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SENATE BILL NO. 542

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 10, 2020)

(Patron Prior to Substitute—Senator Edwards)

A BILL to amend and reenact § 13.1-514 of the Code of Virginia and to repeal the third enactment of Chapter 354 and the third enactment of Chapter 400 of the Acts of Assembly of 2015, relating to the Securities Act; exemption for equity crowdfunding.

Be it enacted by the General Assembly of Virginia:

1. That § 13.1-514 of the Code of Virginia is amended and reenacted as follows:

§ 13.1-514. Exemptions.

A. The following securities are exempted from the securities registration requirements of this chapter:

1. Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;

2. Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by such issuer or guarantor;

3. Any security issued by and representing an interest in or a debt of, or guaranteed by, the International Bank for Reconstruction and Development, or any national bank, or any bank or trust company organized under the laws of any state or trust subsidiary organized under the provisions of Article 3 (§ 6.2-1047 et seq.) of Chapter 10 of Title 6.2;

4. Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association or savings bank, or by any savings and loan association or savings bank which is organized under the laws of this Commonwealth;

5. Any security issued or guaranteed by an insurance company licensed to transact insurance business in this Commonwealth;

6. Any security issued by any credit union, industrial loan association or consumer finance company which is organized under the laws of this Commonwealth and is supervised and examined by the Commission;

7. Any security issued or guaranteed by any railroad, other common carrier or public service company supervised as to its rates and the issuance of its securities by a governmental authority of the United States, any state, Canada or any Canadian province;

8. Any security which is listed or approved for listing upon notice of issuance on the New York Stock Exchange or the American Stock Exchange or any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants admitted to trading in any of said exchanges; or any warrant or right to subscribe to any of the foregoing securities;

9. Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months after the date of issuance, exclusive of days of grace, or any renewal thereof which is likewise limited, or any guaranty of such paper or of any such renewal;

10. Any security issued in connection with an employee's stock purchase, savings, pension, profit-sharing or similar benefit plan. The Commission may by rule or order, as to any security issued pursuant to such plan, specify or designate persons eligible to participate in such plan;

11. Any security issued by a cooperative association organized as a corporation under the laws of this Commonwealth;

12. Any security listed on an exchange registered with the United States Securities and Exchange Commission or quoted on an automated quotation system operated by a national securities association registered with the United States Securities and Exchange Commission and approved by regulations of the State Corporation Commission;

13. Any security issued by any issuer organized under the laws of any foreign country and approved by rule or regulation of the Commission.

B. The following transactions are exempted from the securities, broker-dealer and agent registration requirements of this chapter except as expressly provided in this subsection:

1. Any isolated transaction by the owner or pledgee of a security, whether effected through a broker-dealer or not, which is not directly or indirectly for the benefit of the issuer;

2. Any nonissuer distribution by a registered broker-dealer and its registered agent of a security that has been outstanding in the hands of the public for the past five years, if the issuer in each of the past

60 three fiscal years has lawfully paid dividends on its common stock aggregating at least four percent of
61 its current market price;

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

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

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

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

71 7. a. Any sale of its securities by an issuer or any sale of securities by a registered broker-dealer and
72 its registered agent acting on behalf of an issuer if, after the sale, such issuer has not more than 35
73 security holders, and if its securities have not been offered to the general public by advertisement or
74 solicitation; or

75 b. To the extent the Commission by rule or order permits, any sale of its securities by an issuer or
76 any sale of securities by a registered broker-dealer and its registered agent acting on behalf of an issuer
77 to not more than 35 persons in the Commonwealth during any period of 12 consecutive months, whether
78 or not the issuer or any purchaser is then present in the Commonwealth, if the issuer or broker-dealer
79 reasonably believes that all the purchasers in the Commonwealth are purchasing for investment, and if
80 the securities have not been offered to the general public by advertisement or general solicitation. The
81 Commission may, by rule or order, as to any security or transaction or any type of security or
82 transaction, withdraw or further condition this exemption, increase or decrease the number of purchasers
83 permitted, or waive the condition relating to their investment intent. The Commission may assess and
84 collect in connection with any filing pursuant to this exemption a nonrefundable fee not to exceed \$250.

85 With respect to this subdivision 7, and except to the extent the Commission by rule or order may
86 otherwise permit, the number of security holders of an issuer or the number of purchasers from an
87 issuer, as the case may be, shall not be deemed to include the security holders of any other corporation,
88 partnership, limited liability company, unincorporated association or trust unless it was organized to raise
89 capital for the issuer. Notwithstanding the provisions of subdivision 15, the merger or consolidation of
90 corporations, partnerships, limited liability companies, unincorporated associations or other entities shall
91 be a violation of this chapter if the surviving or new entity has more than 35 security holders or
92 purchasers and all the securities of the parties thereto were issued under this exemption, unless all of the
93 parties thereto have been engaged in transacting business for more than two years prior to the merger or
94 consolidation;

95 8. Any transaction pursuant to an offer to existing security holders of the issuer including holders of
96 transferable warrants issued to existing security holders and exercisable within 90 days of their issuance,
97 if either (i) no commission or other remuneration (other than a standby commission) is paid or given
98 directly or indirectly for soliciting any security holder in this Commonwealth or (ii) the issuer first
99 notifies the Commission in writing of the terms of the offer and the Commission does not by order
100 disallow the exemption within five full business days after the date of the receipt of the notice;

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

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

107 11. Sales of an issue of bonds, aggregating \$150,000 or less, secured by a first lien deed of trust on
108 realty situated in Virginia, to 30 persons or less who are residents of Virginia;

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

112 13. The Commission is authorized to create by rule a limited offering exemption, the purpose of
113 which shall be to further the objectives of compatibility with similar exemptions from federal securities
114 regulation and uniformity among the states; providing that such rule shall not exempt broker-dealers or
115 agents from the registration requirements of this chapter, except in the case of an agent of the issuer
116 who either (i) receives no sales commission directly or indirectly for offering or selling the securities or
117 (ii) effects transactions in a security exempt from registration under the Securities Act of 1933 pursuant
118 to rules and regulations promulgated under § 4(2) thereof. Any filing made with the Commission
119 pursuant to any exemption created under this subdivision shall be accompanied by a \$250 fee;

120 14. The issuance of any security dividend, whether the corporation distributing the dividend is the
121 issuer of the security or not, if nothing of value is given by stockholders for the distribution other than

the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or in a security;

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

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

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

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

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

20. Any transaction by a bank pursuant to an unsolicited offer or order to buy or sell any security, provided such transaction is not effected by an employee of the bank who is also an employee of a broker-dealer;

21. (Expires July 1, 2020) To the extent the Commission by rule or order permits, any security issued by an entity ~~formed, organized, or existing under the laws of the Commonwealth, if:~~

a. The offering of the security is conducted in accordance with § 3(a)(11) of the Securities Act of 1933 and Rule 147 adopted under the Securities Act of 1933 *or the U.S. Securities and Exchange Commission's Rule 147A*;

b. The offer and sale of the security are made only to residents of Virginia. *However, for an offering conducted in accordance with the U.S. Securities and Exchange Commission's Rule 147A, the offer may be made accessible to residents outside of Virginia provided that the sale of the security is made only to residents of Virginia*;

c. The aggregate price of securities in an offering under this exemption does not exceed \$2 million, which sum the Commission, by rule or order, may increase or decrease;

d. The total consideration paid by any purchaser of securities in an offering under this exemption does not exceed \$10,000, unless the purchaser is an accredited investor as defined by Rule 501 of the U.S. Securities and Exchange Commission's Regulation D (17 C.F.R. § 230.501). The Commission, by rule or order, may increase or decrease such limit on the total consideration to be paid by any purchaser of securities in an offering under this exemption;

e. No compensation is paid to employees, agents, or other persons for the solicitation of, or based on the sale of, securities in connection with an offering of securities under this exemption to any person who is not registered as a broker-dealer or agent, except to the extent permitted by rule or order of the Commission;

f. Neither the issuer nor any person related to the issuer is subject to disqualification as established by the Commission by rule or order; and

g. The security is sold in an offering conducted in compliance with any conditions established by rule or order of the Commission, which may include:

- (1) Restrictions on the nature of the issuer;
- (2) Limitations on the number and manner of offerings;
- (3) Disclosures required to be provided to investors, including disclosures of risk factors related to the issuer and the offering;

(4) Requirements that all proceeds received from purchasers be placed in escrow in a depository institution located in the Commonwealth until the minimum amount of the offering is raised;

(5) Filings with the Commission of notices and other materials related to the offering; ~~and~~

(6) Requirements regarding the preparation and submission of the issuer's financial statements, including (i) the form and content of such statements and (ii) whether such statements are required to be audited or reviewed by an independent certified public accountant in accordance with generally accepted

183 accounting principles; and

184 (7) *Requirements that the entity issuing the security is formed, organized, or existing under the laws*
185 *of the Commonwealth. However, for an offering conducted in in accordance with the U.S. Securities and*
186 *Exchange Commission's Rule 147A, the entity issuing the security may be formed or organized outside*
187 *the Commonwealth, provided that the entity has its principal place of business in the Commonwealth*
188 *and satisfies at least one of the doing business requirements in 17 C.F.R. § 230.147A (c) 2.*

189 The Commission may assess and collect in connection with any filing pursuant to this exemption a
190 nonrefundable fee in an amount to be set by the Commission by rule or order, provided such amount
191 shall not exceed \$500; and

192 22. Any offer or sale of securities conducted in accordance with Tier 2 of federal Regulation A (17
193 CFR 230.251 to 230.263) promulgated under § 3(b)(2) of the Securities Act of 1933 (U.S. Securities and
194 Exchange Commission Release No. 33-9741, 80 Fed. Reg. 21806) to the extent such securities are
195 preempted from the registration requirements of this chapter pursuant to Tier 2 of federal Regulation A.
196 The Commission shall by rule or order prescribe any filings with the Commission of notices, renewals,
197 and other materials. The Commission may assess and collect in connection with any filing pursuant to
198 this exemption a nonrefundable filing fee not to exceed \$500. The Commission shall provide
199 information on its website regarding the differences between the exemption provided pursuant to this
200 subdivision and the exemption provided pursuant to subdivision 21.

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

203 **2. That the third enactment of Chapter 354 and the third enactment of Chapter 400 of the Acts of**
204 **Assembly of 2015 are repealed.**