

1 IN THE HOUSE

BY THE RULES COMMITTEE
BY REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 444

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIRST LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to securities; requiring re-
7 gistration of securities; amending Ch. 198,
8 SLA 1959; repealing and re-enacting subpara-
9 graph (9), subsec. (b), Sec. 302, Ch. 198,
10 SLA 1959; repealing subsec. (d), Sec. 312,
11 Ch. 198, SLA 1959; and providing for an
12 effective date."

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

14 Section 1. Subsec. (b), Sec. 301, Ch. 198, SLA 1959 is
15 amended to read as follows:

16 (b) "Agent" means any individual other than a broker-
17 dealer who represents a broker-dealer or issuer [(EXCEPT AS
18 PROVIDED IN SECTION 302)] in effecting or attempting to effect
19 purchase or sale of securities. "Agent" does not include an
20 individual who represents an issuer in (1) effecting transac-
21 tions in a security exempted by clause (1), (2), (3), (4), or
22 (5) of section 302 (a), (2) effecting transactions exempted
23 by section 302 (b), or (3) effecting transactions with exist-
24 ing employees, partners, or directors of the issuer if no com-
25 mission or other remuneration is paid or given directly or in-
26 directly for soliciting any person in this state. A partner,
27 officer, or director of a broker-dealer or issuer, or a person
28 occupying a similar status or performing similar functions, is
29 an agent only if he otherwise comes within this definition.

1 Sec. 2. Sec. 301, Ch. 198, SLA 1959 is amended by adding
2 a new subsection (m) to read as follows:

3 (m) "Non-issuer" means not directly or indirectly for
4 the benefit of the issuer.

5 Sec. 3. Subsec. (a), Sec. 302, Ch. 198, SLA 1959 is amended
6 to read as follows:

7 (a) The following securities are exempted from sec-
8 tions 401 and 303: [(A) AGENTS OF ISSUERS WITH RESPECT TO
9 THE FOLLOWING SECURITIES ARE EXCEPTED FROM SECTIONS 301 (B)
10 AND 303:]

11 Sec. 4. Subparagraph (5), subsec. (a), Sec. 302, Ch. 198,
12 SLA 1959 is amended to read as follows:

13 (5) any investment contract issued in connection
14 with an employee's stock purchase, savings, pension, profit-
15 sharing, or similar benefit plan if the Administrator is
16 notified in writing thirty days before the inception of
17 the plan or, with respect to plans which are in effect on
18 the effective date of this Act, within sixty days thereafter
19 (or within thirty days before they are reopened if they are
20 closed on the effective date of this Act); [.]

21 Sec. 5. Subsec. (a), Sec. 302, Ch. 198, SLA 1959 is amended
22 by adding the following new subparagraphs:

23 (6) any security issued by and representing an
24 interest in or a debt of, or guaranteed by, any federal
25 savings and loan association, or any building and loan or
26 similar association organized under the laws of any state
27 and authorized to do business in this state;

28 (7) any security issued by and representing an
29 interest in or a debt of, or guaranteed by, any insurance

1 N company organized under the laws of any state and authorized
2 to do business in this state; but this exemption does not
3 apply to an annuity contract, investment contract, or
4 E similar security under which the promised payments are not
5 fixed in dollars but are substantially dependent upon the
6 investment results of a segregated fund or account invested
7 W in securities;

8 (8) any security issued or guaranteed by any
9 federal credit union or any credit union, industrial loan
10 association, or similar association organized and supervised
11 under the laws of this state;

12 (9) any security issued or guaranteed by any
13 railroad, other common carrier, public utility, or holding
14 M company which is (a) subject to the jurisdiction of the
15 Interstate Commerce Commission; (b) a registered holding
16 company under the Public Utility Holding Company Act of 1935
17 A or a subsidiary of such a company within the meaning of
18 that act; (c) regulated in respect of its rates and charges
19 by a governmental authority of the United States or any
20 T state; or (d) regulated in respect of the issuance or
21 guarantee of the security by a governmental authority of the
22 United States, any state, Canada, or any Canadian province;

23 T (10) any security listed or approved for listing
24 upon notice of issuance on the New York Stock Exchange, the
25 American Stock Exchange, or the Midwest Stock Exchange, or
26 E any other security of the same issuer which is of senior or
27 substantially equal rank; any security called for by subscrip-
28 tion rights or warrants so listed or approved; or any warrant
29 R or right to purchase or subscribe to any of the foregoing;

1 (11) any security issued by any person organized
2 and operated not for private profit but exclusively for re-
3 ligious, educational, benevolent, charitable, fraternal,
4 social, athletic, or reformatory purposes, or as a chamber
5 of commerce or trade or professional association.

6 Sec. 6. Subsec. (b), Sec. 302, Ch. 198, SLA 1959 is amended
7 to read as follows:

8 (b) The following transactions are exempted from sec-
9 tions 401 and 303: [(B) AGENTS OF ISSUERS WITH RESPECT TO
10 THE FOLLOWING TRANSACTIONS ARE EXCEPTED FROM SECTIONS 301 (B)
11 AND 303:]

12 Sec. 7. Subparagraph (3), subsec. (b), Sec. 302, Ch. 198,
13 SLA 1959, is amended to read as follows:

14 (3) any transaction by an executor, administra-
15 tor, sheriff, marshal, [A] receiver, [OR] trustee in bank-
16 ruptcy, guardian, or conservator;

17 Sec. 8. Subparagraph (9), subsec. (b), Sec. 302, Ch. 198,
18 SLA 1959, is repealed and re-enacted to read as follows:

19 (9) any isolated non-issuer transaction, whether
20 effected through a broker-dealer or not;

21 Sec. 9. Subsec. (b), Sec. 302, Ch. 198, SLA 1959 is amended
22 by adding the following new subparagraphs:

23 (10) any non-issuer distribution of an outstand-
24 ing security if (a) a recognized securities manual contains
25 the names of the issuer's officers and directors, a balance
26 sheet of the issuer as of a date within eighteen months, and
27 a profit and loss statement for either the fiscal year pre-
28 ceding that date or the most recent year of operations, or
29 (b) the security has a fixed maturity or a fixed interest or

1 N dividend provision and there has been no default during the
2 E current fiscal year or within the three preceding fiscal
3 W years, or during the existence of the issuer and any pre-
4 decessors if less than three years, in the payment of
5 principal, interest, or dividends on the security;

6 (11) any non-issuer transaction effected by or
7 through a registered broker-dealer pursuant to an unsolicited
8 order or offer to buy; but the Administrator may by rule
9 M require that the customer acknowledge upon a specified form
10 A that the sale was unsolicited, and that a signed copy of
11 T each such form be preserved by the broker-dealer for a
12 T specified period;

13 E (12) any transaction executed by a bona fide
14 R pledgee without any purpose of evading this Act;

15 Sec. 10. Subsec. (c), Sec. 302, Ch. 198, SLA 1959 is amended
16 to read as follows:

17 (c) In any proceeding under this Act, the burden of
18 proving an exemption or an exception from a definition is
19 upon the person claiming it.

20 Sec. 11. Sec. 302, Ch. 198, SLA 1959 is amended by adding
21 a new subsection (d) to read as follows:

22 (d) The Administrator may by order deny or revoke any
23 exemption specified in clause (5) or (7) of subsec. (a) or
24 in subsec. (b) with respect to a specific security or trans-
25 action. No such order may be entered without appropriate
26 prior notice to all interested parties, opportunity for
27 hearing, and written findings of fact and conclusions of law,
28 except that the Administrator may by order summarily deny or
29 revoke any of the specified exemptions pending final

1 N determination of any proceeding under this subsection. Upon
2 the entry of a summary order, the Administrator shall promptly
3 E notify all interested parties that it has been entered and of
4 the reasons therefor and that within fifteen days of the
5 W receipt of a written request the matter will be set down for
6 hearing. If no hearing is requested and none is ordered by
7 the Administrator, the order will remain in effect until it
8 M is modified or vacated by the Administrator. If a hearing
9 is requested or ordered, the Administrator, after notice of
10 A and opportunity for hearing to all interested persons, may
11 modify or vacate the order or extend it until final deter-
12 T mination.

13 No order under this subsection may operate retroactively.
14 T No person may be considered to have violated section 401 or
15 303 by reason of any offer or sale effected after the entry
16 E of an order under this subsection if he sustains the burden
17 of proof that he did not know, and in the exercise of
18 R reasonable care could not have known of the order.

19 Sec. 12. Sec. 303, Ch. 198, SLA 1959 is amended to read as
20 follows:

21 Sec. 303. FILING OF SALES AND ADVERTISING LITERATURE.
22 The Administrator may by rule or order require the filing of
23 [ANY REGISTERED BROKER-DEALER OR AGENT TO FILE] any pros-
24 pectus, pamphlet, circular, form letter, advertisement,
25 or other sales literature, or advertising communication
26 addressed or intended for distribution to prospective in-
27 vestors, including clients or prospective clients of an
28 investment adviser, unless the security or transaction is
29 exempted by section 302. [EXCEPT WITH RESPECT TO THE

1 SECURITIES AND TRANSACTIONS SPECIFIED IN SECTION 302.]

2 Sec. 13. Subsec. (a), Sec. 305, Ch. 198, SLA 1959 is
3 amended to read as follows:

4 (a) Neither (1) the fact that an application for regis-
5 tration under Part II or a registration statement under Part
6 IV has been filed nor (2) the fact that a person or security
7 is effectively registered constitutes a finding by the
8 Administrator that any document filed under this Act is true,
9 complete, and not misleading. Neither any such fact nor the
10 fact that an exemption or exception is available for a se-
11 curity or a transaction means that the Administrator has pass-
12 ed in any way upon the merits or qualifications of, or re-
13 commended or given approval to, any person, security, or
14 transaction.

15 Sec. 14. Subparagraph (1), subsec. (a), Sec. 310, Ch. 198,
16 SLA 1959 is amended to read as follows:

17 (1) offers or sells a security in violation of
18 section 201 (a), 401, or 305 (b), or of any rule or order
19 under section 303 which requires the filing of sales litera-
20 ture before it is used, or of any condition imposed under
21 section 404 (j), 405 (c), or 405 (h), or [.]

22 Sec. 15. Subsec. (d), Sec. 312, Ch. 198, SLA 1959 is re-
23 pealed.

24 Sec. 16. Subsec. (b), Sec. 313, Ch. 198, SLA 1959, is amended
25 to read as follows:

26 (b) The Administrator [ADMINISTRATOR] shall keep a
27 register of all applications for registration and registra-
28 tion statements which are or have ever been effective under
29 this Act and all denial, suspension, or revocation orders

1 which have been entered under this Act. The register shall
2 be open for public inspection.

3 Sec. 17. Subsec. (c), Sec. 313, Ch. 198, SLA 1959 is amended
4 to read as follows:

5 (c) The information contained in or filed with any
6 registration statement, application, or report may be made
7 available to the public under such rules as the Administrator
8 prescribes.

9 Sec. 18. Subsec. (a), Sec. 314, Ch. 198, SLA 1959, is amended
10 to read as follows:

11 (a) Sections 101, 201 (a), 401, 305, and 310 apply
12 to persons who sell or offer to sell when (1) an offer to
13 sell is made in this state, or (2) an offer to buy is made
14 and accepted in this state.

15 Sec. 19. Ch. 198, SLA 1959 is amended by adding a new Part
16 IV to read as follows:

17 PART IV

18 REGISTRATION OF SECURITIES

19 Section 401. REGISTRATION REQUIREMENT. It is unlawful
20 for any person to offer or sell any security in this state
21 unless (1) it is registered under this Act or (2) the se-
22 curity or transaction is exempted under section 302.

23 Section 402. REGISTRATION BY NOTIFICATION.

24 (a) The following securities may be registered by
25 notification, whether or not they are also eligible for
26 registration by coordination under section 403:

27 (1) any security whose issuer and any predecessors
28 have been in continuous operation for at least five years if
29 (A) there has been no default during the current fiscal year

1 N or within the three preceding fiscal years in the payment of
2 principal, interest, or dividends on any security of the
3 issuer (or any predecessor) with a fixed maturity or a fixed
4 E interest or dividend provision, and (B) the issuer and any
5 predecessor during the past three fiscal years have had
6 average net earnings, determined in accordance with generally
7 W accepted accounting practices, (i) which are applicable to
8 all securities without a fixed maturity or a fixed interest
9 or dividend provision outstanding at the date the registra-
10 tion statement is filed and equal at least five per cent of
11 the amount of such outstanding securities (as measured by the
12 maximum offering price or the market price on a day, selected
13 by the registrant, within thirty days before the date of
14 M filing the registration statement, whichever is higher, or
15 book value on a day, selected by the registrant, within
16 ninety days of the date of filing the registration statement
17 A to the extent that there is neither a readily determinable
18 market price nor a cash offering price), or (ii) which, if
19 the issuer and its predecessors have not had any security of
20 T the type specified in clause (i) outstanding for three full
21 fiscal years, equal at least five percent of the amount
22 (as measured in clause (i)) of all securities which will be
23 T outstanding if all the securities being offered or proposed
24 to be offered (whether or not they are proposed to be
25 registered or offered in this state) are issued;
26 E (2) any security (other than a certificate of
27 interest or participation in an oil, gas or mining title or
28 lease or in payments out of production under such a title or
29 R lease) registered for non-issuer distribution if (A) any

1 N security of the same class has ever been registered under
2 this Act or predecessor act, or (B) the security being
3 registered was originally issued pursuant to an exemption
4 E under this Act or a predecessor act.

5 (b) A registration statement under this section shall
6 contain the following information and be accompanied by the
7 W following documents in addition to the information specified
8 in section 405 (c) and the consent to service of process
9 required by section 314 (g):

10 (1) a statement demonstrating eligibility for
11 registration by notification;

12 (2) with respect to the issuer and any signifi-
13 cant subsidiary: its name, address, and form of organiza-
14 M tion; the state (or foreign jurisdiction) and the date of
15 its organization; and the general character and location of
16 its business;

17 A (3) with respect to any person on whose behalf
18 any part of the offering is to be made in a non-issuer dis-
19 tribution; his name and address; the amount of securities of
20 T the issuer held by him as of the date of the filing of the
21 registration statement; and a statement of his reasons for
22 making the offering;

23 T (4) a description of the security being regis-
24 tered;

25 (5) the information and documents specified in
26 E clauses (8), (10), and(12) of section 404 (b); and

27 (6) in the case of any registration under section
28 402 (a) (2) which does not also satisfy the conditions of
29 R section 402 (a) (1), a balance sheet of the issuer as of a

1 N date within four months prior to the filing of the registra-
2 tion statement, and a summary of earnings for each of the two
3 fiscal years preceding the date of the balance sheet and for
4 E any period between the close of the last fiscal year and the
5 date of the balance sheet, or for the period of the issuer's
6 and any predecessor's existence if less than two years.

7 W (c) If no stop order is in effect and no proceeding
8 is pending under section 406, a registration statement under
9 this section automatically becomes effective at three o'clock
10 Pacific Standard Time in the afternoon of the second full
11 business day after the filing of the registration statement
12 or the last amendment, or at such earlier time as the Ad-
13 ministrator determines.

14 M Section 403. REGISTRATION BY COORDINATION.

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

18 (b) A registration statement under this section shall
19 contain the following information and be accompanied by the
20 T following documents in addition to the information specified
21 in section 405 (c) and the consent to service of process re-
22 quired by section 314 (g):

23 T (1) three copies of the latest form of prospectus
24 filed under the Securities Act of 1933;

25 (2) if the Administrator by rule or otherwise
26 E requires, a copy of the articles of incorporation and by-laws
27 (or their substantial equivalents) currently in effect, a
28 copy of any agreements with or among underwriters, a copy
29 R of any indenture or other instrument governing the issuance

1 N of the security to be registered, and a specimen or copy of
2 the security;

3 (3) if the Administrator requests, any other
4 E information, or copies of any other documents, filed under
5 the Securities Act of 1933; and

6 (4) an undertaking to forward all future amendments
7 W to the federal prospectus, other than an amendment which
8 merely delays the effective date of the registration state-
9 ment, promptly and in any event not later than the first
10 business day after the day they are forwarded to or filed
11 with the Securities and Exchange Commission, whichever first
12 occurs.

13 (c) A registration statement under this section auto-
14 M matically becomes effective at the moment the federal regis-
15 tration statement becomes effective if all the following
16 conditions are satisfied: (1) no stop order is in effect and
17 A no proceeding is pending under section 406; (2) the regis-
18 tration statement has been on file with the Administrator
19 for at least ten days; and (3) a statement of the maximum
20 T and minimum proposed offering prices and the maximum under-
21 writing discounts and commissions has been on file for two
22 full business days or such shorter period as the Administrator
23 T permits by rule or otherwise and the offering is made within
24 those limitations. The registrant shall promptly notify the
25 Administrator by telephone or telegram of the date and time
26 E when the federal registration statement became effective and
27 the content of the price amendment, if any, and shall
28 promptly file a post-effective amendment containing the
29 R information and documents in the price amendment. "Price

1 N amendment" means the final federal amendment which includes
2 a statement of the offering price, underwriting and selling
3 discounts or commissions, amount of proceeds, conversion
4 E rates, call prices, and other matters dependent upon the
5 offering price. Upon failure to receive the required noti-
6 fication and post-effective amendment with respect to the
7 W price amendment, the Administrator may enter a stop order,
8 without notice or hearing, retroactively denying effectiveness
9 to the registration statement or suspending its effectiveness
10 until compliance with this subsection, if he promptly notifies
11 the registrant by telephone or telegram (and promptly con-
12 firms by letter or telegram when he notifies by telephone)
13 of the issuance of the order. If the registrant proves
14 M compliance with the requirements of this subsection as to
15 notice and post-effective amendment, the stop order is void
16 as of the time of its entry. The Administrator may by rule
17 A or otherwise waive either or both of the conditions speci-
18 fied in clauses (2) and (3). If the federal registration
19 statement becomes effective before all the conditions in this
20 T subsection are satisfied and they are not waived, the regis-
21 tration statement automatically becomes effective as soon
22 as all the conditions are satisfied. If the registrant
23 T advises the Administrator of the date when the federal
24 registration statement is expected to become effective, the
25 Administrator shall promptly advise the registrant by tele-
26 E phone or telegram, at the registrant's expense, whether all
27 the conditions are satisfied and whether he then contemplates
28 the institution of a proceeding under section 406; but this
29 R advice by the Administrator does not preclude the institution

1 N of such a proceeding at any time.

2 Section 404. REGISTRATION BY QUALIFICATION.

3 (a) Any security may be registered by qualification.

4 E (b) A registration statement under this section shall
5 contain the following information and be accompanied by the
6 following documents in addition to the information specified
7 W in section 405 (c) and the consent to service of process re-
8 quired by section 314 (g):

9 (1) with respect to the issuer and any significant
10 subsidiary: its name, address, and form of organization;
11 the state or foreign jurisdiction and date of its organiza-
12 tion; the general character and location of its business;
13 a description of its physical properties and equipment; and
14 M a statement of the general competitive conditions in the
15 industry or business in which it is or will be engaged;

16 (2) with respect to every director and officer of
17 A the issuer, or person occupying a similar status or perform-
18 ing similar functions: his name, address, and principal
19 occupation for the past five years; the amount of securities
20 T of the issuer held by him as of a specified date within
21 thirty days of the filing of the registration statement; the
22 amount of the securities covered by the registration state-
23 T ment to which he has indicated his intention to subscribe;
24 and a description of any material interest in any material
25 transaction with the issuer or any significant subsidiary
26 E effected within the past three years or proposed to be
27 effected;

28 (3) with respect to persons covered by clause
29 R (2): the remuneration paid during the past twelve months

1 N and estimated to be paid during the next twelve months,
2 directly or indirectly, by the issuer (together with all
3 predecessors, parents, subsidiaries, and affiliates) to all
4 E those persons in the aggregate;

5 (4) with respect to any person owning of record,
6 or beneficially if known, ten per cent or more of the out-
7 W standing shares of any class of equity security of the
8 issuer: the information specified in clause (2) other than
9 his occupation;

10 (5) with respect to every promoter if the issuer
11 was organized within the past three years: the information
12 specified in clause (2), any amount paid to him within that
13 period or intended to be paid to him, and the consideration
14 M for any such payment;

15 (6) with respect to any person on whose behalf
16 any part of the offering is to be made in a non-issuer dis-
17 A tribution: his name and address; the amount of securities
18 of the issuer held by him as of the date of the filing of the
19 registration statement; a description of any material in-
20 T terest in any material transaction with the issuer or any
21 significant subsidiary effected within the past three years
22 or proposed to be effected; and a statement of his reasons
23 T for making the offering;

24 (7) the capitalization and long-term debt (on
25 both a current and a pro forma basis) of the issuer and any
26 E significant subsidiary, including a description of each
27 security outstanding or being registered or otherwise
28 offered, and a statement of the amount and kind of considera-
29 R tion (whether in the form of cash, physical assets, services,

1 N patents, goodwill, or anything else) for which the issuer
2 or any subsidiary has issued any of its securities within the
3 past two years or is obligated to issue any of its securities;
4 E (8) the kind and amount of securities to be offer-
5 ed; the proposed offering price or the method by which it is
6 to be computed; any variation therefrom at which any propor-
7 W tion of the offering is to be made to any person or class of
8 persons other than the underwriters, with a specification of
9 any such person or class; the basis upon which the offering
10 is to be made if otherwise than for cash; the estimated
11 aggregate underwriting and selling discounts or commissions
12 and finders' fees (including separately cash, securities,
13 contracts, or anything else of value to accrue to the under-
14 M writers or finders in connection with the offering) or, if
15 the selling discounts or commissions are variable, the basis
16 of determining them and their maximum and minimum amounts;
17 A the estimated amounts of other selling expenses, including
18 legal, engineering, and accounting charges; the name and
19 address of every underwriter and every recipient of a finder's
20 T fee; a copy of any underwriting or selling-group agreement
21 pursuant to which the distribution is to be made, or the
22 proposed form of any such agreement whose terms have not yet
23 T been determined; and a description of the plan of distribu-
24 tion of any securities which are to be offered otherwise than
25 through an underwriter;
26 E (9) the estimated cash proceeds to be received
27 by the issuer from the offering; the purposes for which the
28 proceeds are to be used by the issuer; the amount to be used
29 R for each purpose; the order or priority in which the proceeds

1 N will be used for the purposes stated; the amounts of any
2 funds to be raised from other sources to achieve the purposes
3 stated; the sources of any such funds; and, if any part of
4 E the proceeds is to be used to acquire any property (includ-
5 ing goodwill) otherwise than in the ordinary course of
6 business, the names and addresses of the vendors, the pur-
7 W chase price, the names of any persons who have received
8 commissions in connection with the acquisition, and the
9 amounts of any such commissions and any other expense in
10 connection with the acquisition (including the cost of
11 borrowing money to finance the acquisition);

12 (10) a description of any stock options or other
13 security options outstanding, or to be created in connection
14 M with the offering, together with the amount of any such
15 options held or to be held by every person required to be
16 named in clause (2), (4), (5), (6), or (8) and by any person
17 A who holds or will hold ten per cent or more in the aggregate
18 of any such options;

19 (11) the dates of, parties to, and general effect
20 T concisely stated of, every management or other material con-
21 tract made or to be made otherwise than in the ordinary
22 course of business if it is to be performed in whole or in
23 T part at or after the filing of the registration statement or
24 was made within the past two years, together with a copy of
25 every such contract; and a description of any pending litiga-
26 E tion or proceeding to which the issuer is a party and which
27 materially affects its business or assets (including any
28 such litigation or proceeding known to be contemplated by
29 R governmental authorities);

1 N (12) a copy of any prospectus, pamphlet, circular,
2 form letter, advertisement, or other sales literature intended
3 as of the effective date to be used in connection with the
4 E offering;

5 (13) a specimen or copy of the security being
6 registered; a copy of the issuer's articles of incorporation
7 W and by-laws, or their substantial equivalents, as currently
8 in effect; and a copy of any indenture or other instrument
9 covering the security to be registered;

10 (14) a signed or conformed copy of an opinion of
11 counsel as to the legality of the security being registered
12 (with an English translation if it is in a foreign language),
13 which shall state whether the security when sold will be
14 M legally issued, fully paid, and non-assessable, and, if a
15 debt security, a binding obligation of the issuer;

16 (15) the written consent of any accountant, en-
17 A gineer, appraiser, or other person whose profession gives
18 authority to a statement made by him, if any such person is
19 named as having prepared or certified a report or valuation
20 T (other than a public and official document or statement) which
21 is used in connection with the registration statement;

22 (16) a balance sheet of the issuer as of a date
23 T within four months prior to the filing of the registration
24 statement; a profit and loss statement and analysis of sur-
25 plus for each of the three fiscal years preceding the date of
26 E the balance sheet and for any period between the close of the
27 last fiscal year and the date of the balance sheet, or for
28 the period of the issuer's and any predecessors' existence
29 R if less than three years; and, if any part of the proceeds

1 N of the offering is to be applied to the purchase of any
2 business, the same financial statements which would be re-
3 quired if that business were the registrant; and

4 E (17) such additional information as the Adminis-
5 trator requires by rule or order.

6 (c) A registration statement under this section becomes
7 W effective when the Administrator so orders.

8 (d) The Administrator may by rule or order require as
9 a condition of registration under this section that a pros-
10 pectus containing any designated part of the information
11 specified in subsection (b) be sent or given to each person
12 to whom an offer is made before or concurrently with (1)
13 the first written offer made to him (otherwise than by means
14 M of a public advertisement) by or for the account of the
15 issuer or any other person on whose behalf the offering is
16 being made, or by any underwriter or broker-dealer who is
17 A offering part of an unsold allotment or subscription taken
18 by him as a participant in the distribution, (2) the con-
19 firmation of any sale made by or for the account of any such
20 T person, (3) payment pursuant to any such sale, or (4) de-
21 livery of the security pursuant to any such sale, whichever
22 first occurs.

23 T Section 405. PROVISIONS APPLICABLE TO REGISTRATION
24 GENERALLY.

25 (a) A registration statement may be filed by the
26 E issuer, any other person on whose behalf the offering is to
27 be made, or a registered broker-dealer.

28 (b) Every person filing a registration statement shall
29 R pay a filing fee of 1/10 per cent of the maximum aggregate

1 N offering price at which the registered securities are to be
2 offered in this state, but the fee shall in no case be less
3 than \$500 or more than \$1,000. When a registration statement
4 E is withdrawn before the effective date or a pre-effective
5 stop order is entered under section 406, the Administrator
6 shall retain \$100 of the fee.

7 W (c) Every registration statement shall specify (1) the
8 amount of securities to be offered in this state; (2) the
9 states in which a registration statement or similar document
10 in connection with the offering has been or is to be filed;
11 and (3) any adverse order, judgment, or decree entered in
12 connection with the offering by the regulatory authorities
13 in each state or by any court or the Securities and Exchange
14 M Commission.

15 (d) Any document filed under this Act or a predecessor
16 act within five years preceding the filing of a registration
17 A statement may be incorporated by reference in the registra-
18 tion statement to the extent that the document is currently
19 accurate.

20 T (e) The Administrator may by rule or otherwise permit
21 the omission of any item of information or document from
22 any registration statement.

23 T (f) In the case of a non-issuer distribution, informa-
24 tion may not be required under section 404 or 405 (j) unless
25 it is known to the person filing the registration statement
26 E or to the persons on whose behalf the distribution is to be
27 made, or can be furnished by them without unreasonable effort
28 or expense.

29 R (g) The Administrator may by rule or order require as a

1 N condition of registration by qualification or coordination
2 (1) that any security issued within the past three years or
3 to be issued to a promoter for a consideration substantially
4 E different from the public offering price, or to any person
5 for a consideration other than cash, be deposited in escrow;
6 and (2) that the proceeds from the sale of the registered
7 W security in this state be impounded until the issuer receives
8 a specified amount from the sale of the security either
9 in this state or elsewhere. The Administrator may by rule
10 or order determine the conditions of any escrow or impound-
11 ing required hereunder, but he may not reject a depository
12 solely because of location in another state.

13 (h) The Administrator may by rule or order require as
14 M a condition of registration that any security registered by
15 qualification or coordination be sold only on a specified
16 form of subscription or sale contract, and that a signed or
17 A conformed copy of each contract be filed with the Administra-
18 tor or preserved for any period up to three years specified
19 in the rule or order.

20 T (i) Every registration statement is effective for one
21 year from its effective date, or any longer period during
22 which the security is being offered or distributed in a
23 T non-exempted transaction by or for the account of the issuer
24 or other person on whose behalf the offering is being made
25 or by any underwriter or broker-dealer who is still offering
26 E part of an unsold allotment or subscription taken by him as
27 a participant in the distribution, except during the time
28 a stop order is in effect under section 406. All outstanding
29 R securities of the same class as a registered security are

1 N considered to be registered for the purpose of any non-
2 issuer transaction (1) so long as the registration state-
3 ment is effective and (2) between the thirtieth day after
4 E the entry of any stop order suspending or revoking the
5 effectiveness of the registration statement under section
6 406 (if the registration statement did not relate in whole
7 W or in part to a non-issuer distribution) and one year from
8 the effective date of the registration statement. A regis-
9 tration statement may not be withdrawn for one year from
10 its effective date if any securities of the same class are
11 outstanding. A registration statement may be withdrawn
12 otherwise only in the discretion of the Administrator.

13 (j) So long as a registration statement is effective,
14 M the Administrator may by rule or order require the person who
15 filed the registration statement to file reports, not more
16 often than quarterly, to keep reasonably current the informa-
17 A tion contained in the registration statement and to disclose
18 the progress of the offering.

19 (k) A registration statement relating to a security
20 T issued by a face-amount certificate company or a redeemable
21 security issued by an open-end management company or unit
22 investment trust, as those terms are defined in the Invest-
23 T ment Company Act of 1940, may be amended after its effective
24 date so as to increase the securities specified as proposed
25 to be offered. Such an amendment becomes effective when
26 E the Administrator so orders. Every person filing such an
27 amendment shall pay a filing fee, calculated in the manner
28 specified in subsection (b), with respect to the additional
29 R securities proposed to be offered.

1 N Section 406. DENIAL, SUSPENSION, AND REVOCATION OF
2 REGISTRATION.

3 (a) The Administrator may issue a stop order denying
4 E effectiveness to, or suspending or revoking the effectiveness
5 of, any registration statement if he finds (1) that the
6 order is in the public interest and (2) that

7 W (A) the registration statement as of its effec-
8 tive date or as of any earlier date in the case of an order
9 denying effectiveness, or any amendment under section 405
10 (k) as of its effective date, or any report under section
11 405 (j) is incomplete in any material respect or contains
12 any statement which was, in the light of the circumstances
13 under which it was made, false or misleading with respect to
14 M any material fact;

15 (B) any provision of this Act or any rule, order,
16 or condition lawfully imposed under this Act has been wilfully
17 A violated, in connection with the offering, by (i) the person
18 filing the registration statement, (ii) the issuer, any
19 partner, officer, or director of the issuer, any person
20 T occupying a similar status or performing similar functions,
21 or any person directly or indirectly controlling or con-
22 trolled by the issuer, but only if the person filing the
23 T registration statement is directly or indirectly controlled
24 by or acting for the issuer, or (iii) any underwriter;

25 (C) the security registered or sought to be
26 E registered is the subject of an administrative stop order or
27 similar order or a permanent or temporary injunction of any
28 court of competent jurisdiction entered under any other
29 R federal or state act applicable to the offering; but (i) the

1 N Administrator may not institute a proceeding against an
2 effective registration statement under clause (C) more than
3 one year from the date of the order or injunction relied on,
4 E and (11) he may not enter an order under clause (C) on the
5 basis of an order or injunction entered under any other
6 state act unless that order or injunction was based on facts
7 W which would currently constitute a ground for a stop order
8 under this section;

9 (D) the issuer's enterprise or method of business
10 includes or would include activities which are illegal where
11 performed;

12 (E) the offering has worked or tended to work a
13 fraud upon purchasers or would so operate;

14 M (F) the offering has been or would be made with
15 unreasonable amounts of underwriters' and sellers' discounts,
16 commissions, or other compensation, or promoters' profits
17 A or participation, or unreasonable amounts or kinds of op-
18 tions;

19 (G) when a security is sought to be registered
20 T by notification, it is not eligible for such registration;

21 (H) when a security is sought to be registered
22 by coordination, there has been a failure to comply with
23 T the undertaking required by section 403 (b) (4); or

24 (I) the applicant or registrant has failed to
25 pay the proper filing fee; but the Administrator may enter
26 E only a denial order under this clause and he shall vacate
27 any such order when the deficiency has been corrected.

28 The Administrator may not institute a stop-order
29 R proceeding against an effective registration statement on

1 N the basis of a fact or transaction known to him when the re-
2 gistration statement became effective unless the proceeding
3 is instituted within the next thirty days.

4 E (b) The Administrator may by order summarily post-
5 pone or suspend the effectiveness of the registration
6 statement pending final determination of any proceeding
7 W under this section. Upon the entry of the order, the
8 Administrator shall promptly notify each person specified
9 in subsection (c) that it has been entered and of the
10 reasons therefor and that within fifteen days after the
11 receipt of a written request the matter will be set down
12 for hearing. If no hearing is requested and none is ordered
13 by the Administrator, the order will remain in effect until
14 M it is modified or vacated by the Administrator. If a
15 hearing is requested or ordered, the Administrator, after
16 notice of the opportunity for hearing to each person speci-
17 A fied in subsection (c), may modify or vacate the order or
18 extend it until final determination.

19 (c) No stop order may be entered under any part of
20 T this section except the first sentence of subsection (b)
21 without (1) appropriate prior notice to the applicant or
22 registrant, the issuer, and the person on whose behalf the
23 T securities are to be or have been offered, (2) opportunity
24 for hearing, and (3) written findings of fact and conclusions
25 of law.

26 E (d) The Administrator may vacate or modify a stop order
27 if he finds that the conditions which prompted entry have
28 changed or that it is otherwise in the public interest to do

29 R so.



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Sec. 20. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.