Virginia and is in good standing.

2. That a named foreign corporation of a named state is authorized to do business in Virginia.

3. That the corporate existence of a named domestic corporation has been terminated, together with the date of termination and the reason for the termination.

4. That a named domestic corporation has filed articles of dissolution, together with the date thereof, and whether or not voluntary dissolution proceedings have been revoked.

5. That a named domestic corporation whose corporate existence was automatically terminated has been reinstated, together with the date thereof.

6. That a named foreign corporation of a named state is not authorized to do business in Virginia; and, if it was previously authorized to do business in Virginia, the date when it ceased to be so authorized, and the reason therefor.

7. That a name alleged or supposed to be the name of a corporation is not the name of a domestic corporation or of a foreign corporation authorized to do business in Virginia.

8. The names and addresses of the officers and directors of a corporation contained in its annual report of a particular date.

9. The name and address of the registered agent and registered office of a corporation, together with the date of his appointment.

10. The name and address of a former registered agent and registered office of a corporation, together with the date of his appointment and the date when the corporation filed a statement appointing a new registered agent.

11. That a particular security has or has not been registered for sale in Virginia pursuant to the provisions of the *Uniform* Securities Act ~~(§ 13.1-501 et seq.)~~ *(§ 13.1-527.4 et seq.)*.

12. That a statement or other document required or permitted by law to be filed in the office of the clerk of the Commission has not been filed in his office.

13. The existence or nonexistence of any other fact appearing from the official records of the Commission, unless the disclosure of such fact is forbidden by law.

The certificate shall be signed by the clerk or by a member of his staff and shall be sealed with the seal of the Commission. When so sealed, the certificate shall be admitted in evidence in all cases, civil and criminal, as prima facie evidence of the facts contained in it.

Except as otherwise provided in § 12.1-21.1 or subsection D of § 12.1-21.2, the clerk shall charge and collect a fee of six dollars for each certificate.

CHAPTER 5.1.

UNIFORM SECURITIES ACT.

Article 1.

General Provisions.

§ 13.1-527.4. Short Title.

This Act may be cited as the Uniform Securities Act.

§ 13.1-527.5. Definitions.

In this chapter, unless the context otherwise requires:

(1) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions, is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this chapter.

(2) "Bank" means:

(A) A banking institution organized under the laws of the United States;

(B) A member bank of the Federal Reserve System;

(C) Any other banking institution, whether incorporated or not, doing business under the laws of a State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a), and which is supervised and examined by a state or federal agency having

supervision over banks, and which is not operated for the purpose of evading this chapter; and

(D) A receiver, conservator, or other liquidating agent of any institution or firm included in subdivision (A), (B), or (C).

(3) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

(A) An agent;

(B) An issuer;

(C) A bank or savings institution if its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(4) and (5)) or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(4));

(D) An international banking institution; or

(E) A person excluded by rule adopted or order issued under this chapter.

(4) "Commission" means the State Corporation Commission.

(5) "Depository institution" means:

(A) A bank; or

(B) A savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a State or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a State or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include:

(i). An insurance company or other organization primarily engaged in the business of insurance;

(ii). A Morris Plan bank; or

(iii). An industrial loan company.

(6) "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940.

(7) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the Securities Act of 1933 (15 U.S.C. § 77r(b)) or rules or regulations adopted pursuant to that provision.

(8) "Filing" means the receipt under this chapter of a record by the Commission or a designee of the Commission.

(9) "Fraud," "deceit," and "defraud" are not limited to common law deceit.

(10) "Guaranteed" means guaranteed as to payment of all principal and all interest.

(11) "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

(A) A depository institution or international banking institution;

(B) An insurance company;

(C) A separate account of an insurance company;

(D) An investment company as defined in the Investment Company Act of 1940;

(E) A broker-dealer registered under the Securities Exchange Act of 1934;

(F) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of $10,000,000 or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;

(G) A plan established and maintained by a State, a political subdivision of a State, or an agency or instrumentality of a State or a political subdivision of a State for the benefit of its employees, if the plan has total assets in excess of $10,000,000 or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;

(H) A trust, if it has total assets in excess of $10,000,000, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subdivision (F) or (G), regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(I) An organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in

excess of $10,000,000;

(J) A small business investment company licensed by the Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. Section 681(c)) with total assets in excess of $10,000,000;

(K) A private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with total assets in excess of $10,000,000;

(L) A federal covered investment adviser acting for its own account;

(M) A "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 C.F.R. 230.144A);

(N) A "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934 (17 C.F.R. 240.15a-6);

(O). Any other person, other than an individual, of institutional character with total assets in excess of $10,000,000 not organized for the specific purpose of evading this chapter; or

(P) Any other person specified by rule adopted or order issued under this chapter.

(12) "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the Commission's Bureau of Insurance.

(13) "Insured" means insured as to payment of all principal and all interest.

(14) "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.

(15) "Investment adviser" means a 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 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. The term includes a financial planner or other person who, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

(A) An investment adviser representative;

(B) A lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

(C) A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

(D) A publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;

(E) A federal covered investment adviser;

(F) A bank or savings institution;

(G) Any other person who is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser; or

(H) Any other person excluded by rule adopted or order issued under this chapter.

(16) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

(A) Performs only clerical or ministerial acts;

(B) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;

(C) Is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this State as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-3a) and

(i) Is an "investment adviser representative" as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-3a); or

(ii) Is not a "supervised person" as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); or

(D) Is excluded by rule adopted or order issued under this chapter.

(17) "Issuer" means a person that issues or proposes to issue a security, subject to the following:

(A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a

security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

(B) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.

(C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

(18) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(19) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)).

(20) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(21) "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(A) An office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or

(B) Any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

(22) "Predecessor act" means the act repealed by § 13.1-527.55.

(23) "Price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(24) "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

(25) "Record," except in the phrases "of record," "official record," and "public record," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Sale" includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include:

(A) A security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;

(B) A gift of assessable stock involving an offer and sale; and

(C) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

(27) "Securities and Exchange Commission" means the United States Securities and Exchange Commission.

(28) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term:

(A) Includes both a certificated and an uncertificated security;

(B) Does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed [or variable] sum of money either in a lump sum or periodically for life or other specified period;

(C) Does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974;

(D) Includes as an "investment contract" an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors; and

(E). Includes as an "investment contract," among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement or similar agreement.

(29) "Self-regulatory organization" means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934.

(30) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach or logically associate with the record an electronic symbol, sound, or process.

(31) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

§ 13.1-527.6. References to federal statutes.

"Securities Act of 1933" (15 U.S.C. Section 77a et seq.), "Securities Exchange Act of 1934" (15 U.S.C. Section 78a et seq.), "Public Utility Holding Company Act of 1935"(15 U.S.C. Section 79 et seq.), "Investment Company Act of 1940" (15 U.S.C. Section 80a-1 et seq.), "Investment Advisers Act of 1940" (15 U.S.C. Section 80b-1 et seq.), "Employee Retirement Income Security Act of 1974" (29 U.S.C. Section 1001 et seq.), "National Housing Act" (12 U.S.C. Section 1701 et seq.), "Commodity Exchange Act" (7 U.S.C. Section 1 et seq.), "Internal Revenue Code" (26 U.S.C. Section 1 et seq.), "Securities Investor Protection Act of 1970" (15 U.S.C. Section 78aaa et seq.), "Securities Litigation Uniform Standards Act of 1998" (112 Stat. 3227), "Small Business Investment Act of 1958" (15 U.S.C. Section 661 et seq.), and "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. Section 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this chapter [, or as later amended].

§ 13.1-527.7. References to federal agencies.

A reference in this chapter to an agency or department of the United States is also a reference to a successor agency or department.

§ 13.1-527.8. Electronic records and signatures.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)). This chapter authorizes the filing of records and signatures, when specified by provisions of this chapter or by a rule adopted or order issued under this chapter, in a manner consistent with Section 104(a) of that act (15 U.S.C. Section 7004(a)).

Article 2.

Exemptions From Registration of Securities.

§ 13.1-527.9. Exempt securities.

The following securities are exempt from the requirements of §§ 13.1-527.13 through 13.1-527.18 and 13.1-527.35:

(1) A security, including a revenue obligation or a separate security as defined in Rule 131 (17 C.F.R. 230.131) adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States; by a State; by a political subdivision of a State; by a public authority, agency, or instrumentality of one or more States; by a political subdivision of one or more States; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing;

(2) A security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor;

(3) A security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:

(A) An international banking institution;

(B) A banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a); or

(C) Any other depository institution, unless by rule or order the Commission proceeds under § 13.1-527.12;

(4) A security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this State;

(5) A security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is:

(A) Regulated in respect to its rates and charges by the United States or a State;

(B) Regulated in respect to the issuance or guarantee of the security by the United States, a State, Canada, or a Canadian province or territory; or

(C) A public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that act;

(6) A federal covered security specified in Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)) or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this chapter; a put or a call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78i(b));

(7) A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person; except that with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a rule may be adopted under this chapter limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to subdivision (B) the scope of the exemption and the grounds for denial or suspension, and requiring an issuer:

(A) To file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the Commission does not disallow the exemption within the period established by the rule;

(B) To file a request for exemption authorization for which a rule under this chapter may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with § 13.1-527.52, and grounds for denial or suspension of the exemption; or

(C) To register under § 13.1-527.16;

(8) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a State, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative; and

(9) An equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)).

§ 13.1-527.10. Exempt transactions.

The following transactions are exempt from the requirements of §§ 13.1-527.13 through 13.1-527.18 and 13.1-527.35:

(1) An isolated nonissuer transaction, whether effected by or through a broker-dealer or not;

(2) A nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days, if, at the date of the transaction:

(A) The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(B) The security is sold at a price reasonably related to its current market price;

(C) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;

(D) A nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this chapter or a record filed with the Securities and Exchange Commission that is publicly available contains:

(i) A description of the business and operations of the issuer;

(ii) The names of the issuer's executive officers and the names of the issuer's directors, if any;

(iii) An audited balance sheet of the issuer as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(iv) An audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

(E) Any one of the following requirements is met:

(i) The issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System;

(ii) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(iii) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or

(iv) The issuer of the security has total assets of at least $2,000,000 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization;

(3) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;

(4) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));

(5) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security that:

(A) Is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories; or

(B) Has a fixed maturity or a fixed interest or dividend, if:

(i) A default has not occurred during the current fiscal year or within the three previous fiscal years or during the existence of the issuer and any predecessor if less than three fiscal years, in the payment of principal, interest, or dividends on the security; and

(ii) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous 12 months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(6) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase;

(7) A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;

(8) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of $100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others;

(9) A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in

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such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the Commission after a hearing;

(10) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(11) A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:

(A) The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;

(B) A general solicitation or general advertisement of the transaction is not made; and

(C) A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this chapter as a broker-dealer or as an agent;

(12) A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(13) A sale or offer to sell to:

(A) An institutional investor;

(B) A federal covered investment adviser; or

(C) Any other person exempted by rule adopted or order issued under this chapter;

(14) A sale or an offer to sell securities of an issuer, if the transaction is part of a single issue in which:

(A) Not more than 25 purchasers are present in this State during any 12 consecutive months, other than those designated in subdivision (13);

(B) A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;

(C) A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this chapter or an agent registered under this chapter for soliciting a prospective purchaser in this State; and

(D) The issuer reasonably believes that all the purchasers in this State, other than those designated in subdivision (13), are purchasing for investment;

(15) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this State;

(16) An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(A) A registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 C.F.R. 230.165); and

(B) A stop order of which the offeror is aware has not been issued against the offeror by the Commission or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;

(17) An offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

(A) A registration statement has been filed under this chapter, but is not effective;

(B) A solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the Commission under this chapter; and

(C) A stop order of which the offeror is aware has not been issued by the Commission under this chapter and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;

(18) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties;

(19) A rescission offer, sale, or purchase under § 13.1-527.41;

(20) Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

(A) Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;

(B) Family members who acquire such securities from those persons through gifts or domestic

relations orders;

(C) Former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and

(D) Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than 50 percent of their annual income from those organizations;

(21) A transaction involving:

(A) A stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;

(B) An act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or

(C) The solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 C.F.R. 230.162); or

(22) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this subdivision or by rule adopted or order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this subdivision or by rule adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this subdivision, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. The Commission, by rule adopted or order issued under this chapter, may revoke the designation of a securities exchange under this subdivision, if the Commission finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

§ 13.1-527.11. Additional exemptions and waivers.

A rule adopted or order issued under this chapter may exempt a security, transaction, or offer; a rule under this chapter may exempt a class of securities, transactions, or offers from any or all of the requirements of §§ 13.1-527.13 through 13.1-527.18 and 13.1-527.35; and an order under this chapter may waive, in whole or in part, any or all of the conditions for an exemption or offer under §§ 13.1-527.9 and 13.1-527.10.

§ 13.1-527.12. Denial, suspension, revocation, condition, or limitation of exemptions.

(a) Enforcement related powers. Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this chapter may deny, suspend application of, condition, limit, or revoke an exemption created under § 13.1-527.9 (3)(C), (7) or (8) or § 13.1-527.10 or an exemption or waiver created under § 13.1-527.11 with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in § 13.1-527.18(d) or § 13.1-527.45 and only prospectively.

(b) Knowledge of order required. A person does not violate §§ 13.1-527.13, 13.1-527.15 through 13.1-527.18, 13.1-527.35, or § 13.1-527.41 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

Article 3.

Registration of Securities and

Notice Filing of Federal Covered Securities.

§ 13.1-527.13. Securities registration requirement.

It is unlawful for a person to offer or sell a security in this State unless:

(1) the security is a federal covered security;

(2) the security, transaction, or offer is exempted from registration under §§ 13.1-527.9 through 13.1-527.11; or

(3) the security is registered under this chapter.

§ 13.1-527.14. Notice filing.

(a) With respect to a federal covered security, as defined in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(2)), that is not otherwise exempt under §§ 13.1-527.9 through 13.1-527.11, a rule adopted or order issued under this chapter may require the filing of any or all of the following records:

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(1) before the initial offer of a federal covered security in this State, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 and a consent to service of process complying with § 13.1-527.52 signed by the issuer and the payment of a fee established by the Commission by Rule;

(2) after the initial offer of the federal covered security in this State, all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933; and

(3) to the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this State, if the sales data are not included in records filed with the Securities and Exchange Commission and payment of a fee established by the Commission by Rule.

(b) A notice filing under subsection (a) is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by rule or order under this chapter to be filed and by paying a renewal fee established by the Commission by Rule. A previously filed consent to service of process complying with § 13.1-527.52 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) With respect to a security that is a federal covered security under Section 18(b)(4)(D) of the Securities Act of 1933(15 U.S.C. Section 77r(b)(4)(D)), a rule under this chapter may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process complying with § 13.1-527.52 signed by the issuer not later than 15 days after the first sale of the federal covered security in this State and the payment of a fee established by the Commission by Rule; and the payment of a fee established by the Commission by Rule for any late filing.

(d) Except with respect to a federal security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)), if the Commission finds that there is a failure to comply with a notice or fee requirement of this section, the Commission may issue a stop order suspending the offer and sale of a federal covered security in this State. If the deficiency is corrected, the stop order is void as of the time of its issuance and the Commission may impose a penalty for the noncompliance.

§ 13.1-527.15. Securities registration by coordination.

(a) A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.

(b) A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in § 13.1-527.17 and a consent to service of process complying with § 13.1-527.52:

(1) a copy of the latest form of prospectus filed under the Securities Act of 1933;

(2) a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this chapter;

(3) copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the Commission; and

(4) an undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the Securities and Exchange Commission.

(c) A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

(1) a stop order under subsection (d) or § 13.1-527.18 or issued by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under § 13.1-527.18; and

(2) the registration statement has been on file for at least 20 days or a shorter period provided by rule adopted or order issued under this chapter.

(d) The registrant shall promptly notify the Commission in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the Commission may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The Commission shall promptly notify the registrant of an order by telegram, telephone, or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

(e) If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the Commission, the registration statement is automatically effective under

this chapter when all the conditions are satisfied or waived. If the registrant notifies the Commission of the date when the federal registration statement is expected to become effective, the Commission shall promptly notify the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the Commission intends the institution of a proceeding under § 13.1-527.18. The notice by the Commission does not preclude the institution of such a proceeding.

§ 13.1-527.16. Securities registration by qualification.

(a) A security may be registered by qualification under this section.

(b) A registration statement under this section must contain the information or records specified in § 13.1-527.17, a consent to service of process complying with § 13.1-527.52, and, if required by rule adopted under this chapter, the following information or records:

(1) with respect to the issuer and any significant subsidiary, its name, address, and form of organization; the State or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) with respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five years; the amount of securities of the issuer held by the person as of the 30th day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three years or proposed to be effected;

(3) with respect to persons covered by subdivision (2), the aggregate sum of the remuneration paid to those persons during the previous 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer;

(4) with respect to a person owning of record or owning beneficially, if known, 10 percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in subdivision (2) other than the person's occupation;

(5) with respect to a promoter, if the issuer was organized within the previous three years, the information or records specified in subdivision (2), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;

(6) with respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three years or proposed to be effected; and a statement of the reasons for making the offering;

(7) the capitalization and long term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two years or is obligated to issue its securities;

(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter;

(9) the estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any

persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(10) a description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in subdivision (2), (4), (5), (6), or (8) and by any person that holds or will hold 10 percent or more in the aggregate of those options;

(11) the dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two years, and a copy of the contract;

(12) a description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities;

(13) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with § 13.1-527.10 (17)(B);

(14) a specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;

(15) a signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

(16) a signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement;

(17) a balance sheet of the issuer as of a date within four months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and

(18) any additional information or records required by rule adopted or order issued under this chapter.

(c) Conditions for effectiveness of registration statement. A registration statement under this section becomes effective 30 days, or any shorter period provided by rule adopted or order issued under this chapter, after the date the registration statement or the last amendment other than a price amendment is filed, if:

(1) a stop order is not in effect and a proceeding is not pending under § 13.1-527.18;

(2) the Commission has not issued an order under § 13.1-527.18 delaying effectiveness; and

(3) the applicant or registrant has not requested that effectiveness be delayed.

(d) The Commission may delay effectiveness once for not more than 90 days if the Commission determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The Commission may also delay effectiveness for a further period of not more than 30 days if the Commission determines that the delay is necessary or appropriate.

(e) A rule adopted or order issued under this chapter may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection (b) be sent or given to each person to which an offer is made, before or concurrently, with the earliest of:

(1) the first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;

(2) the confirmation of a sale made by or for the account of the person;

(3) payment pursuant to such a sale; or

(4) delivery of the security pursuant to such a sale.

§ 13.1-527.17. Securities registration filings.

(a)A registration statement may be filed by the issuer, a person on whose behalf the offering is to be

made, or a broker-dealer registered under this chapter.

(b)A person filing a registration statement shall pay a filing fee established by the Commission by Rule. If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under § 13.1-527.18, the Commission shall retain the fee.

(c)A registration statement filed under § 13.1-527.15 or § 13.1-527.16 must specify:

(1) the amount of securities to be offered in this State;

(2) the States in which a registration statement or similar record in connection with the offering has been or is to be filed; and

(3) any adverse order, judgment, or decree issued in connection with the offering by a State securities regulator, the Securities and Exchange Commission, or a court.

(d) A record filed under this chapter or the predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(e) In the case of a nonissuer distribution, information or a record may not be required under subsection (i) or § 13.1-527.16, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

(f) A rule adopted or order issued under this chapter may require as a condition of registration that a security issued within the previous five years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this State be impounded until the issuer receives a specified amount from the sale of the security either in this State or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this chapter.

(g) A rule adopted or order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this chapter or preserved for a period specified by the rule or order, which may not be longer than five years.

(h) Except while a stop order is in effect under § 13.1-527.18, a registration statement is effective for one year after its effective date, or for any longer period designated in an order under this chapter during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the Commission.

(i) While a registration statement is effective, a rule adopted or order issued under this chapter may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

(j) Posteffective amendments. A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the Commission so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee established by the Commission by Rule. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the amendment is filed and the additional registration fee is paid.

§. 13.1-527.18. Denial, suspension, and revocation of securities registration.

(a) The Commission may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the Commission finds that the order is in the public interest and that:

(1) the registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under § 13.1-527.17(j) as of its effective date, or a report under § 13.1-527.17(i), is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) this chapter or a rule adopted or order issued under this chapter or a condition imposed under this chapter has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; or a person directly or indirectly controlling or controlled by the issuer; but only if the person filing the registration statement

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is directly or indirectly controlled by or acting for the issuer; or by an underwriter;

(3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or a stop order or similar order issued under any federal, foreign, or state law other than this chapter applicable to the offering, but the Commission may not institute a proceeding against an effective registration statement under this subdivision more than one year after the date of the order or injunction on which it is based, and the Commission may not issue an order under this subdivision on the basis of an order or injunction issued under the securities act of another State unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;

(4) the issuer's enterprise or method of business includes or would include activities that are unlawful where performed;

(5) with respect to a security sought to be registered under § 13.1-527.15, there has been a failure to comply with the undertaking required by § 13.1-527.15(b)(4);

(6) the applicant or registrant has not paid the filing fee, but the Commission shall void the order if the deficiency is corrected; or

(7) the offering:

(A) will work or tend to work a fraud upon purchasers or would so operate; or

(B) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options; or

(C) is being made on terms that are unfair, unjust, or inequitable.

(b) To the extent practicable, the Commission by rule adopted or order issued under this chapter shall publish standards that provide notice of conduct that violates subsection (a)(7).

(c) The Commission may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the Commission when the registration statement became effective unless the proceeding is instituted within 30 days after the registration statement became effective.

(d) The Commission may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of a hearing. Upon the issuance of the order, the Commission shall promptly notify each person specified in subsection (e) that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by, within 30 days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the Commission, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(e) A stop order may not be issued under this section without:

(1) appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;

(2) an opportunity for hearing; and

(3) findings of fact and conclusions of law.

(f) Modification or vacation of stop order. The Commission may modify or vacate a stop order issued under this section if the Commission finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

§ 13.1-527.19. Waiver and modification. The Commission may waive or modify, in whole or in part, any or all of the requirements of §§ 13.1-527.14, 13.1-527.15, and ~~30~~13.1-527.16(b) or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to § 13.1-527.17(i).

Article 4.

Broker-dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers.

§. 13.1-527.20. Broker-dealer registration requirement and exemptions.

(a) It is unlawful for a person to transact business in this State as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d).

(b) The following persons are exempt from the registration requirement of subsection (a):

(1) a broker-dealer without a place of business in this State if its only transactions effected in this State are with:

(A) the issuer of the securities involved in the transactions;

(B) a broker-dealer registered as a broker-dealer under this chapter or not required to be registered as a broker-dealer under this chapter;

(C) an institutional investor;

(D) a nonaffiliated federal covered investment adviser with investments under management in excess of $100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;

(E) a bona fide preexisting customer whose principal place of residence is not in this State and the person is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the State in which the customer maintains a principal place of residence;

(F) a bona fide preexisting customer whose principal place of residence is in this State but was not present in this State when the customer relationship was established, if:

(i) the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the State in which the customer relationship was established and where the customer had maintained a principal place of residence; and

(ii) within 45 days after the customer's first transaction in this State, the person files an application for registration as a broker-dealer in this State and a further transaction is not effected more than 75 days after the date on which the application is filed, or, if earlier, the date on which the Commission notifies the person that the Commission has denied the application for registration or has stayed the pendency of the application for good cause;

(G) not more than three customers in this State during the previous 12 months, in addition to those customers specified in subdivisions (A) through (F) and under subdivision (H), if the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the State in which the broker-dealer has its principal place of business; and

(H) any other person exempted by rule adopted or order issued under this chapter; and

(2) a person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision.

(c) It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this State, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this State if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the Commission under this chapter, the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this chapter may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.

(d) A rule adopted or order issued under this chapter may permit:

(1) a broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this State to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(A) an individual from Canada or other foreign jurisdiction who is temporarily present in this State and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States;

(B) an individual from Canada or other foreign jurisdiction who is present in this State and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or

(C) an individual who is present in this State, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction; and

(2) an agent who represents a broker-dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in this State as permitted for a broker-dealer described in subdivision (1).

§ 13.1-527.21. Agent registration requirement and exemptions.

(a) It is unlawful for an individual to transact business in this State as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under subsection (b).

(b) The following individuals are exempt from the registration requirement of subsection (a):

(1) an individual who represents a broker-dealer in effecting transactions in this State limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78(o)(2));

(2) an individual who represents a broker-dealer that is exempt under § 13.1-527.20(b) or (d);

(3) an individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(4) an individual who represents an issuer and who effects transactions in the issuer's securities exempted by § 13.1-527.10, other than § 13.1-527.10(11) and (14);

(5) an individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(6) an individual who represents a broker-dealer registered in this State under § 13.1-527.20(a) or exempt from registration under § 13.1-527.20(b) in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of $100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;

(7) an individual who represents an issuer in connection with the purchase of the issuer's own securities;

(8) an individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or

(9) any other individual exempted by rule adopted or order issued under this chapter.

(c) The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this chapter or an issuer that is offering, selling, or purchasing its securities in this State.

(d) It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this State, to employ or associate with an agent who transacts business in this State on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).

(e) An individual may not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this chapter.

§ 13.1-527.22. Investment adviser registration requirement and exemptions.

(a) It is unlawful for a person to transact business in this State as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration as an investment adviser under subsection (b).

(b)The following persons are exempt from the registration requirement of subsection (a):

(1) a person without a place of business in this State that is registered under the securities act of the State in which the person has its principal place of business if its only clients in this State are:

(A) federal covered investment advisers, investment advisers registered under this chapter, or broker-dealers registered under this chapter;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this State if the investment adviser is registered under the securities act of the State in which the clients maintain principal places of residence; or

(D) any other client exempted by rule adopted or order issued under this chapter;

(2) a person without a place of business in this State if the person has had, during the preceding 12 months, not more than five clients that are resident in this State in addition to those specified under subdivision (1); or

(3) any other person exempted by rule adopted or order issued under this chapter.

(c) It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this State if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this chapter, the Securities and Exchange Commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the Commission, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

(d) It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this chapter as an investment adviser representative who transacts business in this State on behalf of the investment adviser unless the individual is registered under § 13.1-527.23(a) or is

exempt from registration under § 13.1-527.23(b).

§ 13.1-527.23. Investment adviser representative registration requirement and exemptions.

(a) It is unlawful for an individual to transact business in this State as an investment adviser representative unless the individual is registered under this chapter as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection (b).

(b) The following individuals are exempt from the registration requirement of subsection (a):

(1) an individual who is employed by or associated with an investment adviser that is exempt from registration under § 13.1-527.22(b) or a federal covered investment adviser that is excluded from the notice filing requirements of § 13.1-527.24; and

(2) any other individual exempted by rule adopted or order issued under this chapter.

(c) The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this chapter or a federal covered investment adviser that has made or is required to make a notice filing under § 13.1-527.24.

(d) An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser unless a rule adopted or order issued under this chapter prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.

(e) It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this State on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this chapter, the Securities and Exchange Commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the Commission, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

(f) An investment adviser registered under this chapter, a federal covered investment adviser that has filed a notice under § 13.1-527.24, or a broker-dealer registered under this chapter is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this chapter, a federal covered investment adviser who has filed a notice under § 13.1-527.24, or a broker-dealer registered under this chapter with which the individual is employed or associated as an investment adviser representative.

§ 13.1-527.24. Federal covered investment adviser notice filing requirement.

(a) Except with respect to a federal covered investment adviser described in subsection (b), it is unlawful for a federal covered investment adviser to transact business in this State as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (c).

(b) The following federal covered investment advisers are not required to comply with subsection (c):

(1) a federal covered investment adviser without a place of business in this State if its only clients in this State are:

(A) federal covered investment advisers, investment advisers registered under this chapter, and broker-dealers registered under this chapter;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this State; or

(D) other clients specified by rule adopted or order issued under this chapter;

(2) a federal covered investment adviser without a place of business in this State if the person has had, during the preceding 12 months, not more than five clients that are resident in this State in addition to those specified under subdivision (1); and

(3) any other person excluded by rule adopted or order issued under this chapter.

(c) A person acting as a federal covered investment adviser, not excluded under subsection (b), shall file a notice, a consent to service of process complying with § 13.1-527.52, and such records as have been filed with the Securities and Exchange Commission under the Investment Advisers Act of 1940 required by rule adopted or order issued under this chapter and pay the fees specified in § 13.1-527.29(e).

(d) The notice under subsection (c) becomes effective upon its filing.

§ 13.1-527.25. Registration by broker-dealer, agent, investment adviser, and investment adviser representative.

(a) A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with § 13.1-527.52, and paying the fee specified in § 13.1-527.29 and any reasonable fees charged by the designee of the

Commission for processing the filing. The application must contain:

(1) the information or record required for the filing of a uniform application; and

(2) upon request by the Commission, any other financial or other information or record that the Commission determines is appropriate.

(b) If the information or record contained in an application filed under subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) If an order is not in effect and a proceeding is not pending under § 13.1-527.31, registration becomes effective at noon on the 45th day after a completed application is filed, unless the registration is denied. A rule adopted or order issued under this chapter may set an earlier effective date or may defer the effective date until noon on the 45th day after the filing of any amendment completing the application.

(d) A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under § 13.1-527.31, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this chapter, by paying the fee specified in § 13.1-527.29, and by paying costs charged by the designee of the Commission for processing the filings.

(e) A rule adopted or order issued under this chapter may impose such other conditions, not inconsistent with the National Securities Markets Improvement Act of 1996. An order issued under this chapter may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

§ 13.1-527.26. Succession and change in registration of broker-dealer or investment adviser.

(a) A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to § 13.1-527.20 or § 13.1-527.22 or a notice pursuant to § 13.1-527.24 for the unexpired portion of the current registration or notice filing.

(b) A broker-dealer or investment adviser that changes its form of organization or State of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this chapter. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this chapter shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within 45 days after filing its amendment to effect succession.

(c) A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.

(d) A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this chapter.

§ 13.1-527.27. Termination of employment or association of agent and investment adviser representative and transfer of employment or association.

(a) If an agent registered under this chapter terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

(b) If an agent registered under this chapter terminates employment by or association with a broker-dealer registered under this chapter and begins employment by or association with another broker-dealer registered under this chapter; or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under § 13.1-527.24 and begins employment by or association with another investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under § 13.1-527.24; then upon the filing by or on behalf of the registrant, within 30 days after the termination, of an application for registration that complies with the requirement of § 13.1-527.25(a) and payment of the filing fee required under § 13.1-527.29, the registration of the agent or investment adviser representative is:

(1) immediately effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record does not contain a new or amended disciplinary disclosure within the previous 12 months; or

(2) temporarily effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record contains a new or amended disciplinary disclosure within the preceding 12 months.

(c) The Commission may withdraw a temporary registration if there are or were grounds for discipline as specified in § 13.1-527.31 and the Commission does so within 30 days after the filing of the application. If the Commission does not withdraw the temporary registration within the 30-day period, registration becomes automatically effective on the 31st day after filing.

(d) The Commission may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection (b)(1) or (2) based on the public interest and the protection of investors.

(e) If the Commission determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this chapter may require the registration be canceled or terminated or the application denied. The may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

§ 13.1-527.28. Withdrawal of registration of broker-dealer, agent, investment adviser, and investment adviser representative.

Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective 60 days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this chapter unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued under this chapter. The Commission may institute a revocation or suspension proceeding under § 13.1-527.31 within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

§ 13.1-527.29. Filing fees.

(a) A person shall pay a fee established by the Commission by Rule when initially filing an application for registration as a broker-dealer and a fee established by the Commission by Rule when filing a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the Commission shall retain the fee.

(b) The fee for an individual shall be as established by the Commission by Rule when filing an application for registration as an agent, a fee established by the Commission by Rule when filing a renewal of registration as an agent, and a fee established by the Commission by Rule when filing for a change of registration as an agent. If the filing results in a denial or withdrawal, the Commission shall retain the fee.

(c) A person shall pay a fee established by the Commission by Rule when filing an application for registration as an investment adviser and a fee established by the Commission by Rule when filing a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal, the Commission shall retain the fee.

(d) The fee for an individual shall be the fee established by the Commission by Rule when filing an application for registration as an investment adviser representative, a fee established by the Commission by Rule when filing a renewal of registration as an investment adviser representative, and a fee of established by the Commission by Rule when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the Commission shall retain the fee.

(e) A federal covered investment adviser required to file a notice under § 13.1-527.24 shall pay an initial fee established by the Commission by Rule and an annual notice fee ~~of~~ established by the Commission by Rule.

(f) A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this chapter.

(g) An investment adviser representative who is registered as an agent under § 13.1-527.21 and who represents a person that is both registered as a broker-dealer under § 13.1-527.20 and registered as an investment adviser under § 13.1-527.22 or required as a federal covered investment adviser to make a notice filing under § 13.1-527.24 is not required to pay an initial or annual registration fee for registration as an investment adviser representative.]

§ 13.1-527.29:1. Fees to cover expense of regulation.

The fees paid into the state treasury under this chapter, except for fees and funds collected for the Literary Fund, shall be deposited into a special fund and specifically accounted for and used by the State Corporation Commission to defray the costs of supervising, implementing, and administering the provisions of this chapter and Chapter 8 (§ 13.1-557 et seq.) of this title, and Chapters 6.1 (§ 59.1-92.1 et seq.) and 7 (§ 59.1-93 et seq.) of Title 59.1. Included in the Commission's costs shall be a reasonable margin in the nature of a reserve fund. All excesses of fees collected exceeding these costs shall revert to the general fund.

§ 13.1-527.30. Postregistration requirements.

(a) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this chapter may establish minimum financial requirements for broker-dealers registered or required to be registered under this chapter and investment advisers registered or required to be registered under this chapter.

(b) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall file such financial reports as are required by a rule adopted or order issued under this chapter. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22):

(1) a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this chapter;

(2) broker-dealer records required to be maintained under subdivision (1) may be maintained in any form of data storage acceptable under Section 17(a) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78q(a)) if they are readily accessible to the Commission; and

(3) investment adviser records required to be maintained under subdivision (1) may be maintained in any form of data storage required by rule adopted or order issued under this chapter.

(d) The records of a broker-dealer registered or required to be registered under this chapter and of an investment adviser registered or required to be registered under this chapter are subject to such reasonable periodic, special, or other audits or inspections by a representative of the Commission, within or without this State, as the Commission considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The Commission may copy, and remove for audit or inspection copies of, all records the Commission reasonably considers necessary or appropriate to conduct the audit or inspection. The Commission may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this chapter may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount not to exceed $100,000. The Commission may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this chapter whose net capital exceeds, or of an investment adviser registered under this chapter whose minimum financial requirements exceed, the amounts required by rule or order under this chapter. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in § 13.1-527.40(j)(2).

(f) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this chapter may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(g) With respect to an investment adviser registered or required to be registered under this chapter, a rule adopted or order issued under this chapter may require that information or other record be

furnished or disseminated to clients or prospective clients in this State as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(h) A rule adopted or order issued under this chapter may require an individual registered under § 13.1-527.21 or § 13.1-527.23 to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this chapter may require continuing education for an individual registered under § 13.1-527.23.

§ 13.1-527.31. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration.

(a) If the Commission finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

(b) If the Commission finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may revoke, suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser. However, the Commission may not:

(1) institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another State that is reported to the Commission or a designee of the Commission more than one year after the date of the order on which it is based; or

(2) under subsection (d)(5)(A) or (B), issue an order on the basis of an order issued under the securities act of another State unless the other order was based on conduct for which subsection (d) would authorize the action had the conduct occurred in this State.

(c) If the Commission finds that the order is in the public interest and subsection (d)(1) through (6), (8), (9), (10), or (12) and (13) authorizes the action, an order under this chapter may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of $10,000 for each violation, on a registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

(d)A person may be disciplined under subsections (a) through (c) if the person:

(1) has filed an application for registration in this State under this chapter or the predecessor act within the previous 10 years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) willfully violated or willfully failed to comply with this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous 10 years;

(3) has been convicted of a felony or within the previous 10 years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(4) is enjoined or restrained by a court of competent jurisdiction in an action instituted by the Commission under this chapter or the predecessor act, a State, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(5) is the subject of an order, issued after notice and opportunity for hearing by:

(A) the securities, depository institution, insurance, or other financial services regulator of a State or by the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;

(B) the securities regulator of a State or the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;

(C) the Securities and Exchange Commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;

(D) a court adjudicating a United States Postal Service fraud order;

(E) the insurance regulator of a State denying, suspending, or revoking registration as an insurance agent; or

(F) a depository institution regulator suspending or barring the person from the depository institution business;

(6) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission; the Federal Trade Commission; a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a State that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a State, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;

(7) is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the Commission may not enter an order against an applicant or registrant under this subdivision without a finding of insolvency as to the applicant or registrant;

(8) refuses to allow or otherwise impedes the Commission from conducting an audit or inspection under § 13.1-527.30(d) or refuses access to a registrant's office to conduct an audit or inspection under § 13.1-527.30(d);

(9) has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous 10 years;

(10) has not paid the proper filing fee within 30 days after having been notified by the Commission of a deficiency, but the Commission shall vacate an order under this subdivision when the deficiency is corrected;

(11) after notice and opportunity for a hearing, has been found within the previous 10 years:

(A) by a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(B) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or

(C) to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

(12) is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a State;

(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years; or

(14) is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this subdivision if the individual has successfully completed all examinations required by subsection (e). The Commission may require an applicant for registration under § 13.1-527.21 or § 13.1-527.23 who has not been registered in a State within the two years preceding the filing of an application in this State to successfully complete an examination.

(e) A rule adopted or order issued under this chapter may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, an examination as to an individual and a rule adopted under this chapter may waive, in whole or in part, an examination as to a class of individuals if the Commission determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) The Commission may summarily suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of a hearing. Upon the issuance of an order, the Commission shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the Commission may issue a final order. If a hearing is requested or ordered, the Commission, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) An order issued may not be issued under this section, except under subsection (f), without:

(1) appropriate notice to the applicant or registrant;

(2) opportunity for hearing; and

(3) findings of fact and conclusions of law.

(h) A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the Commission under subsections (a) through (c) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

Article 5.

Fraud and Liabilities.

§ 13.1-527.32. General fraud.

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

(1) to employ a device, scheme, or artifice to defraud;

(2) to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

§ 13.1-527.33. Prohibited conduct in providing investment advice.

(a) It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities:

(1) to employ a device, scheme, or artifice to defraud another person; or

(2) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

(b) A rule adopted under this chapter may define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons of a federal covered investment adviser, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

(c) A rule adopted under this chapter may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

§ 13.1-527.34. Evidentiary burden.

(a) In a civil action or proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.

(b) In a criminal proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

§ 13.1-527.35. Filing of sales and advertising literature.

(a) Except as otherwise provided in subsection (b), a rule adopted or order issued under this chapter may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this chapter.

(b) This section does not apply to sales and advertising literature specified in subsection (a) which relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by §§ 13.1-527.9 through 13.1-527.11 except as required pursuant to subdivision 7 of § 13.1-527.9.

§ 13.1-527.36. Misleading filings.

It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this chapter, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

§ 13.1-527.37. Misrepresentations concerning registration or exemption.

The filing of an application for registration, a registration statement, a notice filing under this chapter, the registration of a person, the notice filing by a person, or the registration of a security under this chapter does not constitute a finding by the Commission that a record filed under this chapter is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the Commission has passed upon the merits or qualifications of, or recommended or given approval to, a

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person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

§ 13.1-527.38. Qualified immunity.

A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the Commission, or designee of the Commission, the Securities and Exchange Commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

§ 13.1-527.39. Criminal penalties.

(a) Criminal penalties. A person that willfully violates this chapter, or a rule adopted or order issued under this chapter, except § 13.1-527.35 or the notice filing requirements of § 13.1-527.14 or § 13.1-527.24, or that willfully violates § 13.1-527.36 knowing the statement made to be false or misleading in a material respect, upon conviction, shall be guilty of a Class 4 felony pursuant to subsection d of § 18.2-10 for each violation. An individual convicted of violating a rule or order under this chapter may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order.

(b) Criminal reference not required. The Attorney General or the proper prosecuting attorney with or without a reference from the Commission, may institute criminal proceedings under this chapter.

(c) No limitation on other criminal enforcement. This chapter does not limit the power of this State to punish a person for conduct that constitutes a crime under other laws of this State.

§ 13.1-527.39:1. Division created in Office of the Attorney General; Commission to provide technical support.

A. There is hereby created in the office of the Attorney General a Division of Securities Counsel. The duties of such Division shall be to provide legal and technical assistance to an attorney for the Commonwealth, in the preparation for a prosecution of and the prosecution of a violation of this title; provided, however, such assistance shall be rendered only upon the request of the attorney for the Commonwealth.

B. The Attorney General may employ and fix the salaries of attorneys, employees and consultants, within the amounts appropriated to the Attorney General for providing legal service for the Commonwealth, as he may deem necessary for the operation of the Division of Securities Counsel to carry out its functions.

C. The Commission shall provide technical assistance to the Division of Securities Counsel in its investigation and preparation of a prosecution under the provisions of this title.

§ 13.1-527.40. Civil liability.

(a) A person is liable to the purchaser if the person sells a security in violation of § 13.1-527.13 or, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(1) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the legal rate of interest pursuant to § 6.1-330.53 from the date of the purchase, costs, and reasonable attorneys' fees determined by the court, upon the tender of the security, or for actual damages as provided in subdivision (3).

(2) The tender referred to in subdivision (1) may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in subdivision (3).

(3) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest at the legal rate of interest pursuant to § 6.1-330.53 from the date of the purchase, costs, and reasonable attorneys' fees determined by the court.

(b) A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(1) The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorneys' fees determined by the court, upon the tender of the purchase

price, or for actual damages as provided in subdivision (3).

(2) The tender referred to in subdivision (1) may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in subdivision (3).

(3) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest pursuant to § 6.1-330.53 from the date of the sale of the security, costs, and reasonable attorneys' fees determined by the court.

(c) A person acting as a broker-dealer or agent that sells or buys a security in violation of § 13.1-527.20(a), 13.1-527.21(a), or § 13.1-527.37 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsections (b)(1) through (3), or, if a seller, for a remedy as specified in subsections (c)(1) through (3).

(d) A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of § 13.1-527.22 (a), 13.1-527.23 (a), or § 13.1-527.37 is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest pursuant to § 6.1-330.53 from the date of payment, costs, and reasonable attorneys' fees determined by the Commission.

(e) A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person. An action under this subsection is governed by the following:

(1) The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest pursuant to § 6.1-330.53 from the date of the fraudulent conduct, costs, and reasonable attorneys' fees determined by the court, less the amount of any income received as a result of the fraudulent conduct.

(2) This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

(f) The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (b) through (f):

(1) a person that directly or indirectly controls a person liable under subsections (b) through (f), unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(2) an individual who is a managing partner, executive officer, or director of a person liable under subsections (b) through (f), including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(3) an individual who is an employee of or associated with a person liable under subsections (b) through (f) and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and

(4) a person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (b) through (f), unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

(g) A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

(h) A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(i) A person may not obtain relief:

(1) under subsection (b) for violation of § 13.1-527.13, or under subsection (d) or (e), unless the action is instituted within one year after the violation occurred; or

(2) under subsection (b), other than for violation of § 13.1-527.13, or under subsection (c) or (f), unless the action is instituted within the earlier of two years after discovery of the facts constituting the violation or five years after the violation.

(j) No enforcement of violative contract. A person that has made, or has engaged in the performance of, a contract in violation of this chapter or a rule adopted or order issued under this chapter, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its

making or performance was in violation of this chapter, may not base an action on the contract.

(k) A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this chapter or a rule adopted or order issued under this chapter is void.

(l) The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or § 13.1-527.30(e).

§ 13.1-527.41. Rescission offers.

A purchaser, seller, or recipient of investment advice may not maintain an action under § 13.1-527.40 if:

(1) The purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted:

(A) an offer stating the respect in which liability under § 13.1-527.40 may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this chapter to be furnished to that person at the time of the purchase, sale, or investment advice;

(B) if the basis for relief under this section may have been a violation of § 13.1-527.40(b), an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest pursuant to § 6.1-330.53 from the date of the purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest pursuant to § 6.1-330.53 from the date of the purchase in cash equal to the damages computed in the manner provided in this subsection;

(C) if the basis for relief under this section may have been a violation of § 13.1-527.40(c), an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest pursuant to § 6.1-330.53 from the date of the sale; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest pursuant to § 6.1-330.53 from the date of the sale;

(D) if the basis for relief under this section may have been a violation of § 13.1-527.40(d); and if the customer is a purchaser, an offer to pay as specified in subdivision (B); or, if the customer is a seller, an offer to tender or to pay as specified in subdivision (C);

(E) if the basis for relief under this section may have been a violation of § 13.1-527.40(e), an offer to reimburse in cash the consideration paid for the advice and interest pursuant to § 6.1-330.53 from the date of payment; or

(F) if the basis for relief under this section may have been a violation of § 13.1-527.40(f), an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest pursuant to § 6.1-330.53 from the date of the violation causing the loss;

(2) the offer under subdivision (1) states that it must be accepted by the purchaser, seller, or recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than three days, that the Commission, by order, specifies;

(3) the offeror has the present ability to pay the amount offered or to tender the security under subdivision (1);

(4) the offer under subdivision (1) is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and

(5) the purchaser, seller, or recipient of investment advice that accepts the offer under subdivision (1) in a record within the period specified under subdivision (2) is paid in accordance with the terms of the offer.

Article 6.

Administration and Judicial Review.

§ 13.1-527.42. Administration.

(a) The Commission shall administer this chapter.

(b) It is unlawful for an officer, employee, or designee of the Commission to use for personal benefit or the benefit of others records or other information obtained by or filed with the Commission that are not public under § 13.1-527.48(b). This chapter does not authorize the Commission or an officer, employee, or designee of the Commission to disclose the record or information, except in accordance

with § 13.1-527.43, 13.1-527.48(c), or § 13.1-527.49.

(c) This chapter does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(d) The Commission may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the Commission may collaborate with public and nonprofit organizations with an interest in investor education. The Commission may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the Commission to require participation or monetary contributions of a registrant in an investor education program.

(e) The Securities Investor Education and Training Fund is created to provide funds for the purposes specified in subsection (d).

§ 13.1-527.43. Investigations and subpoenas.

(a) The Commission may:

(1) conduct public or private investigations within or outside of this State which the Commission considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this chapter or a rule adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter;

(2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the Commission determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(3) publish a record concerning an action, proceeding, or an investigation under, or a violation of, this chapter or a rule adopted or order issued under this chapter if the Commission determines it is necessary or appropriate in the public interest and for the protection of investors.

(b) For the purpose of an investigation under this chapter, the Commission or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the Commission considers relevant or material to the investigation. Information or documents obtained or prepared by any member, subordinate, or employee of the Commission in the course of any examination or investigation conducted pursuant to the provisions of this chapter shall be deemed confidential and shall not be disclosed to the public.

(c) If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the Commission under this chapter, the Commission may:

(1) hold the person in contempt;

(2) order the person to appear before the Commission;

(3) order the person to testify about the matter under investigation or in question;

(4) order the production of records;

(5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;

(6) impose a civil penalty pursuant to §§ 12.1-33 and 12.1-34 for each violation; and

(7) grant any other necessary or appropriate relief.

(d) An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the Commission under this chapter or in an action or proceeding instituted by the Commission under this chapter on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the Commission may compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

(e) At the request of the securities regulator of another State or a foreign jurisdiction, the Commission may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other State or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The Commission may provide the assistance by using the authority to investigate and the powers conferred by this section as the Commission determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this chapter or other law of this State if occurring in this State. In deciding whether to provide the assistance, the Commission may consider whether the

requesting regulator is permitted and has agreed to provide assistance reciprocally within its State or foreign jurisdiction to the Commission on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this State; and the availability of resources and employees of the Commission to carry out the request for assistance.

§ 13.1-527.44. Civil enforcement.

(a) If the Commission believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the Commission, pursuant to its authority as a court of record as provided in Article IX, Section 3 of the Constitution of Virginia, may enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.

(b) In an action under this section and on a proper showing, the Commission may:

(1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) order other appropriate or ancillary relief, which may include:

(A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the Commission, for the defendant or the defendant's assets;

(B) to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(C) imposing a civil penalty up to $10,000 for each violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act; and

(D) ordering the payment of prejudgment and postjudgment interest; or

(3) order such other relief as the Commission considers appropriate.

§ 13.1-527.45. Enforcement.

(a) If the Commission determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the Commission may:

(1) issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter;

(2) issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under § 13.1-527.20(b)(1)(D) or (F) or an investment adviser under § 13.1-527.22(b)(1)(C); or

(3) issue an order under § 13.1-527.12.

(b) An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the Commission shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the Commission will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within 15 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the Commission within 30 days after the date of service of the order, the order, which may include a civil penalty or costs of the investigation if a civil penalty or costs were sought in the statement accompanying the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the Commission, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) If a hearing is requested or ordered pursuant to subsection (b), a hearing must be held. A final order may not be issued unless the Commission makes findings of fact and conclusions of law in a record in accordance with the Commission's Rules of Practice and Procedure, pursuant to 5 VAC 5-20-210 et seq. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) In a final order under subsection (c), the Commission may impose a civil penalty up to $10,000 for each violation.

(e) In a final order, the Commission may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.

(f)The Commission ~~may~~ shall file a certified copy of the final order with the Clerk of the Commission.

§ 13.1-527.46. Rules, forms, orders, interpretative opinions, and hearings.

(a) The Commission may:

(1) issue forms and orders and, after notice and comment, may adopt and amend rules necessary or

appropriate to carry out this chapter and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;

(2) by rule, define terms, whether or not used in this chapter, but those definitions may not be inconsistent with this chapter; and

(3) by rule, classify securities, persons, and transactions and adopt different requirements for different classes.

(b) Under this chapter, a rule or form may not be adopted or amended, or an order issued or amended, unless the Commission finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this chapter. In adopting, amending, and repealing rules and forms, § 13.1-527.49 applies in order to achieve uniformity among the States and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

(c) Subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisers Act of 1940, the Commission may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this chapter. A rule adopted or order issued under this chapter may establish:

(1) subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisors Act of 1940, the form and content of financial statements required under this chapter;

(2) whether unconsolidated financial statements must be filed; and

(3) whether required financial statements must be audited by an independent certified public accountant.

(d) The Commission may provide interpretative opinions or issue determinations that the Commission will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. A rule adopted or order issued under this chapter may establish a reasonable charge for interpretative opinions or determinations that the Commission will not institute an action or a proceeding under this chapter.

§ 13.1-527.47. Files and opinions.

(a) The Commission shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this chapter or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or the predecessor act; and interpretative opinions or no action determinations issued under this chapter.

(b) The Commission shall make all rules, forms, interpretative opinions, and orders available to the public.

(c) The Clerk of the Commission shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted under this chapter may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the Clerk of the Commission of a record's nonexistence is prima facie evidence of a record or its nonexistence.

(d) Papers, documents and files may be destroyed by the Commission when, in its opinion, they no longer serve any useful purpose.

§ 13.1-527.48. Public records; confidentiality

(a) Presumption of public records. Except as otherwise provided in subsection (b), records obtained by the Commission or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.

(b) Nonpublic records. The following records are not public records and are not available for public examination under subsection (a):

(1) a record obtained by the Commission in connection with an audit or inspection under § 13.1-527.30(d) or an investigation under § 13.1-527.43;

(2) a part of a record filed in connection with a registration statement under §§ 13.1-527.13 and 13.1-527.15 through 13.1-527.17 or a record under § 13.1-527.30(d) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

(3) a record that is not required to be provided to the Commission or filed under this chapter and is provided to the Commission only on the condition that the record will not be subject to public

examination or disclosure;

(4) a nonpublic record received from a person specified in § 13.1-527.49(a); and

(5) any social security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed; and

(6) a record obtained by the Commission through a designee of the Commission that a rule or order under this chapter determines has been:

(A) expunged from the Commission's records by the designee; or

(B) determined to be nonpublic or nondisclosable by that designee if the Commission finds the determination to be in the public interest and for the protection of investors~~]~~.

(c) If disclosure is for the purpose of a civil, Commission, or criminal investigation, action, or proceeding or to a person specified in § 13.1-527.49(a), the Commission may disclose a record obtained in connection with an audit or inspection under § 13.1-527.30(d) or a record obtained in connection with an investigation under § 13.1-527.43.

§ 13.1-527.49. Uniformity and cooperation with other agencies.

(a) The Commission shall, in its discretion, cooperate, coordinate, consult, and, subject to § 13.1-527.48, share records and information with the securities regulator of another State, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, and a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, States, and foreign governments.

(b) In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this chapter, the Commission shall, in its discretion, take into consideration in carrying out the public interest the following general policies:

(1) maximizing effectiveness of regulation for the protection of investors;

(2) maximizing uniformity in federal and state regulatory standards; and

(3) minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

(c) The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes:

(1) establishing or employing one or more designees as a central depository for registration and notice filings under this chapter and for records required or allowed to be maintained under this chapter;

(2) developing and maintaining uniform forms;

(3) conducting a joint examination or investigation;

(4) holding a joint hearing;

(5) instituting and prosecuting a joint civil or proceeding;

(6) sharing and exchanging personnel;

(7) coordinating registrations under §§ 13.1-527.13 and 13.1-527.20 through ~~40~~413.1-527.23 and exemptions under § 13.1-527.11;

(8) sharing and exchanging records, subject to § 13.1-527.48;

(9) formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases;

(10) formulating common systems and procedures;

(11) notifying the public of proposed rules, forms, statements of policy, and guidelines;

(12) attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity; and

(13) developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.

§ 13.1-527.50. Judicial review

(a) A final order issued by the Commission under this chapter is subject to appeal to the Supreme Court of Virginia, as a matter of right.

(b) A rule adopted under this chapter is subject to appeal to the Supreme Court of Virginia, as a matter of right.

§ 13.1-527.51. Jurisdiction

(a) §§ 13.1-527.13, 13.1-527.14, 13.1-527.20(a), 13.1-527.21(a), 13.1-527.22(a), 13.1-527.23(a), 13.1-527.32, 13.1-527.37, 13.1-527.40, and 13.1-527.41 do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this State or the offer to purchase or the purchase is made and accepted in this State.

(b) Sections 13.1-527.20(a), 13.1-527.21(a), 13.1-527.22(a), 13.1-527.23(a), 13.1-527.32, 13.1-527.37,

13.1-527.40, and 13.1-527.41 do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in this State or the offer to sell or the sale is made and accepted in this State.

(c) For the purpose of this section, an offer to sell or to purchase a security is made in this State, whether or not either party is then present in this State, if the offer:

(1) originates from within this State; or

(2) is directed by the offeror to a place in this State and received at the place to which it is directed.

(d) For the purpose of this section, an offer to purchase or to sell is accepted in this State, whether or not either party is then present in this State, if the acceptance:

(1) is communicated to the offeror in this State and the offeree reasonably believes the offeror to be present in this State and the acceptance is received at the place in this State to which it is directed; and

(2) has not previously been communicated to the offeror, orally or in a record, outside this State.

(e) An offer to sell or to purchase is not made in this State when a publisher circulates or there is circulated on the publisher's behalf in this State a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this State, or that is published in this State but has had more than two thirds of its circulation outside this State during the previous 12 months or when a radio or television program or other electronic communication originating outside this State is received in this State. A radio or television program, or other electronic communication is considered as having originated in this State if either the broadcast studio or the originating source of transmission is located in this State, unless:

(1) the program or communication is syndicated and distributed from outside this State for redistribution to the general public in this State;

(2) the program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this State for redistribution to the general public in this State;

(3) the program or communication is an electronic communication that originates outside this State and is captured for redistribution to the general public in this State by a community antenna or cable, radio, cable television, or other electronic system; or

(4) the program or communication consists of an electronic communication that originates in this State, but which is not intended for distribution to the general public in this State.

(f) Sections 13.1-527.22(a), 13.1-527.23(a), 13.1-527.24(a), 13.1-527.33, 13.1-527.36, and 13.1-527.37 apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this State, whether or not either party is then present in this State.

§ 13.1-527.52. Service of process.

(a) A consent to service of process must be signed and filed in the form required by a rule or order under this chapter. A consent appointing the Clerk of the Commission the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under this chapter, or a rule adopted or order issued under this chapter after the consent is filed, has the same force and validity as if the service were made personally in the Commonwealth on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

(b) If a person, including a nonresident of this State, engages in an act, practice, or course of business prohibited or made actionable by this chapter or a rule adopted or order issued under this chapter and the person has not filed a consent to service of process under subsection (a), the act, practice, or course of business constitutes the appointment of the Clerk of the Commission as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.

(c) Service under subsection (a) or (b) may be made by providing a copy of the process to the office of the Clerk of the Commission, but it is not effective unless:

(1) The plaintiff, which may be the Commission, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and

(2) The plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the Commission in a proceeding before the Commission, allows.

(d) Service pursuant to subsection (c) may be used in a proceeding before the Commission or by the Commission in a civil action in which the Commission is the moving party.

(e) If process is served under subsection (c), the Commission shall order continuances as are

necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

§ 13.1-527.53. Severability clause.

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Article 7.

Transition.

§ 13.1-527.54. Application of act to existing proceeding and existing rights and duties.

(a) Applicability of predecessor act to pending proceedings and existing rights. The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of this chapter or may be instituted on the basis of conduct occurring before the effective date of this chapter, but a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within five years after the effective date of this chapter, whichever is earlier.

(b) Continued effectiveness under predecessor act. All effective registrations under the predecessor act, all orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no action determinations, and conditions imposed on the registrations under the predecessor act remain in effect while they would have remained in effect if this chapter had not been enacted. They are considered to have been filed, issued, or imposed under this chapter, but are exclusively governed by the predecessor act.

(c) Applicability of predecessor act to offers or sales. The predecessor act exclusively applies to an offer or sale made within one year after the effective date of this chapter pursuant to an offering made in good faith before the effective date of this chapter on the basis of an exemption available under the predecessor act.

§ 13.1-561.1. Fees to cover expense of regulation.

The fees paid into the state treasury under this chapter, except for fees and funds collected for the Literary Fund, shall be deposited into a special fund and specifically accounted for and used by the State Corporation Commission to defray the costs of supervising, implementing, and administering the provisions of this chapter and ~~Chapters 5 (§ 13.1-501 et seq.) and 6 (§ 13.1-528 et seq.)~~ *Chapter 5.1 (§ 13.1-527.4 et seq.)* of this title, and Chapters 6.1 (§ 59.1-92.1 et seq.) and 7 (§ 59.1-93 et seq.) of Title 59.1. Included in the Commission's costs shall be a reasonable margin in the nature of a reserve fund. All excesses of fees collected exceeding these costs shall revert to the general fund.

§ 13.1-775.1. Annual registration fees for domestic and foreign corporations.

A. Every domestic corporation and every foreign corporation authorized to do business in this Commonwealth, whose number of authorized shares is 5,000 shares or less, shall pay into the state treasury by its due date each calendar year an annual registration fee of ~~fifty dollars~~ *$50*.

Any such corporation whose number of authorized shares is more than 5,000 shall pay an annual registration fee of $50 plus $15 for each 5,000 shares or fraction thereof in excess of 5,000 shares up to a maximum of $850.

The annual registration fee shall be irrespective of any specific license tax or other tax or fee imposed by law upon the corporation for the privilege of carrying on its business in this Commonwealth or upon its franchise, property or receipts.

B. The State Corporation Commission shall ascertain from its records the number of authorized shares of each corporation authorized to do business in this Commonwealth, as of the first day of the second month next preceding the month of the corporation's annual registration fee due date each year, and shall assess against each corporation the registration fee herein imposed. In any year in which a corporation's due date is extended pursuant to this chapter the registration fee assessment shall be increased by a prorated amount to cover the period of extension. A statement of the assessment, when made, shall be forwarded by the Clerk of the State Corporation Commission to the Comptroller and to each corporation.

C. Any corporation which fails to pay the registration fee herein imposed within the time prescribed shall incur a penalty as provided in subdivision B 1 of § 13.1-752 or § 13.1-768, as the case may be, which shall be added to the amount of the registration fee. The penalty shall be in addition to any other penalty or liability provided by law.

D. The fees paid into the state treasury under this section shall be set aside as a special fund to be used only by the State Corporation Commission as it deems necessary to defray all costs of staffing, maintaining and operating the office of the Clerk of the Commission, together with all other costs incurred by the Commission in supervising, implementing and administering the provisions of Part 5 (§ 8.9A-501 et seq.) of Title 8.9A, this title, except for Chapters ~~5 (§ 13.1-501 et seq.)~~ *5.1 (§ 13.1-527.4 et seq.)* and 8 (§ 13.1-557 et seq.) and Article 6 (§ 55-142.1 et seq.) of Chapter 6 of Title 55, provided that one-half of the fees collected shall be credited to the general fund. The excess of fees collected over the projected costs of administration in the next fiscal year shall be paid into the general fund prior to

the close of the fiscal year.

§ 13.1-936.1. Annual registration fees for domestic and foreign corporations.

A. Every domestic corporation and every foreign corporation authorized to conduct its affairs in this Commonwealth shall pay into the state treasury by its due date each calendar year an annual registration fee of ~~twenty-five dollars~~ *$25*.

The annual registration fee shall be irrespective of any specific license tax or other tax or fee imposed by law upon the corporation for the privilege of conducting its affairs in this Commonwealth or upon its franchise, property or receipts. Nonstock corporations incorporated before 1970 which were not liable for the annual registration fee therefor shall not be liable for an annual registration fee hereafter.

B. The State Corporation Commission shall ascertain from its records each corporation authorized to conduct its affairs in this Commonwealth, as of the first day of the second month next preceding the month of the corporation's annual registration fee due date each year, and shall assess against each corporation the registration fee herein imposed. In any year in which a corporation's due date is extended pursuant to this chapter the registration fee assessment shall be increased by a prorated amount to cover the period of extension. A statement of the assessment, when made, shall be forwarded by the Clerk of the State Corporation Commission to the Comptroller and to each corporation.

C. Any corporation which fails to pay the registration fee herein imposed within the time prescribed shall incur a penalty as provided in subdivision B 1 of § 13.1-914 or § 13.1-930, as the case may be, which shall be added to the amount of the registration fee. The penalty shall be in addition to any other penalty or liability provided by law.

D. The fees paid into the state treasury under this section shall be set aside as a special fund to be used only by the State Corporation Commission as it deems necessary to defray all costs of staffing, maintaining and operating the office of the Clerk of the Commission, together with all other costs incurred by the Commission in supervising, implementing and administering the provisions of Part 5 (§ 8.9A-501 et seq.) of Title 8.9A, this title, except for Chapters ~~5 (§ 13.1-501 et seq.)~~ *5.1 (§ 13.1-527.4 et seq.)* and 8 (§ 13.1-557 et seq.) and Article 6 (§ 55-142.1 et seq.) of Chapter 6 of Title 55, provided that one-half of the fees collected shall be credited to the general fund. The excess of fees collected over the projected costs of administration in the next fiscal year shall be paid into the general fund prior to the close of the fiscal year.

§ 19.2-215.1. Functions of a multijurisdiction grand jury.

The functions of a multijurisdiction grand jury are:

1. To investigate any condition that involves or tends to promote criminal violations of:

a. Title 10.1 for which punishment as a felony is authorized;

~~b. § 13.1-520;~~

~~c~~ *b.* §§ 18.2-47 and 18.2-48;

~~d~~ *c.* §§ 18.2-111 and 18.2-112;

~~e~~ *d.* Article 6 (§ 18.2-59 et seq.) of Chapter 4 of Title 18.2;

~~f~~ *e.* Article 7.1 (§ 18.2-152.1 et seq.) of Chapter 5 of Title 18.2;

~~g~~ *f.* Article 1 (§ 18.2-247 et seq.) and Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2;

~~h~~ *g.* Article 1 (§ 18.2-325 et seq.) and Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 or any other provision prohibiting, limiting, regulating, or otherwise affecting gaming or gambling activity;

~~i~~ *h.* § 18.2-434, when violations occur before a multijurisdiction grand jury;

~~j~~ *i.* Article 2 (§ 18.2-438 et seq.) and Article 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2;

~~k~~ *j.* § 18.2-460 for which punishment as a felony is authorized;

~~l~~ *k.* Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of Title 18.2;

~~m~~ *l.* Article 1 (§ 32.1-310 et seq.) of Chapter 9 of Title 32.1;

~~n~~ *m.* Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1;

~~o~~ *n.* Article 6 (§ 3.1-796.122 et seq.) of Chapter 27.4 of Title 3.1;

~~p~~ *o.* Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

~~q~~ *p.* Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of Title 18.2; and

~~r~~ *q.* Any other provision of law when such condition is discovered in the course of an investigation that a multijurisdiction grand jury is otherwise authorized to undertake and to investigate any condition that involves or tends to promote any attempt, solicitation or conspiracy to violate the laws enumerated in this section.

2. To report evidence of any criminal offense enumerated in subdivision 1 to the attorney for the Commonwealth or United States attorney of any jurisdiction where such offense could be prosecuted or investigated and, when appropriate, to the Attorney General.

3. To consider bills of indictment prepared by a special counsel to determine whether there is sufficient probable cause to return each such indictment as a "true bill." Only bills of indictment which allege an offense enumerated in subdivision 1 may be submitted to a multijurisdiction grand jury.

4. The provisions of this section shall not abrogate the authority of an attorney for the Commonwealth in a particular jurisdiction to determine the course of a prosecution in that jurisdiction.

§ 30-101. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Advisory agency" means any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Contract" means any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency which involves the payment of money appropriated by the General Assembly or a political subdivision, whether or not such agreement is executed in the name of the Commonwealth of Virginia, or some political subdivision thereof. "Contract" includes a subcontract only when the contract of which it is a part is with the legislator's own governmental agency.

"Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, broker-dealer as defined in ~~subsection A of § 13.1-501~~ *§ 13.1-527.5*, or investment company or advisor registered under the federal Investment Advisors Act or Investment Company Act of 1940.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" shall not include any offer of a ticket or other admission or pass unless the ticket, admission, or pass is used. "Gift" shall not include honorary degrees and presents from relatives. For the purpose of this definition, "relative" means the donee's spouse, child, uncle, aunt, niece, or nephew; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, or sister; or the donee's brother's or sister's spouse.

"Governmental agency" means each component part of the legislative, executive or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties.

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as the legislator, who is a dependent of the legislator or of whom the legislator is a dependent. "Dependent" means a son, daughter, father, mother, brother, sister or other person, whether or not related by blood or marriage, if such person receives from the legislator, or provides to the legislator, more than one-half of his financial support.

"Legislator" means a member of the General Assembly.

"Personal interest" means a financial benefit or liability accruing to a legislator or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, $10,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business that exceeds, or may reasonably be anticipated to exceed, $10,000 annually; (iv) ownership of real or personal property if the interest exceeds $10,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; or (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business.

"Personal interest in a contract" means a personal interest which a legislator has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business which is a party to the contract.

"Personal interest in a transaction" means a personal interest of a legislator in any matter considered by the General Assembly. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business, or represents any individual or business and such property, business or represented individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction. A "personal interest in a transaction" exists only if the legislator or member of his immediate family or an individual or business represented by the legislator is affected in a way that is substantially different from the general public or from persons comprising a profession, occupation, trade, business or other comparable and generally recognizable class or group of which he or the individual or business he represents is a member.

"Transaction" means any matter considered by the General Assembly, whether in a committee,

subcommittee, or other entity of the General Assembly or before the General Assembly itself, on which official action is taken or contemplated.

§ 30-103. Prohibited conduct.

No legislator shall:

1. Solicit or accept money or other thing of value for services performed within the scope of his official duties, except the compensation, expenses or other remuneration paid to him by the General Assembly. This prohibition shall not apply to the acceptance of special benefits which may be authorized by law;

2. Offer or accept any money or other thing of value for or in consideration of obtaining employment, appointment, or promotion of any person with any governmental or advisory agency;

3. Offer or accept any money or other thing of value for or in consideration of the use of his public position to obtain a contract for any person or business with any governmental or advisory agency;

4. Use for his own economic benefit or that of another party confidential information which he has acquired by reason of his public position and which is not available to the public;

5. Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him in the performance of his official duties. This subdivision shall not apply to any political contribution actually used for political campaign or constituent service purposes and reported as required by Chapter 9 (§ 24.2-900 et seq.) of Title 24.2;

6. Accept any business or professional opportunity when he knows that there is a reasonable likelihood that the opportunity is being afforded him to influence him in the performance of his official duties;

7. During the one year after the termination of his service as a legislator, represent a client or act in a representative capacity on behalf of any person or group, for compensation, on any matter before the General Assembly or any agency of the legislative branch of government. The prohibitions of this subdivision shall apply only to persons engaged in activities that would require registration as a lobbyist under § 2.2-422. Any person subject to the provisions of this subdivision may apply to the Attorney General, as provided in § 30-122, for an advisory opinion as to the application of the restriction imposed by this subdivision on any post-public employment position or opportunity;

8. Accept any honoraria for any appearance, speech, or article in which the legislator provides expertise or opinions related to the performance of his official duties. The term "honoraria" shall not include any payment for or reimbursement to such person for his actual travel, lodging, or subsistence expenses incurred in connection with such appearance, speech, or article or in the alternative a payment of money or anything of value not in excess of the per diem deduction allowable under § 162 of the Internal Revenue Code, as amended from time to time;

9. Accept appointment to serve on a body or board of any corporation, company or other legal entity, vested with the management of the corporation, company or entity, and on which two other members of the General Assembly already serve, which is operated for profit and regulated by the State Corporation Commission as (i) a financial institution, (ii) a mortgage lender or broker, (iii) any business under Chapter ~~5~~ ~~(§ 13.1-501 et seq.)~~ *5.1 (§ 13.1-527.4 et seq.)* of Title 13.1, (iv) any business under Title 38.2, or (v) any business under Title 56;

10. Accept a gift from a person who has interests that may be substantially affected by the performance of the legislator's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the legislator's impartiality in the matter affecting the donor. Violations of this subdivision shall not be subject to criminal law penalties; or

11. Accept gifts from sources on a basis so frequent as to raise an appearance of the use of his public office for private gain. Violations of this subdivision shall not be subject to criminal law penalties.

§ 38.2-6016. Applicability of securities laws.

Nothing in this chapter shall preempt or otherwise limit the provisions of the ~~Virginia~~ *Uniform* Securities Act ~~(§ 13.1-501 et seq.)~~ *(§ 13.1-527.4 et seq.)*, or any regulations, notices, bulletins or other interpretations issued by or through the Commission acting pursuant to the ~~Virginia~~ *Uniform* Securities Act. Compliance with the provisions of this chapter shall not constitute compliance with any applicable provision of the ~~Virginia~~ *Uniform* Securities Act and any amendments thereto or any regulations, notices, bulletins, or other interpretations issued by or through the Commission acting pursuant to the ~~Virginia~~ *Uniform* Securities Act.

§ 55-79.90. Public offering statement; condominium securities.

A. A public offering statement shall disclose fully and accurately the characteristics of the condominium and the units therein offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominium. The proposed public offering statement submitted to the agency shall be in a form prescribed by its rules and shall include the following:

1. The name and principal address of the declarant and the condominium;

2. A general narrative description of the condominium stating the total number of units in the offering; the total number of units planned to be sold and rented; the total number of units that may be included in the condominium by reason of future expansion or merger of the project by the declarant;

3. Copies of the declaration and bylaws, with a brief narrative statement describing each and including information on declarant control, a projected budget for at least the first year of the condominium's operation (including projected common expense assessments for each unit), and provisions for reserves for capital expenditures and restraints on alienation;

4. Copies of any management contract, lease of recreational areas, or similar contract or agreement affecting the use, maintenance or access of all or any part of the condominium with a brief narrative statement of the effect of each such agreement upon a purchaser, and a statement of the relationship, if any, between the declarant and the managing agent or firm;

5. A general description of the status of construction, zoning, site plan approval, issuance of building permits, or compliance with any other state or local statute or regulation affecting the condominium;

6. The significant terms of any encumbrances, easements, liens and matters of title affecting the condominium;

7. The significant terms of any financing offered by the declarant to the purchaser of units in the condominium;

8. Provisions of any warranties provided by the declarant on the units and the common elements, other than the warranty prescribed by subsection (b) of § 55-79.79;

9. A statement that the purchaser may cancel the disposition within ten days of delivery of the current public offering statement, or within ten days of the contract date of the disposition, whichever is later;

10. A statement of the declarant's obligation to complete improvements of the condominium which are planned but not yet begun, or begun but not yet completed. Said statement shall include a description of the quality of the materials to be used, the size or capacity of the improvements when material, and the time by which the improvements shall be completed. Any limitations on the declarant's obligation to begin or complete any such improvements shall be expressly stated;

11. If the units in the condominium are being subjected to a time-share instrument pursuant to § 55-367, the information required to be disclosed by § 55-374;

12. A statement listing the facilities or amenities which are defined as common elements or limited common elements in the condominium instruments, which are available to a purchaser for use. Such statement shall also include whether there are any fees or other charges for the use of such facilities or amenities which are not included as part of any assessment, and the amount of such fees or charges, if any, a purchaser may be required to pay;

13. A statement of any limitation on the number of persons who may occupy a unit as a dwelling; and

14. Additional information required by the agency to assure full and fair disclosure to prospective purchasers.

B. The public offering statement shall not be used for any promotional purposes before registration of the condominium project and afterwards only if it is used in its entirety. No person may advertise or represent that the agency approves or recommends the condominium or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the agency requires it.

C. The agency may require the declarant to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the condominium may be made after registration without notifying the agency and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

D. If an interest in a condominium is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement in this chapter if he delivers to the purchaser and files with the agency a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a condominium is not a security under the provisions of the *Uniform* Securities Act ~~(§ 13.1-501 et seq.)~~ *(§ 13.1-527.4 et seq.)*.

§ 55-79.97. Resale by purchaser.

A. In the event of any resale of a condominium unit by a unit owner other than the declarant, and subject to the provisions of subsection J and § 55-79.87 A, the unit owner shall disclose in the contract that (i) the unit is located within a development which is subject to the Condominium Act, (ii) the Act requires the seller to obtain from the unit owners' association a resale certificate and provide it to the purchaser, (iii) the purchaser may cancel the contract within three days after receiving the resale certificate, (iv) the purchaser has a right to request an update of the resale certificate in accordance with

subsection D, and (v) the right to receive the resale certificate and the right to cancel the contract are waived conclusively if not exercised before settlement.

B. If the contract does not contain the disclosure required by subsection A, the purchaser's sole remedy is to cancel the contract prior to settlement.

C. The information contained in the resale certificate shall be current as of a date specified on the resale certificate. The purchaser may cancel the contract (i) within three days after the date of the contract, if the purchaser receives the resale certificate on or before the date that the purchaser signs the contract; (ii) within three days after receiving the resale certificate if the resale certificate is hand delivered or delivered with the consent of the purchaser by electronic means and a receipt obtained; or (iii) within six days after the postmark date if the resale certificate is sent to the purchaser by United States mail. Notice of cancellation shall be hand delivered or sent by United States mail, return receipt requested, to the unit owner selling the unit or his agent. Such cancellation shall be without penalty, and the unit owner shall cause any deposit to be returned promptly to the purchaser. The unit owners' association may also send the resale certificate by electronic means with the consent of the seller and the purchaser.

A resale certificate shall include the following:

1. An appropriate statement pursuant to subsection H of § 55-79.84 which need not be notarized and, if applicable, an appropriate statement pursuant to § 55-79.85;

2. A statement of any expenditure of funds approved by the unit owners' association or the executive organ which shall require an assessment in addition to the regular assessment during the current or the immediately succeeding fiscal year;

3. A statement, including the amount, of all assessments and any other fees or charges currently imposed by the unit owners' association and associated with the purchase, disposition and maintenance of the condominium unit and the use of the common elements, and the status of the account;

4. A statement whether there is any other entity or facility to which the unit owner may be liable for fees or other charges;

5. The current reserve study report or a summary thereof, a statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the executive organ;

6. A copy of the unit owners' association's current budget or a summary thereof prepared by the unit owners' association and a copy of the statement of its financial condition for the last fiscal year for which a statement is available;

7. A statement of the nature and status of any pending suits or unpaid judgments to which the unit owners' association is a party which either could or would have a material impact on the association or the unit owners or which relates to the unit being purchased;

8. A statement setting forth what insurance coverage is provided for all unit owners by the unit owners' association, including any fidelity bond maintained by the unit owners' association, and what additional insurance coverage would normally be secured by each individual unit owner;

9. A statement that any improvements or alterations made to the unit, or the limited common elements assigned thereto, by the prior unit owner are not in violation of the condominium instruments;

10. A copy of the current bylaws, rules and regulations and architectural guidelines adopted by the unit owners' association and the amendments thereto;

11. A statement of whether the condominium or any portion thereof is located within a development subject to the Property Owners' Association Act (§ 55-508 et seq.) of Chapter 26 of this title;

12. A copy of the notice given to the unit owner by the unit owners' association of any current or pending rule or architectural violation;

13. Certification, if applicable, that the association has filed with the Real Estate Board the annual report required by § 55-516.1; which certification shall indicate the filing number assigned by the Real Estate Board and the expiration date of such filing; and

14. A statement of any limitation on the number of persons who may occupy a unit as a dwelling.

Failure to receive copies of such documents shall not excuse any failure to comply with the provisions thereof.

The resale certificate, once received by the owner from the unit owners' association, shall be delivered by the owner to the purchaser. The unit owners' association shall have no obligation to deliver the resale certificate to the purchaser of the unit. The resale certificate shall not, in and of itself, be deemed a security within the meaning of ~~§ 13.1-501~~ *§ 13.1-527.5*.

D. The purchaser may submit a copy of the contract to the unit owners' association with a request for assurance that statements previously furnished pursuant to subsection C remain materially unchanged, or, if there have been material changes, a statement specifying such changes. The purchaser shall be provided with such assurances or such statement within ten days of the receipt of such request by the unit owners' association. The purchaser may be required to pay the same fee charged a unit owner for

the resale certificate, if any. Any fee shall reflect the actual cost incurred by the unit owners' association in providing the assurances, but shall not exceed ten cents per page in copying costs or a total of fifty dollars for all costs incurred in updating the resale certificate. The unit owners' association may also collect from the purchaser the actual costs incurred of any mailing or delivery requested by the purchaser pursuant to this subsection.

E. In the absence of a written agreement to the contrary, the failure of the unit owners' association to provide the statement required by subsection D or the disclosure by such statement that there have been one or more material changes shall render the purchase contract void at the option of the purchaser.

F. The unit owners' association shall furnish the resale certificate upon the written request of any unit owner within fourteen days of the receipt of such request. Payment of the actual costs of preparing the resale certificate may be required of the unit owner requesting it as a prerequisite to its issuance, but the total fee shall not exceed ten cents per page in copying costs or a total of $100, including and not in addition to, any fee charged pursuant to subsection H of § 55-79.84 and § 55-79.85, for all costs incurred in preparing the resale certificate, except that the unit owners' association, upon mutual agreement with the seller, may collect for actual costs incurred, in addition to any fee charged pursuant to this subsection (i) a rush fee, not to exceed ~~twenty-five~~ ~~dollars~~ *$25*, for furnishing the resale certificate within three business days from the actual receipt of the request, (ii) the actual cost of any mailing or delivery requested by the seller pursuant to this subsection, and (iii) any actual cost incurred at the request and with the consent of the purchaser. Neither the unit owners' association nor its management agent, if any, shall require cash or certified funds unless the unit owner is delinquent in any payments due to the unit owners' association in excess of ~~thirty~~ *30* days or if a check of the unit owner made payable to the unit owners' association was returned for insufficient funds within the last six months.

G. When a resale certificate has been issued as required by this section, the unit owners' association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment account and the status of the unit with respect to any violation of the condominium instruments as of the date of the resale certificate unless the purchaser had actual knowledge that the contents of the resale certificate were in error.

H. If the unit owners' association has been requested to furnish the resale certificate required by this section and has been paid the appropriate fee, its failure to provide the resale certificate in substantially the form provided herein within fourteen days from the actual receipt of the request by an officer, director or agent of the unit owners' association shall be deemed a waiver of any claim for delinquent assessments or of any violation of the condominium instruments, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject unit. The unit owners' association shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed $500. The purchaser shall nevertheless be obligated to abide by the condominium instruments, rules and regulations, and architectural guidelines of the unit owners' association as to all matters arising after the date of the settlement of the sale. The settlement agent, as defined in § 6.1-2.20, when transmitting funds to a unit owners' association or otherwise upon request, shall provide the unit owners' association with (i) the name of the seller, (ii) the name and address of the purchaser, (iii) the address of the subject property, (iv) the date of settlement, and (v) a brief explanation of the application of any funds transmitted. Providing a copy of the HUD-1 settlement statement, unless otherwise prohibited, shall satisfy these requirements.

I. Subject to the provisions of § 55-79.87, but notwithstanding any other provisions of this chapter, the provisions and requirements of this section shall apply to any such resale of a condominium unit created under the provisions of the Horizontal Property Act (§ 55-79.1 et seq.).

J. The resale certificate required by this section need not be provided in the case of:

1. A disposition of a unit by gift;

2. A disposition of a unit pursuant to court order if the court so directs; or

3. A disposition of a unit by foreclosure or deed in lieu of foreclosure.

K. In any transaction in which a resale certificate is required and a trustee acts as the seller in the sale or resale of a unit, the trustee shall obtain the resale certificate from the unit owners' association and provide the resale certificate to the purchaser.

§ 55-374.1. Certain advertising practices regulated.

A. Any offering which includes a gift or prize must disclose therein, with the same prominence as such offer:

1. The retail value of each gift or prize;

2. The approximate odds against any given person obtaining each gift or prize if all persons to whom the advertisement is disseminated do what is necessary to qualify for the award of the gift or prize;

3. If the number of gifts or prizes to be awarded is limited, a statement of the number of gifts or prizes to be awarded or in lieu thereof, the nature of such limitation;

4. All rules, terms, requirements, and conditions which must be fulfilled before a prospective

purchaser may claim any gift or prize, including whether the prospective purchaser is required to attend a sales presentation in order to receive the gift or prize;

5. The date upon which the offer expires; and

6. A statement to the effect that the offer is being made for the purpose of soliciting the purchase of a time-share, time-share interest, interval ownership, interval ownership interest, vacation ownership, vacation ownership interest or product, as appropriate.

B. Any gift or prize offered in connection with an offering shall be delivered to the prospective purchaser no later than the day the purchaser attends a sales presentation, if required, and if not, on the day the purchaser appears to claim it, whether or not he purchases a time-share. In the event the supply of gifts or prizes is exhausted at the time required for delivery, the developer shall give the prospective purchaser a written, unconditional promise to deliver such gift or prize no later than ~~thirty~~ *30* days from the date required for delivery. If such gift or prize is not obtainable, the developer shall deliver an item of equal or greater value.

C. The offering of any product registered with the Board is exempt from the Virginia Travel Club Act (§ 59.1-445 et seq.), the Virginia Condominium Act (§ 55-79.39 et seq.), the ~~Virginia~~ *Uniform* Securities Act ~~(§ 13.1-501 et seq.)~~ *(§ 13.1-527.4 et seq.)*, the Virginia Home Solicitation Sales Act (§ 59.1-21.1 et seq.), and the Subdivided Land Sales Act (§ 55-336 et seq.). If any provision of this section is in conflict with the provisions in the Prizes and Gifts Act (§ 59.1-415 et seq.), the provisions of the Prizes and Gifts Act shall control.

§ 55-482. Public offering statement; cooperative securities.

If an interest in a cooperative is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement of this chapter if he delivers to the purchaser and files with the agency a copy of the public offering statement filed with the Securities and Exchange Commission. A cooperative interest is not a security under the provisions of the *Uniform* Securities Act, ~~§§ 13.1-501 through 13.1-527.3~~ *(§ 13.1-527.4 et seq.)*.

§ 55-512. Contents of association disclosure packet; other requirements.

A. Subject to the provisions of subsections C and F, the association shall make available to an owner or his authorized agent within fourteen days after receipt of a written request therefor and receipt of the appropriate fee, an association disclosure packet, which, upon receipt, the seller shall deliver to the purchaser. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet. If hand or electronically delivered, the written request and fee are deemed received on the date of delivery. If sent by United States mail, the request and fee are deemed received six days after the postmark date. An association disclosure packet shall contain the following:

1. The name of the association and, if incorporated, the state in which the association is incorporated and the name and address of its registered agent in Virginia;

2. A statement of any expenditure of funds approved by the association or the board of directors which shall require an assessment in addition to the regular assessment during the current year or the immediately succeeding fiscal year;

3. A statement, including the amount of all assessments and any other mandatory fees or charges currently imposed by the association and associated with the purchase, disposition and maintenance of the lot and to the right of use of common areas, and the status of the account;

4. A statement whether there is any other entity or facility to which the lot owner may be liable for fees or other charges;

5. The current reserve study report or summary thereof, a statement of the status and amount of any reserve or replacement fund and any portion of the fund allocated by the board of directors for a specified project;

6. A copy of the association's current budget or a summary thereof prepared by the association, and a copy of its statement of income and expenses or statement of its financial condition for the last fiscal year for which such statement is available;

7. A statement of the nature and status of any pending suit or unpaid judgment to which the association is a party which either could or would have a material impact on the association or its members or which relates to the lot being purchased;

8. A statement setting forth what insurance coverage is provided for all lot owners by the association, including any fidelity bond maintained by the association, and what additional insurance would normally be secured by each individual lot owner;

9. A statement that any improvement or alteration made to the lot, or uses made of the lot or common area assigned thereto by the prior lot owner, are not in violation of any of the instruments referred to in subdivision 12 of this subsection;

10. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to

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place a sign on the owner's lot advertising the lot for sale;

11. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to display any flag on the owner's lot including, but not limited to reasonable restrictions as to the size, place and manner of placement or display of such flag and the installation of any flagpole or similar structure necessary to display such flag;

12. A copy of the current declaration, the association's articles of incorporation and bylaws, and any rules and regulations or architectural guidelines adopted by the association;

13. A copy of the notice given to the lot owner by the association of any current or pending rule or architectural violation;

14. A copy of the fully completed one-page cover sheet developed by the Real Estate Board pursuant to § 54.1-2105.1; and

15. Certification, if applicable, that the association has filed with the Real Estate Board the annual report required by § 55-516.1; which certification shall indicate the filing number assigned by the Real Estate Board and the expiration date of such filing.

Failure to receive copies of such documents shall not excuse any failure to comply with the provisions thereof.

The disclosure packet, once received by the seller from the association, shall be delivered by the seller to the purchaser. The association shall have no obligation to deliver the disclosure packet to the purchaser of the lot. The disclosure packet required by this section, shall not, in and of itself, be deemed a security within the meaning of ~~§ 13.1-501~~ *§ 13.1-527.5*.

B. The purchaser may submit a copy of the contract to the association with a request for assurance that the information required by this section previously furnished remains materially unchanged, or, if there have been material changes, a statement specifying such changes. The purchaser shall be provided with such assurances or such statement within ten days of the receipt of such request by the association. The purchaser may be required to pay a fee for the preparation and issuance of the requested assurances. The fee shall reflect the actual cost incurred by the association in providing such assurances but shall not exceed ten cents per page of copying costs or a total of ~~fifty~~ ~~dollars~~ *$50*for all costs incurred in updating the association disclosure packet. The association may also collect from the purchaser the actual costs incurred of any mailing or delivery requested by the purchaser pursuant to this subsection.

C. The association may charge a fee for the preparation and issuance of the disclosure packet required by this section. Any fee shall reflect the actual cost of the preparation of the packet, but shall not exceed ten cents per page of copying costs or a total of $100 for all costs incurred in preparing the association disclosure packet, except that the association, upon mutual agreement with the seller, may collect for actual costs incurred, in addition to any fee charged pursuant to this subsection (i) a rush fee, not to exceed ~~twenty-five~~ ~~dollars~~ *$25*, for furnishing the resale certificate within three business days from the actual receipt of the request, (ii) the actual cost of any mailing or delivery requested by the seller pursuant to this subsection, and (iii) any actual cost incurred at the request and with the consent of the purchaser. Neither the association nor its management agent, if any, shall require cash or certified funds unless the lot owner is delinquent in any payments due to the association in excess of ~~thirty~~ *30* days or if a check of the lot owner made payable to the association was returned for insufficient funds within the last six months.

D. When a disclosure packet has been issued as required by this section, the association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment account and the status of the lot with respect to any violation of any of the instruments referred to in subdivision 12 of subsection A as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

E. If the association has been requested to furnish the disclosure packet required by this section and has been paid the appropriate fee, its failure to provide the disclosure packet in substantially the form provided herein within fourteen days from the actual receipt of the request by an officer, director or agent of the association shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject lot. The association shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed $500. The purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters arising after the date of the settlement of the sale. The settlement agent, as defined in § 6.1-2.20, when transmitting funds to the association or otherwise upon request, shall provide the association with (i) the name of the seller, (ii) the name and address of the purchaser, (iii) the address of the subject property, (iv) the date of settlement, and (v) a brief explanation of the application of any funds transmitted. Providing a copy of the HUD-1 settlement statement, unless otherwise prohibited, shall satisfy these requirements.

F. The contract disclosures required by § 55-511 and the disclosure packet required by this section need not be provided in the case of:

1. A disposition of a lot by gift;

2. A disposition of a lot pursuant to court order if the court so directs;

3. A disposition of a lot by foreclosure or deed in lieu of foreclosure;

4. A disposition of a lot that is zoned for or otherwise restricted to nonresidential use; or

5. A disposition of a lot to a person or entity who is not acquiring the lot for his own residence or for the construction thereon of a dwelling unit to be occupied as his own residence, unless requested by such person or entity. If such disclosures are not requested, a statement in the contract of sale that the purchaser is not acquiring the lot for such purpose shall be conclusive and may be relied upon by the seller of the lot. The person or entity acquiring the lot shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters.

G. In any transaction in which a disclosure packet is required and a trustee acts as the seller in the sale or resale of a lot, the trustee shall obtain the disclosure packet from the association and provide the packet to the purchaser.

§ 56-71. Violations of provisions of chapter; penalty.

Every public service company which, directly or indirectly, issues or causes to be issued any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, otherwise than in conformity with the order of the Commission authorizing the same, or contrary to the provisions of this chapter, or which applies the proceeds from the sale thereof, or any part thereof, to any purpose other than the purpose or purposes specified in the Commission's order, as provided in this chapter, or to any purpose specified in such order in excess of the amount in such order authorized for such purpose, shall be subject, in a proceeding before the Commission under rule to show cause, to a penalty of not more than $1,000 for each offense. Every violation of any such order, rule, direction, demand or requirement of the Commission, or of any provision of this chapter, shall be a separate and distinct offense and in case of continuing violation every day's continuance thereof shall be deemed to be a separate and distinct offense. The Commission shall also have jurisdiction, in a proceeding under ~~§ 13.1-519~~ *§ 13.1-527.44*, to issue a cease and desist order enjoining any further or threatened violation of the provisions of this chapter.

§ 56-231.43. Powers.

A. Each cooperative formed under this article shall have power to do any and all lawful acts or things, including, but not limited to the power:

1. To purchase, sell, generate, store, transport or transmit energy, energy services, products and equipment.

2. To sue and be sued.

3. To have a seal and alter the same at pleasure.

4. To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein and to pay in cash or property or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.

5. To render service and to acquire, own, operate, maintain and improve a system or systems.

6. To accept gifts or grants of money or of property, real or personal, and to accept voluntary and uncompensated services.

7. To sell, lease, mortgage or otherwise encumber or dispose of all or any parts of its property.

8. To contract debts, borrow money and to issue or assume the payment of bonds and other obligations.

9. To fix, maintain and collect reasonable fees, rents, tolls and other charges for service rendered.

10. To exercise, with respect to its construction of regulated transmission facilities as a power supply cooperative, all the powers set forth in § 56-49, including the power of eminent domain as prescribed for other public service corporations by general law.

11. To assist its members, by loans or otherwise, in the acquisition by them of energy and electrical, technological and other equipment related to the business of the cooperative.

12. To issue nonassessable nonvoting common and preferred capital stock or similar securities and pay dividends thereon.

13. To perform any and all of the foregoing acts through or by means of its own officers, agents and employees, or by contract.

B. A cooperative shall have the power and is authorized, from time to time, to issue its obligations for any corporate purpose.

1. The obligations may be authorized by resolution of the board, and may bear any date or dates, mature at any time or times, bear any interest, be payable at any times, be in any denominations, be in any form, either coupon or registered, carry any registration privileges, be executed in any manner, be payable in any medium of payment, at any place or places, and be subject to any terms of redemption, as provided by the resolution.

2. These obligations may be sold in the manner and upon the terms as the board may determine. Pending the preparation or execution of definitive bonds or obligations, interim receipts or certificates of temporary bonds may be delivered to the purchaser of such obligations.

C. A cooperative may purchase any of its own obligations.

D. The ~~Virginia~~ *Uniform* Securities Act ~~(§ 13.1-501 et seq.)~~ *(§ 13.1-527.4 et seq.)* shall not apply to membership certificates issued by a cooperative or its cooperative affiliates, or subsidiaries organized prior to January 1, 1999.

§ 58.1-2030. Petition for correction of taxes, etc., assessed by State Corporation Commission.

Any person or corporation feeling aggrieved by reason of any registration fee, franchise tax, charter tax, entrance fee, license tax, fee or charge assessed or imposed by or under authority of the State Corporation Commission against and collected from any corporation, domestic or foreign, or any fee paid under the provisions of Chapter ~~5~~ ~~(§ 13.1-501 et seq.)~~ *5.1 (§ 13.1-527.4 et seq.)* of Title 13.1, may, unless and except as otherwise specifically provided, within one year from the date of the payment of any such tax, fee or charge, apply to the State Corporation Commission for a correction of such assessment or charge and for a refund, in whole or in part, of the tax, fee or charge so assessed or imposed and paid. No payment shall be recovered after a formal adjudication in a proceeding in which the right of appeal existed and was not taken. Such application shall be by written petition, in duplicate and verified by affidavit. Such application shall be filed with the Commission and shall set forth the names and addresses of every party in interest.

§ 59.1-92.20. Fees to cover expense of regulation.

The fees paid into the state treasury under this chapter, except for fees and funds collected for the Literary Fund, shall be deposited into a special fund and specifically accounted for and used by the Commission to defray the costs of supervising, implementing, and administering the provisions of this chapter, Chapters ~~5~~ ~~(§ 13.1-501 et seq.)~~ *5.1 (§ 13.1-527.4 et seq.)* and 8 (§ 13.1-557 et seq.) of Title 13.1, and Chapter 7 (§ 59.1-93 et seq.) of this title. Included in the Commission's costs shall be a reasonable margin in the nature of a reserve fund. All excesses of fees collected exceeding these costs shall revert to the general fund.

§ 59.1-95.1. Fees to cover expense of regulation.

The fees paid into the state treasury under this chapter, except for fees and funds collected for the Literary Fund, shall be deposited into a special fund and specifically accounted for and used by the State Corporation Commission to defray the costs of supervising, implementing, and administering the provisions of Chapters ~~5~~ ~~(§ 13.1-501 et seq.)~~ *5.1 (§ 13.1-527.4 et seq.)* and 8 (§ 13.1-557 et seq.) of Title 13.1, and Chapters 6.1 (§ 59.1-92.1 et seq.) and 7 (§ 59.1-93 et seq.) of this title. Included in the Commission's costs shall be a reasonable margin in the nature of a reserve fund. All excesses of fees collected exceeding these costs shall revert to the general fund.

§ 59.1-199. Exclusions.

Nothing in this chapter shall apply to:

A. Any aspect of a consumer transaction which aspect is authorized under laws or regulations of this Commonwealth or the United States, or the formal advisory opinions of any regulatory body or official of this Commonwealth or the United States.

B. Acts done by the publisher, owner, agent or employee of a newspaper, periodical, or radio or television station, or other advertising media such as outdoor advertising and advertising agencies, in the publication or dissemination of an advertisement in violation of § 59.1-200, unless it be proved that such person knew that the advertisement was of a character prohibited by § 59.1-200.

C. Those aspects of a consumer transaction which are regulated by the Federal Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq.

D. Banks, savings institutions, credit unions, small loan companies, public service corporations, mortgage lenders as defined in § 6.1-409, broker-dealers as defined in ~~§ 13.1-501~~ *§ 13.1-527.5*, gas suppliers as defined in subsection E of § 56-235.8, and insurance companies regulated and supervised by the State Corporation Commission or a comparable federal regulating body.

E. Any aspect of a consumer transaction which is subject to the Landlord and Tenant Act, Chapter 13 (§ 55-217 et seq.) of Title 55 or the Virginia Residential Landlord and Tenant Act, Chapter 13.2 (§ 55-248.2 et seq.) of Title 55, unless the act or practice of a landlord constitutes a misrepresentation or fraudulent act or practice under § 59.1-200.

F. Real estate licensees who are licensed under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

§ 59.1-263. Definitions.

A. For purposes of this chapter, "business opportunity" means the sale of any products, equipment, supplies or services which are sold to a purchaser upon payment of an initial required consideration exceeding $500 for the purpose of enabling such purchaser to start a business, and in which the seller:

1. Represents that the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases or other similar devices, or currency-operated amusement machines or devices, on premises neither owned nor leased by the purchaser or seller; or

2. Represents that it will purchase any or all products made, produced, fabricated, grown, bred or modified by the purchaser using in whole or in part the supplies, services or chattels sold by the seller to the purchaser; or

3. Guarantees that the purchaser will derive income from the business opportunity which exceeds the price paid for the business opportunity, or that the seller will refund all or part of the price paid for the business opportunity, or repurchase any of the products, equipment, supplies or chattels supplied by the seller, if the purchaser is not satisfied with the business opportunity; or

4. Represents that the seller will provide a sales program or marketing program which will enable the purchaser to derive income from the business opportunity which exceeds the price paid for the business opportunity.

B. Exclusions. - Such definition of "business opportunity" shall not include the following:

1. A security as defined by ~~§ 13.1-501~~ *§ 13.1-527.5*; or

2. A franchise as defined by §§ 13.1-559 (b) or § 59.1-21.10; or

3. A license granted by a general merchandise retailer which allows the licensee to sell goods, equipment, supplies, products or services to the general public under the retailer's trademark, trade name or service mark, provided that such general merchandise retailer has been doing business in the Commonwealth continuously for five years prior to the granting of such license and such general merchandise retailer also sells the same goods, equipment, supplies, products or services directly to the general public; or

4. A newspaper distribution system; or

5. The sale of an on-going business. An "on-going business" as used herein is one which for at least twelve months previous to the sale: (i) has been operated from a specific location, (ii) has been open for business to the general public and (iii) has had all equipment and supplies necessary for operating the business located at such specific location; or

6. The sale of sales demonstration equipment and materials furnished at cost for use in making sales and not for resale; or

7. A contract or agreement by which a retailer of goods or services is granted the right to sell goods or services within, or appurtenant to, a retail business establishment as a department or division thereof.

§ 59.1-321. Exemption from registration under other acts.

Any membership camping operator registered with the Commissioner under this chapter shall not be required to register or comply with the terms and requirements of the following:

1. The Virginia Condominium Act (§ 55-79.39 et seq.).

2. The Virginia Real Estate Time-Share Act (§ 55-360 et seq.).

3. The ~~Virginia~~ *Uniform* Securities Act ~~(§ 13.1-501 et seq.)~~ *(§ 13.1-527.4 et seq.)*.

§ 63.2-1931. Effect of service on banks, savings institutions, etc..

Service of a lien or orders to withhold and deliver or any other notice or document authorized by this chapter on the main office or headquarters or registered agent of any bank, savings institution or other financial institution or broker-dealer as defined in ~~§ 13.1-501~~ *§ 13.1-527.5* or any other place designated by such financial institution or broker-dealer shall be effective as to any accounts, credits or other personal property (excluding property held in a safe-deposit box) of the noncustodial parent held by that institution or broker-dealer. The bank, savings institution, financial institution or broker-dealer may accept service or treat service as valid even though made at a point other than those specified above.

Within ~~twenty-one~~ *21* days of receipt of an answer from any bank, savings institution or other financial institution or broker-dealer indicating that a support debtor may have an interest in funds in a joint account, the Department shall serve notice of the order to withhold on all joint account holders at the address for each account holder as provided by the bank, savings institution or other financial institution or broker-dealer in the same manner as service upon the support debtor. A copy of the notice shall be served on the financial institution or broker-dealer by certified mail, return receipt requested. Each account holder may appeal the action to a hearing officer as provided in § 63.2-1929. However, the issue to be determined by the hearing officer is limited to whether the support debtor has any interest in the joint account which is being held based on the support debtor's contribution to the account. Upon satisfactory proof that the support debtor has no interest in the joint account, the Department shall release the order to withhold. Upon receipt of the copy of the notice to the joint account holders, the financial institution or broker-dealer shall treat the initial order to withhold as continuing in effect over the entire property being withheld until a release or order to deliver is served by the Department or until the ninety-day period set forth in the following paragraph expires. If the financial institution or broker-dealer does not receive a copy of the notice to the joint account holders within ~~twenty-one~~ *21* days from delivery of its answer, it may treat the order to withhold as released.

Upon the determination that the support debtor has some interest in the joint account, the Department shall initiate a petition in the general district court or in the circuit court, if the joint account and the

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amount claimed against the support debtor each exceed $10,000, for the jurisdiction in which the support debtor or any joint account owner resides in order that the court may make a determination of the extent of the interest of the support debtor in the joint account, based on the amount the support debtor contributed to the account. If the support debtor and all account owners are nonresidents, venue shall be where the support obligee resides or where the property is located. In cases where the joint account is owned by persons married to each other, the funds in the account shall belong to them equally unless there is clear and convincing evidence otherwise. The Department shall serve a copy of the petition on the financial institution or broker-dealer by certified mail, return receipt requested. If the financial institution or broker-dealer does not receive a copy of the petition within ninety days of receipt of the notice to the joint account holders, it may treat the order to withhold as released.

Notwithstanding service or receipt of such order of support, the financial institution may pay any check deposited with it or another financial institution on or before the date of service or receipt of the order of support on it.

2. That Chapter 5 (§§ 13.1-501 through 13.1-527.3) of Title 13.1 of the Code of Virginia is repealed.