

Senate Bill 358

By: Senator Hamrick of the 30th

AS PASSED

AN ACT

To amend Chapter 5 of Title 10 of the Official Code of Georgia Annotated, relating to securities, by repealing it in its entirety and enacting a new Chapter 5 of Title 10 to be known as the "Georgia Uniform Securities Act of 2008"; to provide for a short title; to provide for definitions; to provide for electronic records and signatures; to provide for exemptions from registration of securities; to provide for registration of securities and notice of filing of federal covered securities; to provide for denial, suspension, or revocation of securities registration; to provide for registration of broker-dealers, agents, investment advisers, investment adviser representatives, and federal covered investment advisers; to provide for termination or transfer of employment of investment advisers; to provide for succession, change, or withdrawal of registration; to provide for filing fees and postregistration requirements; to provide for fraud and liabilities; to provide for prohibited conduct in providing investment advice; to provide for filing of sales and advertising literature; to provide for qualified immunity and civil and criminal penalties; to provide for rescission offers; to provide for administration and judicial review; to provide for investigations and subpoenas; to provide for uniformity and cooperation with other agencies; to provide for jurisdiction and service of process; to amend the Official Code of Georgia Annotated to change certain references; to provide for applicability; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 5 of Title 10 of the Official Code of Georgia Annotated, relating to securities, is repealed in its entirety and replaced by a new Chapter 5 to read as follows:

"CHAPTER 5
ARTICLE 1

10-5-1.

This chapter shall be known as and may be cited as the 'Georgia Uniform Securities Act of 2008.'

10-5-2.

As used in this chapter, the term:

(1) 'Agent' means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or who represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. A partner, officer, or director of a broker-dealer or issuer or an individual having a similar status or performing similar functions may be an agent if the individual performs the duties of an agent. This term does not include an individual excluded by rule adopted or order issued under this chapter.

(2) 'Bank' means:

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

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

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

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

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

(A) An agent;

(B) An issuer;

(C) A bank, trust company, credit union, or savings institution if its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi) and

(viii) through (x) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78c(a)(4); subsection 3(a)(4)(B)(xi) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78c(a)(4) if limited to unsolicited transactions; or subsections 3(a)(5)(B) and 3(a)(5)(C) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78c(a)(5), or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78c(a)(4);

(D) An international banking institution; or

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

(4) 'Central Registration Depository' means a computerized data base that contains information about most brokers, their representatives, and the firms they work for. It can be used to find out if brokers are properly licensed and if they have had previous disputes with regulators or received serious complaints from investors.

(5) 'Credit union' means any credit union incorporated under the laws of this state, the United States, or any state or territory of the United States or the District of Columbia.

(6) 'Commissioner' means the Secretary of State of Georgia.

(7)(A) 'Depository institution' means:

(i) A bank; or

(ii) A savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund or a successor authorized by federal law.

(B) The term does not include:

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

(ii) A Morris Plan bank; or

(iii) An industrial loan company that is not an 'insured depository institution' as defined in subsection 3(c)(2) of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(c)(2), or any successor federal statute.

(8) 'Federal covered investment adviser' means a person registered under the Investment Advisers Act of 1940, 15 U.S.C. Section 80b-1, et seq.

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

(10) 'Filing' means the receipt under this chapter of a record by the Commissioner or a designee of the Commissioner.

(11) 'Fraud,' 'deceit,' or 'defraud' is not limited to common law deceit.

(12) 'Guaranteed' means guaranteed as to payment of all principal and all interest.

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

(A) A depository institution or international banking institution;

(B) An insurance company;

(C) A separate account of an insurance company;

(D) An investment company as defined in the Investment Company Act of 1940, 15 U.S.C. Section 80a-1, et seq.;

(E) A broker-dealer registered under the Securities Exchange Act of 1934, 15 U.S.C. Section 78a, et seq.;

(F) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of \$10 million or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1001, et seq., that is a broker-dealer registered under the Securities Exchange Act of 1934, 15 U.S.C. Section 78a, et seq., an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, 15 U.S.C. Section 80b-1, et seq., an investment adviser registered under this chapter, a depository institution, or an insurance company;

(G) A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees if the plan has total assets in excess of \$10 million or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1001, et seq., that is a broker-dealer registered under the Securities Exchange Act of 1934, 15 U.S.C. Section 78a, et seq., an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, 15 U.S.C. Section 80b-1, et seq., an investment adviser registered under this chapter, a depository institution, or an insurance company;

(H) A trust if it has total assets in excess of \$10 million, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph (F) or (G) of this paragraph, regardless of the size of their assets, except

a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(I) An organization that is not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$10 million, including an organization described in subsection 501(c)(3) of the Internal Revenue Code, 26 U.S.C. Section 501(c)(3), a corporation, a Massachusetts trust or similar business trust, a limited liability company, or a partnership;

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

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

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

(M) A qualified institutional buyer as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(H), 17 C.F.R. 230.144A, adopted under the Securities Act of 1933, 15 U.S.C. Section 77a, et seq.;

(N) A major United States institutional investor as defined in Rule 15a-6(b)(4)(I), 17 C.F.R. 240.15a-6, adopted under the Securities Exchange Act of 1934, 15 U.S.C. Section 78a, et seq.;

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

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

(14) 'Insurance company' means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

(15) 'Insured' means insured as to payment of all principal and all interest.

(16) 'International banking institution' means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933, 15 U.S.C. Section 77a, et seq.

(17) 'Investment adviser' means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for

compensation and as a part of a regular business, issues or promulgates analysis or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

- (A) An investment adviser representative;
- (B) A lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;
- (C) A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;
- (D) A publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;
- (E) A federal covered investment adviser;
- (F) A bank or savings institution;
- (G) A credit union;
- (H) Any other person that is excluded by the Investment Advisers Act of 1940, 15 U.S.C. Section 80b-1, et seq., from the definition of investment adviser; or
- (I) Any other person excluded by rule adopted or order issued under this chapter.

(18) 'Investment Adviser Registration Depository' means an electronic filing system that facilitates investment adviser registration, regulatory review, and the public disclosure information of investment adviser firms.

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

- (A) Performs only clerical or ministerial acts;
- (B) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;

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

- (i) An investment adviser representative as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940, 15 U.S.C. Section 80b-3a; or
- (ii) Not a supervised person as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940, 15 U.S.C. Section 80b-2(a)(25); or

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

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

(A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued;

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

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

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

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

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

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

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

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

(25) 'Predecessor Act' means Chapter 5 of this title, the 'Georgia Securities Act of 1973', as it existed immediately prior to the effective date of this chapter.

(26) 'Price amendment' means the amendment to a registration statement filed under the Securities Act of 1933, 15 U.S.C. Section 77a, et seq., or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933, 15 U.S.C. Section 77a, et seq., that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

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

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

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

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

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

(C) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a

present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

(30) 'Securities and Exchange Commission' means the United States Securities and Exchange Commission.

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

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

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

(C) Does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1001, et seq.;

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

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

(32) 'Self-regulatory organization' means a national securities exchange registered under the Securities Exchange Act of 1934, 15 U.S.C. Section 78a, et seq., a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, 15 U.S.C. Section 78a, et seq., a clearing agency registered under the Securities Exchange

Act of 1934, 15 U.S.C. Section 78a, et seq., or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934, 15 U.S.C. Section 78a, et seq.

(33) 'Sign' means, with present intent to authenticate or adopt a record:

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

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

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

10-5-3.

Any citation in this chapter to a section of the United States Code includes those statutes and the rules and regulations adopted under those statutes as in effect on the date of enactment of this chapter, or as later amended.

10-5-4.

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

10-5-5.

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

ARTICLE 2

10-5-10.

The following securities are exempt from the requirements of Article 3 of this chapter and Code Section 10-5-53:

- (1) A security, including a revenue obligation or a separate security as defined in Rule 131, 17 C.F.R. 230.131, adopted under the Securities Act of 1933, 15 U.S.C. Section 77a, et seq., issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one or more states; by a political subdivision of one or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress or a certificate of deposit for any of the foregoing;
- (2) A security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor;
- (3) A security issued by and representing or that will represent an interest in or a direct obligation of or be guaranteed by:
 - (A) An international banking institution;
 - (B) A banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of P. L. 87-722, 12 U.S.C. Section 92a; or
 - (C) Any other depository institution, unless by rule or order the Commissioner proceeds under Code Section 10-5-13;
- (4) A security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this state;
- (5) A security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is:
 - (A) Regulated in respect to its rates and charges by the United States or a state;
 - (B) Regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory; or
 - (C) A public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that act;
- (6) A federal covered security specified in Section 18(b)(1) of the Securities Act of 1933, 15 U.S.C. Section 77r(b)(1), or by rule adopted under that provision or a security listed

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

(7) A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes or as a chamber of commerce and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person; or a security of a company that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the Investment Company Act of 1940, 15 U.S.C. Section 80b-3(c)(10)(B); except that with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a rule may be adopted under this chapter limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to Section 3(c)(10)(B) of the Investment Company Act of 1940, 15 U.S.C. Section 80b-3(c)(10)(B), the scope of the exemption and the grounds for denial or suspension, and requiring an issuer:

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

(B) To file a request for exemption authorization for which a rule under this chapter may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with Code Section 10-5-80, and grounds for denial or suspension of the exemption; or

- (C) To register under Code Section 10-5-23;
- (8) A member's or owner's interest in, retention certificate, or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative; and
- (9) An equipment trust certificate with respect to equipment leased or conditionally sold to a person if any security issued by the person would be exempt under this Code section or would be a federal covered security under Section 18(b)(1) of the Securities Act of 1933, 15 U.S.C. Section 77r(b)(1).

10-5-11.

The following transactions are exempt from the requirements of Article 3 of this chapter and Code Section 10-5-53:

- (1) An isolated nonissuer transaction, whether effected by or through a broker-dealer or not;
- (2) A nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, 15 U.S.C. Section 80a-1, et seq., in a security of a class that has been outstanding in the hands of the public for at least 90 days, if, at the date of the transaction:
 - (A) The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;
 - (B) The security is sold at a price reasonably related to its current market price;
 - (C) The security does not constitute the whole or part of an unsold allotment to or a subscription or participation by the broker-dealer as an underwriter of the security or a redistribution;
 - (D) A nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this chapter or a record filed with the Securities and Exchange Commission that is publicly available contains:
 - (i) A description of the business and operations of the issuer;

- (ii) The names of the issuer's executive officers and the names of the issuer's directors, if any;
 - (iii) An audited balance sheet of the issuer as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and
 - (iv) An audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had an audited income statement, a pro forma income statement; and
- (E) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, 15 U.S.C. Section 78a, et seq., or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless the issuer of the security is a unit investment trust registered under the Investment Company Act of 1940, 15 U.S.C. Section 80a-1, et seq.; or the issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or the issuer of the security has total assets of at least \$2 million based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization;
- (3) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;
- (4) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78m or 78o(d);
- (5) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security that:
- (A) Is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories; or
 - (B) Has a fixed maturity or a fixed interest or dividend if:

- (i) A default has not occurred during the current fiscal year or within the three previous fiscal years or during the existence of the issuer and any predecessor, if less than three fiscal years, in the payment of principal, interest, or dividends on the security; and
 - (ii) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous 12 months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with or an acquisition of an unidentified person;
- (6) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase;
 - (7) A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;
 - (8) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100 million acting in the exercise of discretionary authority in a signed record for the account of others;
 - (9) A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the Commissioner after a hearing;
 - (10) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;
 - (11) A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:
 - (A) The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;
 - (B) A general solicitation or general advertisement of the transaction is not made; and
 - (C) A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this chapter as a broker-dealer or as an agent;
 - (12) A transaction by an executor, commissioner of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
 - (13) A sale or offer to sell to:
 - (A) An institutional investor;
 - (B) A federal covered investment adviser; or

- (C) Any other person exempted by rule adopted or order issued under this chapter;
- (14) A sale or an offer to sell securities of an issuer if part of a single issue in which:
- (A) Not more than 15 purchasers are present in this state during any 12 consecutive months, other than those designated in paragraph (13) of this Code section;
 - (B) A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;
 - (C) A commission or other remuneration is not paid or given, directly or indirectly, to any person for soliciting a prospective purchaser in this state; and
 - (D) The issuer reasonably believes that all the purchasers in this state, other than those designated in paragraph (13) of this Code section, are purchasing for investment;
- (15) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state;
- (16) An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933, 15 U.S.C. Section 77a, et seq., if:
- (A) A registration or offering statement or similar record as required under the Securities Act of 1933, 15 U.S.C. Section 77a, et seq., has been filed but is not effective, or the offer is made in compliance with Rule 165, 17 C.F.R. 230.165, adopted under the Securities Act of 1933, 15 U.S.C. Section 77a, et seq.; and
 - (B) A stop order of which the offeror is aware has not been issued against the offeror by the Commissioner or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;
- (17) An offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933, 15 U.S.C. Section 77a, et seq., if:
- (A) A registration statement has been filed under this chapter but is not effective;
 - (B) A solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the Commissioner under this chapter; and
 - (C) A stop order of which the offeror is aware has not been issued by the Commissioner under this chapter, and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;
- (18) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of

securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary, and the other person, or its parent or subsidiary, are parties;

(19) A rescission offer, sale, or purchase under Code Section 10-5-59;

(20) An offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter;

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

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

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

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

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

(22) A transaction involving:

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

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

(C) The solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162, 17 C.F.R. 230.162, adopted under the Securities Act of 1933, 15 U.S.C. Section 77a, et seq.; and

(23) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this chapter or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' the Commissioner, by rule adopted or order issued under this chapter, may revoke the designation of a securities exchange under this paragraph, if the Commissioner finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

10-5-12.

A rule adopted or order issued under this chapter may exempt a security, transaction, or offer; a rule adopted under this chapter may exempt a class of securities, transactions, or offers from any or all of the requirements of Article 3 of this chapter and Code Section 10-5-53; and an order issued under this chapter may waive, in whole or in part, any or all of the conditions for an exemption or offer under Code Sections 10-5-10 and 10-5-11.

10-5-13.

(a) Except with respect to a federal covered security or a transaction involving a federal covered security, an order issued under this chapter may deny, suspend application of, condition, limit, or revoke an exemption created under subparagraph (C) of paragraph (3) or paragraph (7) or (8) of Code Section 10-5-10 or under Code Section 10-5-11 or an exemption or waiver created under Code Section 10-5-12 with respect to a specific security, transaction, or offer. An order issued under this Code section may be issued only

pursuant to the procedures in subsection (d) of Code Section 10-5-25 or 10-5-73 and only prospectively.

(b) A person does not violate Code Section 10-5-20, 10-5-22 through 10-5-25, 10-5-53, or 10-5-59 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this Code section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

ARTICLE 3

10-5-20.

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

- (1) The security is a federal covered security;
- (2) The security, transaction, or offer is exempted from registration under Code Sections 10-5-10 through 10-5-12; or
- (3) The security is registered under this chapter.

10-5-21.

(a) With respect to a federal covered security, as defined in Section 18(b)(2) of the Securities Act of 1933, 15 U.S.C. Section 77r(b)(2), that is not otherwise exempt under Code Sections 10-5-10 through 10-5-12, a rule adopted or order issued under this chapter may require the filing of any or all of the following records:

- (1) Before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, 15 U.S.C. Section 77a, et seq., and a consent to service of process complying with Code Section 10-5-80 signed by the issuer and the payment of a fee of \$250.00;
- (2) After the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, 15 U.S.C. Section 77a, et seq.; and
- (3) To the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this state, if the sales data are not included in records filed with the Securities and Exchange Commission and payment of a fee of \$250.00.

(b) A notice filing under subsection (a) of this Code section is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by rule adopted or order issued under this chapter to be filed and by paying a renewal fee of \$100.00. A previously filed consent to service of process complying with Code Section 10-5-80 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) With respect to a security that is a federal covered security under Section 18(b)(4)(D) of the Securities Act of 1933, 15 U.S.C. Section 77r(b)(4)(D), a rule adopted under this chapter may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process complying with Code Section 10-5-80 signed by the issuer not later than 15 days after the first sale of the federal covered security in this state and the payment of a fee of \$250.00.

(d) Except with respect to a federal security under Section 181(b)(1) of the Securities Act of 1933, 15 U.S.C. Section 77r(b)(1), if the Commissioner finds that there is a failure to comply with a notice or fee requirement of this Code section, the Commissioner may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the Commissioner.

10-5-22.

(a) A security for which a registration statement has been filed under the Securities Act of 1933, 15 U.S.C. Section 77a, et seq., in connection with the same offering may be registered by coordination under this Code section.

(b) A registration statement and accompanying records under this Code section must contain or be accompanied by the following records in addition to the information specified in Code Section 10-5-24 and a consent to service of process complying with Code Section 10-5-80:

(1) A copy of the latest form of prospectus filed under the Securities Act of 1933, 15 U.S.C. Section 77a, et seq.;

(2) A copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any

indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this chapter;

(3) Copies of any other information or any other records filed by the issuer under the Securities Act of 1933, 15 U.S.C. Section 77a, et seq., requested by the Commissioner; and

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

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

(1) A stop order issued under subsection (d) of this Code section or Code Section 10-5-25 or issued by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under Code Section 10-5-41; and

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

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

(e) If the federal registration statement becomes effective before each of the conditions in this Code section is satisfied or is waived by the Commissioner, the registration statement is automatically effective under this chapter when all the conditions are satisfied or waived. If the registrant notifies the Commissioner of the date when the federal registration statement is expected to become effective, the Commissioner shall promptly notify the registrant by telephone or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the Commissioner intends the institution of a proceeding under Code Section 10-5-25. The notice by the Commissioner does not preclude the institution of such a proceeding.

10-5-23.

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

(b) A registration statement under this Code section must contain the information or records specified in Code Section 10-5-24, a consent to service of process complying with Code Section 10-5-80, and, if required by rule adopted under this chapter, the following information or records:

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

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

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

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

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

(6) With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the

issuer or any significant subsidiary effected within the previous three years or proposed to be effected; and a statement of the reasons for making the offering;

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

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

(9) The estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including good will, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(10) A description of any stock options or other security options outstanding or to be created in connection with the offering and the amount of those options held or to be held

by each person required to be named in paragraph (2), (4), (5), (6), or (8) of this subsection and by any person that holds or will hold 10 percent or more in the aggregate of those options;

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

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

(13) A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with subparagraph (B) of paragraph (17) of Code Section 10-5-11;

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

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

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

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

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

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

(1) A stop order is not in effect and a proceeding is not pending under Code Section 10-5-25;

(2) The Commissioner has not issued an order under Code Section 10-5-25 delaying effectiveness; and

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

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

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

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

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

(3) Payment pursuant to such a sale; or

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

10-5-24.

(a) A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this chapter.

(b) If a registration statement is withdrawn before the effective date or a pre-effective stop order is issued under Code Section 10-5-25, the Commissioner shall retain the fee.

(c) A registration statement filed under Code Section 10-5-22 or 10-5-23 must specify:

(1) The amount of securities to be offered in this state;

- (2) The states in which a registration statement or similar record in connection with the offering has been or is to be filed; and
- (3) Any adverse order, judgment, or decree issued in connection with the offering by a state securities administrator, the Securities and Exchange Commission, or a court.
- (d) A record filed under this chapter or the predecessor Act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.
- (e) In the case of a nonissuer distribution, information or a record shall not be required under subsection (i) of this Code section or under Code Section 10-5-23, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.
- (f) A rule adopted or order issued under this chapter may require as a condition of registration that a security issued within the previous five years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this chapter, but the Commissioner may not reject a depository institution solely because of its location in another state.
- (g) A rule adopted or order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this chapter or preserved for a period specified by the rule or order, which may not be longer than five years.
- (h) Except while a stop order is in effect under Code Section 10-5-25, a registration statement is effective for one year after its effective date or for any longer period designated in an order under this chapter during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any

securities of the same class are outstanding, a registration statement may not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the Commissioner.

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

(j) A registration statement may be amended after its effective date. The post-effective amendment becomes effective when the Commissioner so orders. A post-effective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the amendment is filed and the additional registration fee is paid.

10-5-25.

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

(1) The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under subsection (j) of Code Section 10-5-24 as of its effective date, or a report under subsection (i) of Code Section 10-5-24 is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;

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

(3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this chapter applicable to the offering, but the Commissioner may not institute a proceeding against an effective registration statement under this paragraph more than one year after the date

of the order or injunction on which it is based, and the Commissioner may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this Code section;

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

(5) With respect to a security sought to be registered under Code Section 10-5-22, there has been a failure to comply with the undertaking required by paragraph (4) of subsection (b) of said Code section;

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

(7) The offering:

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

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

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

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

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

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

each person subject to the order, may modify or vacate the order or extend the order until final determination.

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

- (1) Appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;
- (2) An opportunity for hearing; and
- (3) Findings of fact and conclusions of law in a record in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

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

10-5-26.

The Commissioner may waive or modify, in whole or in part, any or all of the requirements of Code Sections 10-5-21, 10-5-22, and subsection (b) of Code Section 10-5-23 or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to subsection (i) of Code Section 10-5-24.

ARTICLE 4

10-5-30.

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

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

- (1) A broker-dealer without a place of business in this state if its only transactions effected in this state are with:
 - (A) The issuer of the securities involved in the transactions;
 - (B) A person registered as a broker-dealer under this chapter or not required to be registered as a broker-dealer under this chapter;
 - (C) An institutional investor;
 - (D) A nonaffiliated federal covered investment adviser with investments under management in excess of \$100 million acting for the account of others pursuant to discretionary authority in a signed record;

- (E) A bona fide preexisting customer whose principal place of residence is not in this state and the person is registered as a broker-dealer under the Securities Exchange Act of 1934, 15 U.S.C. Section 78a, et seq., or not required to be registered under the Securities Exchange Act of 1934, 15 U.S.C. Section 78a, et seq., and is registered under the securities act of the state in which the customer maintains a principal place of residence;
- (F) A bona fide preexisting customer whose principal place of residence is in this state but was not present in this state when the customer relationship was established, if:
- (i) The broker-dealer is registered under the Securities Exchange Act of 1934, 15 U.S.C. Section 78a, et seq., or not required to be registered under the Securities Exchange Act of 1934, 15 U.S.C. Section 78a, et seq., and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and
 - (ii) Within 45 days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than 75 days after the date on which the application is filed, or, if earlier, the date on which the Commissioner notifies the person that the Commissioner has denied the application for registration or has stayed the pendency of the application for good cause;
- (G) Not more than three customers in this state during the previous 12 months, in addition to those customers specified in subparagraphs (A) through (F) and subparagraph (H) of this paragraph, if the broker-dealer is registered under the Securities Exchange Act of 1934, 15 U.S.C. Section 78a, et seq., or not required to be registered under the Securities Exchange Act of 1934, 15 U.S.C. Section 78a, et seq., and is registered under the securities act of the state in which the broker-dealer has its principal place of business; and
- (H) Any other person exempted by rule adopted or order issued under this chapter; and
- (2) A person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision.
- (c) It is unlawful for a broker-dealer or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked or the individual is barred

from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the Commissioner under this chapter, the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this chapter may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.

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

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

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

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

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

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

10-5-31.

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

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

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

- (2) An individual who represents a broker-dealer that is exempt under subsection (b) or (d) of Code Section 10-5-30;
 - (3) An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;
 - (4) An individual who represents an issuer and who effects transactions in the issuer's securities exempted by Code Section 10-5-11, with the exception of paragraphs (11) and (14) of that Code section;
 - (5) An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933, 15 U.S.C. Section 77r(b)(3) or 77r(b)(4)(D), is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;
 - (6) An individual who represents a broker-dealer registered in this state under subsection (a) of Code Section 10-5-30 or exempt from registration under subsection (b) of Code Section 10-5-30 in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of \$100 million acting for the account of others pursuant to discretionary authority in a signed record;
 - (7) An individual who represents an issuer in connection with the purchase of the issuer's own securities;
 - (8) An individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or
 - (9) Any other individual exempted by rule adopted or order issued under this chapter.
- (c) The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this chapter or an issuer that is offering, selling, or purchasing its securities in this state.
- (d) It is unlawful for a broker-dealer or an issuer engaged in offering, selling, or purchasing securities in this state to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) of this Code section or exempt from registration under subsection (b) of this Code section.

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

10-5-32.

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

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

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

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

(B) Institutional investors;

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

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

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

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

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

(d) It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this chapter as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under subsection (a) of Code Section 10-5-33 or is exempt from registration under subsection (b) of Code Section 10-5-33.

10-5-33.

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

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

(1) An individual who is employed by or associated with an investment adviser that is exempt from registration under subsection (b) of Code Section 10-5-32 or a federal covered investment adviser that is excluded from the notice filing requirements of Code Section 10-5-34; and

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

(c) The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this chapter or a federal covered investment adviser that has made or is required to make a notice filing under Code Section 10-5-34.

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

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

for good cause, the Commissioner, by order, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

(f) An investment adviser registered under this chapter, a federal covered investment adviser that has filed a notice under Code Section 10-5-34, or a broker-dealer registered under this chapter is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this chapter, a federal covered investment adviser who has filed a notice under Code Section 10-5-34, or a broker-dealer registered under this chapter with which the individual is employed or associated as an investment adviser representative.

10-5-34.

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

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

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

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

(B) Institutional investors;

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

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

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

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

(c) A person acting as a federal covered investment adviser, not excluded under subsection (b) of this Code section, shall file a notice, a consent to service of process complying with Code Section 10-5-80 and such records as have been filed with the Securities and Exchange Commission under the Investment Advisers Act of 1940, 15 U.S.C. Section

80b-1, et seq., required by rule adopted or order issued under this chapter and pay the fees specified in subsection (e) of Code Section 10-5-39.

(d) The notice under subsection (c) of this Code section becomes effective upon its filing.

10-5-35.

(a) A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with Code Section 10-5-80, and paying the fee specified in Code Section 10-5-39 and any reasonable fees charged by the Commissioner for processing the filing.

The application must contain:

(1) The information or records required for the filing of a uniform application as required for applicants registering through the Central Registration Depository and the Investment Adviser Registration Depository, as applicable; and

(2) Upon request by the Commissioner, any other financial or other information or record that the Commissioner determines is appropriate;

(b)(1) Each individual filing an application to become a salesperson, limited salesperson, designated salesperson, investment adviser, federal covered adviser, or investment adviser representative shall be fingerprinted and have a criminal record check as required by this subsection.

(2) Fingerprints shall be in such form and quality as shall be acceptable for submission to the National Crime Information Center under standards adopted by the Federal Bureau of Investigation or the United States Department of Justice. It shall be the duty of each law enforcement agency in this state to fingerprint those persons required to be fingerprinted by this subsection.

(3) At the discretion of the Commissioner, fees required for a criminal record check by the Georgia Crime Information Center, the National Crime Information Center, the Federal Bureau of Investigation, or the United States Department of Justice shall be paid by the applicant.

(4) The Commissioner shall transmit two sets of fingerprints to the Georgia Crime Information Center, which shall submit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain one set of fingerprints and promptly conduct a search of state records. After receiving a report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the Commissioner shall determine whether the applicant shall be licensed. If the applicant's fingerprints had been previously submitted for review to the Central

Registration Depository in connection with federal or state licensing, the Commissioner may review and rely upon the criminal history reported pursuant thereto.

(5) The Commissioner shall notify the applicant of his or her rights to challenge the accuracy and completeness of any information provided by the Georgia Crime Information Center or the National Crime Information Center.

(6) Information provided by the Georgia Crime Information Center or the National Crime Information Center shall be used only for those purposes allowed by Code Section 35-3-35 or by applicable federal laws, rules, or regulations.

(7) Neither the Georgia Crime Information Center, the Commissioner, any law enforcement agency, nor the employees of any such entities shall be responsible for the accuracy of the information contained in the criminal background check nor incur any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this subsection.

(8) The Commissioner shall be authorized to adopt rules and regulations necessary to implement the provisions of this subsection.

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

(d) If an order is not in effect and a proceeding is not pending under Code Section 10-5-41, registration becomes effective at noon on the forty-fifth day after a completed application is filed unless the registration is denied. A rule adopted or order issued under this chapter may set an earlier effective date or may defer the effective date until noon on the forty-fifth day after the filing of any amendment completing the application.

(e) A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under Code Section 10-5-41, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this chapter, by paying the fee specified in Code Section 10-5-39, and by paying costs charged by the Commissioner for processing the filings.

(f) A rule adopted or order issued under this chapter may impose such other conditions, not inconsistent with the National Securities Markets Improvement Act of 1996, 15 U.S.C. Section 80b-1, et seq. An order issued under this chapter may waive, in whole or in part, such requirements in connection with registration as are in the public interest and for the protection of investors.

10-5-36.

(a) A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser by filing as a successor an application for registration pursuant to Code Section 10-5-30 or 10-5-32 or a notice pursuant to Code Section 10-5-34 for the unexpired portion of the current registration or notice filing.

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

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

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

10-5-37.

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

(b) If an agent registered under this chapter terminates employment by or association with a broker-dealer registered under this chapter and begins employment by or association with another broker-dealer registered under this chapter or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under Code Section 10-5-34 and begins employment by or association with another investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under Code Section 10-5-34, then upon the filing by or on behalf of the registrant, within 30 days after the termination, of an application for registration that complies with the requirement of subsection (a) of Code Section 10-5-35 and payment of the filing fee required under Code Section 10-5-39, the registration of the agent or investment adviser representative is:

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

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

(c) The Commissioner may withdraw a temporary registration if there are or were grounds for discipline as specified in Code Section 10-5-41 and the Commissioner does so within 30 days after the filing of the application. If the Commissioner does not withdraw the temporary registration within the 30 day period, registration becomes automatically effective on the thirty-first day after filing.

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

(e) If the Commissioner determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian or cannot reasonably be located, a rule adopted or order issued under this chapter may require the registration be canceled or terminated or the application denied. The Commissioner may reinstate a

canceled or terminated registration, with or without hearing, and may make the registration retroactive.

10-5-38.

Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective 60 days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this chapter unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued under this chapter. The Commissioner may institute a revocation or suspension proceeding under Code Section 10-5-41 within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

10-5-39.

(a) A person shall pay a fee of \$250.00 when initially filing an application for registration as a broker-dealer and a fee of \$100.00 when filing a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the Commissioner shall retain the fee.

(b) The fee for an individual is \$50.00 when filing an application for registration as an agent, \$40.00 when filing a renewal of registration as an agent, and \$30.00 when filing for a change of registration as an agent. If the filing results in a denial or withdrawal, the Commissioner shall retain the fee.

(c) A person shall pay a fee of \$250.00 when filing an application for registration as an investment adviser and a fee of \$100.00 when filing a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal, the Commissioner shall retain the fee.

(d) The fee for an individual is \$250.00 when filing an application for registration as an investment adviser representative, a fee of \$100.00 when filing a renewal of registration as an investment adviser representative, and a fee of \$50.00 when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the Commissioner shall retain the fee.

(e) A federal covered investment adviser required to file a notice under Code Section 10-5-34 shall pay an initial fee of \$250.00 and an annual notice fee of \$100.00.

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

(g) An investment adviser representative who is registered as an agent under Code Section 10-5-31 and who represents a person that is both registered as a broker-dealer under Code Section 10-5-30 and registered as an investment adviser under Code Section 10-5-32 or required as a federal covered investment adviser to make a notice filing under Code Section 10-5-34 is not required to pay an initial or annual registration fee for registration as an investment adviser representative.

10-5-40.

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

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

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

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

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

- (3) Investment adviser records required to be maintained under paragraph (1) of this subsection may be maintained in any form of data storage required by rule adopted or order issued under this chapter.
- (d) The records of a broker-dealer registered or required to be registered under this chapter and of an investment adviser registered or required to be registered under this chapter are subject to such reasonable, periodic, special, or other audits or inspections by a representative of the Commissioner, inside or outside this state, as the Commissioner considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The Commissioner may copy, and remove for audit or inspection copies of, all records the Commissioner reasonably considers necessary or appropriate to conduct the audit or inspection. The Commissioner may assess a reasonable charge for conducting an audit or inspection under this subsection.
- (e) Subject to Section 15(h) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78o(h), or Section 222 of the Investment Advisers Act of 1940, 15 U.S.C. Section 80b-22, a rule adopted or order issued under this chapter may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount not to exceed \$25,000.00. The Commissioner may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this chapter whose net capital exceeds or of an investment adviser registered under this chapter whose minimum financial requirements exceed the amounts required by rule adopted or order issued under this chapter. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in paragraph (2) of subsection (j) of Code Section 10-5-58.
- (f) Subject to Section 15(h) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78o(h), or Section 222 of the Investment Advisers Act of 1940, 15 U.S.C. Section 80b-22, an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this chapter may prohibit, limit, or impose conditions on a broker-dealer regarding custody of

funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(g) With respect to an investment adviser registered or required to be registered under this chapter, a rule adopted or order issued under this chapter may require that information or other record be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(h) A rule adopted or order issued under this chapter may require an individual registered under Code Section 10-5-31 or 10-5-33 to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this chapter may require continuing education for an individual registered under Code Section 10-5-33.

10-5-41.

(a) If the Commissioner finds that the order is in the public interest and subsection (d) of this Code section authorizes the action, an order issued under this chapter may deny an application or may condition or limit registration:

(1) Of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative; and

(2) If the applicant is a broker-dealer or investment adviser, of any partner, officer, director, person having a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser.

(b) If the Commissioner finds that the order is in the public interest and subsection (d) of this Code section authorizes the action, an order issued under this chapter may revoke, suspend, condition, or limit the registration of a registrant and if the registrant is a broker-dealer or investment adviser, any partner, officer, or director, any person having a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser. However, the Commissioner:

(1) May not institute a revocation or suspension proceeding under this subsection based on an order issued by another state that is reported to the Commissioner later than one year after the date of the order on which it is based; and

(2) Under subparagraphs (d)(5)(A) and (d)(5)(B) of this Code section may not issue an order on the basis of an order under the state securities act of another state unless the

other order was based on conduct for which subsection (d) of this Code section would authorize the action had the conduct occurred in this state.

(c) If the Commissioner finds that the order is in the public interest and paragraphs (1) through (6) and (8) through (13) of subsection (d) of this Code section authorize the action, an order under this chapter may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of \$50,000.00 for a single violation or \$500,000.00 for several violations on a registrant and if the registrant is a broker-dealer or investment adviser, any partner, officer, or director, any person having similar functions or any person directly or indirectly controlling the broker-dealer or investment adviser.

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

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

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

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

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

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

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

- (B) The securities administrator of a state or by the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;
 - (C) The Securities and Exchange Commission or by a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;
 - (D) A court adjudicating a United States Postal Service fraud order;
 - (E) The insurance regulator of a state denying, suspending, or revoking the registration of an insurance agent; or
 - (F) A depository institution regulator suspending or barring a person from the depository institution business;
- (6) Is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services administrator of a state that the person willfully violated the Securities Act of 1933, 15 U.S.C. Section 77a, et seq., the Securities Exchange Act of 1934, 15 U.S.C. Section 78a, et seq., the Investment Advisers Act of 1940, 15 U.S.C. Section 80b-1, et seq., the Investment Company Act of 1940, 15 U.S.C. Section 80a-1, et seq., or the Commodity Exchange Act, 7 U.S.C. Section 1, et seq., the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;
- (7) Is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the Commissioner may not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant;
- (8) Refuses to allow or otherwise impedes the Commissioner from conducting an audit or inspection under subsection (d) of Code Section 10-5-40 or refuses access to a registrant's office to conduct an audit or inspection under subsection (d) of Code Section 10-5-40;
- (9) Has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor Act or a rule adopted or order issued under this chapter or the predecessor Act within the previous ten years;

- (10) Has not paid the proper filing fee within 30 days after having been notified by the Commissioner of a deficiency, but the Commissioner shall vacate an order under this paragraph when the deficiency is corrected;
- (11) After notice and opportunity for a hearing, has been found within the previous ten years:
- (A) By a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;
 - (B) To have been the subject of an order of a securities administrator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or
 - (C) To have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;
- (12) Is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state;
- (13) Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten years; or
- (14) Is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by subsection (e) of this Code section. The Commissioner may require an applicant for registration under Code Section 10-5-31 or 10-5-33 who has not been registered in a state within the two years preceding the filing of an application in this state to successfully complete an examination.
- (e) A rule adopted or order issued under this chapter may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, an examination as to an individual and a rule adopted under this chapter may waive, in whole or in part, an examination as to

a class of individuals if the Commissioner determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) The Commissioner may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the Commissioner shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within 30 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the Commissioner within 30 days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the Commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) Except under subsection (f) of this Code section, an order may not be issued under this Code section without:

- (1) Appropriate notice to the applicant or registrant;
- (2) Opportunity for hearing; and
- (3) Findings of fact and conclusions of law in a record in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

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

(i) The Commissioner may not institute a proceeding under subsection (a), (b), or (c) of this Code section based solely on material facts actually known by the Commissioner unless an investigation or the proceeding is instituted within one year after the Commissioner actually acquires knowledge of the material facts.

ARTICLE 5

10-5-50.

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

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

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

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

10-5-51.

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

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

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

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

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

10-5-52.

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

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

10-5-53.

(a) Except as otherwise provided in subsection (b) of this Code section, a rule adopted or order issued under this chapter may require the filing of a prospectus, pamphlet, circular,

form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this chapter.

(b) This Code section does not apply to sales and advertising literature specified in subsection (a) of this Code section which relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by Code Sections 10-5-10 through 10-5-12, except as required pursuant to paragraph (7) of Code Section 10-5-10.

10-5-54.

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

10-5-55.

The filing of an application for registration, a registration statement, a notice filing under this chapter, the registration of a person, the notice filing by a person, or the registration of a security under this chapter does not constitute a finding by the Commissioner that a record filed under this chapter is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the Commissioner has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this Code section.

10-5-56.

A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the Commissioner, or a designee of the Commissioner, the Securities and Exchange

Commission, or a self-regulatory organization, unless the person knew that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

10-5-57.

- (a) A person that willfully violates this chapter, or a rule adopted or order issued under this chapter, except Code Section 10-5-53 or the notice filing requirements of Code Section 10-5-21 or 10-5-34, or that willfully violates Code Section 10-5-54 knowing the statement made to be false or misleading in a material respect, upon conviction, shall be fined not more than \$500,000.00 or imprisoned not more than five years, or both. An individual convicted of violating a rule adopted or order issued under this chapter may be fined but may not be imprisoned if the individual did not have knowledge of the rule or order.
- (b) The Attorney General or the proper prosecuting attorney with or without a reference from the Commissioner may institute criminal proceedings under this chapter.
- (c) This chapter does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

10-5-58.

- (a) Enforcement of civil liability under this Code section is subject to the Securities Litigation Uniform Standards Act of 1998, 112 Stat. 3227.
- (b) A person is liable to the purchaser if the person sells a security in violation of Code Section 10-5-20, or, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:
 - (1) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the legal rate of interest from the date of the purchase, costs, and reasonable attorney fees determined by the court upon the tender of the security or for actual damages as provided in paragraph (3) of this subsection;
 - (2) The tender referred to in paragraph (1) of this subsection may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser

that no longer owns the security may recover actual damages as provided in paragraph (3) of this subsection; and

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

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

(1) The seller may maintain an action to recover the security and any income received on the security, costs, and reasonable attorney fees determined by the court upon the tender of the purchase price or for actual damages as provided in paragraph (3) of this subsection;

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

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

(d) A person acting as a broker-dealer or agent that sells or buys a security in violation of subsection (a) of Code Section 10-5-30, subsection (a) of Code Section 10-5-31, or Code Section 10-5-55 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsection (b) of this Code section, or, if a seller, for a remedy as specified in subsection (c) of this Code section.

(e) A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of subsection (a) of Code Section 10-5-32, subsection (a) of Code Section 10-5-33, or Code Section 10-5-55 is liable to the

client. The client may maintain an action to recover the consideration paid for the advice, interest from the date of payment, costs, and reasonable attorney fees determined by the court.

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

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

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

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

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

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

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

(4) A person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under

subsections (b) through (f) of this Code section, unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

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

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

(j) A person may not obtain relief under subsection (b) of this Code section:

(1) For a violation of Code Section 10-5-20 or for a violation of subsection (d) or (e) of this Code section, unless the action is instituted within two years after the violation occurred; or

(2) Other than for a violation of Code Section 10-5-20 or for a violation of subsection (c) or (f) of this Code section, unless the action is instituted within the earlier of two years after discovery of the facts constituting the violation or five years after the violation occurred.

(k) A person that has made or has engaged in the performance of a contract in violation of this chapter or a rule adopted or order issued under this chapter or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter may not base an action on the contract.

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

(m) The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this Code section or subsection (e) of Code Section 10-5-40.

10-5-59.

A purchaser, seller, or recipient of investment advice may not maintain an action under Code Section 10-5-58 if:

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

(A) An offer stating the respect in which liability under Code Section 10-5-58 may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer and any financial or other

information necessary to correct all material misrepresentations or omissions in the information that was required by this chapter to be furnished to that person at the time of the purchase, sale, or investment advice;

(B) If the basis for relief may have been a violation of subsection (b) of Code Section 10-5-58, an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid and interest from the date of the purchase, less the amount of any income received on the security; or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it and interest from the date of the purchase in cash equal to the damages computed in the manner provided in this subparagraph;

(C) If the basis for relief may have been a violation of subsection (c) of Code Section 10-5-58, an offer to tender the security on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser, and interest from the date of the sale; or, if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest from the date of the sale;

(D) If the basis for relief may have been a violation of subsection (d) of Code Section 10-5-58 and if the customer is a purchaser, an offer to pay as specified in subparagraph (B) of this paragraph; or, if the customer is a seller, an offer to tender or to pay as specified in subparagraph (C) of this paragraph;

(E) If the basis for relief may have been a violation of subsection (e) of Code Section 10-5-58, an offer to reimburse in cash the consideration paid for the advice and interest from the date of payment; or

(F) If the basis for relief may have been a violation of subsection (f) of Code Section 10-5-58, an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest from the date of the violation causing the loss;

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

- (3) The offeror has the present ability to pay the amount offered or to tender the security under paragraph (1) of this Code section;
- (4) The offer under paragraph (1) of this Code section is delivered to the purchaser, seller, or recipient of investment advice or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and
- (5) The purchaser, seller, or recipient of investment advice that accepts the offer under paragraph (1) of this Code section in a record within the period specified under paragraph (2) of this Code section is paid in accordance with the terms of the offer.

ARTICLE 6

10-5-70.

- (a) The administration of this chapter shall be vested in the Secretary of State, who is designated as the Commissioner of Securities.
- (b) The Commissioner shall have the authority to administer oaths in and to prescribe forms for all matters arising under this chapter. The Commissioner shall cooperate with the administrators of the securities laws of other states and of the United States with a view to assisting those administrators in the enforcement of their securities and investment adviser laws and to achieving maximum uniformity in the interpretation of like provisions of the laws administered by them and in the forms which are required to be filed under such laws.
- (c) The Commissioner shall have authority to employ examiners, clerks and stenographers, and other employees as the administration of this chapter may require. The Commissioner shall also have authority to appoint and employ investigators who shall have, in any case that there is reason to believe a violation of this chapter has occurred or is about to occur, the right and power to serve subpoenas and to swear out and execute search warrants and arrest warrants.
- (d) The Commissioner shall have the power to make such rules and regulations from time to time as he or she may deem necessary and proper for the enforcement of this chapter. Such rules and regulations shall be adopted, promulgated, and contested as provided in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'
- (e) The Commissioner or any persons employed by the Commissioner shall be paid, in addition to their regular compensation, the transportation fare, board, lodging, and other traveling expenses necessary and actually incurred by each of them in the performance of their duties under this chapter.

(f) The Commissioner shall appoint, with the approval of the Governor, a person as assistant Commissioner and delegate such powers and duties under this chapter to such assistant Commissioner as he or she desires.

(g) To encourage uniform interpretation and administration of this chapter and effective securities regulation and enforcement, the Commissioner may cooperate with the securities agencies or administrators of one or more states, Canadian provinces or territories, another country, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Securities Investor Protection Corporation, any self-regulatory organization, any national or international organization, securities officials or agencies, or any governmental law enforcement or regulatory agency. The cooperation authorized may include, but is not limited to, participation in a central registration depository under this chapter for documents or records required or allowed to be maintained under this chapter and the designation of any such system as an agent for registration or receipt.

(h) Neither the Commissioner, the assistant Commissioner, nor any employee of the Commissioner may use for personal gain or benefit information filed with or obtained by the Commissioner which is not public information nor may the Commissioner, assistant Commissioner, or any employee of the Commissioner conduct securities dealings based upon information filed with or obtained by the Commissioner, even though such information is known to the public, if there has not been a sufficient period for the securities markets to assimilate the information.

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

(j) The Commissioner may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the Commissioner may collaborate with public and nonprofit organizations with an interest in investor education. This subsection does not authorize the Commissioner to require participation or monetary contributions of a registrant in an investor education program.

10-5-71.

(a) The Commissioner may:

(1) Conduct public or private investigations inside or outside this state which the Commissioner considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this chapter or a rule adopted or order issued

under this chapter or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter;

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

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

(b) For the purpose of an investigation under this chapter, the Commissioner or his or her designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the Commissioner considers relevant or material to the investigation.

(c) If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the Commissioner under this chapter, the Commissioner may refer the matter to the Attorney General or the proper district attorney, who may apply to the superior court or a court of another state to enforce compliance. The court may:

(1) Hold the person in contempt;

(2) Order the person to appear before the Commissioner;

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

(4) Order the production of records;

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

(6) Impose a civil penalty of not less than \$5,000.00 and not greater than \$50,000.00 for each violation; and

(7) Grant any other necessary or appropriate relief.

(d) This Code section does not preclude a person from applying to superior court or a court of another state for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(e) An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the Commissioner under this chapter or in an action or proceeding instituted by the Commissioner under this chapter on the

ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the Commissioner may apply to superior court to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

(f) At the request of the securities administrator of another state or a foreign jurisdiction, the Commissioner may provide assistance if the requesting administrator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting administrator regulates or enforces. The Commissioner may provide the assistance by using the authority to investigate and the powers conferred by this Code section as the Commissioner determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this chapter or other law of this state if occurring in this state. In deciding whether to provide the assistance, the Commissioner may consider whether the requesting administrator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the Commissioner on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this state; and the availability of resources and employees of the Commissioner to carry out the request for assistance.

(g) In the case of any investigation conducted under this Code section, the Commissioner may appoint an investigative agent who shall have the same investigative powers and authority as the Commissioner. The agent shall possess such qualifications as the Commissioner may require.

10-5-67.

(a) If the Commissioner believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the Commissioner may

maintain an action in the superior court to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.

- (b) In an action under this Code section and on a proper showing, the court may:
- (1) Issue a permanent or temporary injunction, restraining order, or declaratory judgment;
 - (2) Order other appropriate or ancillary relief, which may include:
 - (A) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the Commissioner, for the defendant or the defendant's assets;
 - (B) Ordering the Commissioner to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;
 - (C) Imposing a civil penalty up to \$50,000.00 for a single violation or up to \$500,000.00 for more than one violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor Act or a rule adopted or order issued under this chapter or the predecessor Act; and
 - (D) Ordering the payment of prejudgment and postjudgment interest; or
 - (3) Order such other relief as the court considers appropriate.
- (c) The Commissioner may not be required to post a bond in an action or proceeding under this chapter.

10-5-73.

- (a) If the Commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the Commissioner may:
- (1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter;

- (2) Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under subparagraph (b)(1)(D) or (b)(1)(F) of Code Section 10-5-30 or an investment adviser under subparagraph (b)(1)(C) of Code Section 10-5-32; or
- (3) Issue an order under Code Section 10-5-13.
- (b) An order under subsection (a) of this Code section is effective on the date of issuance. Upon issuance of the order, the Commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the Commissioner will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within 30 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the Commissioner within 30 days after the date of service of the order, the order becomes final as to that person by operation of law. If a hearing is requested or ordered, the Commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.
- (c) If a hearing is requested or ordered pursuant to subsection (b) of this Code section, a hearing must be held pursuant to the provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act' and this chapter. A final order may not be issued unless the Commissioner makes findings of fact and conclusions of law in a record. The final order may make final, vacate, or modify the order issued under subsection (a) of this Code section.
- (d) In a final order under subsection (c) of this Code section, the Commissioner may impose a civil penalty up to \$50,000.00 for a single violation or up to \$500,000.00 for more than one violation.
- (e) In a final order under subsection (c) of this Code section, the Commissioner may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.
- (f) If a petition for judicial review of a final order is not filed in accordance with Code Section 10-5-78, the Commissioner may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.
- (g) If a person does not comply with an order under this Code section, the Commissioner may petition a court of competent jurisdiction to enforce the order. The court may not require the Commissioner to post a bond in an action or proceeding under this Code

section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than \$5,000.00 but not greater than \$50,000.00 for each violation and may grant any other relief the court determines is just and proper in the circumstances.

10-5-74.

(a) The Commissioner may:

- (1) Issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this chapter and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;
- (2) By rule, define terms, whether or not used in this chapter, but those definitions may not be inconsistent with this chapter; and
- (3) By rule, classify securities, persons, and transactions and adopt different requirements for different classes.

(b) Under this chapter, a rule or form may not be adopted or amended or an order issued or amended unless the Commissioner finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this chapter. In adopting, amending, and repealing rules and forms, Code Section 10-5-77 applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

(c) Subject to Section 15(h) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78a, et seq., and Section 222 of the Investment Advisers Act of 1940, 15 U.S.C. Section 80b-1, et seq., the Commissioner may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this chapter. A rule adopted or order issued under this chapter may establish:

- (1) Subject to Section 15(h) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78a, et seq., and Section 222 of the Investment Advisers Act of 1940, 15 U.S.C. Section 80b-1, et seq., the form and content of financial statements required under this chapter;
- (2) Whether unconsolidated financial statements must be filed; and

- (3) Whether required financial statements must be audited by an independent certified public accountant.
- (d) The Commissioner may provide interpretative opinions or issue determinations that the Commissioner will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. A rule adopted or order issued under this chapter may establish a reasonable charge for interpretative opinions or determinations that the Commissioner will not institute an action or a proceeding under this chapter.
- (e) A hearing in an administrative proceeding under this chapter shall be conducted in public unless the Commissioner for good cause consistent with this chapter determines that the hearing shall not be so conducted.

10-5-75.

- (a) The Commissioner shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this chapter or the predecessor Act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or the predecessor Act; and interpretative opinions or no action determinations issued under this chapter.
- (b) The Commissioner shall make all rules, forms, interpretative opinions, and orders available to the public.
- (c) The Commissioner shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted under this chapter may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the Commissioner of a record's nonexistence is prima-facie evidence of a record or its nonexistence.

10-5-76.

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

(b) The following information and documents do not constitute public information under subsection (a) of this Code section and shall be confidential:

- (1) Information or documents obtained by the Commissioner in connection with an investigation under Code Section 10-5-21;
- (2) Information or documents filed with the Commissioner in connection with a registration statement or exemption filing under this chapter which constitute trade secrets or commercial or financial information of a person for which that person is entitled to and has asserted a claim of confidentiality or privilege authorized by law;
- (3) Any document or record specifically designated as confidential in accordance with this chapter; and
- (4) Any document, record, or information designated as confidential by federal statute, rule, or regulation.

10-5-77.

(a) The Commissioner shall, in his or her discretion, cooperate, coordinate, consult, and, subject to Code Section 10-5-76, share records and information with the securities administrator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities administrators, a federal or state banking or insurance regulator, or a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.

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

- (1) Maximizing effectiveness of regulation for the protection of investors;
- (2) Maximizing uniformity in federal and state regulatory standards; and
- (3) Minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

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

- (1) Establishing or employing one or more designees as a central depository for registration and notice filings under this chapter and for records required or allowed to be maintained under this chapter;
- (2) Developing and maintaining uniform forms;
- (3) Conducting a joint examination or investigation;
- (4) Holding a joint administrative hearing;
- (5) Instituting and prosecuting a joint civil or administrative proceeding;
- (6) Sharing and exchanging personnel;
- (7) Coordinating registrations under Code Sections 10-5-20 and Code Section 10-5-30 through 10-5-33 and exemptions under Code Section 10-5-12;
- (8) Sharing and exchanging records, subject to Code Section 10-5-76;
- (9) Formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases;
- (10) Formulating common systems and procedures;
- (11) Notifying the public of proposed rules, forms, statements of policy, and guidelines;
- (12) Attending conferences and other meetings among securities administrators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity; and
- (13) Developing and maintaining a uniform exemption from registration for small issuers and taking other steps to reduce the burden of raising investment capital by small businesses.

10-5-78.

- (a) A final order issued by the Commissioner under this chapter is subject to judicial review in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'
- (b) A rule adopted under this chapter is subject to judicial review in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

10-5-79.

- (a) Code Sections 10-5-20 and 10-5-21, subsection (a) of Code Section 10-5-30, subsection (a) of Code Section 10-5-31, subsection (a) of Code Section 10-5-32, subsection (a) of Code Section 10-5-33, and Code Sections 10-5-42, 10-5-55, 10-5-58, and 10-5-59 do not apply to a person that sells or offers to sell a security unless the offer to sell or the

sale is made in this state or the offer to purchase or the purchase is made and accepted in this state.

(b) Subsection (a) of Code Section 10-5-30, subsection (a) of Code Section 10-5-31, subsection (a) of Code Section 10-5-32, subsection (a) of Code Section 10-5-33, and Code Sections 10-5-42, 10-5-55, 10-5-58, and 10-5-59 do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in this state or the offer to sell or the sale is made and accepted in this state.

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

- (1) Originates from within this state; or
- (2) Is directed by the offeror to a place in this state and received at the place to which it is directed.

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

- (1) Is communicated to the offeror in this state and the offeree reasonably believes the offeror to be present in this state and the acceptance is received at the place in this state to which it is directed; and
- (2) Has not previously been communicated to the offeror, orally or in a record, outside this state.

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

- (1) The program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state;
- (2) The program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state;

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

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

(f) Subsection (a) of Code Section 10-5-32, subsection (a) of Code Section 10-5-33, subsection (a) of Code Section 10-5-34, and Code Sections 10-5-51, 10-5-54, and 10-5-55 apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

10-5-80.

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

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

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

(1) The plaintiff, which may be the Commissioner, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process

has not been filed, at the last known address or takes other reasonable steps to give notice; and

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

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

(e) If process is served under subsection (c) of this Code section, the court, or the Commissioner in a proceeding before the Commissioner, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

ARTICLE 7

10-5-90.

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

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

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

SECTION 2.

Code Section 7-1-241 of the Official Code of Georgia Annotated, relating to restrictions on engaging in banking business, is amended by revising paragraph (5) of subsection (b) as follows:

- "(5) A securities broker or dealer registered pursuant to the provisions of 15 U.S.C. Section 78o or Chapter 5 of Title 10 to the extent that such securities broker or dealer:
- (A) Sells certificates of deposit or interest in certificates of deposit or other deposit instruments issued by a bank or savings association, provided such securities broker or dealer fully and fairly discloses at the time of solicitation and confirmation whether or not federal deposit insurance is available for that deposit instrument;
 - (B) Purchases certificates of deposit or other deposit instruments issued by a bank or savings association for the account of the customer of such securities broker or dealer, provided such instruments are registered in the name of the customer or the custodian of such customer on the books or other records of the issuing bank or savings association; or
 - (C) Holds customer funds incidental to the purchase and sale of securities on behalf of such customer."

SECTION 3.

Code Section 7-1-242 of the Official Code of Georgia Annotated, relating to restriction on corporate fiduciaries, is amended by revising paragraphs (6) and (7) of subsection (a) as follows:

- "(6) An investment adviser registered pursuant to the provisions of 15 U.S.C. Section 80b-3 or Chapter 5 of Title 10, provided this exception shall not authorize an investment adviser to act in any fiduciary capacity subject to the provisions of Title 53, relating to wills, trusts, and the administration of estates; or
- (7) A securities broker or dealer registered pursuant to the provisions of 15 U.S.C. Section 78o or Chapter 5 of Title 10 acting in such fiduciary capacity incidental to and as a consequence of its broker or dealer activities."

SECTION 4.

Code Section 7-1-396 of the Official Code of Georgia Annotated, relating to the effect of certificate of incorporation and permit to begin business, is amended by revising subsection (a) as follows:

- "(a) As of the issuance of the certificate of incorporation by the Secretary of State, the corporate existence of the bank or trust company shall begin and those persons who

subscribed for shares prior to filing of the articles, or their assignees, shall be shareholders in the bank or trust company; provided, nevertheless, that the department shall have full authority to regulate and supervise the activities of promoters, incorporators, initially named directors, subscribers for shares, and all persons soliciting offers to subscribe for shares in any bank in formation under this chapter even though the corporate existence of the bank may not have officially begun and the bank in formation shall be considered a 'bank' for those purposes. Persons named in the articles of incorporation and approved by the department as initial directors of the bank in formation shall not be considered 'agents' or 'broker-dealers' within the meaning of paragraphs (1) and (3) of Code Section 10-5-2."

SECTION 5.

Code Section 10-1-417 of the Official Code of Georgia Annotated, relating to purchaser and participant remedies; violations as unfair or deceptive acts; and penalty regarding multilevel distribution companies, is amended by revising subsection (c) as follows:

"(c) Nothing contained in this part shall be construed to limit, modify, or repeal any provisions of Chapter 5 of this title, the 'Georgia Uniform Securities Act of 2008,' including, but not limited to, the definition of the term 'security' as contained in paragraph (31) of Code Section 10-5-2."

SECTION 6.

Code Section 10-5B-2 of the Official Code of Georgia Annotated, relating to definitions regarding deceptive, fraudulent, or abusive telemarketing, is amended by revising paragraph (8) of subsection (a) as follows:

"(8) 'Telephonic sale,' 'sell telephonically,' 'telephonic selling,' 'telephonic offer for sale,' or 'telephonic solicitation of sale,' and 'telemarketing' means a sale or solicitation of goods or services, a sale or offer to sell a security as defined in paragraph (31) of Code Section 10-5-2, or a solicitation of a charitable contribution, in which:

- (A) The seller solicits the sale or charitable sale or contribution over the telephone;
- (B) The purchaser's agreement to purchase or contribute is made over the telephone;
- and
- (C) In the case of a sale of goods or services only, the purchaser, over the telephone, pays for or agrees to commit to payment for goods or services prior to or upon receipt by the purchaser of the goods and services."

SECTION 7.

Code Section 14-2-140 of the Official Code of Georgia Annotated, relating to corporation code definitions, is amended by revising paragraph (19) as follows:

"(19) 'National securities exchange' means any securities exchange or securities quotation system if the securities listed on that exchange or system are exempt from the registration requirements of Chapter 5 of Title 10, known as the 'Georgia Uniform Securities Act of 2008,' pursuant to Code Section 10-5-10 or any successor provision."

SECTION 8.

Code Section 14-11-1107 of the Official Code of Georgia Annotated, relating to laws governing chapter regarding limited liability companies, is amended by revising subsection (n) as follows:

"(n) Nothing in this chapter shall be construed as establishing that a limited liability company interest is not a 'security' within the meaning of paragraph (31) of Code Section 10-5-2 (or any successor statute)."

SECTION 9.

Code Section 16-14-3 of the Official Code of Georgia Annotated, relating to definitions under the "Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act," is amended by revising subdivision (9)(A)(xxi) as follows:

"(xxi) Chapter 5 of Title 10, relating to violations of the 'Georgia Uniform Securities Act of 2008';"

SECTION 10.

The Official Code of Georgia Annotated is amended by replacing "Georgia Securities Act of 1973," with "Georgia Uniform Securities Act of 2008," and "Georgia Securities Act of 1973." with "Georgia Uniform Securities Act of 2008.", respectively, wherever the former phrase appears in:

- (1) Code Section 10-5A-8, relating to applicability of securities law;
- (2) Code Section 10-5B-3, relating to rules to prohibit deceptive, fraudulent, or abusive telemarketing activities authorized;
- (3) Code Section 10-5B-4, relating to required and prohibited telephone conduct and activities and liability;
- (4) Code Section 10-5B-5, relating to applicability of chapter to persons subject to other provisions of the Code;

- (5) Code Section 10-5B-7, relating to remedies, duties, prohibitions, and penalties of chapter not exclusive and construction with other provisions of the Code;
- (6) Code Section 10-9-59, relating to inapplicability of "Georgia Securities Act of 1973" to bonds for Georgia World Congress Center;
- (7) Code Section 12-3-298, relating to revenue bonds; issuance for purpose of paying for cost of parks projects;
- (8) Code Section 12-8-59.1, relating to liberal construction regarding regional solid waste management authorities; bonds not subject to other state law; and other authorities;
- (9) Code Section 19-6-28.1, relating to suspension of, or denial of application or renewal of, license for noncompliance with child support order;
- (10) Code Section 19-11-9.3, relating to suspension or denial of license for noncompliance with child support order; interagency agreements; and report to General Assembly;
- (11) Code Section 20-3-295, relating to the Georgia Higher Education Assistance Corporation to maintain certified list of borrowers in default, administrative hearings, and appeals;
- (12) Code Section 20-3-616, relating to exemption from securities law; approval required for transfer of advance tuition payment contracts;
- (13) Code Section 33-11-66, relating to cumulative nature of Code section; variable annuity contracts; and Insurance Commissioner's role;
- (14) Code Section 33-11-67, variable contract insurance policies and Insurance Commissioner's role; insurance license required;
- (15) Code Section 33-14-10, relating to sale of subscriptions for insurance securities and sale offer of insurance securities;
- (16) Code Section 33-59-16, relating to compliance with securities laws;
- (17) Code Section 36-42-15, relating to construction of chapter and applicability of the "Georgia Securities Act of 1973" to downtown development authorities;
- (18) Code Section 42-4-102, relating to construction of article; bonds not subject to regulation under the "Georgia Securities Act of 1973"; and power of counties and municipalities to activate regional jail authorities;
- (19) Code Section 45-13-25, relating to employment of assistants to the Secretary of State to discharge functions imposed by Chapter 5 of Title 10, the "Georgia Securities Act of 1973";

(20) Code Section 50-23-13, relating to liberal construction; bonds of Environmental Facilities Authority exempt from securities law; necessity of notice, proceeding, or publication; and referendums;

(21) Code Section 50-26-10, relating to obligations not subject to "Georgia Securities Act of 1973"; payment of operating costs; Georgia Housing Authority's revenue; and issuance of bonds;

(22) Code Section 50-32-35, relating to applicability of Chapter 5 of Title 10 to the Georgia Regional Transportation Authority;

(23) Code Section 50-34-8, relating to obligations of the OneGeorgia Authority not subject to the "Georgia Securities Act of 1973"; setting of rates, fees, and charges for loans; and power to issue bonds; and

(24) Code Section 50-35-11, relating to construction of chapter creating Environmental Training and Education Authority.

SECTION 11.

The Official Code of Georgia Annotated is amended by replacing "Georgia Securities Law" with "Georgia Uniform Securities Act of 2008" wherever the former phrase appears in:

(1) Code Section 36-62-11, relating to construction of chapter regarding development authorities generally;

(2) Code Section 36-63-11, relating to construction of chapter regarding resource recovery development authorities generally; and

(3) Code Section 36-75-10, relating to construction of chapter regarding war on terrorism local assistance.

SECTION 12.

This Act shall become effective on July 1, 2009.

SECTION 13.

All laws and parts of laws in conflict with this Act are repealed.