

ILLINOIS SECURITIES LAW OF 1953

(815 ILCS 5/1)

Effective January 1, 1954

(As amended through August 5, 2013)



Illinois Securities Department

JESSE WHITE
Secretary of State



I am pleased to provide this booklet on the Illinois Securities Law of 1953, including amendments through Aug. 5, 2013. This law governs the offer and sale of securities in Illinois as well as broker-dealers, salespersons, investment advisers and investment adviser representatives. The Secretary of State, Illinois Securities Department is responsible for administering this law and pursuing enforcement actions against violators.

New amendments signed into law in August 2013 provide greater protection to people who invest their hard-earned money and, all too often, find they are victims of unscrupulous con-artists.

My office is committed to protecting the investing public, and I welcome the additional protections provided by recent enactments. I sincerely thank all those who helped amend the Act as well as those members of the General Assembly who assisted in the legislative process.

A handwritten signature in cursive script that reads "Jesse White". The signature is written in dark ink and is positioned to the left of a vertical line.

Jesse White

Secretary of State

THE ILLINOIS SECURITIES LAW OF 1953

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Illinois Securities Law of 1953

Cite: 815 ILCS 5/1 et seq.

Short title: Illinois Securities Law of 1953.

Title: An Act relating to securities; defining terms used; providing for the registration of securities and for the regulation of the sale thereof; providing for the registration of dealers in and salesmen of securities; fixing penalties for violations of this Act; and repealing a certain Act herein named except provisions of said Act continued in force and effect.

Sec. 1. Short title. This Act may be cited as the Illinois Securities Law of 1953.

Sec. 2. Definitions. As used in this Act, unless the context otherwise requires, the terms defined in the Sections of this Act that precede Section 3 shall have the meanings therein ascribed.

Sec. 2.1. Security. "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, viatical investment, investment fund share, face-amount certificate, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas or other mineral lease, right or royalty, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into, relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not mean a mineral investment contract or a mineral deferred delivery contract; provided, however, the Department shall have the authority to regulate these contracts as hereinafter provided.

Sec. 2.2 "Issuer" means every person who shall have issued or proposes to issue any security; except that (1) with respect to certificates of deposit, voting-trust certificates, collateral-trust certificates, and certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions), "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust, agreement or instrument under which such securities are issued; (2) with respect to trusts other than those specified in clause (1) above, where the trustee is a corporation authorized to accept and execute trusts, "issuer" means the entrusters, depositors or creators of the trust and any manager or committee charged with the general

direction of the affairs of the trust pursuant to the provisions of the agreement or instrument creating the trust; (3) with respect to equipment trust certificates or like securities, "issuer" means the person to whom the equipment or property is or is to be leased or conditionally sold; and (4) with respect to fractional interests in oil, gas or other mineral lease, right or royalty, "issuer" means the owner of the right or interest therein (whether whole or fractional), in which fractional interests are created by such owner for the purpose of sale.

Sec. 2.3 "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a limited liability company, a limited liability partnership, a trust or any unincorporated organization. As used in this Section, "trust" includes only a trust where the interest or interests of the beneficiary or beneficiaries is a security.

Sec. 2.4. "Controlling person" means any person offering or selling a security, or group of persons acting in concert in the offer or sale of a security, owning beneficially (and in the absence of knowledge, or reasonable grounds for belief, to the contrary, record ownership shall for the purposes hereof be presumed to be beneficial ownership) either (i) 25% or more of the outstanding voting securities of the issuer of such security where no other person owns or controls a greater percentage of such securities, or (ii) such number of outstanding securities of the issuer of such security as would enable such person, or group of persons, to elect a majority of the board of directors or other managing body of such issuer. In case of unincorporated issuers, "controlling person" means any person offering or selling a security, or group of persons acting in concert in the offer or sale of a security, who directly or indirectly controls the activities of the issuer.

Sec. 2.5. "Sale" or "sell" shall have the full meaning of that term as applied by or accepted in the courts of this State, and shall include every contract of sale or disposition of a security or interest in a security for value. Any security given with or as a bonus on account of any purchase of securities or property shall be conclusively presumed to constitute a part of the subject of such purchase and shall be deemed to have been sold within the meaning of this Section. A privilege to convert a security into another security shall not be deemed a sale of such other security, provided no consideration from the holder in addition to the surrender or cancellation of the convertible security is required to effect the conversion.

Sec. 2.5a. Offer. "Offer" shall include every offer to sell or otherwise dispose of, or solicitation of an offer to purchase, whether orally or by means of publication, including but not limited to printed and electronic media, a security or interest in a security for value; provided that the term "offer" shall not include preliminary negotiations or agreements between an issuer and

any underwriter or among underwriters who are or are to be in privity of contract with an issuer, or the circulation or publication of an identifying statement or circular or preliminary prospectus, as defined by rules or regulations of the Secretary of State.

Sec. 2.6. “Underwriter” means any person who has purchased a security from an issuer or a controlling person with a view to, or who offers or sells a security for an issuer or a controlling person in connection with, the distribution thereof, or who participates or has a participation in the direct or indirect underwriting of such distribution; but such term shall not include a person whose interest is limited to a commission or discount from an underwriter or dealer not in excess of the usual and customary distributors’ or sellers’ commission or discount. An underwriter shall be deemed to be no longer an underwriter of a security after he or she has completely disposed of his or her allotment of such security or, if he or she did not purchase the security, after he or she has ceased to offer and sell such security for the issuer or controlling person.

Sec. 2.7. “Dealer” means any person, other than a salesperson, or controlling person and other than a bank organized under the banking laws of this State or of the United States or other than a trust company organized under the laws of this State or other than a regular employee of such bank or trust company, who engages in this State, either for all or part of his or her time, directly or indirectly, as agent, broker or principal, in the business of offering, selling, buying and selling, or otherwise dealing or trading in securities issued by another person, any government or political subdivision or instrumentality thereof.

Sec. 2.8. “Registered dealer” means a dealer registered under Section 8 of this Act.

Sec. 2.8a. “Principal of a dealer” means any officer, director, partner, member, trustee or manager of such dealer who is responsible for the supervision of the securities activities in this State of salespersons and for management of the daily business operations in this State of such dealer.

Sec. 2.9. “Salesperson” means an individual, other than an issuer or a dealer, employed or appointed or authorized by a dealer, issuer or controlling person to offer, purchase or sell securities in this State. The partners or officers of a dealer or issuer shall not be deemed to be salespersons within the meaning of this definition if they are not or have not been regularly engaged in securities offering, purchasing or selling activities other than transactions for their own respective accounts. No individual shall be deemed to be a salesperson solely by reason of effecting transactions in a covered security to qualified purchasers as described in Section 18(b)(3) of

the Federal 1933 Act, effecting transactions in a covered security as described in Section 18(b)(4)(D) of the Federal 1933 Act, or engaging in offers or effecting sales of securities to employees of the issuer of such securities or to employees of the parent or any majority owned subsidiary of such issuer, provided that such individual is an employee of such issuer, parent or subsidiary who has not been employed primarily to make such offers or sales and who receives no special compensation, directly or indirectly, for or on account of any such offer or sale. "Salesperson" also means a limited Canadian salesperson. "Salesperson" also means an individual who, in this State, communicates with members of the public to identify prospective customers for the purpose of soliciting the purchase or sale of securities or related services.

Sec. 2.10. "Registered salesperson" means a salesperson registered under Section 8 of this Act. "Registered salesperson" also means a registered limited Canadian salesperson.

Sec. 2.10a. Telephone Solicitor. "Telephone solicitor" means a natural person who makes or causes to be made an unsolicited telephone call with the intent to offer or sell a security.

Sec. 2.11. Investment adviser. "Investment adviser" means any person who, for compensation, engages in this State in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, in this State for direct or indirect compensation and as part of a regular advisory business, issues or promulgates analyses or reports concerning securities or any financial planner or other person who, as an integral component of other financially related services, provides the foregoing investment advisory services to others for compensation and as part of a business or who holds himself or herself out as providing the foregoing investment advisory services to others for compensation; but "investment adviser" does not include:

- (1) a bank or trust company, or the regular employees of a bank or trust company;
- (2) any lawyer, accountant, engineer, geologist or teacher (i) whose performance of such services is solely incidental to the practice of his or her profession or (ii) who:
 - (A) does not exercise investment discretion with respect to the assets of clients or maintain custody of the assets of clients for the purpose of investing those assets, except when the person is acting as a bona fide fiduciary in a capacity such as an executor, trustee, personal representative, estate or trust agent, guardian, conservator, or person serving in a similar fiduciary capacity;
 - (B) does not accept or receive, directly or indirectly, any commission, fee, or other remuneration contingent upon the purchase or sale

of any specific security by a client of such person; and

- (C) does not advise on the purchase or sale of specific securities, except that this clause (c) shall not apply when the advice about specific securities is based on financial statement analyses or tax considerations that are reasonably related to and in connection with the person's profession;
- (3) any registered dealer or partner, officer, director or regular employee of a registered dealer, or registered salesperson, whose performance of these services, in each case, is solely incidental to the conduct of the business of the registered dealer or registered salesperson, as the case may be, and who receives no special compensation, directly or indirectly, for such services;
- (4) any publisher or regular employee of such publisher of a bona fide newspaper, news magazine or business or financial publication of regular and established paid circulation;
- (5) any person whose advice, analyses or reports relate only to securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States, any state or any political subdivision of any state, or any public agency or public instrumentality of any one or more of the foregoing;
- (5.5) any person who is a federal covered investment adviser; or
- (6) any other persons who are not within the intent of this Section as the Secretary of State may designate by rules and regulations or order.

Sec. 2.12. "Registered investment adviser" means an investment adviser registered under Section 8 of this Act.

Sec. 2.12a. "Principal of an investment adviser" means any officer, director, partner, member, trustee or manager of such investment adviser who is responsible for the supervision of the registered representatives in this State of such investment adviser, and for management of the daily business operations in this State of such investment adviser.

Sec. 2.12b. Investment adviser representative. "Investment adviser representative" means, with respect to an investment adviser who is required to register under this Act, any partner, officer, director of (or a person occupying a similar status or performing similar functions), or other natural person employed by or associated with an investment adviser, except clerical or ministerial personnel, who in this State:

- (1) makes any recommendations or otherwise renders advice regarding securities;
- (2) manages accounts or portfolios of clients;
- (3) determines what recommendation or advice regarding securities should be given;
- (4) supervises any employee who performs any of the foregoing; or
- (5) solicits, refers, offers, or negotiates for the sale of, or sells, investment

advisory services.

With respect to a federal covered investment adviser, "investment adviser representative" means any person who is an investment adviser representative with a place of business in this State as such terms are defined by the Securities and Exchange Commission under Section 203A of the Federal 1940 Investment Advisers Act.

Sec. 2.12c. Registered investment adviser representative. "Registered investment adviser representative" means an investment adviser representative registered under Section 8 of this Act.

Sec. 2.13. "Effective date" when used with respect to a registration under the Federal 1933 Act means the date and time as of which a statement for the registration of securities under said Act first becomes effective or, upon the election of an applicant for registration under subsection A of Section 5, subsection A of Section 6 or subsection A of Section 7 of this Act, the date and time as of which a post-effective amendment to the registration statement filed under the Federal 1933 Act relating to such securities becomes effective; provided that in the case of securities initially registered under the Federal 1933 Act for the invitation of competitive bids, "effective date" shall mean the date upon which a post-effective amendment to the registration statement filed under the Federal 1933 Act relating to such securities becomes effective for the first offering of such securities otherwise than for such invitation or, upon the election of any applicant for registration under subsection A of Section 5, subsection A of Section 6 or subsection A of Section 7 of this Act, the date and time as of which a subsequent post-effective amendment filed under the Federal 1933 Act relating to such securities becomes effective.

Sec. 2.14. "Face amount certificate contract" means any form of "face amount certificate" or "periodic payment plan certificate" (as so designated and defined under the Federal Investment Company Act of 1940) and shall also mean any form of annuity contract (other than an annuity contract issued by a life insurance company authorized to transact business in this State), or installment face amount certificate contract, or installment face amount certificate, or installment participation certificate, or installment face amount certificate bond, or similar security evidencing an obligation on the part of the issuer to pay a stated or determinable sum or sums at a fixed or determinable date or dates more than twenty-four months after the date of issuance, or to pay the proceeds of liquidation of an interest in certain specified securities or in a unit or fund, upon the payment of a single lump sum at the date of issuance, or in consideration of the payment of periodic installments of a stated or determinable amount.

Sec. 2.15. "Investment fund shares" means securities issued by persons known as "investment funds" or "investment companies" or "investment

trusts” but such term shall not include securities issued by persons not within the intent of this Section as the Secretary of State may designate by rules and regulations or order.

Sec. 2.16. “Securities Director” means the chief administrator of the Securities Department, appointed by the Secretary of State.

Sec. 2.17. “Federal 1933 Act” means the Act of the Congress of the United States known as the Securities Act of 1933, as amended.

Sec. 2.17a. “Federal 1934 Act” means the Act of Congress of the United States known as the Securities Exchange Act of 1934, as amended.

Sec. 2.17b. Federal 1974 Act. “Federal 1974 Act” means the Act of Congress of the United States known as the Commodity Exchange Act, as amended.

Sec. 2.17c. “Federal Bankruptcy Code” means the Act of Congress of the United States known as the Bankruptcy Code of 1978, as amended.

Sec. 2.17d. “Federal 1940 Investment Company Act” means the Act of Congress of the United States known as the Investment Company Act of 1940, as amended.

Sec. 2.17e. “Federal 1940 Investment Advisers Act” means the Act of Congress of the United States known as the Investment Advisers Act of 1940, as amended.

Sec. 2.17f. Federal 1996 Act. “Federal 1996 Act” means the Act of Congress of the United States known as the National Securities Markets Improvement Act of 1996.

Sec. 2.18. “Clearing corporation” means a clearing corporation as defined in Section 8-102 of the Uniform Commercial Code, as amended.

Sec. 2.24. “State” means any state, territory, or possession of the United States, the District of Columbia and Puerto Rico.

Sec. 2.25. “Federal ERISA Act” means the Act of Congress of the United States known as the Employee Retirement Income Security Act of 1974, as amended.

Sec. 2.26. Mineral investment contract. “Mineral investment contract” means any investment, account, agreement, or contract whereby the investor’s profits are dependent upon the transportation, mining, minting,

milling, flotation, refining, hallmarking, sale, resale, or repurchase of a metal or mineral, even if there is any potential for profit from fluctuation in the value of the metal or mineral, except any contract or agreement for the sale or purchase of a metal or mineral between merchants. Nothing herein shall affect the jurisdiction or authority of the Commodity Futures Trading Commission under the Federal 1974 Act or the application of any provision thereof or regulation thereunder to any person or transaction subject thereto. The Secretary of State may, for the purposes of this Section by rules and regulations, define the term “between merchants”.

Sec. 2.27. Mineral deferred delivery contract. “Mineral deferred delivery contract” means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for the use or consumption by the offeree or purchaser, of a metal or mineral, whether for immediate or subsequent delivery, and whether characterized as a cash contract, deferred shipment contract, installment contract, or otherwise. Any mineral deferred delivery contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes. A mineral deferred delivery contract does not include any of the following:

- (1) Any contract or agreement that requires, and in which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the metal or mineral to be purchased under the contract or agreement.
- (2) Any contract or agreement for the sale or purchase of a metal or mineral between merchants.

Nothing herein shall affect the jurisdiction or authority of the Commodity Futures Trading Commission under the Federal 1936 Act or the application of any provision thereof or regulation thereunder to any person or transaction subject thereto. The Secretary of State may, for the purposes of this Section, by rules and regulations, define (i) the means that constitute “physical delivery” of a metal or mineral and (ii) the term “between merchants”.

Sec. 2.28. Securities exchange. “Securities exchange” means any organization, association, or group of persons, incorporated or unincorporated, located within this State that constitutes, maintains, or provides a marketplace, facilities, or electronic communications equipment for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood. The term includes the marketplace, facilities, and electronic communications equipment used by such an exchange. “Securities exchange” does not include any exchange, stock market operated by a national securities association registered under Section 15A of the Federal 1934 Act, automated quotation system or board of trade whose principal place of business is located in any state other than this

State, or any exchange, automated quotation system, or board of trade registered under the Federal 1934 Act or designated as a contract market under the Federal 1974 Act or any affiliate thereof, or any dealer registered under this Act, or any broker-dealer registered under any federal securities Act, or any broker-dealer who is a member of the body corporate known as the Securities Investor Protection Corporation established pursuant to the Act of Congress of the United States known as the Securities Investor Protection Act of 1970, as amended, or a member of an association of dealers or broker-dealers registered as a national securities association pursuant to Section 15A of the Federal 1934 Act, or any exchange, automated quotation system, or board of trade set forth in subsection G of Section 3 of this Act, or any other exchange, automated quotation system, or board of trade that the Secretary of State, by rule or regulation, deems to have substantially equivalent standards for listing or designation as required by any such exchange, automated quotation system, or board of trade.

Section 2.29. Covered security. "Covered security" means any security that is a covered security under Section 18(b) of the Federal 1933 Act or rules or regulations promulgated thereunder.

Section 2.30. Federal covered investment adviser. "Federal covered investment adviser" means a person who is registered under Section 203 of the Federal 1940 Investment Advisers Act.

Section 2.31. Limited Canadian salesperson. "Limited Canadian salesperson" means a salesperson who is a resident of Canada, has no office or other physical presence in this State, and complies with conditions specified by the Secretary of State through rule or order.

Section 2.32. Limited Canadian dealer. "Limited Canadian dealer" means a dealer who is a resident of Canada, has no office or other physical presence in this State, and complies with conditions specified by the Secretary of State through rule or order.

Section 2.33. Viatical investment. "Viatical investment" means the contractual right to receive any portion of the death benefit or ownership of a life insurance policy or certificate for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Viatical investment" does not include:

- (1) any transaction between a viator and a viatical settlement provider, as defined in the Viatical Settlements Act of 2009;
- (2) any transfer of ownership or beneficial interest in a life insurance policy from a viatical settlement provider to another viatical settlement provider, as defined in the Viatical Settlements Act of 2009, or to any legal entity formed solely for the purpose of holding owner

- ship or beneficial interest in a life insurance policy or policies;
- (3) the bone fide assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or financial institution as collateral for a loan; for the purposes of this item (3), "financial institution" means financial institution as defined by the Viatical Settlements Act of 2009; or
 - (4) a policy loan by a life insurance company or the exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with the Illinois Insurance Code.

Sec. 2a. Notification filing requirements of issuers of any covered securities and payment of fees.

All issuers of any covered security (except any security listed or authorized for listing on the New York Stock Exchange or American Stock Exchange or listed on the National Market System of the Nasdaq Stock Market (or any successor to such entities), or listed or authorized for listing on a national securities exchange (or tier or segment thereof) that has listing standards that the federal Securities and Exchange Commission by rule (on its own initiative or on the basis of petition) has determined are substantially similar to the listing standards applicable to any security described in this Section, or is a security of the same issuer that is equal in seniority or that is a senior security described in this Section) shall annually file a notification with the Secretary of State in such form and manner as prescribed by rule or order and pay the notification filing fee established under Section 11a of this Act which shall not be returnable in any event.

Anything in this Act to the contrary notwithstanding, until October 10, 1999 or other date as may be legally permissible, the refusal to file the notification or pay the fee by an issuer of any covered security (except issuers of securities which are being sold under Regulation D, Section 506 of the Federal 1933 Act) after written notice by the Secretary of State (which may be by United States Postal Service, facsimile or electronic transmission or other similar means), shall require the issuer or his, her, or its designee to file an application for registration with the Secretary of State under subsection A or B of Section 5, 6, or 7 of this Act and pay the registration fee established under Section 11a of this Act which shall not be returnable in any event. The failure to file any such notification shall constitute a violation of subsection D of Section 12 of this Act, subject to the penalties enumerated in Section 14 of this Act. The civil remedies provided for in subsection A of Section 13 of this Act and the civil remedies of rescission and appointment of a receiver, conservator, ancillary receiver, or ancillary conservator provided for in subsection F of Section 13 of this Act shall not be available against any person by reason of the failure to file any such notification or to pay the notification fee.

Sec. 3. The provisions of Sections 2a, 5, 6 and 7 of this Act shall not apply to any of the following securities:

- A. 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 corporation or other instrumentality of any one or more of the foregoing, or any certificate of deposit for any such security.
- B. Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporation or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States then maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor.
- C. (1) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank or savings bank, bank holding company, or credit union organized under the laws of the United States, or any bank, savings bank, savings institution or trust company organized and supervised under the laws of any state, or any interest or participation in any common trust fund or similar fund maintained by any such bank, savings bank, savings institution or trust company exclusively for the collective investment and reinvestment of assets contributed thereto by such bank, savings bank, savings institution or trust company or any affiliate thereof, in its capacity as fiduciary, trustee, executor, administrator or guardian.
(2) Any security issued or guaranteed to both principal and interest by an international bank of which the United States is a member.
- D. (1) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any savings and loan association or building and loan association organized and supervised under the laws of any state.
(2) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar organization organized and supervised under the laws of any state.
- E. Any security issued or guaranteed by any railroad, other common carrier, public utility or holding company where such issuer or guarantor is subject to the jurisdiction of the Interstate Commerce Commission or successor entity, or is a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that Act, or is regulated in respect of its rates and charges by a governmental authority of the United States or any state, or is regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province.
- F. Equipment trust certificates in respect of equipment leased or conditionally sold to a person, if securities issued by such person would be exempt under subsection E of this Section.

- G. Any security which at the time of sale is listed or approved for listing upon notice of issuance on the New York Stock Exchange, Inc., the American Stock Exchange, Inc., the Pacific Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Chicago Board of Trade, the Philadelphia Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the National Market System of the Nasdaq Stock Market, or any other exchange, automated quotation system or board of trade which the Secretary of State, by rule or regulation, deems to have substantially equivalent standards for listing or designation as required by any such exchange, automated quotation system or board of trade; and securities senior or of substantially equal rank, both as to dividends or interest and upon liquidation, to securities so listed or designated; and warrants and rights to purchase any of the foregoing; provided, however, that this subsection G shall not apply to investment fund shares or securities of like character, which are being continually offered at a price or prices determined in accordance with a prescribed formula.

The Secretary of State may, after notice and opportunity for hearing, revoke the exemption afforded by this subparagraph with respect to any securities by issuing an order if the Secretary of State finds that the further sale of the securities in this State would work or tend to work a fraud on purchasers of the securities.

- H. Any security issued by a person organized and operated not for pecuniary profit and exclusively for religious, educational, benevolent, fraternal, agricultural, charitable, athletic, professional, trade, social or reformatory purposes, or as a chamber of commerce or local industrial development corporation, or for more than one of said purposes and no part of the net earnings of which inures to the benefit of any private stockholder or member.
- I. Instruments evidencing indebtedness under an agreement for the acquisition of property under contract of conditional sale.
- J. A note secured by a first mortgage upon tangible personal or real property when such mortgage is made, assigned, sold, transferred and delivered with such note or other written obligation secured by such mortgage, either to or for the benefit of the purchaser or lender; or bonds or notes not more than 10 in number secured by a first mortgage upon the title in fee simple to real property if the aggregate principal amount secured by such mortgage does not exceed \$500,000 and also does not exceed 75% of the fair market value of such real property.
- K. A note or notes not more than 10 in number secured by a junior mortgage lien if the aggregate principal amount of the indebtedness represented thereby does not exceed 50% of the amount of the then outstanding prior lien indebtedness and provided that the total amount of the indebtedness (including the indebtedness represented by the subject junior mortgage note or notes) shall not exceed 90% of the fair mar-

ket value of the property securing such indebtedness; and provided further that each such note or notes shall bear across the face thereof the following legend in letters at least as large as 12 point type: "THIS NOTE IS SECURED BY A JUNIOR MORTGAGE".

- L. Any negotiable promissory note or draft, bill of exchange or bankers' acceptance 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 9 months of the date of issuance exclusive of days of grace, or any renewal of such note, draft, bill or acceptance which is likewise limited, or any guarantee of such note, draft, bill or acceptance or of any such renewal, provided that the note, draft, bill, or acceptance is a negotiable security eligible for discounting by banks that are members of the Federal Reserve System. Any instrument exempted under this subsection from the requirement of Sections 5, 6, and 7 of this Act shall bear across the face thereof the following legend in letters at least as large as 12 point type: "THIS INSTRUMENT IS NEITHER GUARANTEED, NOR IS THE ISSUANCE THEREOF REGULATED BY ANY AGENCY OR DEPARTMENT OF THE STATE OF ILLINOIS OR THE UNITED STATES.". However, the foregoing legend shall not be required with respect to any such instrument:
 - (i) sold to a person described in subsection C or H of Section 4 of this Act;
 - (ii) sold to a "Qualified Institutional Buyer" as that term is defined in Rule 144a adopted under the Securities Act of 1933;
 - (iii) where the minimum initial subscription for the purchase of such instrument is \$100,000 or more; or
 - (iv) issued by an issuer that has any class of securities registered under Section 12 of the Securities Exchange Act of 1934 or has any outstanding class of indebtedness rated in one of the 3 highest categories by a rating agency designated by the Department;
- M. Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state.
- N. Any security issued pursuant to (i) a written compensatory benefit plan (including without limitation, any purchase, savings, option, bonus, stock appreciation, profit sharing, thrift, incentive, pension, or similar plan) and interests in such plans established by one or more of the issuers thereof or its parents or majority-owned subsidiaries for the participation of their employees, directors, general partners, trustees (where the issuer is a business trust), officers, or consultants or advisers of such issuers or its parents or majority-owned subsidiaries, provided that bona fide services are rendered by consultants or advisers and those services are not in connection with the offer and sale of securities in a capital-raising transaction or (ii) a written contract relating to the compensation of any such person.

- O. Any option, put, call, spread or straddle issued by a clearing agency registered as such under the Federal 1934 Act, if the security, currency, commodity, or other interest underlying the option, put, call, spread or straddle is not required to be registered under Section 5.
- P. Any security which meets all of the following conditions:
- (1) If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of the agent in its prospectus.
 - (2) A class of the issuer's securities is required to be and is registered under Section 12 of the Federal 1934 Act, and has been so registered for the three years immediately preceding the offering date.
 - (3) Neither the issuer nor a significant subsidiary has had a material default during the last seven years, or for the period of the issuer's existence if less than seven years, in the payment of (i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money, or (ii) rentals under leases with terms of three years or more.
 - (4) The issuer has had consolidated net income, before extraordinary items and the cumulative effect of accounting changes, of at least \$1,000,000 in four of its last five fiscal years including its last fiscal year; and if the offering is of interest bearing securities, has had for its last fiscal year, net income, before deduction for income taxes and depreciation, of at least 1-1/2 times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. For the purposes of this clause "last fiscal year" means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement of the offering.
 - (5) If the offering is of stock or shares other than preferred stock or shares, the securities have voting rights and the rights include (i) the right to have at least as many votes per share, and (ii) the right to vote on at least as many general corporate decisions, as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law.
 - (6) If the offering is of stock or shares, other than preferred stock or shares, the securities are owned beneficially or of record, on any date within six months prior to the commencement of the offering, by at least 1,200 persons, and on that date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least \$3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or dealer may rely in good faith for the purposes of this

clause upon written information furnished by the record owners.

- (7) The issuer meets the conditions specified in paragraphs (2), (3) and (4) of this subsection P if either the issuer or the issuer and the issuer's predecessor, taken together, meet such conditions and if:
 - (a) the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and the assets and liabilities of the successor at the time of the succession were substantially the same as those of the predecessor; or
 - (b) all predecessors met such conditions at the time of succession and the issuer has continued to do so since the succession.
- Q. Any security appearing on the List of OTC Margin Stocks published by the Board of Governors of the Federal Reserve System or any security incorporated by reference to the List of OTC Margin Stocks by the Board of Governors of the Federal Reserve System; any other securities of the same issuer which are of senior or substantially equal rank; any securities called for by subscription rights or warrants so listed or approved; or any warrants or rights to purchase or subscribe to any of the foregoing.
- R. Any security issued by a bona fide agricultural cooperative operating in this State that is organized under the laws of this State or as a foreign cooperative association organized under the law of another state that has been duly qualified to transact business in this State.

Sec. 4. Exempt transactions. The provisions of Sections 2a, 5, 6 and 7 of this Act shall not apply to any of the following transactions, except where otherwise specified in this Section 4:

- A. Any offer or sale, whether through a dealer or otherwise, of securities by a person who is not an issuer, underwriter, dealer or controlling person in respect of such securities, and who, being the bona fide owner of such securities, disposes thereof for his or her own account; provided, that such offer or sale is not made directly or indirectly for the benefit of the issuer or of an underwriter or controlling person.
- B. Any offer, sale, issuance or exchange of securities of the issuer to or with security holders of the issuer except to or with persons who are security holders solely by reason of holding transferable warrants, transferable options, or similar transferable rights of the issuer, if no commission or other remuneration is paid or given directly or indirectly for or on account of the procuring or soliciting of such sale or exchange (other than a fee paid to underwriters based on their undertaking to purchase any securities not purchased by security holders in connection with such sale or exchange).
- C. Any offer, sale or issuance of securities to any corporation, bank, savings

bank, savings institution, savings and loan association, trust company, insurance company, building and loan association, or dealer; to a pension fund, pension trust, or employees' profit sharing trust, other financial institution or institutional investor, any government or political subdivision or instrumentality thereof, whether the purchaser is acting for itself or in some fiduciary capacity; to any partnership or other association engaged as a substantial part of its business or operations in purchasing or holding securities; to any trust in respect of which a bank or trust company is trustee or co-trustee; to any entity in which at least 90% of the equity is owned by persons described under subsection C, H, or S of this Section 4; to any employee benefit plan within the meaning of Title I of the Federal ERISA Act if (i) the investment decision is made by a plan fiduciary as defined in Section 3(21) of the Federal ERISA Act and such plan fiduciary is either a bank, savings and loan association, insurance company, registered investment adviser or an investment adviser registered under the Federal 1940 Investment Advisers Act, or (ii) the plan has total assets in excess of \$5,000,000, or (iii) in the case of a self-directed plan, investment decisions are made solely by persons that are described under subsection C, D, H or S of this Section 4; to any plan established and maintained by, and for the benefit of the employees of, any state or political subdivision or agency or instrumentality thereof if such plan has total assets in excess of \$5,000,000; or to any organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, any Massachusetts or similar business trust, or any partnership, if such organization, trust, or partnership has total assets in excess of \$5,000,000.

- D. The Secretary of State is granted authority to create by rule or regulation a limited offering transactional exemption that furthers the objectives of compatibility with federal exemptions and uniformity among the states. The Secretary of State shall prescribe by rule or regulation the amount of the fee for filing any report required under this subsection, but the fee shall not be less than the minimum amount nor more than the maximum amount established under Section 11a of this Act and shall not be returnable in any event.
- E. Any offer or sale of securities by an executor, administrator, guardian, receiver or trustee in insolvency or bankruptcy, or at any judicial sale, or at a public sale by auction held at an advertised time and place, or the offer or sale of securities in good faith and not for the purpose of avoiding the provisions of this Act by a pledgee of securities pledged for a bona fide debt;
- F. Any offer or sale by a registered dealer, either as principal or agent, of any securities (except face amount certificate contracts and investment fund shares) at a price reasonably related to the current market price of such securities, provided:
 - (1) (a) the securities are issued and outstanding;

- (b) the issuer is required to file reports pursuant to Section 13 or Section 15(d) of the Federal 1934 Act and has been subject to such requirements during the 90 day period immediately preceding the date of the offer or sale, or is an issuer of a security covered by Section 12(g)(2)(B) or (G) of the Federal 1934 Act;
 - (c) the dealer has a reasonable basis for believing that the issuer is current in filing the reports required to be filed at regular intervals pursuant to the provisions of Section 13 or Section 15(d), as the case may be, of the Federal 1934 Act, or in the case of insurance companies exempted from Section 12(g) of the Federal 1934 Act by subparagraph 12(g)(2)(G) thereof, the annual statement referred to in Section 12(g)(2)(G)(i) of the Federal 1934 Act; and
 - (d) the dealer has in its records, and makes reasonably available upon request to any person expressing an interest in a proposed transaction in the securities, the issuer's most recent annual report filed pursuant to Section 13 or 15(d), as the case may be, of the Federal 1934 Act or the annual statement in the case of an insurance company exempted from Section 12(g) of the Federal 1934 Act by subparagraph 12(g)(2)(G) thereof, together with any other reports required to be filed at regular intervals under the Federal 1934 Act by the issuer after such annual report or annual statement; provided that the making available of such reports pursuant to this subparagraph, unless otherwise represented, shall not constitute a representation by the dealer that the information is true and correct, but shall constitute a representation by the dealer that the information is reasonably current; or
- (2) (a) prior to any offer or sale, an application for the authorization thereof and a report as set forth under subparagraph (d) of this paragraph (2) has been filed by any registered dealer with and approved by the Secretary of State pursuant to such rules and regulations as the Secretary of State may prescribe;
- (b) the Secretary of State shall have the power by order to refuse to approve any application or report filed pursuant to this paragraph (2) if
 - (i) the application or report does not comply with the provisions of this paragraph (2); or
 - (ii) the offer or sale of such securities would work or tend to work a fraud or deceit, or

- (iii) the issuer or the applicant has violated any of the provisions of this Act;
- (c) each application and report filed pursuant to this paragraph (2) shall be accompanied by a filing fee and an examination fee in the amount established pursuant to Section 11a of this Act, which shall not be returnable in any event;
- (d) there shall be submitted to the Secretary of State no later than 120 days following the end of the issuer's fiscal year, each year during the period of the authorization, one copy of a report which shall contain a balance sheet and income statement prepared as of the issuer's most recent fiscal year end certified by an independent certified public accountant, together with such current information concerning the securities and the issuer thereof as the Secretary of State may prescribe by rule or regulation or order;
- (e) prior to any offer or sale of securities under the provisions of this paragraph (2), each registered dealer participating in the offer or sale of such securities shall provide upon request of prospective purchasers of such securities a copy of the most recent report required under the provisions of sub-paragraph (d) of this paragraph (2);
- (f) approval of an application filed pursuant to this paragraph (2) of subsection F shall expire 5 years after the date of the granting of the approval, unless said approval is sooner terminated by (1) suspension or revocation by the Secretary of State in the same manner as is provided for in subsections E, F and G of Section 11 of this Act, or (2) the applicant filing with the Secretary of State an affidavit to the effect that (i) the subject securities have become exempt under Section 3 of this Act or (ii) the applicant no longer is capable of acting as the applicant and stating the reasons therefor or (iii) the applicant no longer desires to act as the applicant. In the event of the filing of an affidavit under either preceding sub-division (ii) or (iii) the Secretary of State may authorize a substitution of applicant upon the new applicant executing the application as originally filed. However, the aforementioned substituted execution shall have no effect upon the previously determined date of expiration of approval of the application. Notwithstanding the provisions of this subparagraph (f), approvals granted under this paragraph (2) of subsection F prior to the effective date of this Act shall be governed by the provisions of

- (g) this Act in effect on such date of approval; and no person shall be considered to have violated Section 5 of this Act by reason of any offer or sale effected in reliance upon an approval granted under this paragraph (2) after a termination thereof under the foregoing subparagraph (f) if official notice of such termination has not been circulated generally to dealers by the Secretary of State and if such person sustains the burden of proof that he or she did not know, and in the exercise of reasonable care, could not have known, of the termination; or
- (3) the securities, or securities of the same class, are the subject of an existing registration under Section 5 of this Act.

The exemption provided in this subsection F shall apply only if the offer or sale is made in good faith and not for the purpose of avoiding any of the provisions of this Act, and only if the offer or sale is not made for the direct or indirect benefit of the issuer of the securities, or the controlling person in respect of such issuer.

- G. (1) Any offer, sale or issuance of a security, whether to residents or to non-residents of this State, where:
- (a) all sales of such security to residents of this State (including the most recent such sale) within the immediately preceding 12-month period have been made to not more than 35 persons or have involved an aggregate sales price of not more than \$1,000,000;
 - (b) such security is not offered or sold by means of any general advertising or general solicitation in this State; and
 - (c) no commission, discount, or other remuneration exceeding 20% of the sale price of such security, if sold to a resident of this State, is paid or given directly or indirectly for or on account of such sales.
- (2) In computing the number of resident purchasers or the aggregate sales price under paragraph (1) (a) above, there shall be excluded any purchaser or dollar amount of sales price, as the case may be, with respect to any security which at the time of its sale was exempt under Section 3 or was registered under Section 5, 6 or 7 or was sold in a transaction exempt under other subsections of this Section 4.
- (3) A prospectus or preliminary prospectus with respect to a security for which a registration statement is pending or effective under the Federal 1933 Act shall not be deemed to constitute general advertising or general solicitation in this State as such terms are used in paragraph (1) (b) above, provided that such prospectus or preliminary prospectus has not been sent or otherwise delivered to more than 150 residents

of this State.

- (4) The Secretary of State shall by rule or regulation require the filing of a report or reports of sales made in reliance upon the exemption provided by this subsection G and prescribe the form of such report and the time within which such report shall be filed. Such report shall set forth the name and address of the issuer and of the controlling person, if the sale was for the direct or indirect benefit of such person, and any other information deemed necessary by the Secretary of State to enforce compliance with this subsection G. The Secretary of State shall prescribe by rule or regulation the amount of the fee for filing any such report, established pursuant to Section 11a of this Act, which shall not be returnable in any event. The Secretary of State may impose, in such cases as he or she may deem appropriate, a penalty for failure to file any such report in a timely manner, but no such penalty shall exceed an amount equal to five times the filing fee. The contents of any such report or portion thereof may be deemed confidential by the Secretary of State by rule or order and if so deemed shall not be disclosed to the public except by order of court or in court proceedings. The failure to file any such report shall not affect the availability of such exemption, but such failure to file any such report shall constitute a violation of subsection D of Section 12 of this Act, subject to the penalties enumerated in Section 14 of this Act. The civil remedies provided for in subsection A of Section 13 of this Act and the civil remedies of rescission and appointment of a receiver, conservator, ancillary receiver or ancillary conservator provided for in subsection F of Section 13 of this Act shall not be available against any person by reason of the failure to file any such report or on account of the contents of any such report.
- H. Any offer, sale or issuance of a security to (1) any natural person who has, or is reasonably believed by the person relying upon this subsection H to have, a net worth or joint net worth with that person's spouse, at the time of the offer, sale or issuance, in excess of \$1,000,000 excluding the value of a principal residence, or (2) any natural person who had, or is reasonably believed by the person relying upon this subsection H to have had, an income or joint income with that person's spouse, in excess of \$200,000 in each of the two most recent years and who reasonably expects, or is reasonably expected to have, an income in excess of \$200,000 in the current year, or (3) any person that is not a natural person and in which at least 90% of the equity interest is owned by persons who meet either of the tests set forth in clauses (1) or (2) of this sub-

section H; provided that such security is not offered or sold by means of any general advertising or general solicitation in this State.

- I. Any offer, sale or issuance of securities to or for the benefit of security holders of any person incident to a vote by such security holders pursuant to such person's organizational document or any applicable statute of the jurisdiction of such person's organization, on a merger, consolidation, reclassification of securities, or sale or transfer of assets in consideration of or exchange for securities of the same or another person.
- J. Any offer, sale or issuance of securities in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where such offer, sale or issuance is incident to a reorganization, recapitalization, readjustment, composition or settlement of a claim, as approved by a court of competent jurisdiction of the United States, or any state.
- K. Any offer, sale or issuance of securities for patronage, or as patronage refunds, or in connection with marketing agreements by cooperative associations organized exclusively for agricultural, producer, marketing, purchasing, or consumer purposes; and the sale of subscriptions for or shares of stock of cooperative associations organized exclusively for agricultural, producer, marketing, purchasing, or consumer purposes, if no commission or other remuneration is paid or given directly or indirectly for or on account of such subscription, sale or resale, and if any person does not own beneficially more than 5% of the aggregate amount of issued and outstanding capital stock of such cooperative association.
- L. Offers for sale or solicitations of offers to buy (but not the acceptance thereof), of securities which are the subject of a pending registration statement filed under the Federal 1933 Act and which are the subject of a pending application for registration under this Act.
- M. Any offer or sale of preorganization subscriptions for any securities prior to the incorporation, organization or formation of any issuer under the laws of the United States, or any state, or the issuance by such issuer, after its incorporation, organization or formation, of securities pursuant to such preorganization subscriptions, provided the number of subscribers does not exceed 25 and either (1) no commission or other remuneration is paid or given directly or indirectly for or on account of such sale or sales or issuance, or (2) if any commission or other remuneration is paid or given directly or indirectly for or on account of such sale or sales or issuance, the securities are not offered or sold by any means of general advertising or general solicitation in this State.
- N. The execution of orders for purchase of securities by a registered salesperson and dealer, provided such persons act as agent for the

purchaser, have made no solicitation of the order to purchase the securities, have no direct interest in the sale or distribution of the securities ordered, receive no commission, profit, or other compensation other than the commissions involved in the purchase and sale of the securities and deliver to the purchaser written confirmation of the order which clearly identifies the commissions paid to the registered dealer.

- O. Any offer, sale or issuance of securities, other than fractional undivided interests in an oil, gas or other mineral lease, right or royalty, for the direct or indirect benefit of the issuer thereof, or of a controlling person, whether through a dealer (acting either as principal or agent) or otherwise, if the securities sold, immediately following the sale or sales, together with securities already owned by the purchaser, would constitute 50% or more of the equity interest of any one issuer, provided that the number of purchasers is not more than 5 and provided further that no commission, discount or other remuneration exceeding 15% of the aggregate sale price of the securities is paid or given directly or indirectly for or on account of the sale or sales.
- P. Any offer, sale or issuance of securities (except face amount certificate contracts and investment fund shares) issued by and representing an interest in an issuer which is a business corporation incorporated under the laws of this State, the purposes of which are to provide capital and supervision solely for the redevelopment of blighted urban areas located in a municipality in this State and whose assets are located entirely within that municipality, provided:
 - (1) no commission, discount or other remuneration is paid or given directly or indirectly for or on account of the sale or sales of such securities;
 - (2) the aggregate amount of any securities of the issuer owned of record or beneficially by any one person will not exceed the lesser of \$5,000 or 4% of the equity capitalization of the issuer;
 - (3) the officers and directors of the corporation have been bona fide residents of the municipality not less than 3 years immediately preceding the effectiveness of the offering sheet for the securities under this subsection P; and
 - (4) the issuer files with the Secretary of State an offering sheet descriptive of the securities setting forth:
 - (a) the name and address of the issuer;
 - (b) the title and total amount of securities to be offered;
 - (c) the price at which the securities are to be offered; and

- (d) such additional information as the Secretary of State may prescribe by rule and regulation.

The Secretary of State shall within a reasonable time examine the offering sheet so filed and, unless the Secretary of State shall make a determination that the offering sheet so filed does not conform to the requirements of this subsection P, shall declare the offering sheet to be effective, which offering sheet shall continue effective for a period of 12 months from the date it becomes effective. The fee for examining the offering sheet shall be as established pursuant to Section 11a of this Act, and shall not be returnable in any event. The Secretary of State shall by rule or regulation require the filing of a report or reports of sales made to residents of this State in reliance upon the exemption provided by this subsection P and prescribe the form of such report and the time within which such report shall be filed. The Secretary of State shall prescribe by rule or regulation the amount of the fee for filing any such report, but such fee shall not be less than the minimum amount nor more than the maximum amount established pursuant to Section 11a of this Act, and shall not be returnable in any event. The Secretary of State may impose, in such cases as he or she may deem appropriate, a penalty for failure to file any such report in a timely manner, but no such penalty shall exceed an amount equal to five times the filing fee. The contents of any such report shall be deemed confidential and shall not be disclosed to the public except by order of court or in court proceedings. The failure to file any such report shall not affect the availability of such exemption, but such failure to file any such report shall constitute a violation of subsection D of Section 12 of this Act, subject to the penalties enumerated in Section 14 of this Act. The civil remedies provided for in subsection A of Section 13 of this Act and the civil remedies of rescission and appointment of a receiver, conservator, ancillary receiver or ancillary conservator provided for in subsection F of Section 13 of this Act shall not be available against any person by reason of the failure to file any such report or on account of the contents of any such report.

- Q. Any isolated transaction, whether effected by a dealer or not.
- R. Any offer, sale or issuance of a security to any person who purchases at least \$150,000 of the securities being offered, where the purchaser's total purchase price does not, or it is reasonably believed by the person relying upon this subsection R that said purchase price does not, exceed 20 percent of the purchaser's net worth at the time of sale, or if a natural person a joint net worth with that person's spouse, for one or any combination of the following: (i) cash, (ii) securities for which market quotations are readily available, (iii) an unconditional obligation to pay cash or securities for which quotations are readily available, which obligation is to be discharged within five years of the sale of the securities to the purchaser, or (iv) the cancellation of any indebtedness owed by the issuer to the purchaser; provided that such security is

not offered or sold by means of any general advertising or general solicitation in this State.

- S. Any offer, sale or issuance of a security to any person who is, or who is reasonably believed by the person relying upon this subsection S to be, a director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer. For purposes of this subsection S, "executive officer" shall mean the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy making functions for the issuer. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform such policy making functions for the issuer.

A document being filed pursuant to this Section 4 shall be deemed filed, and any fee paid pursuant to this Section 4 shall be deemed paid, upon the date of actual receipt thereof by the Secretary of State.

Sec. 5. Registration of Securities. All securities except those set forth under Section 2a of this Act, or those exempt under Section 3 of this Act, or those offered or sold in transactions exempt under Section 4 of this Act, or face amount certificate contracts required to be registered under Section 6 of this Act, or investment fund shares required to be registered under Section 7 of this Act, shall be registered either by coordination or by qualification, as hereinafter in this Section provided, prior to their offer or sale in this State.

A. Registration by Coordination.

- (1) Securities which are being or have been registered under the Federal 1933 Act may be registered by coordination in the manner provided in this subsection A, if the effective date of the registration under the Federal 1933 Act is not more than 30 days before the filing with the Secretary of State.
- (2) Securities may be registered by coordination by the filing with the Secretary of State by the issuer, by a controlling person or by a registered dealer of:
 - (a) One copy of the registration statement (without exhibits) descriptive of the securities on file with the Securities and Exchange Commission in its most recent form as of the date of the initial filing under this subsection A.;
 - (b) An application, in such form and executed, verified, or authenticated by such person as the Secretary of State shall by rule or regulation prescribe, setting forth the title and the total amount of securities to be offered, the

amount of securities and the proposed maximum aggregate price thereof to be offered in this State under this subsection A and, if the applicant is electing the date of effectiveness of a post-effective amendment as its effective date as provided in Section 2.13 of this Act, specifying such date as the effective date for purposes of registration under this subsection A;

- (c) An undertaking to forward to the Secretary of State, in writing (which may be by electronic or facsimile transmission), any and all subsequent amendments of and supplements to the registration statement not later than the 7th day after the forwarding thereof to the Securities and Exchange Commission, or such longer period as the Secretary of State may permit by rule, regulation or order; and
 - (d) If the applicant is not a registered dealer, the name of at least one registered dealer for the securities being registered under this subsection A (except that, in the case of securities being offered and sold on a delayed or continuous basis pursuant to Rule 415 under the Federal 1933 Act, 17 C.F.R. Section 230.415, or any similar or successor rule thereto as may be designated by the Secretary of State by rule or regulation, the name of the registered dealer may be furnished no later than the close of business on the second business day following the commencement of sales of the registered securities in this State) or a written statement setting forth the method of offer and sale in this State of the securities being registered in compliance with Section 8 of this Act.
- (3) Registration of securities by coordination shall take effect automatically as of the effective date of the registration statement (or post-effective amendment) filed under the Federal 1933 Act, provided that on the effective date, the information required by sub-paragraphs (a), (b), and (d) and the undertaking required by sub-paragraph (c) of paragraph (2) of this subsection A have been on file with the Secretary of State for at least 10 business days, or such shorter period as the Secretary of State may permit by rule, regulation or order. If, however, the time period referred to in the preceding sentence shall not have expired on the effective date of the registration statement (or post-effective amendment) filed under the Federal 1933 Act, registration of such securities by coordination shall, upon the expiration of such time period, take effect automatically as of the effective date of the regis-

- tration statement (or post-effective amendment) filed under the Federal 1933 Act.
- (4) If the information required by sub-paragraphs (a), (b), and (d) and the undertaking required by sub-paragraph (c) of paragraph (2) of this subsection A are not filed with the Secretary of State prior to the effective date of the registration statement (or post-effective amendment) filed under the Federal 1933 Act, any registration of securities by coordination under this subsection A shall take effect automatically as soon as all of the following conditions have been satisfied:
 - (a) the information required by sub-paragraphs (a), (b), and (d) and the undertaking required by sub-paragraph (c) of paragraph (2) of this subsection A have been on file with the Secretary of State for 10 business days, or for such shorter period as the Secretary of State may permit by rule, regulation or order;
 - (b) the registration statement or post-effective amendment filed under the Federal 1933 Act is then in effect; and
 - (c) the prospectus then on file with the Secretary of State satisfies the requirements of Section 10(a)(3) of the Federal 1933 Act.
 - (5) The applicant shall furnish to the Secretary of State written notice (which may be by electronic or facsimile transmission) confirming the date of effectiveness and the title of the securities registered under the Federal 1933 Act, final pricing information, the total amount of securities registered under the Federal 1933 Act, and the amount registered in this State if different than the amounts then on file with the Secretary of State, no later than the close of business on the second business day following the date on which the registration statement becomes effective under the Federal 1933 Act.
 - (6) No action by the Secretary of State shall be necessary to evidence the effectiveness of the registration by coordination under this subsection A. The Secretary of State may, at his or her discretion, provide a statement attesting to such registration, which statement shall be in such form as the Secretary of State may deem appropriate.
 - (7) Notwithstanding the foregoing, the issuer, controlling person or registered dealer who filed the application set forth in sub-paragraph (b) of paragraph (2) of this subsection A may request, in writing (which may be by electronic or facsimile transmission) prior to or upon notice of effectiveness under the Federal 1933 Act, a waiver of automatic effectiveness of the registration of securities and the Secretary of State may, at his or her discretion, grant such waiver of automatic effec-

tiveness. Upon the grant by the Secretary of State of the request of waiver of automatic effectiveness, such registration of securities shall become effective automatically on the date that the issuer, controlling person or registered dealer who filed the application set forth in subparagraph (b) of paragraph (2) of this subsection A notifies the Secretary of State in writing.

- B. Registration by Qualification. Securities may be registered by qualification in the manner provided in this subsection B.
- (1) An application for registration by qualification shall be made by the issuer, by a controlling person or by a registered dealer together with the examination fee established pursuant to Section 11a of this Act, which is not returnable in any event. Such application shall be executed, verified, or authenticated by the applicant and filed with the Secretary of State. The application shall set forth:
- (a) The name and address of the issuer;
 - (b) The title and total amount of the securities to be offered;
 - (c) The amount of the securities to be offered in this State;
 - (d) The price at which the securities are to be offered, or the method by which such price is to be determined, provided that such price or method may be furnished by written notice (which may be by electronic or facsimile transmission) to the Secretary of State subsequent to the filing of the application but prior to registration of the securities under this Law; and
 - (e) The aggregate underwriting commissions, remuneration or discount.
- (2) If the issuer, dealer, or controlling person has not filed a registration statement that is then in effect under the Federal 1933 Act, there shall be filed with the application:
- (a) (Blank);
 - (b) (Blank);
 - (c) A copy of the indenture or other instrument, if any, under which the securities are to be or have been issued;
 - (d) A specimen copy of the securities or a copy of the form of the instrument to evidence the securities;
 - (e) An opinion of counsel as to the legality of the securities;
 - (f) A copy of the underwriting and selling agreements, if any;
 - (g) An undertaking to file promptly (no later than 2 business days after the occurrence of any event which requires a material change in the prospectus) with the Secretary of State all amendments of and supplements

to the prospectus as theretofore filed under this subsection B, together with any additional information, document or undertaking which the Secretary of State, at his or her discretion, deems material, accompanied by the amendment filing fee established pursuant to Section 11a of this Act or, in lieu thereof, a notification in writing that all offers and sales of the securities have been suspended pending the filing with the Secretary of State of such amendment of or supplement to the prospectus; and

- (h) A written statement setting forth the name of at least one registered dealer for the securities being registered under this subsection B, or an application for registration of a salesperson or a written statement setting forth the method of offer and sale in this State of the securities being registered in compliance with Section 8 of this Act.
- (3) In addition, there shall be filed with the application such additional information and material in such form as the Secretary of State may by rule, regulation or order prescribe and a prospectus which contains but is not limited to the following:
- (a) The date and form of organization of the issuer;
 - (b) A brief description of the business conducted and intended to be conducted by the issuer and by its subsidiaries and the general development of such business during the past 5 years or such shorter period as the issuer and such subsidiaries may have been in existence;
 - (c) The location and general character of the physical properties of the issuer and of its subsidiaries;
 - (d) The authorized and issued capitalization of the issuer and a description of the securities being registered and of all authorized securities;
 - (e) The proposed method of sale of the securities, the price thereof to the public or the method by which such price is to be computed, and the underwriting and selling discounts and commissions;
 - (f) The intended use by the issuer of the proceeds of the securities;
 - (g) The names and addresses of all of the issuer's officers and directors, or persons performing similar functions, their business experience during the preceding 5 years and the remuneration paid to each by the issuer and its subsidiaries during the fiscal year last past and proposed to be paid for the then current fiscal year;

- (h) The names and addresses of all persons owning of record, and of all persons owning beneficially, to the extent known to the applicant, 10% or more of any class of equity securities of the issuer, and the percentage owned by each;
- (i) A brief description of any pending material legal proceeding, and of any material legal proceeding known to be contemplated by governmental authorities, involving the issuer or its subsidiaries;
- (j) The following financial statements of the issuer:
 - (i) A balance sheet as of a date within 135 days prior to the date of submitting the application. If such balance sheet is not certified by an independent certified public accountant, the prospectus shall also contain a balance sheet certified by an independent certified public accountant as of the close of the issuer's last fiscal year, unless such fiscal year ended within 135 days prior to the time of filing the application, in which case the certified balance sheet may be as of the end of the preceding fiscal year.
 - (ii) An income statement for each of the issuer's 3 fiscal years (or for the period of existence of the issuer if less than 3 years) next preceding the date of the certified balance sheet and for the period, if any, between the date of the certified balance sheet and the date of the most recent balance sheet. Such statement shall be certified by an independent certified public accountant for the periods ending with the date of the certified balance sheet.
 - (iii) An analysis of each surplus account of the issuer for each period for which an income statement is filed, certified by an independent certified public accountant for the periods for which certified income statements are filed.
 - (iv) An analysis (which need not be certified to by independent certified public accountants and which may be in narrative form if desired by the applicant) of all surplus accounts of the issuer for a period beginning on a date not less than 8 years prior to the date of the certified balance sheet required by the above sub-division (i) of this subparagraph (j), or from the date of the organization of the issuer, whichever is later, and ending on the

day before the first day of the earliest period covered by the analysis of surplus accounts furnished pursuant to the above sub-division (iii) of this subparagraph (j); and

- (k) If the issuer owns more than 50% of the voting securities of one or more entities, there shall also be included in the prospectus either (i) like financial statements for each such entity, or (ii) like consolidated financial statements for the issuer and such entities;
- (l) Anything in sub-paragraphs (j) and (k) of this paragraph (3) to the contrary notwithstanding, the financial statements contained in the prospectus need not be certified by an independent certified public accountant if the securities being registered under this subsection B are covered by a Notification under Regulation A or an Offering Sheet under Regulation D adopted pursuant to the Federal 1933 Act or any other regulation so adopted which the Secretary of State may by rule or regulation or by order determine to have filing or disclosure requirements substantially similar to such Regulation A or Regulation D unless the financial statements furnished pursuant to any such Federal regulation are required to be or are certified by an independent certified public accountant.
- (4) If the securities being registered under this subsection B are certificates of deposit, voting trust certificates, collateral-trust certificates, certificates of interest, fractional interests in oil, gas or other mineral rights of unincorporated issuers or like securities, the prospectus may omit such of the foregoing items in sub-paragraphs (a) through (k) of paragraph (3) of this subsection B, but shall include such pertinent information, as the Secretary of State may by rule, regulation or order prescribe; such prospectus shall contain a description of the properties and businesses from which such certificates, shares or interests derive value.
- (5) The Secretary of State may, upon written request by the applicant and where consistent with the protection of investors, permit the omission of one or more of the financial statements required by this subsection B or the filing in substitution therefor of appropriate financial statements of comparable character or permit the omission of any of the information required by this subsection B. The Secretary of State may also by written notice require the filing of other financial statements or information in addition to, or in substitution for, the financial statements or information required by this subsection B in any case where such additional financial statements or information is necessary or appropriate for an adequate presentation of the financial condition of any issuer or oth-

erwise required for fair disclosure respecting the business and property of any issuer.

- (6) The Secretary of State shall within a reasonable time examine the application and documents filed with him or her, and unless the Secretary of State makes a determination that the application and documents so filed do not conform to the requirements of this subsection B, or there is a proceeding pending under Section 11 of this Act, shall register the securities for offer and sale in this State under this subsection B. If the securities registered shall not have been sold and distributed at the expiration of a period of 6 months following the date of registration, the Secretary of State may require the filing of such current information concerning the securities and the issuer thereof as he or she may by rule, regulation or order prescribe.
- (7) The Secretary of State is granted authority to create by rule or regulation a limited offering registration provision that furthers the objectives of compatibility with federal exemptions and uniformity among the states. The Secretary of State shall prescribe by rule or regulation the amount of the fees for examining and filing any documents required under this subparagraph, but each fee shall not be less than the minimum amount nor more than the maximum amount established under Section 11a of this Act and shall not be returnable in any event.

C. Pending Application, Filing Fee and Oversales of Securities.

- (1) No application shall be deemed to be filed or pending and no securities covered by such application shall be deemed to be registered under subsection A of this Section 5 unless a filing fee has been paid. No application shall be deemed to be filed or pending and no securities covered by such application shall be deemed to be registered under subsection B of this Section 5 unless the examination fee and filing fee have been paid. The filing fee payable under the provisions of subsections A and B of this Section 5 shall be established by rule or regulation, but in no event shall the fee be less than the minimum amount nor more than the maximum amount of filing fee established pursuant to Section 11a of this Act, and in no case shall such fee be returnable. The "maximum aggregate price" as used in subsection A of this Section 5 and in this subsection C shall be the applicant's bona fide estimate thereof, determined in the manner prescribed by the Secretary of State by rule or regulation.
- (2) If after an offering of securities is registered under this Section 5 (except for securities registered under subsection B of this Section 5 wherein the entire offering of securities was registered), the offeror sells or determines that it will sell,

prior to the expiration of the period during which the offeror intends the registration of the securities together with any renewals thereof to remain in effect in this State, an amount of that offering in excess of the amount registered, the applicant may amend the registration and register the excess securities by filing an amended application and paying a filing fee equal to the difference between the initial filing fee paid and the filing fee which would have been paid under paragraph (1) of this subsection C for the entire amount registered together with an additional fee established pursuant to Section 11a of this Act. The fees shall not be returnable in any event. With respect to the excess securities being registered, the "maximum aggregate price" shall be the actual sales price of such securities. Upon receipt of such amended application, filing fee, and additional fee by the Secretary of State, registration of the excess securities shall become effective retroactively to the date of the initial registration.

D. Effective Period and Sales Reports.

- (1) A registration effected under Section 5 of this Act shall continue effective for a period of one year from the date of registration or renewal of registration unless sooner terminated by (1) suspension or revocation by the Secretary of State; or (2) the applicant filing with the Secretary of State an affidavit evidencing either that (a) the securities have been fully sold and distributed to the public or (b) that it is no longer desired to offer such securities in this State or (c) that such securities have become exempt from the registration requirements under Section 3 or paragraph (1) of subsection F of Section 4 of this Act.
- (2) The Secretary of State may, at his or her discretion, require each issuer, controlling person or registered dealer on whose behalf a registration of securities is effected under this Section 5 to file a report, in such form and of such content and for such time period as the Secretary of State may by rule or regulation prescribe, stating the aggregate dollar amount of securities sold to Illinois residents. The civil remedies provided for in subsection A of Section 13 of this Act and the civil remedies of rescission and appointment of a receiver, conservator, ancillary receiver or ancillary conservator provided for in subsection I of Section 11 and in subsection F and G of Section 13 of this Act and the civil remedies of restitution, damages and disgorgement of profits provided for in subsection I of Section 11 of this Act shall not be available against any person by reason of the failure to file any such report or on account of the contents of any such report.

- E. Renewal of Registration. A registration of securities in effect under subsection A of this Section 5 or subsection B of this Section 5 if a registration statement or post-effective amendment is then in effect under the Federal 1933 Act may be renewed for the amount of securities which remain unsold under such registration as then in effect, by the issuer, by a controlling person or by a registered dealer by filing an application for renewal with the Secretary of State no later than 10 business days prior to the date (or such lesser period as the Secretary of State may prescribe by rule or regulation) upon which such registration would otherwise expire, in such form and executed, verified, or authenticated by such person as the Secretary of State shall prescribe by rule or regulation. Such application shall be accompanied by a prospectus in its most current form together with a renewal fee equal in amount to a registration fee calculated in accordance with paragraph (1) of subsection C of this Section 5 and based upon the amount of securities initially registered for sale in this State but which remain unsold; except that the "maximum aggregate price" of such securities shall be the applicant's bona fide estimate thereof at the time the application for renewal of registration is filed with the Secretary of State pursuant to this subsection E. A renewal of registration of securities shall take effect as of the date and time that the prior registration under subsection A of this Section 5 or prior renewal under this subsection E would otherwise have expired and thereafter shall be deemed to be a new registration of the amount of unsold securities specified in the application for renewal. The Secretary of State may by rule or regulation prescribe an additional fee for the failure to file timely an application for renewal and limit the number of times that a registration may be renewed.
- F. The applicant or registrant shall notify the Secretary of State, by written notice (which may be by electronic or facsimile transmission), within 2 business days after its receipt of any stop order, denial, order to show cause, suspension or revocation order, injunction or restraining order, or similar order entered or issued by any state, federal or other regulatory authority or by any court, concerning the securities which are being or have been registered in this State or any other securities of the issuer currently being or proposed to be offered to the public, if the matter which is the subject of, or the failure to disclose the existence of, such order would in this State constitute a violation of subsection E, F, G, H, I or J of Section 12 of this Act. The obligation contained in this subsection F shall continue until such time as offers and sales of the securities registered under this Section 5 are no longer being made in this State by the applicant or registrant.

- G. Any document being filed pursuant to this Section 5 shall be deemed filed, and any fee being paid pursuant to this Section 5 shall be deemed paid, upon the date of actual receipt thereof by the Secretary of State.
- H. The Secretary of State may require by rule or regulation the payment of an additional fee for the filing of information or documents required to be filed by this Section 5 which have not been filed in a timely manner. Such fees shall be deposited into the Securities Investors Education Fund, a special fund hereby created in the State treasury. The amounts deposited into such Fund shall be used to promote public awareness of the dangers of securities fraud.

Sec. 6. Registration of Face Amount Certificate Contracts. All face amount certificate contracts except those set forth under Section 2a of this Act, or those exempt under Section 3 of this Act, or those offered or sold in transactions exempt under Section 4 of this Act, shall be registered either by coordination or by qualification, as hereinafter in this Section provided, prior to their offer or sale in this State.

A. Registration of Face Amount Certificate Contracts by Coordination.

- (1) Face amount certificate contracts which are being or have been registered under the Federal 1933 Act may be registered by coordination in the manner provided in this subsection A, if the effective date of the registration under the Federal 1933 Act is not more than 30 days before the filing with the Secretary of State.
- (2) Face amount certificate contracts may be registered by coordination by the filing with the Secretary of State by the issuer, by a controlling person or by a registered dealer of:
 - (a) One copy of the registration statement (without exhibits) descriptive of the face amount certificate contracts on file with the Securities and Exchange Commission in its most recent form as of the date of the initial filing under this subsection A;
 - (b) An application, in such form and executed, verified, or authenticated by such person as the Secretary of State shall by rule or regulation prescribe, setting forth the title of every series, type or class of face amount certificate contracts to be offered in this State under this subsection A and, if the applicant is electing the date of effectiveness of a post-effective amendment as its effective date as provided in Section 2.13 of this Act, specifying such date as the effective date for purposes of registration under this subsection A;
 - (c) An undertaking to forward to the Secretary of State, in writing (which may be by electronic or facsimile transmission), any and all subsequent amendments of and supplements to the

registration statement not later than the 7th day after the forwarding thereof to the Securities and Exchange Commission, or such longer period as the Secretary of State may permit by rule, regulation or order; and

- (d) If the applicant is not a registered dealer, the name of at least one registered dealer for the face amount certificate contracts being registered under this subsection A or a written statement setting forth the method of offer and sale in this State of the face amount certificate contracts being registered in compliance with Section 8 of this Act.
- (3) Registration of face amount certificate contracts by coordination shall take effect automatically as of the effective date of the registration statement (or post-effective amendment) filed under the Federal 1933 Act, provided that on the effective date, the information required by sub-paragraphs (a), (b), and (d) and the undertaking required by sub-paragraph (c) of paragraph (2) of this subsection A have been on file with the Secretary of State for at least 10 business days, or such shorter period as the Secretary of State may permit by rule, regulation or order. If, however, the time period referred to in the preceding sentence shall not have expired on the effective date of the registration statement (or post-effective amendment) filed under the Federal 1933 Act, registration of such face amount certificate contracts by coordination shall, upon the expiration of such time period, take effect automatically as of the effective date of the registration statement (or post-effective amendment) filed under the Federal 1933 Act.
- (4) If the information required by sub-paragraphs (a), (b), and (d) and the undertaking required by sub-paragraph (c) of paragraph (2) of this subsection A are not filed with the Secretary of State prior to the effective date of the registration statement (or post-effective amendment) filed under the Federal 1933 Act, any registration of face amount certificate contracts by coordination under this subsection A shall take effect automatically as soon as all of the following conditions have been satisfied:
- (a) the information required by sub-paragraphs (a), (b), and (d) and the undertaking required by sub-paragraph (c) of paragraph (2) of this subsection A have been on file with the Secretary of State for 10 business days, or for such shorter period as the Secretary of State may permit by rule, regulation or order;
 - (b) the registration statement or post-effective amendment filed under the Federal 1933 Act is then in effect; and
 - (c) the prospectus then on file with the Secretary of State satisfies the requirements of Section 10(a)(3) of the Federal 1933 Act.

- (5) The applicant shall furnish to the Secretary of State written notice (which may be by electronic or facsimile transmission) confirming the date of effectiveness and the title of the face amount certificate contracts registered under the Federal 1933 Act, no later than the close of business on the second business day following the date on which registration becomes effective under the Federal 1933 Act.
- (6) No action by the Secretary of State shall be necessary to evidence the effectiveness of the registration by coordination under this subsection A. The Secretary of State may, at his or her discretion, provide a statement attesting to such registration, which statement shall be in such form as the Secretary of State may deem appropriate.
- (7) Notwithstanding the foregoing, the issuer, controlling person or registered dealer who filed the application set forth in subparagraph (b) of paragraph (2) of this subsection A may request, in writing (which may be by electronic or facsimile transmission) prior to or upon notice of effectiveness under the Federal 1933 Act, a waiver of automatic effectiveness of the registration of the face amount certificate contracts and the Secretary of State may, at his or her discretion, grant such waiver of automatic effectiveness. Upon the grant by the Secretary of State of the request of waiver of automatic effectiveness, such registration of the face amount certificate contracts shall become effective automatically on the date that the issuer, controlling person or registered dealer who filed the application set forth in subparagraph (b) of paragraph (2) of this subsection A notifies the Secretary of State in writing.

B. Registration of Face Amount Certificate Contracts by Qualification. Face amount certificate contracts may be registered by qualification in the manner provided in this subsection B.

- (1) An application for registration by qualification shall be made by the issuer, by a controlling person or by a registered dealer together with the examination fee established pursuant to Section 11a of the Act, which shall not be returnable in any event. Such application shall be executed, verified, or authenticated by the applicant and filed with the Secretary of State. The application shall set forth:
 - (a) The names and addresses of the persons creating or sponsoring the face amount certificate contracts; and
 - (b) The title of each series, type or class of face amount certificate contracts to be offered.
- (2) If the issuer, dealer, or controlling person has not filed a registration statement or post-effective amendment which is then in effect under the Federal 1933 Act, there shall be filed with the applica-

tion:

- (a) Specimen copies of each and every series, type or class of face amount certificate contract proposed to be offered in this State, and specimen copies of each and every form of face amount certificate contract or other security being issued or proposed to be offered and issued elsewhere;
 - (b) (Blank);
 - (c) (Blank);
 - (d) An opinion of counsel as to the legality of the face amount certificate contracts;
 - (e) An undertaking to file promptly (no later than 2 business days after the occurrence of any event which requires a material change in the prospectus) with the Secretary of State any and all amendments of and supplements to the prospectus as theretofore filed under this subsection B, together with any additional information, document or undertaking which the Secretary of State at his or her discretion, deems material, accompanied by the amendment filing fee established pursuant to Section 11a of this Act or, in lieu thereof, a notification in writing that all offers and sales of the face amount certificate contracts have been suspended pending the filing with the Secretary of State of such amendment of or supplement to the prospectus; and
- (3) In addition, there shall be filed with the application such additional information and material in such form as the Secretary of State may by rule, regulation or order prescribe and a prospectus which contains, but is not limited to the following:
- (a) The date and form of organization of the issuer;
 - (b) A brief description of the business conducted and intended to be conducted by the issuer and by its subsidiaries and the general development of such business during the past 5 years or such shorter period as the issuer and such subsidiaries may have been in existence;
 - (c) The location and general character of the physical properties of the issuer and of its subsidiaries;
 - (d) A complete description of the terms and conditions of each and every series, type or class of face amount certificate contracts being issued or proposed to be offered in this State or elsewhere, which description shall include appropriate tables of initial or periodic installment payments required of the purchaser, surrender or liquidation values, maturity values, optional plans of extended contract periods and schedules of annuity payments which may be elected by a face amount certificate contract holder;
 - (e) A schedule of all types of deductions which may be made

from plan payments or the income therefrom or the avails thereof as charges prior to distributions to holders of the face amount certificate contracts;

- (f) The names and addresses of all of the issuer's officers and directors, or persons performing similar functions, their business experience during the preceding 5 years and the remuneration paid to each by the issuer and its subsidiaries during the fiscal year last past and proposed to be paid for the then current fiscal year;
- (g) The names and addresses of all persons owning of record, and of all persons owning beneficially, to the extent known to the applicant, 10% or more of any class of equity securities of the issuer, and the percentage owned by each;
- (h) A brief description of any pending material legal proceeding, and of any material legal proceeding known to be contemplated by governmental authorities, involving the issuer or its subsidiaries; and
- (i) The following financial statements of the issuer:
 - (i) a balance sheet as of a date within 135 days prior to the date application for registration is received by the Secretary of State, which balance sheet, if not certified by an independent certified public accountant, shall be accompanied by a certified balance sheet of the issuer as of the close of the last prior fiscal year;
 - (ii) a detailed statement of income and expenses, including income from investments, service fees, loading and other sources, operating expenses and provisions for contract reserves or any additional credits to contract liabilities, profits realized and losses sustained in transactions in investments, and all other charges to operations, for a period of not less than 3 fiscal years (or for the period of existence of the issuer if less than 3 years) last preceding the date of the balance sheet presented under subdivision (i) of this subparagraph (i), which statement of income and expenses, if not certified by an independent certified public accountant, shall be accompanied by a certified statement of income and expenses for a period of 3 years last preceding the uncertified period or periods presented as and for this subdivision (ii);
 - (iii) a detailed analysis of each surplus and reserve account for the same period or periods covered by subdivision (ii) of this subparagraph (i), with like requirement for independent certification; and
 - (iv) such other financial data as the Secretary of State may

reasonably require in any specific case or by rule or regulation.

- (4) The Secretary of State shall within a reasonable time examine the application and related documents filed with him or her and, unless the Secretary of State makes a determination that the application and related documents so filed do not conform to the requirements of this subsection B or there is a proceeding pending under Section 11 of this Act, shall upon receipt of the deposit required by subsection G of this Section 6 and upon receipt of the registration fee as hereinafter prescribed, register the face amount certificate contracts, as described by series, type or class within the application, for offer and sale in this State under this subsection B.
- C. Pending Application and Filing Fee. No application for registration of face amount certificate contracts shall be deemed to be filed or pending and no face amount certificate contracts covered by such application shall be deemed to be registered under subsection A of this Section 6 unless a filing fee in the amount established pursuant to Section 11a of this Act has been paid, which shall not be returnable in any event. No application for registration of face amount certificate contracts shall be deemed to be filed or pending and no face amount certificate contracts covered by such application shall be deemed to be registered under subsection B of this Section 6 unless the examination fee and filing fee established pursuant to Section 11a of this Act have been paid, which fees shall not be returnable in any event.
- D. Effective Period and Sales Reports.
- (1) A registration under subsection A or B of this Section 6, unless sooner terminated by the voluntary action of the issuer, or by suspension or revocation by the Secretary of State, shall continue in force and effect for a period of one year from the date of registration or renewal of registration or such other period of time as the Secretary of State may prescribe by rule or regulation, and shall permit the offer and sale of face amount certificate contracts so registered without limitation as to number or aggregate amount during such period of registration; provided, however, that, in the case of face amount certificate contracts registered under subsection B of this Section 6, the issuer shall promptly file with the Secretary of State, throughout such registration year, (i) one specimen copy of each monthly, quarterly, semi-annual or other periodic or special report and of each financial statement distributed to contract holders; (ii) one certified copy of all statements and reports filed with any regulatory authority or agency of the Federal Government which relate to the issuer or the issuance of the securities registered pursuant to this Section 6 and (iii) one copy of each independently certified audit report pertaining to the financial affairs and position of the issuer covering the issuer's fiscal

year ending during the registration year, to be supplied to the Secretary of State as soon as available after the close of the issuer's fiscal year.

(2) The Secretary of State may, at his or her discretion, require each issuer, controlling person or registered dealer on whose behalf a registration of face amount certificate contracts is effective under this Section 6 to file a report, in such form and of such content and for such time period as the Secretary of State may by rule or regulation prescribe, stating the aggregate dollar amount of face amount certificate contracts sold to Illinois residents. The civil remedies provided for in subsection A of Section 13 of this Act and the civil remedies of rescission and appointment of a receiver, conservator, ancillary receiver or ancillary conservator provided for in subsection I of Section 11 and in subsections F and G of Section 13 of this Act and the civil remedies of restitution, damages and disgorgement of profits provided for in subsection I of Section 11 of this Act shall not be available against any person by reason of the failure to file any such report or on account of the contents of any such report.

E. Amendatory statements and required fees. The Secretary of State may by rule or regulation require the filing of an amendatory statement and prescribe its form and content. The fee for filing the statement shall be established pursuant to Section 11a of this Act. The fee shall not be returnable in any event.

F. Renewal of Registration. A registration of face amount certificate contracts in effect under subsection A or B of this Section 6 may be renewed by the issuer by filing an application for renewal with the Secretary of State no later than 10 business days prior to the date upon which such registration would otherwise expire, (or such lesser period as the Secretary of State may prescribe by rule or regulation) in such form and executed, verified, or authenticated by such person as the Secretary of State shall prescribe by rule or regulation. Such application shall be accompanied by a prospectus in its most current form together with a renewal fee established pursuant to Section 11a of this Act, which shall not be returnable in any event. A renewal of registration of face amount certificate contracts shall take effect as of the date and time that the prior registration under subsection A of this Section 6 or prior renewal under this subsection F would otherwise have expired and (or such alternative date as the Secretary of State may prescribe by rule or regulation) thereafter shall be deemed to be a new registration of the face amount certificate contracts covered thereby. The Secretary of State may by rule or regulation prescribe an additional fee for the failure to file timely an application for renewal and limit the number of times a registration may be renewed.

G. Deposit of Securities. No face amount certificate contract shall be reg-

istered under subsection B of this Section 6 unless the issuer shall establish and maintain with the Secretary of State, for the benefit of the holders of such contracts residing in this State, a deposit of securities representing debt obligations of the kind in which life insurance companies organized under the laws of this State are permitted to invest their funds, in an amount having a fair market value of not less than \$100,000 and at no time less than the current contract liability on all such face amount certificate contracts held by persons residing in this State, and provided further that deposited securities, other than those secured by entire first mortgage or trust deeds on improved unencumbered real estate, are issued by an issuer required to file reports pursuant to Section 13 or 15(d) of the Federal 1934 Act or are covered by Section 12(g)(2)(B) or (G) of the Federal 1934 Act, or appear in current quotations in transactions on exchanges recognized by subsection G of Section 3 of this Act, and provided further, that bonds or notes secured by mortgages or trust deeds be limited to those (i) constituting the entire indebtedness secured thereby, (ii) establishing a first lien on improved real estate held in fee simple, and (iii) insured by the Federal Housing Administrator under an Act of Congress of the United States entitled "National Housing Act". Debentures issued by the Federal Housing Administrator under an Act of Congress of the United States entitled the "National Housing Act" may be included in the deposit prescribed by this subsection in amounts related to, and in substitution for, specific insured mortgage loans then included in the subject deposit which are in default, but at no time shall the aggregate principal amount of such debentures included in the subject deposit exceed 5% of the fair market value of securities comprising the subject deposit. The current contract liability in respect of contracts held by persons residing in this State shall be that as determined in such contracts as computed by the issuer and regularly certified to the Secretary of State, on or before the last day of each calendar month as of the close of the month last prior to the date of reporting.

Securities deposited as hereinabove required may be withdrawn by the depositor at any time, and from time to time, whenever other securities eligible for deposit and of a fair market value not less than that withdrawn are deposited in substitution for securities withdrawn.

The Secretary of State may, upon receipt of appropriate certification in writing, deemed by the Secretary of State to be competent and adequate, evidencing the reduction of contract liability on contracts held by persons residing in this State to an aggregate amount representing not more than 90% of the fair market value of the securities then on deposit, permit an equivalent reduction in the deposited securities.

- H. Minimum Deposit; Annual Fee; Transaction Charge. The initial and continuing deposit required hereby shall, so long as the face amount certificate contracts registered under subsection B of this Section 6 are

being offered and sold in this State, and until all contract liability on all contracts outstanding in this State has been discharged, include obligations of the United States or the State of Illinois in bearer form or fully registered, or registered as to principal, in the title of Treasurer of the State of Illinois, and his or her successors in office, in the minimum principal amount of \$50,000. An issuer of face amount certificate contracts, in respect of which a deposit is required to be established and maintained under this Section 6, and an issuer of face amount certificate contracts heretofore qualified for issuance to persons residing in this State under "An Act relating to the sale or other disposition of securities and providing penalties for the violation thereof and to repeal Acts in conflict therewith", approved June 10, 1919, as amended, and in respect of which a deposit of securities was established and has been maintained under the Act approved June 10, 1919, as cited above, shall pay to the Secretary of State an annual fee determined at the rate of 1/30th of one percent on the average of quarterly computations on the aggregate of principal amounts of market-quoted or listed securities and the original loan amounts of real estate loans insured by the Federal Housing Administrator, and in addition each such issuer shall pay to the Secretary of State, against quarterly billings therefor, a transaction charge in the amount established pursuant to Section 11a of this Act, which annual fee and transaction charge shall not be returnable in any event, for each separate issue or loan included in additions to and withdrawals from such deposits, provided however that the transaction charge established pursuant to Section 11a of this Act for each separate issue of market-quoted or listed securities shall apply to all the items of that issue included in a single transaction, regardless of the aggregate principal amount, and in respect of real estate loans such transaction charge shall apply to the group of documents pertaining to each separate loan, and not to the separate items and documents included in such group.

Nothing herein contained in respect of prescribed custody of deposited securities with the State Treasurer and of permissible procedures of liquidation of deposited securities by the Secretary of State in the event of insolvency of an issuer of face amount certificate contracts, or the appointment of a trustee in bankruptcy, shall preclude the surrender of deposited securities to a duly qualified trustee under appointment by a Court having jurisdiction under the Federal Bankruptcy Code under an appropriate order of such Court.

- I. Liquidation of Securities. Upon the insolvency of the issuer of face amount certificate contracts or appointment of a receiver or trustee in bankruptcy, the Secretary of State, if not required otherwise under Federal law or under an order of a Federal Court of competent jurisdiction, may apply to the Circuit Court of Sangamon County, or any other court of competent jurisdiction, for authority to proceed for the

liquidation of such securities held for the benefit of the holders of such contracts who reside in this State. The Secretary of State is hereby authorized to deal with such securities on deposit in this State for the benefit of the holders of such face amount certificate contracts, in his or her name or, if the Court shall so order, in the name of the issuer. The Secretary of State may, subject to the approval of the Court, sell or otherwise dispose of the securities so deposited or any part thereof. The Secretary of State shall as soon as may be conveniently possible, give notice by publication as provided by law, and as the Court may direct, to all contract holders residing in this State who may have claims against the issuer under such face amount certificate contracts and for whose benefit such deposit is held, to file and prove their claims in the manner and within the time the Court shall direct. In order to preserve so far as possible the rights and interests of the holders of outstanding contracts of such issuer who reside in this State, the Secretary of State may liquidate such securities on deposit in this State by entering into contracts with any issuer or person able to buy such securities in whole, or in part. Upon receiving an offer or offers for the purchase of such securities in whole, or in part, the Secretary of State shall submit such offer or offers to the Court, and if, after a full hearing upon the petition filed by the Secretary of State, the court shall find that the Secretary of State endeavored to obtain the best contract price for the benefit of the contract holders, and if the court shall find that the best contract price in the interests of the contract holders has been obtained, and that it is for the best interests of the holders of such contracts that such securities be sold, the court shall, by written order approve the acts of the Secretary of State and authorize him or her to dispose of such securities. Upon the conversion of such securities to cash, the Secretary of State may then proceed to dispose of the sum received for such securities among the respective holders of such contracts as their interests may appear. Upon the liquidation and distribution of such funds, the Secretary of State may make proper liquidation of such securities and the distribution or disposition thereof or of the proceeds therefrom as herein provided.

For the purpose of liquidation of such securities, the Secretary of State shall have the power to appoint one or more special deputies as his or her agent or agents and to employ such clerks, assistants or attorneys as may by him or her be deemed necessary and to give each of such persons such power to assist him or her as he or she may consider wise. The compensation of every such special deputy, agent, clerk, assistant or attorney shall be fixed, and all expenses of taking possession of such securities of the issuer and the administration thereof shall be approved, by the Secretary of State subject to the approval of the court and shall be paid out of the funds or assets received from the liquidation of such securities.

- J. The applicant or registrant shall notify the Secretary of State, by written notice (which may be by electronic or facsimile transmission), within 2 business days after its receipt of any stop order, denial, order to show cause, suspension or revocation order, injunction or restraining order, or similar order entered or issued by any state, federal or other regulatory authority or by any court, concerning the face amount certificate contracts which are being or have been registered in this State or any other securities of the issuer currently being or proposed to be offered to the public, if the matter which is the subject of, or the failure to disclose the existence of, such order would in this State constitute a violation of subsection E, F, G, H, I or J of Section 12 of this Act. The obligation contained in this subsection J shall continue until such time as offers and sales of the face amount certificate contracts registered under this Section 6 are no longer being made in this State by the applicant or registrant.
- K. Any document being filed pursuant to this Section 6 shall be deemed filed, and any fee being paid pursuant to this Section 6 shall be deemed paid, upon the date of actual receipt thereof by the Secretary of State.
- L. The Secretary of State may require by rule or regulation the payment of an additional fee for the filing of information or documents required to be filed by this Section 6 which have not been filed in a timely manner. Such fees shall be deposited into the Securities Investors Education Fund and used to promote public awareness of the dangers of securities fraud.

Sec. 7. Registration of Investment Fund Shares. All investment fund shares except those set forth under Section 2a of this Act, or those exempt under Section 3 of this Act, or those offered or sold in transactions exempt under Section 4 of this Act, or face amount certificate contracts required to be registered under Section 6 of this Act, shall be registered either by coordination or by qualification, as hereinafter in this Section provided, prior to their offer or sale in this State. Additional classes of shares that are of the same rank, general description, and characteristics as those currently registered may be added to a current registration under this Section upon the filing of an amendment and the payment of the additional fees as prescribed by the Secretary of State by rule or regulation. Any change in organization or plans of operation shall be disclosed to the Secretary of State by filing an amendment to a current registration and the payment of the additional fees as prescribed by the Secretary of State by rule or regulation.

- A. Registration of Investment Fund Shares by Coordination.
 - (1) Investment fund shares which are being or have been registered under the Federal 1933 Act and the Federal 1940 Investment Company Act may be registered by coordination in the manner provided in this subsection A, if the effective date of the registration under the Federal 1933 Act is not more than 30 days before the filing with the Secretary of State.

- (2) Investment fund shares may be registered by coordination by the filing with the Secretary of State by the issuer, by a controlling person or by a registered dealer of:
- (a) One copy of the registration statement (without exhibits) descriptive of the investment fund shares on file with the Securities and Exchange Commission in its most recent form as of the date of the initial filing under this subsection A;
 - (b) An application, in such form and executed, verified, or authenticated by such person as the Secretary of State shall by rule or regulation prescribe, setting forth the title of the investment fund shares to be offered in this State under this subsection A and, if the applicant is electing the date of effectiveness of a post-effective amendment as its effective date as provided in Section 2.13 of this Act, specifying such date as the effective date for purposes of registration under this subsection A; and
 - (c) An undertaking to forward to the Secretary of State, in writing (which may be by electronic or facsimile transmission), any and all subsequent amendments of and supplements to the registration statement not later than the 7th day after the forwarding thereof to the Securities and Exchange Commission, or such longer period as the Secretary of State may permit by rule, regulation or order; and
 - (d) if the applicant is not a registered dealer, the name of at least one registered dealer for the investment fund shares being registered under this subsection A or a written statement setting forth the method of offer and sale in this State of the investment fund shares being registered in compliance with Section 8 of this Act.
- (3) Registration of investment fund shares by coordination shall take effect automatically as of the effective date of the registration statement (or post-effective amendment) filed under the Federal 1933 Act, provided that on the effective date, the information required by sub-paragraphs (a), (b), and (d) and the undertaking required by sub-paragraph (c) of paragraph (2) of this subsection A have been on file with the Secretary of State for at least 10 business days, or such shorter period as the Secretary of State may permit by rule, regulation or order. If, however, the time period referred to in the preceding sentence shall not have expired on the effective date of the registration statement (or post-effective amendment) filed under the Federal 1933 Act, registration of such investment fund shares by coordination shall, upon the expiration of such time period, take effect automatically as of the effective date of the registration statement (or post-effective amendment) filed under the Federal 1933 Act.

- (4) If the information required by sub-paragraphs (a), (b), and (d) and the undertaking required by sub-paragraph (c) of paragraph (2) of this subsection A are not filed with the Secretary of State prior to the effective date of the registration statement (or post-effective amendment) filed under the Federal 1933 Act, any registration of investment fund shares by coordination under this subsection A shall take effect automatically as soon as all of the following conditions have been satisfied:
- (a) the information required by sub-paragraphs (a), (b), and (d) and the undertaking required by sub-paragraph (c) of paragraph (2) of this subsection A have been on file with the Secretary of State for 10 business days, or for such shorter period as the Secretary of State may permit by rule, regulation or order;
 - (b) the registration statement or post-effective amendment filed under the Federal 1933 Act is then in effect; and
 - (c) the prospectus then on file with the Secretary of State satisfies the requirements of Section 10(a)(3) of the Federal 1933 Act.
- (5) The applicant shall furnish to the Secretary of State written notice (which may be by electronic or facsimile transmission) confirming the date of effectiveness and the title of the investment fund shares registered under the Federal 1933 Act, no later than the close of business on the second business day following the date on which registration statement becomes effective under the Federal 1933 Act.
- (6) No action by the Secretary of State shall be necessary to evidence the effectiveness of the registration by coordination under this subsection A. The Secretary of State may, at his or her discretion, provide a statement attesting to such registration, which statement shall be in such form as the Secretary of State may deem appropriate.
- (7) Notwithstanding the foregoing, the issuer, controlling person or registered dealer who filed the application set forth in subparagraph (b) of paragraph (2) of this subsection A may request, in writing (which may be by electronic or facsimile transmission) prior to or upon notice of effectiveness under the Federal 1933 Act, a waiver of automatic effectiveness of the registration of investment fund shares and the Secretary of State may, at his or her discretion, grant such waiver of automatic effectiveness. Upon the grant by the Secretary of State of the request of waiver of automatic effectiveness, such registration of investment fund shares shall become effective automatically on the date that the issuer, controlling person or registered dealer who filed the application set forth in subparagraph (b) of paragraph (2) of this subsection A notifies the

Secretary of State in writing.

B. Registration of Investment Fund Shares by Qualification. Investment fund shares may be registered by qualification in the manner provided in this subsection B.

- (1) An application for registration by qualification shall be made by the issuer, by a controlling person or by a registered dealer together with the examination fee established pursuant to Section 11a of the Act, which shall not be returnable in any event. Such application shall be signed, verified, or authenticated by the applicant and filed with the Secretary of State. The application shall set forth:
 - (a) The name and address of the issuer;
 - (b) The title of the investment fund shares; and
 - (c) The names and addresses of the persons creating or sponsoring the investment fund shares.
- (2) If the issuer, dealer, or controlling person has not filed a registration statement or post-effective amendment which is then in effect under the Federal 1933 Act, there shall be filed with the application:
 - (a) A specimen copy of the investment fund shares, if any, or a copy of the form of the instrument to evidence the investment fund shares, if any;
 - (b) (Blank);
 - (c) (Blank);
 - (d) An opinion of counsel as to the legality of the investment fund shares;
 - (e) An undertaking to file promptly (not later than 2 business days after the occurrence of any event which requires a material change in the prospectus) with the Secretary of State any and all amendments of and supplements to the prospectus as theretofore filed under this subsection B, together with any additional information, document or undertaking which the Secretary of State, at his or her discretion, deems material, accompanied by the amendment filing fee established pursuant to Section 11a of this Act or, in lieu thereof, a notification in writing that all offers and sales of the investment fund shares have been suspended pending the filing with the Secretary of State of the amendment of or supplement to the prospectus;
 - (f) A written statement setting forth the name of at least one registered dealer for the investment fund shares being registered under this subsection B or an application for registration of a salesperson or a written statement setting forth the method of offer and sale in this State of the investment fund shares being registered in compliance with Section 8 of this Act.
- (3) In addition, there shall be filed with the application such addition-

al information and material in such form as the Secretary of State may by rule, regulation or order prescribe and a prospectus which contains, but is not limited to the following:

- (a) The date and form of organization of the fund or trust;
- (b) The authorized and issued capitalization of the fund or trust and a description of the investment fund shares being registered and of all authorized securities;
- (c) A schedule of the types of deductions which may be made from the trust or corporate or fund assets and the income therefrom or the avails thereof as charges prior to distribution to holders of the investment fund shares;
- (d) The names and addresses of all of the fund's or trust's officers and directors, or persons performing similar functions, their business experience during the preceding 5 years and the remuneration paid to each by the fund or trust or any affiliate thereof during the fiscal year last past and proposed to be paid for the then current fiscal year;
- (e) A brief description of any pending material legal proceeding, and of any material legal proceeding known to be contemplated by governmental authorities involving the fund or trust;
- (f) A statement of the plan of operation, management policies and provisions and restrictions in respect of investment and reinvestment of principal funds and undistributed income therefrom;
- (g) A statement of the plan and intention in respect of distributions of ordinary income and capital gains, which statement shall disclose the taking of adequate measures for specific separation and identification of distributions arising from ordinary income and those arising from profits realized from the disposition of securities;
- (h) Specimen computations illustrating typical applications of the formulae to be used in determining asset value, offering price and liquidating price of the investment fund shares; and
- (i) The following financial statements in respect of the issuer if the investment fund shares represent shares of an issuing corporation, or in respect of the trust fund, if the investment fund shares represent beneficial interests in a trust fund:
 - (i) a balance sheet as of a date within 135 days prior to the date of submitting the application. If such balance sheet is not certified by an independent certified public accountant, the prospectus shall also contain a balance sheet certified by an independent certified public accountant as of the close of the fund's last fiscal year,

unless such fiscal year ended within 135 days prior to the time of filing the application, in which case the certified balance sheet may be as of the end of the preceding fiscal year;

- (ii) a detailed statement of income and expenses and of profits realized and losses sustained from the sale of securities for each of the three fiscal years (or for the period of existence of the issuer if less than 3 years) next preceding the date of the certified balance sheet and for the period, if any, between the date of the certified balance sheet and the date of the most recent balance sheet. Such statements shall be certified by an independent certified public accountant for the periods ending with the date of the certified balance sheet;
 - (iii) an analysis of each surplus account (or, in lieu thereof, a statement of changes in net assets) for each period for which a statement of income and expenses is filed, certified by an independent certified public accountant for the periods for which certified statements of income and expenses are submitted; and
 - (iv) such other financial statements and supporting schedules as the Secretary of State may by rule or regulation prescribe.
- (4) The Secretary of State may make or cause to be made an examination of matters pertaining to the investment fund shares as to which registration is sought under this subsection B and the persons creating, sponsoring or having general charge of the distribution of the investment fund shares, or any of them, and may require the applicant to advance sufficient funds to defray all actual expenses of such examination. An itemized statement of such expenses shall be furnished to the applicant.
- (5) No investment fund shares shall be registered under this subsection B unless the underlying securities or cash are and are to be deposited and held under an appropriate agreement for the benefit of the holders of the investment fund shares with and by a trustee or custodian which is a clearing corporation, bank, trust company or member of a national securities exchange registered under the Federal 1934 Act, provided that any such bank or trust company shall have an aggregate capital, surplus and undivided profits of at least \$2,000,000 and any such member of a national securities exchange shall have capital stock, additional paid-in capital and retained earnings of at least \$2,000,000 if a corporation or partnership capital of at least \$2,000,000 if a partnership and further provided that any such member of a national securities exchange shall comply with the provisions of the Federal 1940

Investment Company Act and the rules and regulations of the Securities and Exchange Commission promulgated under that Act relating to the custody of the underlying securities of investment funds.

- (6) The Secretary of State shall within a reasonable time examine the application and documents filed with him or her and may make such additional examination pursuant to paragraph (4) of this subsection B as he or she may deem appropriate, and unless the Secretary of State makes a determination that the application and documents so filed do not conform to the requirements of this subsection B, or there is a proceeding pending under Section 11 of this Act, the Secretary of State shall register the investment fund shares for offer and sale in this State under this subsection B.
- C. Pending Application and Filing Fee. No application for registration of investment fund shares shall be deemed to be filed or pending and no investment fund shares covered by such application shall be deemed to be registered under subsection A of this Section 7 unless a filing fee in the amount established pursuant to Section 11a of this Act has been paid, which fee shall not be returnable in any event. No application shall be deemed to be filed or pending and no investment fund shares covered by such application shall be deemed to be registered under subsection B of this Section 7 unless the examination fee and filing fee established pursuant to Section 11a of this Act have been paid, which fees shall not be returnable in any event.
 - D. Amendatory statements and required fees. The Secretary of State may by rule or regulation require the filing of an amendatory statement and prescribe its form and content. The fee for filing the statement shall be established pursuant to Section 11a of this Act. The fee shall not be returnable in any event.
 - E. Discontinuance of Registration. An amendatory statement or statements may be submitted by the applicant at any time, and from time to time, when it is desired to discontinue registration in respect of one or more classes, series, or portfolios and if the Secretary of State shall find that such discontinuance is not against the public interest, such amendatory statement or statements shall be filed by the Secretary of State without charge, but such discontinuance of registration shall not entitle the applicant to any refund of any fees previously paid in respect of such discontinued class or classes, series, or portfolios.
 - F. Effective Period and Sales Reports.
 - (1) A registration of investment fund shares under this Section 7, unless sooner terminated by the voluntary action of the applicant or by action of the Secretary of State under Section 11 hereof, shall continue in force and effect for a period of one year from the date of registration or renewal of registration (or such other period of time as the Secretary of State may prescribe by rule or regulation or

order), without limitation as to number of shares or aggregate amount; provided, however, that in the case of investment fund shares registered under subsection B of this Section 7, the issuer which has no registration statement then in effect under the Federal 1933 Act and the Federal 1940 Investment Company Act shall promptly file with the Secretary of State throughout such registration period, one copy of each monthly, quarterly, semi-annual, annual or other periodic report and financial statement sent to holders of its outstanding investment fund shares, and one copy of each statement and report relating to such investment fund shares filed with any regulatory authority or agency of the Federal Government.

(2) The Secretary of State may, at his or her discretion, require each issuer, controlling person or registered dealer on whose behalf a registration of investment fund shares is effected under this Section 7 to file a report, in such form and of such content and for such time period as the Secretary of State may by rule or regulation prescribe, stating the aggregate dollar amount of investment fund shares sold to Illinois residents. The civil remedies provided for in subsection A of Section 13 of this Act and the civil remedies of rescission and appointment of a receiver, conservator, ancillary receiver or ancillary conservator provided for in subsection I of Section 11 and in subsections F and G of Section 13 of this Act and the civil remedies of restitution, damages and disgorgement of profits provided for in subsection I of Section 11 of this Act shall not be available against any person by reason of the failure to file any such report or on account of the contents of any such report.

G. Renewal of Registration. A registration of investment fund shares in effect under subsection A or B of this Section 7 may be renewed by the issuer by filing an application for renewal of registration with the Secretary of State no later than 10 business days prior to the date upon which such registration would otherwise expire or such lesser period as the Secretary of State may prescribe by rule or regulation, in such form and executed, verified, or authenticated by such person as the Secretary of State shall prescribe by rule or regulation. Such application shall be accompanied by a prospectus in its most current form together with a renewal fee established pursuant to Section 11a of this Act, which shall not be returnable in any event. A renewal of registration of securities shall take effect as of the date and time that the prior registration under subsection A of this Section 7 or prior renewal under this paragraph (1) would otherwise have expired (or such alternative date as the Secretary of State may prescribe by rule or regulation) and thereafter shall be deemed to be a new registration of the investment fund shares covered thereby. The Secretary of State may by rule or regulation prescribe an additional fee for the failure to file timely an appli-

cation for renewal and limit the number of times a registration may be renewed.

- H. The applicant or registrant shall notify the Secretary of State, by written notice (which may be by electronic or facsimile transmission), within 2 business days after its receipt of any stop order, denial, order to show cause, suspension or revocation order, injunction or restraining order, or similar order entered or issued by any state, federal or other regulatory authority or by any court, concerning the investment fund shares which are being or have been registered in this State or any other securities of the issuer currently being or proposed to be offered to the public, if the matter which is the subject of, or the failure to disclose the existence of, such order would in this State constitute a violation of subsection E, F, G, H, I or J of Section 12 of this Act. The obligation contained in this subsection H shall continue until such time as offers and sales of the investment fund shares registered under this Section 7 are no longer being made in this State by the applicant or registrant.
- I. Any document being filed pursuant to this Section 7 shall be deemed filed, and any fee being paid pursuant to this Section 7 shall be deemed paid, upon the date of actual receipt thereof by the Secretary of State.
- J. The Secretary of State may require by rule or regulation the payment of an additional fee for the filing of information or documents required to be filed by this Section 7 which have not been filed in a timely manner. Such fees shall be deposited into the Securities Investors Education Fund and use to promote public awareness of the dangers of securities fraud.

Sec. 7a. (a) Except as provided in subsection (b) of this Section, no securities, issued by an issuer engaged in or deriving revenues from the conduct of any business or profession, the conduct of which would violate Section 11-14, 11-14.3, 11-14.4 as described in subdivision (a)(1), (a)(2), or (a)(3) or that involves soliciting for a juvenile prostitute, 11-15, 11-15.1, 11-16, 11-17, 11-19 or 11-19.1 of the Criminal Code of 1961 or the Criminal Code of 2012, if conducted in this State, shall be sold or registered pursuant to Section 5, 6 or 7 of this Act nor sold pursuant to the provisions of Section 3 or 4 of this Act.

- (b) Notwithstanding the provisions of subsection (a) hereof, such securities issued prior to the effective date of this amendatory Act of 1989 may be sold by a resident of this State in transactions which qualify for an exemption from the registration requirements of this Act pursuant to subsection A of Section 4 of this Act.

Sec. 8. Registration of dealers, limited Canadian dealers, salespersons, investment advisers, and investment adviser representatives.

- A. Except as otherwise provided in this subsection A, every dealer, limited Canadian dealer, salesperson, investment adviser, and investment adviser

er representative shall be registered as such with the Secretary of State. No dealer or salesperson need be registered as such when offering or selling securities in transactions exempted by subsection A, B, C, D, E, G, H, I, J, K, M, O, P, Q, R or S of Section 4 of this Act, provided that such dealer or salesperson is not regularly engaged in the business of offering or selling securities in reliance upon the exemption set forth in subsection G or M of Section 4 of this Act. No dealer, issuer or controlling person shall employ a salesperson unless such salesperson is registered as such with the Secretary of State or is employed for the purpose of offering or selling securities solely in transactions exempted by subsection A, B, C, D, E, G, H, I, J, K, L, M, O, P, Q, R or S of Section 4 of this Act; provided that such salesperson need not be registered when effecting transactions in this State limited to those transactions described in Section 15(h)(2) of the Federal 1934 Act or engaging in the offer or sale of securities in respect of which he or she has beneficial ownership and is a controlling person. The Secretary of State may, by rule, regulation or order and subject to such terms, conditions, and, fees as may be prescribed in such rule, regulation or order, exempt from the registration requirements of this Section 8 any investment adviser, if the Secretary of State shall find that such registration is not necessary in the public interest by reason of the small number of clients or otherwise limited character of operation of such investment adviser.

- B. An application for registration as a dealer or limited Canadian dealer, executed, verified, or authenticated by or on behalf of the applicant, shall be filed with the Secretary of State, in such form as the Secretary of State may by rule, regulation or order prescribe, setting forth or accompanied by:
- (1) The name and address of the applicant, the location of its principal business office and all branch offices, if any, and the date of its organization;
 - (2) A statement of any other Federal or state licenses or registrations which have been granted the applicant and whether any such licenses or registrations have ever been refused, canceled, suspended, revoked or withdrawn;
 - (3) The assets and all liabilities, including contingent liabilities of the applicant, as of a date not more than 60 days prior to the filing of the application;
 - (4)
 - (a) A brief description of any civil or criminal proceeding of which fraud is an essential element pending against the applicant and whether the applicant has ever been convicted of a felony, or of any misdemeanor of which fraud is an essential element;
 - (b) A list setting forth the name, residence and business address and a 10 year occupational statement of each principal of the applicant and a statement describing briefly

any civil or criminal proceedings of which fraud is an essential element pending against any such principal and the facts concerning any conviction of any such principal of a felony, or of any misdemeanor of which fraud is an essential element;

- (5) If the applicant is a corporation: a list of its officers and directors setting forth the residence and business address of each; a 10-year occupational statement of each such officer or director; and a statement describing briefly any civil or criminal proceedings of which fraud is an essential element pending against each such officer or director and the facts concerning any conviction of any officer or director of a felony, or of any misdemeanor of which fraud is an essential element;
- (6) If the applicant is a sole proprietorship, a partnership, limited liability company, an unincorporated association or any similar form of business organization: the name, residence and business address of the proprietor or of each partner, member, officer, director, trustee or manager; the limitations, if any, of the liability of each such individual; a 10-year occupational statement of each such individual; a statement describing briefly any civil or criminal proceedings of which fraud is an essential element pending against each such individual and the facts concerning any conviction of any such individual of a felony, or of any misdemeanor of which fraud is an essential element;
- (7) Such additional information as the Secretary of State may by rule or regulation prescribe as necessary to determine the applicant's financial responsibility, business repute and qualification to act as a dealer.
- (8) (a) No applicant shall be registered or re-registered as a dealer or limited Canadian dealer under this Section unless and until each principal of the dealer has passed an examination conducted by the Secretary of State or a self-regulatory organization of securities dealers or similar person, which examination has been designated by the Secretary of State by rule, regulation or order to be satisfactory for purposes of determining whether the applicant has sufficient knowledge of the securities business and laws relating thereto to act as a registered dealer. Any dealer who was registered on September 30, 1963, and has continued to be so registered; and any principal of any registered dealer, who was acting in such capacity on and continuously since September 30, 1963; and any individual who has previously passed a securities dealer examination administered by the Secretary of State or any examination designated by the Secretary of State to be satisfactory for purposes of deter-

mining whether the applicant has sufficient knowledge of the securities business and laws relating thereto to act as a registered dealer by rule, regulation or order, shall not be required to pass an examination in order to continue to act in such capacity. The Secretary of State may by order waive the examination requirement for any principal of an applicant for registration under this subsection B who has had such experience or education relating to the securities business as may be determined by the Secretary of State to be the equivalent of such examination. Any request for such a waiver shall be filed with the Secretary of State in such form as may be prescribed by rule or regulation.

- (b) Unless an applicant is a member of the body corporate known as the Securities Investor Protection Corporation established pursuant to the Act of Congress of the United States known as the Securities Investor Protection Act of 1970, as amended, a member of an association of dealers registered as a national securities association pursuant to Section 15A of the Federal 1934 Act, or a member of a self-regulatory organization or stock exchange in Canada which the Secretary of State has designated by rule or order, an applicant shall not be registered or re-registered unless and until there is filed with the Secretary of State evidence that such applicant has in effect insurance or other equivalent protection for each client's cash or securities held by such applicant, and an undertaking that such applicant will continually maintain such insurance or other protection during the period of registration or re-registration. Such insurance or other protection shall be in a form and amount reasonably prescribed by the Secretary of State by rule or regulation.
- (9) The application for the registration of a dealer or limited Canadian dealer shall be accompanied by a filing fee and a fee for each branch office in this State, in each case in the amount established pursuant to Section 11a of this Act, which fees shall not be returnable in any event.
- (10) The Secretary of State shall notify the dealer or limited Canadian dealer by written notice (which may be by electronic or facsimile transmission) of the effectiveness of the registration as a dealer in this State.
- (11) Any change which renders no longer accurate any information contained in any application for registration or re-registration of a dealer or limited Canadian dealer shall be reported to the Secretary of State within 10 business days after the occurrence of such change; but in respect to assets and liabilities only material-

ly adverse changes need be reported.

- C. Any registered dealer, limited Canadian dealer, issuer, or controlling person desiring to register a salesperson shall file an application with the Secretary of State, in such form as the Secretary of State may by rule or regulation prescribe, which the salesperson is required by this Section to provide to the dealer, issuer, or controlling person, executed, verified, or authenticated by the salesperson setting forth or accompanied by:
- (1) the name, residence and business address of the salesperson;
 - (2) whether any federal or State license or registration as dealer, limited Canadian dealer, or salesperson has ever been refused the salesperson or canceled, suspended, revoked, withdrawn, barred, limited, or otherwise adversely affected in a similar manner or whether the salesperson has ever been censured or expelled;
 - (3) the nature of employment with, and names and addresses of, employers of the salesperson for the 10 years immediately preceding the date of application;
 - (4) a brief description of any civil or criminal proceedings of which fraud is an essential element pending against the salesperson, and whether the salesperson has ever been convicted of a felony, or of any misdemeanor of which fraud is an essential element;
 - (5) such additional information as the Secretary of State may by rule, regulation or order prescribe as necessary to determine the salesperson's business repute and qualification to act as a salesperson; and
 - (6) no individual shall be registered or re-registered as a salesperson under this Section unless and until such individual has passed an examination conducted by the Secretary of State or a self-regulatory organization of securities dealers or similar person, which examination has been designated by the Secretary of State by rule, regulation or order to be satisfactory for purposes of determining whether the applicant has sufficient knowledge of the securities business and laws relating thereto to act as a registered salesperson.

Any salesperson who was registered prior to September 30, 1963, and has continued to be so registered, and any individual who has passed a securities salesperson examination administered by the Secretary of State or an examination designated by the Secretary of State by rule, regulation or order to be satisfactory for purposes of determining whether the applicant has sufficient knowledge of the securities business and laws relating thereto to act as a registered salesperson, shall not be required to pass an examination in order to continue to act as a salesperson. The Secretary of State may by order waive the examination requirement for any applicant for registration under this subsection C who has had such experience or education relating to the securities business as may

be determined by the Secretary of State to be the equivalent of such examination. Any request for such a waiver shall be filed with the Secretary of State in such form as may be prescribed by rule, regulation or order.

- (7) The application for registration of a salesperson shall be accompanied by a filing fee and a Securities Audit and Enforcement Fund fee, each in the amount established pursuant to Section 11a of this Act, which shall not be returnable in any event.
- (8) Any change which renders no longer accurate any information contained in any application for registration or re-registration as a salesperson shall be reported to the Secretary of State within 10 business days after the occurrence of such change. If the activities are terminated which rendered an individual a salesperson for the dealer, issuer or controlling person, the dealer, issuer or controlling person, as the case may be, shall notify the Secretary of State, in writing, within 30 days of the salesperson's cessation of activities, using the appropriate termination notice form.
- (9) A registered salesperson may transfer his or her registration under this Section 8 for the unexpired term thereof from one registered dealer or limited Canadian dealer to another by the giving of notice of the transfer by the new registered dealer or limited Canadian dealer to the Secretary of State in such form and subject to such conditions as the Secretary of State shall by rule or regulation prescribe. The new registered dealer or limited Canadian dealer shall promptly file an application for registration of such salesperson as provided in this subsection C, accompanied by the filing fee prescribed by paragraph (7) of this subsection C.

C-5. Except with respect to federal covered investment advisers whose only clients are investment companies as defined in the Federal 1940 Act, other investment advisers, federal covered investment advisers, or any similar person which the Secretary of State may prescribe by rule or order, a federal covered investment adviser shall file with the Secretary of State, prior to acting as a federal covered investment adviser in this State, such documents as have been filed with the Securities and Exchange Commission as the Secretary of State by rule or order may prescribe. The notification of a federal covered investment adviser shall be accompanied by a notification filing fee established pursuant to Section 11a of this Act, which shall not be returnable in any event. Every person acting as a federal covered investment adviser in this State shall file a notification filing and pay an annual notification filing fee established pursuant to Section 11a of this Act, which is not returnable in any event. The failure to file any such notification shall constitute a violation of subsection D of Section 12 of this Act, subject to the penalties enumerated in Section 14 of this Act. Until October 10, 1999 or other date as may be legally permissible, a federal covered invest-

ment adviser who fails to file the notification or refuses to pay the fees as required by this subsection shall register as an investment adviser with the Secretary of State under Section 8 of this Act. The civil remedies provided for in subsection A of Section 13 of this Act and the civil remedies or rescission and appointment of receiver, conservator, ancillary receiver, or ancillary conservator provided for in subsection F of Section 13 of this Act shall not be available against any person by reason of the failure to file any such notification or pay the notification fee or on account of the contents of any such notification.

- D. An application for registration as an investment adviser, executed, verified, or authenticated by or on behalf of the applicant, shall be filed with the Secretary of State, in such form as the Secretary of State may by rule or regulation prescribe, setting forth or accompanied by:
- (1) The name and form of organization under which the investment adviser engages or intends to engage in business; the state or country and date of its organization; the location of the adviser's principal business office and branch offices, if any; the names and addresses of the adviser's principal, partners, officers, directors, and persons performing similar functions or, if the investment adviser is an individual, of the individual; and the number of the adviser's employees who perform investment advisory functions;
 - (2) The education, the business affiliations for the past 10 years, and the present business affiliations of the investment adviser and of the adviser's principal, partners, officers, directors, and persons performing similar functions and of any person controlling the investment adviser;
 - (3) The nature of the business of the investment adviser, including the manner of giving advice and rendering analyses or reports;
 - (4) The nature and scope of the authority of the investment adviser with respect to clients' funds and accounts;
 - (5) The basis or bases upon which the investment adviser is compensated;
 - (6) Whether the investment adviser or any principal, partner, officer, director, person performing similar functions or person controlling the investment adviser (i) within 10 years of the filing of the application has been convicted of a felony, or of any misdemeanor of which fraud is an essential element, or (ii) is permanently or temporarily enjoined by order or judgment from acting as an investment adviser, underwriter, dealer, principal or salesperson, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security, and in each case the facts relating to the conviction, order or judgment;
 - (7) (a) A statement as to whether the investment adviser is engaged or is to engage primarily in the business of ren-

- dering investment supervisory services; and
- (b) A statement that the investment adviser will furnish his, her, or its clients with such information as the Secretary of State deems necessary in the form prescribed by the Secretary of State by rule or regulation;
- (8) Such additional information as the Secretary of State may, by rule, regulation or order prescribe as necessary to determine the applicant's financial responsibility, business repute and qualification to act as an investment adviser.
 - (9) No applicant shall be registered or re-registered as an investment adviser under this Section unless and until each principal of the applicant who is actively engaged in the conduct and management of the applicant's advisory business in this State has passed an examination or completed an educational program conducted by the Secretary of State or an association of investment advisers or similar person, which examination or educational program has been designated by the Secretary of State by rule, regulation or order to be satisfactory for purposes of determining whether the applicant has sufficient knowledge of the securities business and laws relating thereto to conduct the business of a registered investment adviser.

Any person who was a registered investment adviser prior to September 30, 1963, and has continued to be so registered, and any individual who has passed an investment adviser examination administered by the Secretary of State, or passed an examination or completed an educational program designated by the Secretary of State by rule, regulation or order to be satisfactory for purposes of determining whether the applicant has sufficient knowledge of the securities business and laws relating thereto to conduct the business of a registered investment adviser, shall not be required to pass an examination or complete an educational program in order to continue to act as an investment adviser. The Secretary of State may by order waive the examination or educational program requirement for any applicant for registration under this subsection D if the principal of the applicant who is actively engaged in the conduct and management of the applicant's advisory business in this State has had such experience or education relating to the securities business as may be determined by the Secretary of State to be the equivalent of the examination or educational program. Any request for a waiver shall be filed with the Secretary of State in such form as may be prescribed by rule or regulation.

- (10) No applicant shall be registered or re-registered as an investment adviser under this Section 8 unless the application for registration or re-registration is accompanied by an application for registration

or re-registration for each person acting as an investment adviser representative on behalf of the adviser and a Securities Audit and Enforcement Fund fee that shall not be returnable in any event is paid with respect to each investment adviser representative.

- (11) The application for registration of an investment adviser shall be accompanied by a filing fee and a fee for each branch office in this State, in each case in the amount established pursuant to Section 11a of this Act, which fees shall not be returnable in any event.
- (12) The Secretary of State shall notify the investment adviser by written notice (which may be by electronic or facsimile transmission) of the effectiveness of the registration as an investment adviser in this State.
- (13) Any change which renders no longer accurate any information contained in any application for registration or re-registration of an investment adviser shall be reported to the Secretary of State within 10 business days after the occurrence of the change. In respect to assets and liabilities of an investment adviser that retains custody of clients' cash or securities or accepts pre-payment of fees in excess of \$500 per client and 6 or more months in advance only materially adverse changes need be reported by written notice (which may be by electronic or facsimile transmission) no later than the close of business on the second business day following the discovery thereof.
- (14) Each application for registration as an investment adviser shall become effective automatically on the 45th day following the filing of the application, required documents or information, and payment of the required fee unless (i) the Secretary of State has registered the investment adviser prior to that date or (ii) an action with respect to the applicant is pending under Section 11 of this Act.

D-5. A registered investment adviser or federal covered investment adviser desiring to register an investment adviser representative shall file an application with the Secretary of State, in the form as the Secretary of State may by rule or order prescribe, which the investment adviser representative is required by this Section to provide to the investment adviser, executed, verified, or authenticated by the investment adviser representative and setting forth or accompanied by:

- (1) The name, residence, and business address of the investment adviser representative;
- (2) A statement whether any federal or state license or registration as dealer, salesperson, investment adviser, or investment adviser representative has ever been refused, canceled, suspended, revoked or withdrawn;
- (3) The nature of employment with, and names and addresses of,

- employers of the investment adviser representative for the 10 years immediately preceding the date of application;
- (4) A brief description of any civil or criminal proceedings, of which fraud is an essential element, pending against the investment adviser representative and whether the investment adviser representative has ever been convicted of a felony or of any misdemeanor of which fraud is an essential element;
 - (5) Such additional information as the Secretary of State may by rule or order prescribe as necessary to determine the investment adviser representative's business repute or qualification to act as an investment adviser representative;
 - (6) Documentation that the individual has passed an examination conducted by the Secretary of State, an organization of investment advisers, or similar person, which examination has been designated by the Secretary of State by rule or order to be satisfactory for purposes of determining whether the applicant has sufficient knowledge of the investment advisory or securities business and laws relating to that business to act as a registered investment adviser representative; and
 - (7) A Securities Audit and Enforcement Fund fee established under Section 11a of this Act, which shall not be returnable in any event.

The Secretary of State may by order waive the examination requirement for an applicant for registration under this subsection D-5 who has had the experience or education relating to the investment advisory or securities business as may be determined by the Secretary of State to be the equivalent of the examination. A request for a waiver shall be filed with the Secretary of State in the form as may be prescribed by rule or order.

A change that renders no longer accurate any information contained in any application for registration or re-registration as an investment adviser representative must be reported to the Secretary of State within 10 business days after the occurrence of the change. If the activities that rendered an individual an investment adviser representative for the investment adviser are terminated, the investment adviser shall notify the Secretary of State in writing (which may be by electronic or facsimile transmission), within 30 days of the investment adviser representative's termination, using the appropriate termination notice form as the Secretary of State may prescribe by rule or order.

A registered investment adviser representative may transfer his or her registration under this Section 8 for the unexpired term of the registration from one registered investment adviser to another by the giving of notice of the transfer by the new investment adviser to the Secretary of

State in the form and subject to the conditions as the Secretary of State shall prescribe. The new registered investment adviser shall promptly file an application for registration of the investment adviser representative as provided in this subsection, accompanied by the Securities Audit and Enforcement Fund fee prescribed by paragraph (7) of this subsection D-5.

- E. (1) Subject to the provisions of subsection F of Section 11 of this Act, the registration of a dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative may be denied, suspended or revoked if the Secretary of State finds that the dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative or any principal officer, director, partner, member, trustee, manager or any person who performs a similar function of the dealer, limited Canadian dealer, or investment adviser:
- (a) has been convicted of any felony during the 10 year period preceding the date of filing of any application for registration or at any time thereafter, or of any misdemeanor of which fraud is an essential element;
 - (b) has engaged in any unethical practice in connection with any security, or in any fraudulent business practice;
 - (c) has failed to account for any money or property, or has failed to deliver any security, to any person entitled thereto when due or within a reasonable time thereafter;
 - (d) in the case of a dealer, limited Canadian dealer, or investment adviser, is insolvent;
 - (e) in the case of a dealer, limited Canadian dealer, salesperson, or registered principal of a dealer or limited Canadian dealer (i) has failed reasonably to supervise the securities activities of any of its salespersons or other employees and the failure has permitted or facilitated a violation of Section 12 of this Act or (ii) is offering or selling or has offered or sold securities in this State through a salesperson other than a registered salesperson, or, in the case of a salesperson, is selling or has sold securities in this State for a dealer, limited Canadian dealer, issuer or controlling person with knowledge that the dealer, limited Canadian dealer, issuer or controlling person has not complied with the provisions of this Act or (iii) has failed reasonably to supervise the implementation of compliance measures following notice by the Secretary of State of noncompliance with the Act or with the regulations promulgated thereunder or both or (iv) has failed to maintain and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of its salespersons that are reasonably

designed to achieve compliance with applicable securities laws and regulations;

- (f) in the case of an investment adviser, has failed reasonably to supervise the advisory activities of any of its investment adviser representatives or employees and the failure has permitted or facilitated a violation of Section 12 of this Act;
- (g) has violated any of the provisions of this Act;
- (h) has made any material misrepresentation to the Secretary of State in connection with any information deemed necessary by the Secretary of State to determine a dealer's, limited Canadian dealer's, or investment adviser's financial responsibility or a dealer's, limited Canadian dealer's, investment adviser's, salesperson's, or investment adviser representative's business repute or qualifications, or has refused to furnish any such information requested by the Secretary of State;
- (i) has had a license or registration under any Federal or State law regulating securities, commodity futures contracts, or stock futures contracts refused, cancelled, suspended, withdrawn, revoked, or otherwise adversely affected in a similar manner;
- (j) has had membership in or association with any self-regulatory organization registered under the Federal 1934 Act or the Federal 1974 Act suspended, revoked, refused, expelled, cancelled, barred, limited in any capacity, or otherwise adversely affected in a similar manner arising from any fraudulent or deceptive act or a practice in violation of any rule, regulation or standard duly promulgated by the self-regulatory organization;
- (k) has had any order entered against it after notice and opportunity for hearing by a securities agency of any state, any foreign government or agency thereof, the Securities and Exchange Commission, or the Federal Commodities Futures Trading Commission arising from any fraudulent or deceptive act or a practice in violation of any statute, rule or regulation administered or promulgated by the agency or commission;
- (l) in the case of a dealer or limited Canadian dealer, fails to maintain a minimum net capital in an amount which the Secretary of State may by rule or regulation require;
- (m) has conducted a continuing course of dealing of such nature as to demonstrate an inability to properly conduct the business of the dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative;
- (n) has had, after notice and opportunity for hearing, any injunction or order entered against it or license or registration

refused, canceled, suspended, revoked, withdrawn, limited, or otherwise adversely affected in a similar manner by any state or federal body, agency or commission regulating banking, insurance, finance or small loan companies, real estate or mortgage brokers or companies, if the action resulted from any act found by the body, agency or commission to be a fraudulent or deceptive act or practice in violation of any statute, rule or regulation administered or promulgated by the body, agency or commission;

- (o) has failed to file a return, or to pay the tax, penalty or interest shown in a filed return, or to pay any final assessment of tax, penalty or interest, as required by any tax Act administered by the Illinois Department of Revenue, until such time as the requirements of that tax Act are satisfied;
- (p) in the case of a natural person who is a dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative, has defaulted on an educational loan guaranteed by the Illinois Student Assistance Commission, until the natural person has established a satisfactory repayment record as determined by the Illinois Student Assistance Commission;
- (q) has failed to maintain the books and records required under this Act or rules or regulations promulgated under this Act or under any requirements established by the Securities and Exchange Commission or a self-regulatory organization;
- (r) has refused to allow or otherwise impeded designees of the Secretary of State from conducting an audit, examination, inspection, or investigation provided for under Section 8 or 11 of this Act;
- (s) has failed to maintain any minimum net capital or bond requirement set forth in this Act or any rule or regulation promulgated under this Act;
- (t) has refused the Secretary of State or his or her designee access to any office or location within an office to conduct an investigation, audit, examination, or inspection;
- (u) has advised or caused a public pension fund or retirement system established under the Illinois Pension Code to make an investment or engage in a transaction not authorized by that Code;
- (v) if a corporation, limited liability company, or limited liability partnership has been suspended, canceled, revoked, or has failed to register as a foreign corporation, limited liability company, or limited liability partnership with the Secretary of State;
- (w) is permanently or temporarily enjoined by any court of com-

petent jurisdiction, including any state, federal, or foreign government, from engaging in or continuing any conduct or practice involving any aspect of the securities or commodities business or in any other business where the conduct or practice enjoined involved investments, franchises, insurance, banking, or finance;

- (2) If the Secretary of State finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative, or is subject to an adjudication as a person under legal disability or to the control of a guardian, or cannot be located after reasonable search, or has failed after written notice to pay to the Secretary of State any additional fee prescribed by this Section or specified by rule or regulation, or if a natural person, has defaulted on an educational loan guaranteed by the Illinois Student Assistance Commission, the Secretary of State may by order cancel the registration or application.
- (3) Withdrawal of an application for registration or withdrawal from registration as a dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative becomes effective 30 days after receipt of an application to withdraw or within such shorter period of time as the Secretary of State may determine, unless any proceeding is pending under Section 11 of this Act when the application is filed or a proceeding is instituted within 30 days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Secretary of State by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Secretary of State may nevertheless institute a revocation or suspension proceeding within 2 years after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

F. The Secretary of State shall make available upon request the date that each dealer, investment adviser, salesperson, or investment adviser representative was granted registration, together with the name and address of the dealer, limited Canadian dealer, or issuer on whose behalf the salesperson is registered, and all orders of the Secretary of State denying or abandoning an application, or suspending or revoking registration, or censuring the persons. The Secretary of State may designate by rule, regulation or order the statements, information or reports submitted to or filed with him or her pursuant to this Section 8 which the Secretary of State determines are of a sensitive nature and therefore should be exempt from public disclosure. Any such statement, infor-

mation or report shall be deemed confidential and shall not be disclosed to the public except upon the consent of the person filing or submitting the statement, information or report or by order of court or in court proceedings.

- G. The registration or re-registration of a dealer or limited Canadian dealer and of all salespersons registered upon application of the dealer or limited Canadian dealer shall expire on the next succeeding anniversary date of the registration or re-registration of the dealer; and the registration or re-registration of an investment adviser and of all investment adviser representatives registered upon application of the investment adviser shall expire on the next succeeding anniversary date of the registration of the investment adviser; provided, that the Secretary of State may by rule or regulation prescribe an alternate date which any dealer registered under the Federal 1934 Act or a member of any self-regulatory association approved pursuant thereto, a member of a self-regulatory organization or stock exchange in Canada, or any investment adviser may elect as the expiration date of its dealer or limited Canadian dealer and salesperson registrations, or the expiration date of its investment adviser registration, as the case may be. A registration of a salesperson registered upon application of an issuer or controlling person shall expire on the next succeeding anniversary date of the registration, or upon termination or expiration of the registration of the securities, if any, designated in the application for his or her registration or the alternative date as the Secretary may prescribe by rule or regulation. Subject to paragraph (9) of subsection C of this Section 8, a salesperson's registration also shall terminate upon cessation of his or her employment, or termination of his or her appointment or authorization, in each case by the person who applied for the salesperson's registration, provided that the Secretary of State may by rule or regulation prescribe an alternate date for the expiration of the registration.
- H. Applications for re-registration of dealers, limited Canadian dealers, salespersons, investment advisers, and investment adviser representatives shall be filed with the Secretary of State prior to the expiration of the then current registration and shall contain such information as may be required by the Secretary of State upon initial application with such omission therefrom or addition thereto as the Secretary of State may authorize or prescribe. Each application for re-registration of a dealer, limited Canadian dealer, or investment adviser shall be accompanied by a filing fee, each application for re-registration as a salesperson shall be accompanied by a filing fee and a Securities Audit and Enforcement Fund fee established pursuant to Section 11a of this Act, and each application for re-registration as an investment adviser representative shall be accompanied by a Securities Audit and Enforcement Fund fee established under Section 11a of this Act, which shall not be returnable in any event. Notwithstanding the foregoing, applications for re-registra-

ment of an examination fee for administering any examination which it may conduct pursuant to subsection B, C, D, or D-5 of this Section 8.

- K. The Secretary of State may declare any application for registration or limited registration under this Section 8 abandoned by order if the applicant fails to pay any fee or file any information or document required under this Section 8 or by rule or regulation for more than 30 days after the required payment or filing date. The applicant may petition the Secretary of State for a hearing within 15 days after the applicant's receipt of the order of abandonment, provided that the petition sets forth the grounds upon which the applicant seeks a hearing.
- L. Any document being filed pursuant to this Section 8 shall be deemed filed, and any fee being paid pursuant to this Section 8 shall be deemed paid, upon the date of actual receipt thereof by the Secretary of State or his or her designee.
- M. The Secretary of State shall provide to the Illinois Student Assistance Commission annually or at mutually agreed periodic intervals the names and social security numbers of natural persons registered under subsections B, C, D and D-5 of this Section. The Illinois Student Assistance Commission shall determine if any student loan defaulter is registered as a dealer, limited Canadian dealer, salesperson, or investment adviser under this Act and report its determination to the Secretary of State or his or her designee.

Sec. 8a. Advertisement and sale of certain investments.

- (a) Every person who sells or offers to sell a certificate of deposit shall disclose in every advertisement therefor whether the certificate of deposit is insured, the identity of the insurer, and whether the certificate is backed by the full faith and credit of any government.
- (b) With respect to the sale of any uninsured certificate of deposit, each person referred to in subsection (a) shall notify the purchaser in writing of the lack of insurance.

Sec. 8b. Telephone Solicitation.

- (a) A telephone solicitor may not make an unsolicited telephone call to a natural person who does not have a previously existing account relationship with the telephone solicitor unless:
 - (1) immediately after making contact with the natural person to whom the call is made the telephone solicitor identifies himself or herself by name, identifies the dealer, investment adviser, or other person on whose behalf the telephone solicitor is calling, and states the purpose of the call; and
 - (2) the telephone solicitor makes the telephone call after 12:00 noon and before 9:00 p.m. on a Sunday or after 9:00 a.m. and before 9:00 p.m. on a weekday or a Saturday, as determined in the Central Time Zone.

tion of dealers, limited Canadian dealers, and investment advisers may be filed within 30 days following the expiration of the registration provided that the applicant pays the annual registration fee together with an additional amount equal to the annual registration fee and files any other information or documents that the Secretary of State may prescribe by rule or regulation or order. Any application filed within 30 days following the expiration of the registration shall be automatically effective as of the time of the earlier expiration provided that the proper fee has been paid to the Secretary of State.

Each registered dealer, limited Canadian dealer, or investment adviser shall continue to be registered if the registrant changes his, her, or its form of organization provided that the dealer or investment adviser files an amendment to his, her, or its application not later than 30 days following the occurrence of the change and pays the Secretary of State a fee in the amount established under Section 11a of this Act.

- I. (1) Every registered dealer, limited Canadian dealer, and investment adviser shall make and keep for such periods, such accounts, correspondence, memoranda, papers, books and records as the Secretary of State may by rule or regulation prescribe. All records so required shall be preserved for 3 years unless the Secretary of State by rule, regulation or order prescribes otherwise for particular types of records.
 - (2) Every registered dealer, limited Canadian dealer, and investment adviser shall file such financial reports as the Secretary of State may by rule or regulation prescribe.
 - (3) All the books and records referred to in paragraph (1) of this subsection I are subject at any time or from time to time to such reasonable periodic, special or other audits, examinations, or inspections by representatives of the Secretary of State, within or without this State, as the Secretary of State deems necessary or appropriate in the public interest or for the protection of investors.
 - (4) At the time of an audit, examination, or inspection, the Secretary of State, by his or her designees, may conduct an interview of any person employed or appointed by or affiliated with a registered dealer, limited Canadian dealer, or investment advisor, provided that the dealer, limited Canadian dealer, or investment advisor shall be given reasonable notice of the time and place for the interview. At the option of the dealer, limited Canadian dealer, or investment advisor, a representative of the dealer or investment advisor with supervisory responsibility over the individual being interviewed may be present at the interview.
- J. The Secretary of State may require by rule or regulation the payment of an additional fee for the filing of information or documents required to be filed by this Section which have not been filed in a timely manner. The Secretary of State may also require by rule or regulation the pay-

- (b) The Secretary may adopt rules or regulations necessary to implement or enforce this Section.
- (c) A telephone solicitor subject to this Section who makes unsolicited telephone calls shall implement in-house systems and procedures to ensure that every effort is made to not call persons who ask not to be called by the telephone solicitor again.

Sec. 8c. Non-English Language Transactions. A person subject to registration under Section 8 of this Act may conduct transactions in a language other than English through an employee or agent acting as interpreter or through an interpreter provided by the customer.

Sec. 9. Advertising. The Secretary of State may by rule or regulation require the filing with him or her of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature or advertising communication addressed or intended for distribution or dissemination in this State to prospective investors, including clients or prospective clients of an investment adviser; provided, that no such filing may be required with respect to:

- (1) securities exempt from registration pursuant to the provisions of Section 3 of this Act or sold solely in transactions of the nature set forth in Section 4 of this Act;
- (2) securities registered under both the Federal 1933 Act and subsection A or B of Section 5, 6 or 7 of this Act;
- (2.5) federal covered securities; or
- (3) advertisements appearing in newspapers, magazines or periodicals of regular publication and established paid circulation, other than an advertisement which constitutes an offer of securities which is not covered by any of the exemptions set forth in Section 4 of this Act, and which securities are not exempt from registration pursuant to the provisions of Section 3 of this Act.

Sec. 10. Service of process.

A. A consent to service of process shall be in the form prescribed by the Secretary of State, shall be irrevocable, and shall provide that actions arising out of or founded upon the offer or sale of any securities in alleged violation of this Act may be commenced against the person executing the consent in any circuit court within this State, by the service of process upon the Secretary of State.

Service of any process or pleading in any action against a person who has filed under this Act a consent to service of process upon the Secretary of State shall, if made on the Secretary of State, be by duplicate copies, one of which shall be filed in the office of the Secretary of State and the other immediately forwarded by the Secretary of State by registered mail or certified mail, return receipt requested, to the person at his or her latest address on file in the office of the Secretary of State.

The filing fee for service of process under this subsection A shall be as established pursuant to Section 11a of this Act, and shall not be returnable in any event.

- B. (1) The filing of a notice filing under Section 2a of this Act or of an application for registration under Section 5, 6, 7, or 8 of this Act, or the offer, sale or delivery of securities in this State, whether effected by mail or otherwise, by any person (unless the securities are exempt from registration under subsection A or B of Section 3 of this Act) shall be equivalent to and shall constitute an appointment of the Secretary of State, or his or her successors in office, by the person and the issuer of the securities to be the true and lawful attorney for the person upon whom may be served all lawful process in any action or proceeding against the person, arising out of the offer or sale of the securities.
- (2) Service of process under this subsection B shall be made by serving a copy upon the Secretary of State or any employee in his or her office designated by the Secretary of State to accept such service for him or her, provided notice of such and a copy of the process are, within 10 days thereafter, sent by registered mail or certified mail, return receipt requested, by the plaintiff to the defendant, at the last known address of the defendant. The filing fee for service of process under this subsection B shall be as established pursuant to Section 11a of this Act, and shall not be returnable in any event. The Secretary of State shall keep a record of all such processes which shall show the day of the service.
- C. Notwithstanding the foregoing, the filing of an application by an issuer, controlling person, registered dealer, or limited Canadian dealer for the registration of a salesperson shall also constitute the appointment by the salesperson of the issuer, controlling person, registered dealer, or limited Canadian dealer to be the true and lawful attorney for the person upon whom may be served all lawful process against the person, arising under subsection J of Section 8 or Section 11 of this Act. Following any service in the foregoing manner, the Secretary of State shall, as soon thereafter as reasonably practical, serve a copy of the lawful process to the person by registered mail or certified mail, return receipt requested, at his, her, or its last known address.

Sec. 11. Duties and powers of the Secretary of State.

- A. (1) The administration of this Act is vested in the Secretary of State, who may from time to time make, amend and rescind such rules and regulations as may be necessary to carry out this Act, including rules and regulations governing procedures of registration, statements, applications and reports for various classes of securities, persons and matters within his or her jurisdiction and defining any terms, whether or not used in this Act, insofar as the defi-

nitions are not inconsistent with this Act. The rules and regulations adopted by the Secretary of State under this Act shall be effective in the manner provided for in the Illinois Administrative Procedure Act.

- (2) Among other things, the Secretary of State shall have authority, for the purposes of this Act, to prescribe the form or forms in which required information shall be set forth, accounting practices, the items or details to be shown in balance sheets and earning statements, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and non-recurring income, in the differentiation of investment and operating income, and in the preparation of consolidated balance sheets or income accounts of any person, directly or indirectly, controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.
- (3) No provision of this Act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the Secretary of State under this Act, notwithstanding that the rule or regulation may, after the act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.
- (4) The Securities Department of the Office of the Secretary of State shall be deemed a criminal justice agency for purposes of all federal and state laws and regulations and, in that capacity, shall be entitled to access to any information available to criminal justice agencies and has the power to appoint special agents to conduct all investigations, searches, seizures, arrests, and other duties imposed under the provisions of any law administered by the Department. The special agents have and may exercise all the powers of peace officers solely for the purpose of enforcing provisions of this Act.

The Director must authorize to each special agent employed under this Section a distinct badge that, on its face, (i) clearly states that the badge is authorized by the Department and (ii) contains a unique and identifying number.

Special agents shall comply with all training requirements established for law enforcement officers by provisions of the Illinois Police Training Act.

- (5) The Secretary of State, by rule, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision of Section 5, 6, 7, 8, 8a, or 9 of this Act or of any rule promulgated under these Sections, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the

protection of investors.

- B. The Secretary of State may, anything in this Act to the contrary notwithstanding, require financial statements and reports of the issuer, dealer, salesperson, or investment adviser, or investment adviser representative as often as circumstances may warrant. In addition, the Secretary of State may secure information or books and records from or through others and may make or cause to be made investigations respecting the business, affairs, and property of the issuer of securities, any person involved in the sale or offer for sale, purchase or offer to purchase of any mineral investment contract, mineral deferred delivery contract, or security and of dealers, salespersons, and investment advisers, and investment adviser representatives that are registered or are the subject of an application for registration under this Act. The costs of an investigation shall be borne by the registrant or the applicant, provided that the registrant or applicant shall not be obligated to pay the costs without his, her or its consent in advance.
- C. Whenever it shall appear to the Secretary of State, either upon complaint or otherwise, that this Act, or any rule or regulation prescribed under authority thereof, has been or is about to be violated, he or she may, in his or her discretion, do one or more of the following:
 - (1) require or permit the person to file with the Secretary of State a statement in writing under oath, or otherwise, as to all the facts and circumstances concerning the subject matter which the Secretary of State believes to be in the public interest to investigate, audit, examine, or inspect;
 - (2) conduct an investigation, audit, examination, or inspection as necessary or advisable for the protection of the interests of the public; and
 - (3) appoint investigators to conduct all investigations, searches, seizures, arrests, and other duties imposed under the provisions of any law administered by the Department. The Director must authorize to each investigator employed under this Section a distinct badge that, on its face, (i) clearly states that the badge is authorized by the Department and (ii) contains a unique and identifying number.
- D. (1) For the purpose of all investigations, audits, examinations, or inspections which in the opinion of the Secretary of State are necessary and proper for the enforcement of this Act, the Secretary of State or a person designated by him or her is empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require, by subpoena or other lawful means provided by this Act or the rules adopted by the Secretary of State, the production of any books and records, papers, or other documents which the Secretary of State or a person designated by him or her deems relevant or material to the inquiry.

- (2) The Secretary of State or a person designated by him or her is further empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books and records, papers, or other documents in this State at the request of a securities agency of another state, if the activities constituting the alleged violation for which the information is sought would be in violation of Section 12 of this Act if the activities had occurred in this State.
- (3) The Circuit Court of any County of this State, upon application of the Secretary of State or a person designated by him or her may order the attendance of witnesses, the production of books and records, papers, accounts and documents and the giving of testimony before the Secretary of State or a person designated by him or her; and any failure to obey the order may be punished by the Circuit Court as a contempt thereof.
- (4) The fees of subpoenaed witnesses under this Act for attendance and travel shall be the same as fees of witnesses before the Circuit Courts of this State, to be paid when the witness is excused from further attendance, provided, the witness is subpoenaed at the instance of the Secretary of State; and payment of the fees shall be made and audited in the same manner as other expenses of the Secretary of State.
- (5) Whenever a subpoena is issued at the request of a complainant or respondent as the case may be, the Secretary of State may require that the cost of service and the fee of the witness shall be borne by the party at whose instance the witness is summoned.
- (6) The Secretary of State shall have power at his or her discretion, to require a deposit to cover the cost of the service and witness fees and the payment of the legal witness fee and mileage to the witness served with subpoena.
- (7) A subpoena issued under this Act shall be served in the same manner as a subpoena issued out of a circuit court.
- (8) The Secretary of State may in any investigation, audits, examinations, or inspections cause the taking of depositions of persons residing within or without this State in the manner provided in civil actions under the laws of this State.

E. Anything in this Act to the contrary notwithstanding:

- (1) If the Secretary of State shall find that the offer or sale or proposed offer or sale or method of offer or sale of any securities by any person, whether exempt or not, in this State, is fraudulent, or would work or tend to work a fraud or deceit, or is being offered or sold in violation of Section 12, or there has been a failure or refusal to submit any notification filing or fee required under this Act, the Secretary of State may by written order prohibit or suspend the offer or sale of securities by that person or deny or revoke the reg-

istration of the securities or the exemption from registration for the securities.

- (2) If the Secretary of State shall find that any person has violated subsection C, D, E, F, G, H, I, J, or K of Section 12 of this Act, the Secretary of State may by written order temporarily or permanently prohibit or suspend the person from offering or selling any securities, any mineral investment contract, or any mineral deferred delivery contract in this State, provided that any person who is the subject of an order of permanent prohibition may petition the Secretary of State for a hearing to present evidence of rehabilitation or change in circumstances justifying the amendment or termination of the order of permanent prohibition.
- (3) If the Secretary of State shall find that any person is engaging or has engaged in the business of selling or offering for sale securities as a dealer or salesperson or is acting or has acted as an investment adviser, investment adviser representative, or federal covered investment adviser, without prior thereto and at the time thereof having complied with the registration or notice filing requirements of this Act, the Secretary of State may by written order prohibit or suspend the person from engaging in the business of selling or offering for sale securities, or acting as an investment adviser, investment adviser representative, or federal covered investment adviser, in this State.
- (4) In addition to any other sanction or remedy contained in this subsection E, the Secretary of State, after finding that any provision of this Act has been violated, may impose a fine as provided by rule, regulation or order not to exceed \$10,000, for each violation of this Act, may issue an order of public censure against the violator, and may charge as costs of investigation all reasonable expenses, including attorney's fees and witness fees.

- F (1) The Secretary of State shall not deny, suspend or revoke the registration of securities, suspend or revoke the registration of a dealer, salesperson, investment adviser, or investment adviser representative, prohibit or suspend the offer or sale of any securities, prohibit or suspend any person from offering or selling any securities in this State, prohibit or suspend a dealer or salesperson from engaging in the business of selling or offering for sale securities, prohibit or suspend a person from acting as an investment adviser or federal covered investment adviser, or investment adviser representative, impose any fine for violation of this Act, issue an order of public censure, or enter into an agreed settlement except after an opportunity for hearing upon not less than 10 days notice given by personal service or registered mail or certified mail, return receipt requested, to the person or persons concerned. Such notice shall state the date and time and place of the hearing and shall contain

a brief statement of the proposed action of the Secretary of State and the grounds for the proposed action. A failure to appear at the hearing or otherwise respond to the allegations set forth in the notice of hearing shall constitute an admission of any facts alleged therein and shall constitute sufficient basis to enter an order.

- (2) Anything herein contained to the contrary notwithstanding, the Secretary of State may temporarily prohibit or suspend, for a maximum period of 90 days, by an order effective immediately, the offer or sale or registration of securities, the registration of a dealer, salesperson, investment adviser, or investment adviser representative, or the offer or sale of securities by any person, or the business of rendering investment advice, without the notice and prior hearing in this subsection prescribed, if the Secretary of State shall in his or her opinion, based on credible evidence, deem it necessary to prevent an imminent violation of this Act or to prevent losses to investors which the Secretary of State reasonably believes will occur as a result of a prior violation of this Act. Immediately after taking action without such notice and hearing, the Secretary of State shall deliver a copy of the temporary order to the respondent named therein by personal service or registered mail or certified mail, return receipt requested. The temporary order shall set forth the grounds for the action and shall advise that the respondent may request a hearing, that the request for a hearing will not stop the effectiveness of the temporary order and that respondent's failure to request a hearing within 30 days after the date of the entry of the temporary order shall constitute an admission of any facts alleged therein and shall constitute sufficient basis to make the temporary order final. Any provision of this paragraph (2) to the contrary notwithstanding, the Secretary of State may not pursuant to the provisions of this paragraph (2) suspend the registration of a dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative based upon sub-paragraph (n) of paragraph (1) of subsection E of Section 8 of this Act or revoke the registration of securities or revoke the registration of any dealer, salesperson, investment adviser representative, or investment adviser.
- (3) The Secretary of State may issue a temporary order suspending or delaying the effectiveness of any registration of securities under subsection A or B of Section 5, 6 or 7 of this Act subsequent to and upon the basis of the issuance of any stop, suspension or similar order by the Securities and Exchange Commission with respect to the securities which are the subject of the registration under subsection A or B of Section 5, 6 or 7 of this Act, and the order shall become effective as of the date and time of effectiveness of the

Securities and Exchange Commission order and shall be vacated automatically at such time as the order of the Securities and Exchange Commission is no longer in effect.

- (4) When the Secretary of State finds that an application for registration as a dealer, salesperson, investment adviser, or investment adviser representative should be denied, the Secretary of State may enter an order denying the registration. Immediately after taking such action, the Secretary of State shall deliver a copy of the order to the respondent named therein by personal service or registered mail or certified mail, return receipt requested. The order shall state the grounds for the action and that the matter will be set for hearing upon written request filed with the Secretary of State within 30 days after the receipt of the request by the respondent. The respondent's failure to request a hearing within 30 days after receipt of the order shall constitute an admission of any facts alleged therein and shall make the order final. If a hearing is held, the Secretary of State shall affirm, vacate, or modify the order.
- (5) The findings and decision of the Secretary of State upon the conclusion of each final hearing held pursuant to this subsection shall be set forth in a written order signed on behalf of the Secretary of State by his or her designee and shall be filed as a public record. All hearings shall be held before a person designated by the Secretary of State, and appropriate records thereof shall be kept.
- (6) Notwithstanding the foregoing, the Secretary of State, after notice and opportunity for hearing, may at his or her discretion enter into an agreed settlement, stipulation or consent order with a respondent in accordance with the provisions of the Illinois Administrative Procedure Act. The provisions of the agreed settlement, stipulation or consent order shall have the full force and effect of an order issued by the Secretary of State.
- (7) Anything in this Act to the contrary notwithstanding, whenever the Secretary of State finds that a person is currently expelled from, refused membership in or association with, or limited in any material capacity by a self-regulatory organization registered under the Federal 1934 Act or the Federal 1974 Act because of a fraudulent or deceptive act or a practice in violation of a rule, regulation, or standard duly promulgated by the self-regulatory organization, the Secretary of State may, at his or her discretion, enter a Summary Order of Prohibition, which shall prohibit the offer or sale of any securities, mineral investment contract, or mineral deferred delivery contract by the person in this State. The order shall take effect immediately upon its entry. Immediately after taking the action the Secretary of State shall deliver a copy of the order to the named Respondent by personal service or registered mail or certified mail, return receipt requested. A person who is the subject

of an Order of Prohibition may petition the Secretary of State for a hearing to present evidence of rehabilitation or change in circumstances justifying the amendment or termination of the Order of Prohibition.

- G. No administrative action shall be brought by the Secretary of State for relief under this Act or upon or because of any of the matters for which relief is granted by this Act after the earlier to occur of (i) 3 years from the date upon which the Secretary of State had notice of facts which in the exercise of reasonable diligence would lead to actual knowledge of the alleged violation of the Act, or (ii) 5 years from the date on which the alleged violation occurred.
- H. The action of the Secretary of State in denying, suspending, or revoking the registration of a dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative, in prohibiting any person from engaging in the business of offering or selling securities as a dealer, limited Canadian dealer, or salesperson, in prohibiting or suspending the offer or sale of securities by any person, in prohibiting a person from acting as an investment adviser, federal covered investment adviser, or investment adviser representative, in denying, suspending, or revoking the registration of securities, in prohibiting or suspending the offer or sale or proposed offer or sale of securities, in imposing any fine for violation of this Act, or in issuing any order shall be subject to judicial review in the Circuit Courts of Cook or Sangamon Counties in this State. The Administrative Review Law shall apply to and govern every action for the judicial review of final actions or decisions of the Secretary of State under this Act.
- I. Notwithstanding any other provisions of this Act to the contrary, whenever it shall appear to the Secretary of State that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of this Act or of any rule or regulation prescribed under authority of this Act, the Secretary of State may at his or her discretion, through the Attorney General take any of the following actions:
 - (1) File a complaint and apply for a temporary restraining order without notice, and upon a proper showing the court may enter a temporary restraining order without bond, to enforce this Act;
 - (2) File a complaint and apply for a preliminary or permanent injunction, and, after notice and a hearing and upon a proper showing, the court may grant a preliminary or permanent injunction and may order the defendant to make an offer of rescission with respect to any sales or purchases of securities, mineral investment contracts, or mineral deferred delivery contracts determined by the court to be unlawful under this Act.
 - (3) Seek the seizure of assets when probable cause exists that the assets were obtained by a defendant through conduct in violation of Section 12, paragraph F, G, I, J, K, or L of this Act, and thereby sub-

ject to a judicial forfeiture hearing as required under this Act.

- (a) In the event that such probable cause exists that the subject of an investigation who is alleged to have committed one of the relevant violations of this Act has in his possession assets obtained as a result of the conduct giving rise to the violation, the Secretary of State may seek a seizure warrant in any circuit court in Illinois.
 - (b) In seeking a seizure warrant, the Secretary of State, or his or her designee, shall submit to the court a sworn affidavit detailing the probable cause evidence for the seizure, the location of the assets to be seized, the relevant violation under Section 12 of this Act, and a statement detailing any known owners or interest holders in the assets.
 - (c) Seizure of the assets shall be made by any peace officer upon process of the seizure warrant issued by the court. Following the seizure of assets under this Act and pursuant to a seizure warrant, notice of seizure, including a description of the seized assets, shall immediately be returned to the issuing court. Seized assets shall be maintained pending a judicial forfeiture hearing in accordance with the instructions of the court.
 - (d) In the event that management of seized assets becomes necessary to prevent the devaluation, dissipation, or otherwise to preserve the property, the court shall have jurisdiction to appoint a receiver, conservator, ancillary receiver, or ancillary conservator for that purpose, as provided in item (2) of this subsection.
- (4) Seek the forfeiture of assets obtained through conduct in violation of Section 12, paragraph F, G, H, I, J, K, or L when authorized by law. A forfeiture must be ordered by a circuit court or an action brought by the Secretary of State as provided for in this Act, under a verified complaint for forfeiture.
- (a) In the event assets have been seized pursuant to this Act, forfeiture proceedings shall be instituted by the Attorney General within 45 days of seizure.
 - (b) Service of the complaint filed under the provisions of this Act shall be made in the manner as provided in civil actions in this State.
 - (c) Only an owner of or interest holder in the property may file an answer asserting a claim against the property. For purposes of this Section, the owner or interest holder shall be referred to as claimant.
 - (d) The answer must be signed by the owner or interest holder under penalty of perjury and must set forth:
 - (i) the caption of the proceedings as set forth on the notice

- of pending forfeiture and the name of the claimant;
 - (ii) the address at which the claimant will accept mail;
 - (iii) the nature and extent of the claimant's interest in the property;
 - (iv) the date, identity of the transferor, and circumstances of the claimant's acquisition of the interest in the property;
 - (v) the name and address of all other persons known to have an interest in the property;
 - (vi) the specific provisions of this Act relied on in asserting that the property is not subject to forfeiture;
 - (vii) all essential facts supporting each assertion; and
 - (viii) the precise relief sought.
- (e) The answer must be filed with the court within 45 days after service of the complaint.
 - (f) A property interest is exempt from forfeiture under this Act if its owner or interest holder establishes by a preponderance of evidence that the owner or interest holder:
 - (i) is not legally accountable for the conduct giving rise to the forfeiture, did not acquiesce in it, and did not know and could not reasonably have known of the conduct or that the conduct was likely to occur;
 - (ii) with respect to conveyances, did not hold the property jointly or in common with a person whose conduct gave rise to the forfeiture;
 - (iii) does not hold the property for the benefit of or as a nominee for any person whose conduct gave rise to its forfeiture and the owner or interest holder acquires it as a bona fide purchaser for value without knowingly taking part in the conduct giving rise to the forfeiture; or
 - (iv) acquired the interest after the commencement of the conduct giving rise to its forfeiture and the owner or interest holder acquired the interest as a mortgagee, secured creditor, lienholder, or bona fide purchaser for value without knowledge of the conduct that gave rise to the forfeiture.
 - (g) The hearing must be held within 60 days after the answer is filed unless continued for good cause.
 - (h) During the probable cause portion of the judicial in rem proceeding wherein the Secretary of State presents its case-in-chief, the court must receive and consider, among other things, any relevant hearsay evidence and information . The laws of evidence relating to civil actions shall apply to all other portions of the judicial in rem proceeding.
 - (i) The Secretary of State shall show the existence of probable cause for forfeiture of the property. If the Secretary of State

shows probable cause, the claimant has the burden of showing by a preponderance of the evidence that the claimant's interest in the property is not subject to forfeiture.

- (j) If the Secretary of State does not show the existence of probable cause or a claimant has an interest that is exempt under subdivision I (4) (d) of this Section, the court shall order the interest in the property returned or conveyed to the claimant and shall order all other property forfeited to the Secretary of State pursuant to all provisions of this Act. If the Secretary of State does show the existence of probable cause and the claimant does not establish by a preponderance of the evidence that the claimant has an interest that is exempt under subsection D herein, the court shall order all the property forfeited to the Secretary of State pursuant to the provisions of the Section.
- (k) A defendant convicted in any criminal proceeding is precluded from later denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding for violations of the Act giving rise to forfeiture of property herein regardless of the pendency of an appeal from that conviction. However, evidence of the pendency of an appeal is admissible.
- (l) An acquittal or dismissal in a criminal proceeding for violations of the Act giving rise to the forfeiture of property herein shall not preclude civil proceedings under this provision; however, for good cause shown, on a motion by the Secretary of State, the court may stay civil forfeiture proceedings during the criminal trial for a related criminal indictment or information alleging violation of the provisions of Section 12 of the Illinois Securities Law of 1953. Property subject to forfeiture under this Section shall not be subject to return or release by a court exercising jurisdiction over a criminal case involving the seizure of the property unless the return or release is consented to by the Secretary of State.
- (m) All property declared forfeited under this Act vests in the State on the commission of the conduct giving rise to forfeiture together with the proceeds of the property after that time. Any such property or proceeds subsequently transferred to any person remain subject to forfeiture and thereafter shall be ordered forfeited unless the transferee claims and establishes in a hearing under the provisions of this Act that the transferee's interest is exempt under the Act. Any assets forfeited to the State shall be disposed of in following manner:
 - (i) all forfeited property and assets shall be liquidated by

- the Secretary of State in accordance with all laws and rules governing the disposition of such property;
- (ii) the Secretary of State shall provide the court at the time the property and assets are declared forfeited a verified statement of investors subject to the conduct giving rise to the forfeiture;
 - (iii) after payment of any costs of sale, receivership, storage, or expenses for preservation of the property seized, other costs to the State, and payment to claimants for any amount deemed exempt from forfeiture, the proceeds from liquidation shall be distributed pro rata to investors subject to the conduct giving rise to the forfeiture; and
 - (iv) any proceeds remaining after all verified investors have been made whole shall be distributed 25% to the Securities Investors Education Fund, 25% to the Securities Audit and Enforcement Fund, 25% to the Attorney General or any State's Attorney bringing criminal charges for the conduct giving rise to the forfeiture, and 25% to other law enforcement agencies participating in the investigation of the criminal charges for the conduct giving rise to the forfeiture. In the event that no other law enforcement agencies are involved in the investigation of the conduct giving rise to the forfeiture, then the portion to other law enforcement agencies shall be distributed to the Securities Investors Education Fund.
- (n) The Secretary of State shall notify by certified mail, return receipt requested, all known investors in the matter giving rise to the forfeiture of the forfeiture proceeding and sale of assets forfeited arising from the violations of this Act, and shall further publish notice in a paper of general circulation in the district in which the violations were prosecuted. The notice to investors shall identify the name, address, and other identifying information about any defendant prosecuted for violations of this Act that resulted in forfeiture and sale of property, the offense for which the defendant was convicted, and that the court has ordered forfeiture and sale of property for claims of investors who incurred losses or damages as a result of the violations. Investors may then file a claim in a form prescribed by the Secretary of State in order to share in disbursement of the proceeds from sale of the forfeited property. Investor claims must be filed with the Secretary of State within 30 days after receipt of the certified mail return receipt, or within 30 days after the last date of publication of

the general notice in a paper of general circulation in the district in which the violations were prosecuted, whichever occurs last.

- (o) A civil action under this subsection must be commenced within 5 years after the last conduct giving rise to the forfeiture became known or should have become known or 5 years after the forfeitable property is discovered, whichever is later, excluding time during which either the property or claimant is out of this State or in confinement or during which criminal proceedings relating to the same conduct are in progress.
- (p) If property is seized for evidence and for forfeiture, the time periods for instituting judicial forfeiture proceedings shall not begin until the property is no longer necessary for evidence.
- (q) Notwithstanding other provisions of this Act, the Secretary of State and a claimant of forfeitable property may enter into an agreed-upon settlement concerning the forfeitable property in such an amount and upon such terms as are set out in writing in a settlement agreement.
- (r) Nothing in this Act shall apply to property that constitutes reasonable bona fide attorney's fees paid to an attorney for services rendered or to be rendered in the forfeiture proceeding or criminal proceeding relating directly thereto when the property was paid before its seizure and before the issuance of any seizure warrant or court order prohibiting transfer of the property and when the attorney, at the time he or she received the property, did not know that it was property subject to forfeiture under this Act.

The court shall further have jurisdiction and authority, in addition to the penalties and other remedies in this Act provided, to enter an order for the appointment of the court or a person as a receiver, conservator, ancillary receiver or ancillary conservator for the defendant or the defendant's assets located in this State, or to require restitution, damages or disgorgement of profits on behalf of the person or persons injured by the act or practice constituting the subject matter of the action, and may assess costs against the defendant for the use of the State; provided, however, that the civil remedies of rescission and appointment of a receiver, conservator, ancillary receiver or ancillary conservator shall not be available against any person by reason of the failure to file with the Secretary of State, or on account of the contents of, any report of sale provided for in subsection G or P of Section 4, paragraph (2) of subsection D of Sections 5 and 6, or paragraph (2) of subsection F of Section 7 of this Act. Appeals may be taken as in other civil

cases.

- J. In no case shall the Secretary of State, or any of his or her employees or agents, in the administration of this Act, incur any official or personal liability by instituting an injunction or other proceeding or by denying, suspending or revoking the registration of a dealer or salesperson, or by denying, suspending or revoking the registration of securities or prohibiting the offer or sale of securities, or by suspending or prohibiting any person from acting as a dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative or from offering or selling securities.
- K. No provision of this Act shall be construed to require or to authorize the Secretary of State to require any investment adviser or federal covered investment adviser engaged in rendering investment supervisory services to disclose the identity, investments, or affairs of any client of the investment adviser or federal covered investment adviser, except insofar as the disclosure may be necessary or appropriate in a particular proceeding or investigation having as its object the enforcement of this Act.
- L. Whenever, after an examination, investigation or hearing, the Secretary of State deems it of public interest or advantage, he or she may certify a record to the State's Attorney of the county in which the act complained of, examined or investigated occurred. The State's Attorney of that county within 90 days after receipt of the record shall file a written statement at the Office of the Secretary of State, which statement shall set forth the action taken upon the record, or if no action has been taken upon the record that fact, together with the reasons therefor, shall be stated.
- M. The Secretary of State may initiate, take, pursue, or prosecute any action authorized or permitted under Section 6d of the Federal 1974 Act.
- N.
 - (1) Notwithstanding any provision of this Act to the contrary, to encourage uniform interpretation, administration, and enforcement of the provisions of this Act, the Secretary of State may cooperate with the securities agencies or administrators of one or more states, Canadian provinces or territories, or another country, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Securities Investor Protection Corporation, any self-regulatory organization, and any governmental law enforcement or regulatory agency.
 - (2) The cooperation authorized by paragraph (1) of this subsection includes, but is not limited to, the following:
 - (a) establishing or participating in a central depository or depositories for registration under this Act and for documents or records required under this Act;
 - (b) making a joint audit, inspection, examination, or investigation;

- (c) holding a joint administrative hearing;
- (d) filing and prosecuting a joint civil or criminal proceeding;
- (e) sharing and exchanging personnel;
- (f) sharing and exchanging information and documents; or
- (g) issuing any joint statement or policy.

Sec. 11.5. Securities exchange registration.

- (a) A person shall not operate a securities exchange in this State unless it has been registered with the Secretary of State.
- (b) The Secretary of State shall adopt rules or regulations necessary to carry out the provisions of this Section, including rules or regulations prescribing:
 - (1) The fees for the registration of a securities exchange; and
 - (2) The bonding and minimum capitalization requirements for a securities exchange.
- (c) The Securities Director, or his or her designee, shall investigate the qualifications of each person who applies to the Secretary of State for the registration of a securities exchange. The applicant shall pay the cost of the investigation.
- (d) The Secretary of State may deny, suspend, or revoke the registration of a securities exchange if the Securities Director, or his her designee, determines that such action is in the public interest and the provisions of subsection (a) of this Section are applicable to the person who applied for the registration of a securities exchange.
- (e) A securities exchange located in this State shall not allow the trading of a security in this State unless it is issued by an issuer that has complied with the requirements of this Act and any other applicable requirements of federal or State law.
- (f) Any transaction, solicitation, or other activity directly related to the purchase, sale, or other transfer of securities listed on a securities exchange located in this State shall be deemed to be a transaction in this State.
- (g) The Secretary of State may establish reasonable fees by rule or regulation.
- (h) A registered dealer or salesperson shall not use a securities exchange to effect or report any transaction concerning a security unless the securities exchange is registered with the Secretary of State or is excluded from the provisions of Section 2.28 and this Section of the Act.

Sec. 11a. Fees.

- (1) The Secretary of State shall by rule or regulation impose and shall collect reasonable fees necessary for the administration of this Act including, but not limited to, fees for the following purposes:
 - (a) filing an application pursuant to paragraph (2) of subsection F of Section 4 of this Act;
 - (b) examining an application and report pursuant to paragraph (2) of

- subsection F of Section 4 of this Act;
- (c) filing a report pursuant to subsection G of Section 4 of this Act, determined in accordance with paragraph (4) of subsection G of Section 4 of this Act;
 - (d) examining an offering sheet pursuant to subsection P of Section 4 of this Act;
 - (e) filing a report pursuant to subsection P of Section 4, determined in accordance with subsection P of Section 4 of this Act;
 - (f) examining an application to register securities under subsection B of Section 5 of this Act;
 - (g) examining an amended or supplemental prospectus filed pursuant to the undertaking required by sub-paragraph (i) of paragraph (2) of subsection B of Section 5 of this Act;
 - (h) registering or renewing registration of securities under Section 5, determined in accordance with subsection C of Section 5 of this Act;
 - (i) registering securities in excess of the amount initially registered, determined in accordance with paragraph (2) of subsection C of Section 5 of this Act;
 - (j) failure to file timely an application for renewal under subsection E of Section 5 of this Act;
 - (k) failure to file timely any document or information required under Section 5 of this Act;
 - (l) examining an application to register face amount certificate contracts under subsection B of Section 6 of this Act;
 - (m) examining an amended or supplemental prospectus filed pursuant to the undertaking required by sub-paragraph (f) of paragraph (2) of subsection B of Section 6 of this Act;
 - (n) registering or renewing registration of face amount certificate contracts under Section 6 of this Act;
 - (o) amending a registration of face amount certificate contracts pursuant to subsection E of Section 6 of this Act to add any additional series, type or class of contract;
 - (p) failure to file timely an application for renewal under subsection F of Section 6 of this Act;
 - (q) adding to or withdrawing from deposits with respect to face amount certificate contracts pursuant to subsection H of Section 6, a transaction charge payable at the times and in the manner specified in subsection H of Section 6 (which transaction charge shall be in addition to the annual fee called for by subsection H of Section 6 of this Act);
 - (r) failure to file timely any document or information required under Section 6 of this Act;
 - (s) examining an application to register investment fund shares under subsection B of Section 7 of this Act;

- (t) examining an amended or supplemental prospectus filed pursuant to the undertaking required by sub-paragraph (f) of paragraph (2) of subsection B of Section 7 of this Act;
- (u) registering or renewing registration of investment fund shares under Section 7 of this Act;
- (v) amending a registration of investment fund shares pursuant to subsection D of Section 7 of this Act to register an additional class or classes of investment fund shares;
- (w) failure to file timely an application for renewal under paragraph (l) of subsection G of Section 7 of this Act;
- (x) examining an application for renewal of registration of investment fund shares under paragraph (2) of subsection G of Section 7 of this Act;
- (y) failure to file timely any document or information required under Section 7 of this Act;
- (z) filing an application for registration or re-registration of a dealer or limited Canadian dealer under Section 8 of this Act for each office in this State;
- (aa) in connection with an application for the registration or re-registration of a salesperson under Section 8 of this Act, for the following purposes:
 - (i) filing an application;
 - (ii) a Securities Audit and Enforcement Fund fee; and
 - (iii) a notification filing of federal covered investment advisers;
- (bb) in connection with an application for the registration or re-registration of an investment adviser under Section 8 of this Act;
- (cc) failure to file timely any document or information required under Section 8 of this Act;
- (dd) filing a consent to service of process under Section 10 of this Act;
- (ee) issuing a certificate pursuant to subsection B of Section 15 of this Act;
- (ff) issuing a certified copy pursuant to subsection C of Section 15 of this Act;
- (gg) issuing a non-binding statement pursuant to Section 15a of this Act.
- (hh) filings by Notification under Section 2a;
- (ii) notification filing of federal Regulation D, Section 506 offering under the Federal 1933 Act;
- (jj) notification filing of securities and closed-end investment company securities;
- (kk) notification filing of face amount certificate contracts;
- (ll) notification filing of open-end investment company securities;
- (mm) filing a report pursuant to subsection D of Section 4 of this Act;
- (nn) in connection with the filing of an application for registration or re-registration of an investment adviser representative under sub-

section D of Section 8 of this Act;

- (2) The Secretary of State may, by rule or regulation, raise or lower any fee imposed by, and which he or she is authorized by law to collect under, this Act.

Sec. 11b. Special funds. All moneys received by the State of Illinois in furtherance of activities, duties, and responsibilities under the Illinois Securities Law of 1953 from government or non-governmental sources, except funds received pursuant to Section 981, 982, or 1963 of Title 18 of the United States Code, which shall be deposited into the Securities Audit and Enforcement Fund, and funds payable as specific grants or the fines, payments, or fees required under Section 5, 6, 7, or 8, or in connection with violations of Section 12 of this Act, the Business Opportunity Sales Law of 1995, the Illinois Business Brokers Act of 1995, or the Illinois Loan Brokers Act of 1995 to be deposited into the Securities Investors Education Fund or the Securities Audit and Enforcement Fund, shall be placed in the General Revenue Fund of the State treasury.

Sec. 11c. Securities Audit and Enforcement Fund.

- (a) All moneys received by the Secretary of State as a Securities Audit and Enforcement Fund fee or pursuant to Section 981, 982, or 1963 of Title 18 of the United States Code shall be deposited into the Securities Audit and Enforcement Fund, a special fund hereby created in the State Treasury. The moneys in the fund shall be used, subject to appropriation, by the Secretary of State exclusively for the expenses of that office incurred in the administration of the duties and obligations imposed under this Act, the Business Opportunity Sales Law of 1995, the Illinois Business Brokers Act of 1995, or the Illinois Loan Brokers Act of 1995.
- (b) All interest or other income earned from the investment of moneys in the fund shall be deposited into the fund.

Sec. 12. Violation. It shall be a violation of the provisions of this Act for any person:

- A. To offer or sell any security except in accordance with the provisions of this Act.
- B. To deliver to a purchaser any security required to be registered under Section 5, Section 6 or Section 7 hereof unless accompanied or preceded by a prospectus that meets the requirements of the pertinent subsection of Section 5 or of Section 6 or of Section 7.
- C. To act as a dealer, salesperson, investment adviser, or investment adviser representative, unless registered as such, where such registration is required, under the provisions of this Act.
- D. To fail to file with the Secretary of State any application, report or document required to be filed under the provisions of this Act or any rule or regulation made by the Secretary of State pursuant to this Act or to

fail to comply with the terms of any order of the Secretary of State issued pursuant to Section 11 hereof.

- E. To make, or cause to be made, (1) in any application, report or document filed under this Act or any rule or regulation made by the Secretary of State pursuant to this Act, any statement which was false or misleading with respect to any material fact or (2) any statement to the effect that a security (other than a security issued by the State of Illinois) has been in any way endorsed or approved by the Secretary of State or the State of Illinois.
- F. To engage in any transaction, practice or course of business in connection with the sale or purchase of securities which works or tends to work a fraud or deceit upon the purchaser or seller thereof.
- G. To obtain money or property through the sale of securities by means of any untrue statement of a material fact or any omission 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.
- H. To sign or circulate any statement, prospectus, or other paper or document required by any provision of this Act or pertaining to any security knowing or having reasonable grounds to know any material representation therein contained to be false or untrue.
- I. To employ any device, scheme or artifice to defraud in connection with the sale or purchase of any security, directly or indirectly.
- J. When acting as an investment adviser, investment adviser representative, or federal covered investment adviser, by any means or instrumentality, directly or indirectly:
 - (1) To employ any device, scheme or artifice to defraud any client or prospective client;
 - (2) To engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; or
 - (3) To engage in any act, practice, or course of business which is fraudulent, deceptive or manipulative. The Secretary of State shall for the purposes of this paragraph (3), by rules and regulations, define and prescribe means reasonably designed to prevent such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.
- K. When offering or selling any mineral investment contract or mineral deferred delivery contract:
 - (1) To employ any device, scheme, or artifice to defraud any customer, prospective customer, or offeree;
 - (2) To engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any customer, prospective customer, or offeree; or
 - (3) To engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative. The Secretary of State shall for

the purposes of this paragraph (3), by rules and regulations, define and prescribe means reasonably designed to prevent acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.

- L. To knowingly influence, coerce, manipulate, or mislead any person engaged in the preparation or audit of financial statements or appraisals to be used in the offer or sale of securities for the purpose of rendering such financial statements or appraisals materially misleading.

Sec. 13. Private and other civil remedies; securities.

- A. Every sale of a security made in violation of the provisions of this Act shall be voidable at the election of the purchaser exercised as provided in subsection B of this Section; and the issuer, controlling person, underwriter, dealer or other person by or on behalf of whom said sale was made, and each underwriter, dealer or salesperson who shall have participated or aided in any way in making the sale, and in case the issuer, controlling person, underwriter or dealer is a corporation or unincorporated association or organization, each of its officers and directors (or persons performing similar functions) who shall have participated or aided in making the sale, shall be jointly and severally liable to the purchaser as follows:
 - (1) for the full amount paid, together with interest from the date of payment for the securities sold at the rate of the interest or dividend stipulated in the securities sold (or if no rate is stipulated, then at the rate of 10% per annum) less any income or other amounts received by the purchaser on the securities, upon offer to tender to the seller or tender into court of the securities sold or, where the securities were not received, of any contract made in respect of the sale; or
 - (2) if the purchaser no longer owns the securities, for the amounts set forth in clause (1) of this subsection A less any amounts received by the purchaser for or on account of the disposition of the securities.

If the purchaser shall prevail in any action brought to enforce any of the remedies provided in this subsection, the court shall assess costs together with the reasonable fees and expenses of the purchaser's attorney against the defendant. Any provision of this subsection A to the contrary notwithstanding, the civil remedies provided in this subsection A shall not be available against any person by reason of the failure to file with the Secretary of State, or on account of the content of, any report of sale provided for in subsection G or P of Section 4, paragraph (2) of subsection D of Sections 5 and 6, or paragraph (2) of subsection F of Section 7 of this Act.

- B. Notice of any election provided for in subsection A of this Section shall be given by the purchaser within 6 months after the purchaser shall have knowledge that the sale of the securities to him or her is voidable, to each person from whom recovery will be sought, by registered mail or certified mail, return receipt requested, addressed to the person to be notified at his or her last known address with proper postage affixed, or by personal service.
- C. No purchaser shall have any right or remedy under this Section who shall fail, within 15 days from the date of receipt thereof, to accept an offer to repurchase the securities purchased by him or her for a price equal to the full amount paid therefor plus interest thereon and less any income thereon as set forth in subsection A of this Section. Every offer of repurchase provided for in this subsection shall be in writing, shall be delivered to the purchaser or sent by registered mail or certified mail, return receipt requested, addressed to the purchaser at his or her last known address, and shall offer to repurchase the securities sold for a price equal to the full amount paid therefor plus interest thereon and less any income thereon as set forth in subsection A of this Section. Such offer shall continue in force for 15 days from the date on which it was received by the purchaser, shall advise the purchaser of his or her rights and the period of time limited for acceptance thereof, and shall contain such further information, if any, as the Secretary of State may prescribe. Any agreement not to accept or refusing or waiving any such offer made during or prior to said 15 days shall be void.
- D. No action shall be brought for relief under this Section or upon or because of any of the matters for which relief is granted by this Section after 3 years from the date of sale; provided, that if the party bringing the action neither knew nor in the exercise of reasonable diligence should have known of any alleged violation of subsection E, F, G, H, I or J of Section 12 of this Act which is the basis for the action, the 3 year period provided herein shall begin to run upon the earlier of:
 - (1) the date upon which the party bringing the action has actual knowledge of the alleged violation of this Act; or
 - (2) the date upon which the party bringing the action has notice of facts which in the exercise of reasonable diligence would lead to actual knowledge of the alleged violation of this Act.
- E. The term purchaser as used in this Section shall include the personal representative or representatives of the purchaser.
- F. Anything in this Act to the contrary notwithstanding and in addition to all other remedies, the Secretary of State through the Office of the Attorney General may bring an action in any circuit court of the State of Illinois in the name and on behalf of the State of Illinois against any person or persons participating in or about to participate in a violation of this Act to enjoin those persons who are continuing or doing any act in violation of this Act or to enforce compliance with this Act. Upon a

proper showing the court may grant a permanent or preliminary injunction or temporary restraining order without bond, and may order the defendant to make an offer of rescission of any sales or purchases of securities determined by the court to be unlawful under this Act. The court shall further have jurisdiction and authority, in addition to the other penalties and remedies in this Act provided, to act or appoint another person as a receiver, conservator, ancillary receiver or ancillary conservator for the defendant or the defendant's assets located in this State and may assess costs against the defendant for the use of the State.

- G. (1) Whenever any person has engaged or is about to engage in any act or practice constituting a violation of this Act, any party in interest may bring an action in the circuit court of the county in which the party in interest resides, or where the person has his, her or its principal office or registered office or where any part of the transaction has or will take place, to enjoin that person from continuing or doing any act in violation of or to enforce compliance with this Act. Upon a proper showing, the court shall grant a permanent or preliminary injunction or temporary restraining order or rescission of any sales or purchases of securities determined to be unlawful under this Act, and may assess costs of the proceedings against the defendant.
- (2) A copy of the complaint shall be served upon the Secretary of State within one business day of filing in the form and manner prescribed by the Secretary of State by rule or regulation; provided, that the failure to comply with this provision shall not invalidate the action which is the subject of the complaint.
- H. Any provision of this Section 13 to the contrary notwithstanding, neither the civil remedies provided in subsection A of this Section 13 nor the remedies of rescission and appointment of a receiver, conservator, ancillary receiver or ancillary conservator provided in subsection I of Section 11 of this Act and in subsections F and G of this Section 13 of this Act nor the remedies of restitution, damages or disgorgement of profits provided in subsection I of Section 11 of this Act shall be available against any person by reason of the failure to file with the Secretary of State, or on account of the contents of, any notice filing under Section 2a of this Act or subsection C-5 of Section 8 of this Act or any report of sale provided for in subsection G or P of Section 4, paragraph (2) of subsection D of Sections 5 and 6, or paragraph (2) of subsection F of Section 7 of this Act.

Sec. 14. Sentence.

- A. Any person who violates any of the provisions of subsection A, B, C, or D of Section 12 or paragraph (3) of subsection K of Section 12 of this Act shall be guilty of a Class 4 felony.

- B. Any person who violates any of the provisions of subsection E, F, G, H, I, or J, paragraph (1) or (2) of subsection K, or subsection L of Section 12 of this Act shall be guilty of a Class 3 felony.
- B-5. A person who violates a provision of subsection E, F, G, H, I, or J or paragraph (1) or (2) of subsection K of Section 12 of this Act by use of a plan, program, or campaign that is conducted using one or more telephones for the purpose of inducing the purchase or sale of securities is guilty of a Class 2 felony.
- B-10. A person who in the course of violating a provision of subsection E, F, G, H, I, or J or paragraph (1) or (2) of subsection K of Section 12 of this Act induces a person 60 years of age or older to purchase or sell securities is guilty of a Class 2 felony.
- C. No prosecution for violation of any provision of this Act shall bar or be barred by any prosecution for the violation of any other provision of this Act or of any other statute; but all prosecutions under this Act or based upon any provision of this Act must be commenced within 3 years after the violation upon which such prosecution is based; provided however, that if the accused has intentionally concealed evidence of a violation of subsection E, F, G, H, I, J, or K of Section 12 of this Act, the period of limitation prescribed herein shall be extended up to an additional 2 years after the proper prosecuting officer becomes aware of the offense but in no such event shall the period of limitation so extended be more than 2 years beyond the expiration of the period otherwise applicable.
- D. For the purposes of this Act all persons who shall sell or offer for sale, or who shall purchase or offer to purchase, securities in violation of the provisions of this Act, or who shall in any manner knowingly authorize, aid or assist in any unlawful conduct under this Act shall be deemed equally guilty, and may be tried and punished in the county in which said unlawful sale or offering for sale or unlawful purchase or offer to purchase was made, or in the county in which the securities so sold or offered for sale or so purchased or offered to be purchased were delivered or proposed to be delivered to the purchaser thereof or by the seller thereof, as the case may be.
- E. Any person who shall be convicted of a second or any subsequent offense specified in subsection A, B, C, D, or paragraph (3) of subsection K of Section 12 of this Act shall be guilty of a Class 3 felony, and any person who shall be convicted of a second or any subsequent offense specified in subsection E, F, G, H, I, J, or paragraph (1) or (2) of subsection K of Section 12 of this Act shall be guilty of a Class 2 felony.
- F. If any person referred to in this Section is not a natural person, it may upon conviction of a first offense be fined up to \$25,000, and if convicted of a second and subsequent offense, may be fined up to \$50,000, in addition to any other sentence authorized by law.
- G. This Act shall not be construed to repeal or affect any law now in force

relating to the organization of corporations in this State or the admission of any foreign corporation to do business in this State.

- H. For the purposes of this Act, all persons who sell or offer for sale, or who purchase or offer to purchase any mineral investment contract or mineral deferred delivery contract in violation of the provisions of this Act or who, in any manner, knowingly authorize, aid, or assist in any unlawful sale or offer for sale or unlawful purchase or offer to purchase any mineral investment contract or mineral deferred delivery contract shall be deemed equally guilty and may be tried and punished in the county in which the unlawful sale or offer for sale or unlawful purchase or offer to purchase any mineral investment contract or mineral deferred delivery contract was made or in the county in which the mineral investment contract or mineral deferred delivery contract so sold or offered for sale or so purchased or offered to be purchased was delivered or proposed to be delivered to the purchaser thereof or by the seller thereof, as the case may be, or in Sangamon County.

Sec. 15. Evidentiary matters.

- A. In any action, administrative, civil or criminal, where a defense is based upon any exemption provided for in this Act, the burden of proving such exemption shall be upon the party raising such defense.
- B. In any action, administrative, civil or criminal, a certificate under the seal of the State of Illinois, signed by the Secretary of State, attesting to the filing of or the absence of any filing of any document or record with the Secretary of State under this Act, shall constitute prima facie evidence of such filing or of the absence of such filing, and shall be admissible in evidence in any such administrative, criminal or civil action.
- C. In any action, administrative, civil or criminal, the Secretary of State may issue a certificate under the seal of the State of Illinois, signed by the Secretary of State, showing that any document or record is a true and exact copy, photostatic or otherwise, of the record or document on file with the Secretary of State under this Act; and such certified document or record shall be admissible in evidence with the same effect as the original document or record would have if actually produced.
- D. Any certificate pursuant to subsection B or C of this Section 15 shall be furnished by the Secretary of State upon application therefor in the form and manner prescribed by the Secretary of State by rule or regulation, and shall be accompanied by payment of a certification fee in the amount specified in Section 11a of this Act, which shall not be returnable in any event.

Sec. 15a. Issuance of Non-Binding Statements. The Secretary of State, or any person designated by him or her, may issue a statement concerning the applicability of the Act or the rules and regulations thereunder to any

transaction or proposed transaction which may be subject to the Act. No statement issued by the Secretary of State or his or her designee pursuant to this Section 15a shall be binding upon the Secretary of State or the State of Illinois, or shall be admissible in any administrative, civil or criminal action as, or shall otherwise constitute, a legal opinion of the Secretary of State. Each application for a statement pursuant to this Section 15a shall be filed with the Secretary of State in the form and manner prescribed by the Secretary of State by rule or regulation, and shall be accompanied by an application fee in the amount specified in Section 11a of this Act, which fee shall not be returnable in any event.

Sec. 16. Saving clauses. Notwithstanding any repeal provisions of this Act, the provisions of the Act entitled "An Act relating to the sale or other disposition of securities and providing penalties for the violation thereof and to repeal Acts in conflict therewith," approved June 10, 1919, as amended, shall remain in force (1) for the prosecution and punishment of any person who, before the effective date of this Act, shall have violated any provision of said Act approved June 10, 1919, as amended; (2) for carrying out the terms of escrow agreements made pursuant to the provisions of said Act approved June 10, 1919, as amended, and (3) for the retention, enforcement and liquidation of deposits made with the Secretary of State pursuant to the provisions of Section 6a of said Act approved June 10, 1919, as amended, or of subsection E of Section 6 of "The Illinois Securities Law of 1953", approved July 13, 1953, as amended and in effect prior to January 1, 1986, which deposits, from and after January 1, 1986, shall be subject to the provisions of subsections G, H and I of Section 6 as if such deposits were made in respect of face amount certificate contracts which were registered under subsection B of Section 6 on or after January 1, 1986.

Sec. 17. Separability of provisions.

If any provision or provisions of this Act shall be held invalid, the remainder of this Act shall not be affected thereby.

Sec. 18. Repeal.

All the provisions of the Act entitled "An Act relating to the sale or other disposition of securities and providing penalties for the violation thereof and to repeal Acts in conflict therewith," approved June 10, 1919, as amended, except the provisions and parts of said Act continued in force and effect by Section 16 hereof, are hereby repealed.

Sec. 18.1 Additional fees.

In addition to any other fee that the Secretary of State may impose and collect pursuant to the authority contained in Sections 4, 8, and 11a of this Act, beginning on July 1, 2003 the Secretary of State shall also collect the following additional fees:

Securities offered or sold under the Uniform Limited offering Exemption Pursuant to Section 4D of the Act.....	\$100
Registration and renewal of a dealer.....	\$300
Registration and renewal of an investment advisor.....	\$200
Federal covered investment advisor notification filing and annual notification filing.....	\$200
Registration and renewal of a salesperson.....	\$75
Registration and renewal of an investment advisor representative and a federal covered investment advisor representative.....	\$75
Investment fund shares notification filing and annual notification filing: \$800 plus \$80 for each series, class, or portfolio.	

All fees collected by the Secretary of State pursuant to this amendatory Act of the 93rd General Assembly shall be deposited into the General Revenue Fund in the State Treasury.

Sec. 19. Effective date.

This Act shall become effective January 1, 1954.

