

**Senate Bill 235**

By: Senators Jackson of the 50<sup>th</sup>, Cheeks of the 23<sup>rd</sup>, Starr of the 44<sup>th</sup>, Cagle of the 49<sup>th</sup>, Stephens of the 51<sup>st</sup> and Harbison of the 15<sup>th</sup>

**A BILL TO BE ENTITLED  
AN ACT**

1 To amend Title 10 of the Official Code of Georgia Annotated, relating to commerce and  
2 trade, so as to include viatical settlement contract within the meaning of security; to provide  
3 for changes in the definitions of dealer, limited dealer, limited salesman, and salesperson; to  
4 define viatical settlement contract, viatical settlement broker, and viatical settlement  
5 company; to provide for changes in the registration requirements for dealers, salespeople,  
6 investment advisers, and investment adviser representatives; to provide for changes in the  
7 registration of securities by notification; to change the provisions relating to small issuer  
8 registration and nonprofit issuer registration; to provide for regulatory authority for the  
9 commissioner of securities; to change the provisions related to suspension of registration; to  
10 provide for exemptions from registration requirements for viatical settlement contracts; to  
11 provide for privileged communications between the commissioner and attorneys employed  
12 by the commissioner; to provide for the commissioner to delegate authority to the assistant  
13 commissioner to preside at administrative hearings; to change the provisions related to  
14 unlawful practices; to provide a procedure for the collection of civil penalties; to change the  
15 provisions related to notice of opportunity for hearing; to provide for related matters; to  
16 repeal conflicting laws; and for other purposes.

17                   **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

18                   **SECTION 1.**

19 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is  
20 amended in Code Section 10-5-2, relating to definitions and rules of construction, by striking  
21 paragraphs (8), (17), (18), (25), and (26) and inserting in their respective places new  
22 paragraphs (8), (17), (18), (25), and (26) and by adding following paragraph (31) of said  
23 Code section new paragraphs (32), (33), and (34) to read as follows:

24         "(8) 'Dealer' means every person, other than a salesman registered under this chapter,  
25 who engages, either for all or part of his, her, or its time, directly or indirectly, as agent,

1 broker, or principal in the business of offering, buying, selling, or otherwise dealing or  
2 trading in securities issued by another person but does not include a bank or trust  
3 company, or which is not a broker as such term is defined in 15 U.S.C. Section 78c(a)(4)  
4 or a dealer as such term is defined in 15 U.S.C. Section 78c(a)(5); any person insofar as  
5 such person buys or sells securities for his own account, either individually or in some  
6 fiduciary capacity, other than as a part of a regular business; and does not include or any  
7 general partner, or executive officer of any general partner, of an issuer or executive  
8 officer of an issuer offering or selling securities of such issuer unless he or she is paid a  
9 commission for the sale of such securities. Any remuneration paid which is directly  
10 related to the sale of securities shall be considered a commission for the purposes of this  
11 paragraph. The commissioner may by rule provide for additional exceptions from the  
12 definition of dealer if such exceptions are designed to achieve greater uniformity among  
13 the states and federal government relating to transactions by temporary residents of this  
14 state."

15 "(17) 'Limited dealer' means a dealer who is authorized under this chapter to act as a  
16 dealer only with respect to a certain issue of or a certain class or type of securities  
17 specified by the commissioner. The commissioner may by rule provide for additional  
18 exceptions from the definition of limited dealer if such exceptions are designed to achieve  
19 greater uniformity among the states and federal government relating to transactions by  
20 temporary residents of this state."

21 (18) 'Limited salesman' means a salesman who is authorized under this chapter to sell or  
22 offer for sale only a certain issue of or a certain class or type of securities specified by the  
23 commissioner. A limited salesman may be authorized to sell or offer for sale securities  
24 of one or more issuers either concurrently or successively, provided such issuers are  
25 affiliates and provided, further, that one of such issuers shall enter into and file with the  
26 commissioner a written agreement which shall provide that such issuer shall be primarily  
27 responsible for supervising the limited salesman and shall assume all duties,  
28 responsibilities, and liabilities imposed by this chapter for the securities transactions of  
29 the limited salesman to the same extent as if the limited salesman were only registered  
30 with respect to such issuer. Nothing in such agreement shall relieve any issuer on whose  
31 behalf the limited salesman is acting of the responsibilities imposed upon such issuer by  
32 this chapter for the securities transactions of the limited salesman. The commissioner  
33 may by rule provide for additional exceptions from the definition of limited salesman if  
34 such exceptions are designed to achieve greater uniformity among the states and federal  
35 government relating to transactions by temporary residents of this state."

1       "(25) 'Salesperson' means an individual, other than a dealer or limited dealer registered  
2 under this chapter, employed or appointed or authorized by a dealer, limited dealer, or  
3 issuer to sell securities in this state. The general partners or executive officers of a dealer  
4 or a limited dealer engaged in the offer or sale of securities and any general partners of  
5 an issuer or executive officers of any general partner of an issuer or executive officers of  
6 an issuer offering or selling securities of such issuer shall not be deemed to be  
7 salespersons within the meaning of this definition unless they are paid a commission for  
8 the sale of such securities. Any remuneration paid which is directly related to the sale of  
9 securities shall be considered a commission for the purposes of this paragraph. The term  
10 'salesperson' does not include an individual who represents a dealer in effecting only  
11 transactions in this state which are described in Section 15(h)(2) of the Securities  
12 Exchange Act of 1934 or an individual who represents an issuer in effecting transactions  
13 in a federal covered security as described in ~~Sections~~ Section 18(b)(3) or 18(b)(4)(D) of  
14 the Securities Act of 1933. The commissioner may by rule provide for additional  
15 exceptions from the definition of salesperson if such exceptions are designed to achieve  
16 greater uniformity among the states and federal government relating to transactions by  
17 temporary residents of this state.

18       (26) 'Security' means any note, stock, treasury stock, bond, debenture, evidence of  
19 indebtedness, certificate of indebtedness, investment certificate, certificate of interest or  
20 participation in any profit-sharing agreement, certificate of interest in oil, gas, or other  
21 mineral rights, collateral trust certificates, preorganization certificate or subscription,  
22 transferable share, investment contract, viatical settlement contract, voting-trust  
23 certificate, limited partnership interest, or beneficial interest in profits or earnings, or any  
24 other instrument commonly known as a security, including any certificate of interest or  
25 participation in, temporary or interim certificate for, receipt for, guaranty of, or warrant  
26 or right to subscribe to or purchase, any of the foregoing. The term 'investment contract'  
27 shall include but is not limited to an investment which holds out the possibility of return  
28 on risk capital even though the investor's efforts are necessary to receive such return if:

- 29           (A) Such return is dependent upon essential managerial or sales efforts of the issuer or  
30 its affiliates; and  
31           (B) One of the inducements to invest is the promise of promotional or sales efforts of  
32 the issuer or its affiliates in the investor's behalf; and  
33           (C) The investor shall thereby acquire the right to earn a commission or other  
34 compensation from sales of rights to sell goods, services, or other investment contracts  
35 of the issuer or its affiliates.

1   'Security' shall not mean any insurance or endowment policy or annuity contract  
2   under which an insurance company promises to pay a fixed number of dollars either in  
3   a lump sum or periodically for life or some other specified period nor any variable  
4   annuity contract as provided for and regulated under Title 33 and issued by a life  
5   insurance company licensed to do business in the State of Georgia nor shall it mean any  
6   interest in a residential unit and a rental management arrangement relating to such  
7   residential unit so long as the owner-participants under the rental management  
8   arrangement, whether optional or mandatory, do not participate directly in the income  
9   derived from the rental of units owned by others."

10   "(32) 'Viatical settlement broker' means an individual, partnership, corporation, or other  
11   entity which is in the business of arranging or facilitating, in return for a fee, commission,  
12   or other remuneration, the transfer, assignment, or sale of all or portions of the death  
13   benefit or ownership of the death benefit or ownership of a life insurance policy or  
14   certificate to third persons for consideration which is less than the death benefit thereof.

15   (33) 'Viatical settlement company' means an individual, partnership, corporation, or other  
16   entity which is in the business of acquiring life insurance policies from persons who own  
17   or are covered under individual or group life insurance policies for the purpose of  
18   assigning, transferring, or selling all or portions of the death benefit or ownership of said  
19   policies to third persons for consideration which is less than the death benefit thereof.

20   (34) 'Viatical settlement contract' means an agreement for the purchase, sale, assignment,  
21   transfer, devise, or bequest of any portion of the death benefit or ownership of a life  
22   insurance policy or certificate for consideration that is less than the death benefit of the  
23   life insurance policy or certificate. Viatical settlement contract does not include:

24    (A) The assignment, transfer, sale, devise, or bequest of a death benefit, life insurance  
25    policy, or certificate of insurance to a viatical settlement company;

26    (B) The assignment of a life insurance policy to a bank, savings bank, savings and loan  
27    association, credit union, or other institution licensed under the laws of any state or the  
28    United States as collateral for a loan;

29    (C) The obtaining of accelerated benefits from the issuer pursuant to the terms of a life  
30    insurance policy issued in accordance with the laws of this or another state; or

31    (D) The assignment of a life insurance policy by an individual who enters into no more  
32    than one agreement in a calendar year regarding the transfer of life insurance policies  
33    insuring the life of only one person for consideration that is less than the death benefit,  
34    unless any third party receives, directly or indirectly, any fee, commission, or other  
35    remuneration in connection with said assignment.

36   (b) The rules of statutory construction in Chapter 3 of Title 1 shall apply to this chapter."

**SECTION 2.**

2 Said title is further amended by striking subsections (b), (c), and (i) of Code Section 10-5-3,  
3 relating to registration of dealers, salespeople, investment advisers, and investment adviser  
4 representatives, and inserting in their respective places the following:

5     "(b) *Applicability of subsections (a) and (g).* The provisions of subsections (a) and (g) of  
6 this Code section regarding investment advisers, federal covered advisers, or investment  
7 adviser representatives shall not apply to:

8         (1) Any investment adviser, federal covered advisers, or investment adviser  
9 representative whose only clients are insurance companies; or

10         (2) Any investment adviser, federal covered advisers, or investment adviser  
11 representative who during the course of the preceding 12 months has had fewer than six  
12 clients in this state, is registered as an investment adviser under the laws of another state,  
13 and does not maintain an office within this state.

14     (c) *Dealers and limited dealers.* Application for registration as a dealer or limited dealer  
15 may be made by any person. Such application for registration shall be made in a manner  
16 prescribed by the commissioner, shall be verified by the applicant, shall be filed with the  
17 commissioner, and shall contain the following information:

18         (1) The name of the applicant;

19         (2) The address of the principal place of business of the applicant and the addresses of  
20 all branch offices of the applicant in this state;

21         (3) The form of business organization and the date of organization of the applicant;

22         (4) The names and business addresses of all general partners, limited partners, directors,  
23 affiliates, or executive officers of the applicant; a statement of the limitations, if any, of  
24 the liability of any general partner, limited partner, director, affiliate, or executive officer;  
25 and a statement setting forth in chronological order the occupational activities of each  
26 such general partner, limited partner, director, affiliate, or executive officer during the  
27 preceding ten years;

28         (5) A brief description of the general character of the business conducted or proposed to  
29 be conducted by the applicant;

30         (6) A list of any other states in which the applicant is registered as a securities broker,  
31 dealer, or salesperson and, if registration of the applicant as a securities broker, dealer,  
32 or salesperson has ever been denied, revoked, suspended, or withdrawn or if such a  
33 proceeding is pending in any state, full details with respect thereto;

34         (7) Whether the applicant is registered as a broker or dealer under the Securities  
35 Exchange Act of 1934 or any act adopted in amendment thereof and whether any such  
36 registration of the applicant has ever been denied, revoked, or suspended or is then the

1       subject of proceedings for revocation or suspension by the Securities and Exchange  
2       Commission;

3       (8) The names of all organizations of securities brokers or dealers of which the applicant  
4       is a member or before which any application for membership on the part of the applicant  
5       is then pending and whether any membership of the applicant in any such organization  
6       has ever been denied, revoked, or suspended or is then the subject of proceedings for  
7       revocation or suspension;

8       (9) The names of any securities exchanges of which the applicant or any of its partners,  
9       limited partners, directors, affiliates, or executive officers is a member and whether any  
10      such membership has ever been denied, revoked, or suspended or is then the subject of  
11      proceedings for revocation or suspension;

12      (10) A balance sheet as of a date within 90 days prior to the date of filing. This balance  
13      sheet need not be certified. If the balance sheet is not certified, there shall be filed in  
14      addition a certified balance sheet as of a date within one year prior to the date of filing  
15      unless the fiscal year of the applicant has ended within 90 days prior to the date of filing,  
16      in which case the balance sheet may be dated as of the end of the fiscal year preceding  
17      such last fiscal year. Such balance sheets shall be prepared in accordance with generally  
18      accepted accounting principles and, if required to be certified, shall be certified by an  
19      independent public accountant duly registered and in good standing as such under the  
20      laws of the place of his or her residence or principal office. In the case of a dealer or  
21      limited dealer which is registered or which has applied to be registered under the  
22      Securities Exchange Act of 1934, compliance with the financial statement requirements  
23      of that act and of any self-regulatory organization of which he or she is a member or is  
24      applying to be a member shall constitute compliance with this subsection; and

25      (11) Whether the applicant or any general partner, limited partner, director, affiliate, or  
26      executive officer of such applicant has ever been subject to any injunction or disciplinary  
27      proceeding of the Securities and Exchange Commission or any state securities  
28      commission involving a security or any aspect of the securities business, has ever been  
29      convicted of or charged with a misdemeanor of which fraud is an essential element or  
30      which involves a security or any aspect of the securities business, or has ever been  
31      convicted of or charged with a felony and, if so, all pertinent information with respect to  
32      such injunction, disciplinary proceeding, conviction, or charge.

33      The commissioner may waive the furnishing of any information required by this subsection  
34      ~~(other than the requirements with respect to financial statements provided for in paragraph~~  
35      ~~(10) of this subsection)~~ and may require such additional information as to the previous  
36      history, records, or association of the applicant, its general partners, limited partners,

1   directors, affiliates, or executive officers as he or she may deem necessary to establish  
2   whether or not the applicant should be registered as a dealer under this chapter.

3   No applicant shall be registered as a dealer or limited dealer under this chapter nor shall  
4   any such registration be renewed, unless each principal of such applicant has passed a  
5   written examination administered by the commissioner or someone acting under his or her  
6   direction, or unless such applicant presents proof satisfactory to the commissioner showing  
7   that each principal has previously passed a similar examination conducted by the National  
8   Association of Securities Dealers, Inc., or any other examination substantially similar to  
9   that given by the commissioner, as the commissioner may determine. The commissioner  
10   is further authorized to prescribe the time, manner, or procedure relative to the holding of  
11   such examination and may impose a fee against each principal taking said examination to  
12   cover the costs thereof. For the purposes of this subsection only, with respect to a dealer  
13   or an applicant for registration as a dealer, the term 'principal' refers to a person associated  
14   with such dealer or applicant who is engaged in the management of such dealer's or  
15   applicant's business, including the supervision, solicitation, or conduct of such business or  
16   the training of persons associated with such dealer or applicant for any of these functions.

17   There shall be filed with such application an irrevocable written consent of the applicant  
18   to the service of process upon the commissioner in actions against such applicant in the  
19   manner and form provided in Code Section 10-5-18 and payment of the prescribed  
20   registration fee.

21   When an applicant has fully complied with this subsection and subsections (j) and (k) of  
22   this Code section, the commissioner shall register such applicant as a dealer unless he or  
23   she shall find that the applicant is not of good business reputation or does not appear  
24   qualified by training or experience to act as a dealer in securities. When the commissioner  
25   has registered an applicant as a dealer, he or she shall immediately notify the applicant of  
26   such registration.

27   The procedure and requirements relative to the registration of a dealer as provided in this  
28   subsection shall likewise apply to the registration of a limited dealer, except that an  
29   applicant for registration as a limited dealer shall furnish the commissioner, as part of his  
30   or her application, information as to the particular issue or class or type of securities with  
31   respect to which he or she desires to act as a dealer. Any license, certificate, or other  
32   evidence of registration issued by the commissioner to a limited dealer shall specify the

1 issue or class or type of securities with respect to which such registration authorizes such  
2 limited dealer to act as a dealer."

3 "(i) *Expiration and renewal of registration or notice filing.*

4 (1) Every registration and every notice filing under this Code section shall expire on  
5 December 31 in each year.

6 (2) Registration of dealers, limited dealers, salespersons, limited salespersons,  
7 investment advisers, and investment adviser representatives must be renewed each year  
8 by the submission of a renewal application containing the information required in an  
9 application for registration, to the extent that such information has not previously been  
10 included in an application or renewal application previously filed, by the payment of the  
11 proper registration fee, and, in the case of a dealer or limited dealer, by the filing of a  
12 balance sheet as of a date within 90 days prior to the date of filing. This balance sheet  
13 need not be certified. If the balance sheet is not certified, there shall be filed in addition  
14 a certified balance sheet as of a date within one year of the date of filing unless the fiscal  
15 year of the applicant has ended within 90 days prior to the date of filing, in which case  
16 the balance sheet may be dated as of the end of the preceding fiscal year. Such balance  
17 sheets shall be prepared in accordance with generally accepted accounting principles and,  
18 if required to be certified, shall be certified by an independent public accountant duly  
19 registered and in good standing as such under the laws of the place of his or her residence  
20 or principal office. ~~The commissioner may provide by rule or regulation that a dealer or~~  
~~limited dealer which is registered under the Securities Exchange Act of 1934 may file~~  
~~with such dealer's renewal application a copy of such dealer's financial statements~~  
~~prepared pursuant to the Securities Exchange Act of 1934 in lieu of a balance sheet. In~~  
~~the case of a dealer or limited dealer which is registered or which has applied to be~~  
~~registered under the Securities Exchange Act of 1934, compliance with the financial~~  
~~statement requirements required thereunder and of any self-regulatory organization of~~  
~~which he or she is a member or is applying to be a member shall constitute compliance~~  
~~with this subsection.~~

29 (3) Investment advisers with custody of client funds or securities or requiring  
30 prepayment of more than \$500.00 in fees per client six or more months in advance must  
31 provide a balance sheet for the most recent fiscal year. Said balance sheet shall be  
32 prepared in accordance with generally accepted accounting principles and shall, as the  
33 commissioner may by rule specify, be audited by an independent public accountant.

34 (4) Upon any change in the general partners, limited partners, directors, affiliates, or  
35 executive officers of a dealer, limited dealer, or investment adviser, such dealer, limited  
36 dealer, or investment adviser shall promptly notify the commissioner and shall furnish

1 to him or her in writing such information concerning such persons which has not  
2 previously been filed as required in an original application for registration. Upon any  
3 change in the general partners, limited partners, directors, affiliates, or executive officers  
4 of a federal covered adviser, such adviser shall provide the commissioner with a copy of  
5 any information concerning such change at the same time such information is filed with  
6 the Securities and Exchange Commission."

7 **SECTION 3.**

8 Said title is further amended by striking subsection (b) of Code Section 10-5-4, relating to  
9 denial, suspension, or revocation of dealer, salesman, investment adviser, or investment  
10 adviser representative and related matters, and inserting in its place the following:

11 "(b) The commissioner may not begin a proceeding exclusively on the basis of a fact or  
12 transaction known to the commissioner when the registration became effective unless the  
13 proceeding is begun within 90 days after effectiveness of the registration."

14 **SECTION 4.**

15 Said title is further amended by striking paragraph (3) of subsection (d) of Code Section  
16 10-5-5, relating to registration of securities, and inserting in its place the following:

17 "(3) If no stop order is in effect and no proceeding is pending under Code Section  
18 10-5-16 or if the commissioner has not notified the registrant in writing of deficiencies  
19 in the registration statement, a registration statement under this subsection automatically  
20 becomes effective at 3:00 P.M. eastern standard time or eastern daylight time, whichever  
21 is applicable, of the fifth thirtieth full business day after the filing of the registration  
22 statement; or at such earlier time as the commissioner determines."

23 **SECTION 5.**

24 Said title is further amended by striking paragraphs (3) and (5) of subsection (e) of Code  
25 Section 10-5-5, relating to registration of securities, and inserting in their respective places  
26 the following:

27 "(3) A prospectus, or in lieu thereof, a Small Corporate Offering Registration Form  
28 (Form U-7) as adopted by the North American Securities Administrators Association,  
29 Inc., or such other form as the commissioner may prescribe, a copy of which shall be  
30 contained in the registration statement, shall be delivered to any purchaser of securities  
31 registered pursuant to this subsection prior to or simultaneously with the execution by the  
32 purchaser of a written agreement to purchase, the delivery of a confirmation of sale, or  
33 the payment for securities offered by means of such prospectus, whichever occurs first.

1       The prospectus under which securities registered pursuant to this subsection are sold shall  
2       contain the following:

3           (A) With respect to the issuer: its name, street address, form of organization, and its  
4       telephone number; the state or foreign jurisdiction and date of its organization; a brief  
5       description of the type and location of its business;

6           (B) The following financial statements which may, but need not, be certified:

7              (i) A balance sheet of the issuer or a consolidated balance sheet of the issuer and its  
8       subsidiaries prepared in accordance with generally accepted accounting principles as  
9       of a date within 90 days prior to the filing of the registration statement; and

10             (ii) A profit and loss statement of the issuer or consolidated statements of the issuer  
11       and its subsidiaries prepared in accordance with generally accepted accounting  
12       principles for each of the two fiscal years preceding the date of the balance sheet filed  
13       and for the interim period, if any, between the close of the most recent of such fiscal  
14       years and the date of the balance sheet filed and for the corresponding period of the  
15       preceding year or, if the issuer and its predecessors have been in existence for less  
16       than two fiscal years, the profit and loss statement for the periods for which it has  
17       been in existence; provided, however, if the issuer does not report its accounts in the  
18       normal course of its business on a consolidated basis, then it may furnish, in lieu of  
19       consolidated statements, individual statements for it and its majority owned  
20       subsidiaries;

21           (C) The information set forth in subparagraphs (c)(1)(I), (c)(1)(J), and (c)(1)(P) of this  
22       Code section;

23           (D) With respect to every officer and director of the issuer or person occupying a  
24       similar status or performing similar functions and with respect to every affiliate of the  
25       issuer, a description of: all securities of the issuer and its subsidiaries which are  
26       beneficially owned or expected to be beneficially owned, and the amount and type of  
27       consideration which was or will be given for such securities, and any material interest  
28       in any other material transactions with the issuer or any significant subsidiary of the  
29       issuer effected within the past three years or expected to be effected; and

30           (E) Any additional information which is needed to comply with Code Section 10-5-12  
31       and which is not otherwise disclosed to the purchaser."

32       "(5) ~~Registration statements filed pursuant to this subsection will become effective if no stop order is in effect and no proceeding is pending under Code Section 10-5-16, at 3:00 P.M. eastern standard time or eastern daylight time, whichever is applicable, of the tenth full business day after the filing of the registration statement or at such earlier time as the commissioner orders. If no stop order is in effect and no proceeding is pending under~~

Code Section 10-5-16 or if the commissioner has not notified the registrant in writing of deficiencies in the registration statement, a registration statement under this subsection automatically becomes effective at 3:00 P.M. eastern standard time or eastern daylight time, whichever is applicable, of the thirtieth day after the filing of the registration statement or at such earlier time as the commissioner orders."

## SECTION 6.

Said title is further amended by striking subsection (f) of Code Section 10-5-5, relating to registration of securities, and inserting in its place the following:

**"(f) Nonprofit issuer registration.**

10 (1) Sales of securities issued by any person organized and operated:

(A) Not for private profit; and

(B) No part of the net earnings of which inures to the benefit of any person, private stockholder, or individual

14 made by or on behalf of such issuer may be made pursuant to a registration statement  
15 filed pursuant to this subsection.

16 (2) A registration statement under this subsection shall be signed by the issuer, its chief  
17 executive officer, its principal financial officer, its comptroller or principal accounting  
18 officer, and the majority of its board of directors or persons performing similar functions  
19 (or, if there is no board of directors or persons performing similar functions, by the  
20 majority of the persons or board having the power of management of the issuer) and shall  
21 contain the following documents:

(A) A copy of the prospectus proposed to be used in complying with the requirements of paragraph (4) of this subsection;

(B) A copy of any notice, circular, advertisement, sales literature, letter, or communication (if any such notice, circular, advertisement, sales literature, letter, or communication is to be used in connection with the offering) in respect of a security which states from whom a written prospectus meeting the requirements of paragraph (4) of this subsection may be obtained and which does no more than identify the security, state the price thereof, state by whom orders will be executed, and contain such other information as the commissioner, by rules or regulations, deemed necessary or appropriate in the public interest and for the protection of investors and subject to such terms and conditions as may be prescribed therein, may permit;

(C) A specimen or copy of the securities being registered and a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, as currently in effect;

1           (D) If the securities described in the prospectus forming a part of the registration  
2 statement are to be secured by any interest in or lien upon any real or personal property,  
3 a signed opinion of legal counsel which states that such interest or lien will be as  
4 described in such prospectus and that such interest or lien has been filed of record and  
5 otherwise perfected under applicable law;

6           (E) A copy of any underwriting or selling group agreement pursuant to which the  
7 distribution is to be made;

8           (F) A copy of every management or other material contract referred to in the  
9 prospectus;

10          (G) A signed copy of any professional opinion or any reports or certifications  
11 specifically referred to in the prospectus;

12          (H) A copy of any literature concerning the issuer or the offering given to any person  
13 directly engaged in the sale of securities;

14          (I) A written consent of each director of the issuer or any person occupying a similar  
15 status or performing a similar function to the use of his name in the prospectus unless  
16 such director or person has signed the registration statement;

17          (J) If any accountant, attorney, engineer, or appraiser or any person whose profession  
18 gives authority to a statement made by him is named in the registration statement as  
19 having prepared an opinion referred to in the registration statement or as having  
20 certified any part of the registration statement or is named as having prepared or  
21 certified a report of valuation for use in connection with the registration statement, the  
22 written consent of such person to the references to him in the registration statement; and  
23          (K) A copy of any trust indenture required by paragraph (3) of this subsection.

24          (3)(A) If the securities to be registered are bonds, notes, debentures, evidences of  
25 indebtedness, or any interest in such securities, the provisions for disbursing the  
26 proceeds of such securities, for collecting and disbursing funds for the payment of  
27 principal of and interest on such securities, and for governing the rights of the trustee  
28 and the holders of such securities with respect to any collateral or other security  
29 therefor shall be governed by an indenture between the issuer of such securities and a  
30 trustee or trustees.

31          (B) Each such trustee shall be an attorney duly admitted to practice before the highest  
32 court of any state who is not regularly employed by the issuer or underwriter of the  
33 securities subject to the indenture and which attorney is insured under a professional  
liability or other policy in an amount not less than the aggregate amount of all funds  
under his or her authority as trustee for such offering and any other offering for which  
he or she is trustee or a corporation which is organized and doing business under the

1 laws of the United States or any state, ~~which is qualified to do business in Georgia, and~~  
2 which is authorized to exercise corporate trust powers; and ~~which~~ is subject to  
3 supervision or examination by an agency or authority of the United States or the state  
4 of its incorporation or principal place of business:

5 (i) Provided that no such attorney or corporation may serve as trustee if such attorney  
6 or corporation:

7 (I) Serves as trustee under an indenture covering any other securities of the issuer  
8 of the securities subject to the indenture unless the commissioner determines, after  
9 the filing of an affidavit by the proposed trustee and the issuers in a form acceptable  
10 to the commissioner, that there is no significant likelihood of such service resulting  
11 in an actual or potential conflict of interest which would affect investors and that if  
12 such conflict should arise, such trustee shall resign all positions upon the  
13 appointment of a substitute trustee as provided in the indenture;

14 (II) Is an affiliate of the issuer or underwriter of the securities subject to the  
15 indenture;

16 (III) Is a guarantor of or an affiliate of an obligor upon or a guarantor of the  
17 securities subject to the indenture;

18 (IV) Is the beneficial owner of, or holds as collateral security for an obligation  
19 which is in default, 5 percent or more of the voting securities of, or 10 percent or  
20 more of any other class of security of the issuer of the securities subject to the  
21 indenture; or

22 (V) Is the beneficial owner of, or holds as collateral security for an obligation  
23 which is in default, 10 percent or more of any class of security of any person who,  
24 to the knowledge of such attorney or corporation, owns 50 percent or more of the  
25 voting securities of the issuer or any guarantor of the securities subject to the  
26 indenture; and

27 (ii) Provided, further, that no such attorney nor any director or executive officer (or  
28 persons performing similar functions) of such corporation:

29 (I) Is a director, officer, partner, employee, appointee, or representative of the  
30 issuer, any guarantor, or any underwriter of the securities subject to the indenture;  
31 or

32 (II) Is a guarantor or underwriter of or an obligor upon the securities subject to the  
33 indenture.

34 (C) Such indenture shall in addition to the provisions specified in subparagraph (A) of  
35 this paragraph contain:

1           (i) A provision requiring the trustee to maintain a current list of the names and  
2           addresses of the holders of the securities subject to the indenture; and

3           (ii) A provision that the trustee, in case of any failure to make, when due, any  
4           payment into any sinking fund for the repayment of the securities subject to the  
5           indenture or any payment of the principal of or interest on the securities subject to the  
6           indenture, which failure is not corrected within 30 days of the date such payment was  
7           due, shall have the authority to commence a civil action to recover on behalf of the  
8           holders of the securities subject to the indenture all payments of principal and interest  
9           which are due and have not been paid; to declare the entire outstanding principal  
10          balance of and accrued but unpaid interest on such securities to be immediately due  
11          and payable and to commence a civil action to recover such principal and interest on  
12          behalf of the holders of the securities subject to the indenture; to take possession of  
13          and dispose of any collateral security subject to the indenture; and to secure such  
14          additional relief as the parties to the indenture shall provide; and a provision that,  
15          upon occurrence of any such failure, the trustee shall notify, to the extent that it can  
16          identify them, the holders of such securities of the occurrence of such failure and of  
17          its intentions with respect thereto; and

18           (iii) A provision requiring the resignation and substitution of a trustee who is under  
19           any conflict of interest affecting investors.

20           (4) The prospectus required in this paragraph shall be delivered to any purchaser of  
21          securities registered pursuant to this subsection prior to or simultaneously with the  
22          execution by the purchaser of a written agreement to purchase, the delivery of a  
23          confirmation of sale, or the payment for securities offered by means of such prospectus,  
24          whichever occurs first. The prospectus under which securities registered pursuant to this  
25          subsection are sold shall contain the following:

26           (A) With respect to the issuer: its name, street address, form of organization, and  
27          telephone number; the state or foreign jurisdiction and date of its organization; and a  
28          brief description of the type of business or other endeavors it conducts;

29           (B) The following financial statements:

30           (i) A balance sheet of the issuer or a consolidated balance sheet of the issuer and its  
31          subsidiaries prepared in accordance with generally accepted accounting principles as  
32          of the date within 90 days prior to the filing of the registration statement; and

33           (ii) A statement of source and application of funds of the issuer or consolidated  
34          statements of the issuer and its subsidiaries prepared in accordance with generally  
35          accepted accounting principles for each of the two fiscal years preceding the date of  
36          the balance sheet filed and for the interim period, if any, between the close of the most

recent of such fiscal years and the date of the balance sheet filed and for the corresponding period of the preceding year or, if the issuer and its predecessors have been in existence for less than two fiscal years, the statement of source and application of funds for the periods for which it has been in existence; provided, however, if the issuer does not report its accounts in the normal course of its business on a consolidated basis, then it may furnish, in lieu of consolidated statements, individual statements for it and its majority owned subsidiaries;

(C) The information set forth in subparagraphs (c)(1)(I), (c)(1)(J), and (c)(1)(P) of this Code section;

(D) A summary of special risk factors, if any, involved in the purchase of such securities;

(E) With respect to any underwriter of the securities being registered: a description of all fees, commissions, expenses, and other payments and remunerations received or to be received directly or indirectly by such underwriter and its affiliates in connection with the sale of the securities being registered and a description of any affiliation, interest, or arrangement such underwriter may have with any building contractor, supplier, paying agent, or other person who may receive any proceeds from the sale of the securities being registered;

(F) A description of the material terms of the securities to be registered and, if such securities are bonds, notes, debentures, evidences of indebtedness, or any interest in such securities, a description of the material terms of the indenture under which the securities are to be issued; and

(G) Any additional information needed to comply with paragraph (2) of subsection (a) of Code Section 10-5-12.

(5) In case any of the financial statements contained in the registration statement filed under this subsection are certified, they shall be certified by an independent public accountant duly registered and in good standing as such under the laws of the place of his or her residence or principal office. In case any of the financial statements contained in such registration statement are not certified, any dealer or other person who receives any remuneration, directly or indirectly, in connection with the sale of securities shall perform an independent investigation to reasonably assure itself of the accuracy and reliability of such financial statements. The records of the investigation shall be made available upon request to any potential investor and shall be maintained for not less than five years following the sale of the securities.

(6) No material provided to any investor may make reference to any appraisal or other opinion of the value of any property, the purchase, construction, or improvement of

1       which is related to the offering, unless the appraisal or opinion is prepared by an appraiser  
2       licensed to do business as an appraiser in the state where the property is located, if  
3       applicable, with such professional certification or standards as the commissioner may by  
4       rule prescribe, and unless such appraisal addresses in its value determination the value  
5       of the property both before and after any planned improvements, if applicable, and makes  
6       allowance in its value determination for a sale of the property through foreclosure or  
7       other distress circumstances rather than in an arm's length sale. If no such appraisal is  
8       referenced, the offering material shall clearly disclose on the inside front cover page of  
9       the prospectus in the case of a printed prospectus or on the second page of the prospectus  
10      in the case of a prospectus reproduced by any other means, in boldface print or capital  
11      type, the following legend:

12                          'NO APPRAISAL'

13                          NO APPRAISAL RELATING TO THE VALUE OF THE PROPERTY IS BEING  
14                          OFFERED FOR CONSIDERATION BY THE INVESTOR, AND THE INVESTOR  
15                          SHOULD MAKE HIS OR HER OWN INVESTIGATION AND ANALYSIS TO  
16                          ASCERTAIN THE VALUE OF THE PROPERTY AND WHETHER THAT VALUE  
17                          IS ADEQUATE PROTECTION FOR THIS INVESTMENT.'

18        (7) If no stop order is in effect and no proceeding is pending under Code Section 10-5-16  
19        or if the commissioner has not notified the registrant in writing of deficiencies in the  
20        registration statement, a registration statement under this subsection automatically  
21        becomes effective at 3:00 P.M. eastern standard time or eastern daylight time, whichever  
22        is applicable, of the thirtieth day after the filing of the registration statement or at such  
23        earlier time as the commissioner determines. Registration statements filed pursuant to  
24        this subsection will become effective if no stop order is in effect and no proceeding is  
25        pending under Code Section 10-5-16 at 3:00 P.M. eastern standard time or eastern  
26        daylight time, whichever is applicable, on the fifth full business day after the filing of the  
27        registration statement or at such earlier time as the commissioner orders."

28                          **SECTION 7.**

29        Said title is further amended by adding at the end of Code Section 10-5-5, relating to  
30        registration of securities, a new subsection to read as follows:

31        "(h) *Regulatory authority.* The commissioner shall be authorized to promulgate such rules  
32        and regulations as relate to the registration provisions set forth in this Code section as may

1 be necessary to achieve compatibility and uniformity with federal law and laws among the  
2 several states."

## SECTION 8.

4 Said title is further amended by striking subsection (b) of Code Section 10-5-7, relating to  
5 registration of securities and denial, suspension, or revocation of registration, and inserting  
6 in its place the following:

7     "(b) The commissioner may by order summarily postpone or suspend the effectiveness of  
8     the registration statement or certificate of exemption pending final determination of any  
9     proceeding under this Code section. Upon the entry of the order, the commissioner shall  
10    promptly notify by telephone or telegraph the issuer, any person on whose behalf such  
11    distribution is being made, and the representative of the underwriters that it has been  
12    entered and of the reasons therefor and that within ~~15~~ 30 days after the receipt of a written  
13    request the matter will be set down for hearing. If no hearing is requested and none is  
14    ordered by the commissioner, the order will remain in effect until it is modified or vacated  
15    by the commissioner. If a hearing is requested or ordered, the commissioner, after notice  
16    of an opportunity for hearing to each person specified in subsection (a) of Code Section  
17    10-5-16, may modify or vacate the order or extend it until final determination."

## SECTION 9.

19 Said title is further amended by striking paragraphs (13) through (16) of Code Section  
20 10-5-9, relating to exempt transactions, and inserting in their place the following:

21       "(13) Any transaction involving the issuance or sale of securities of an issuer, other than  
22       viatical settlement contracts, by or on behalf of the issuer or an affiliate of the issuer if  
23       all of the following conditions are met:

24                             (A) The aggregate number of persons in this state purchasing such securities from the  
25                             issuer and all affiliates of the issuer pursuant to this paragraph during the 12 month  
26                             period ending on the date of such issuance or sale shall not exceed 15 persons exclusive  
27                             of persons who acquire securities in transactions which are not subject to this chapter  
28                             or which are otherwise exempt from registration under the paragraphs of this Code  
29                             section or Code Section 10-5-8 or which have been registered pursuant to Code Section  
30                             10-5-5;

31       (B) Such securities are not offered for sale by means of any form of general or public  
32       solicitations or advertisements, including, but not limited to the following:

33                   (i) Publicly disseminated advertisements or sales literature, through the mails or  
34                   otherwise;

1                         (ii) Any advertisement, article, notice, or other communication published in any  
2                         newspaper, magazine, or other similar media, or broadcast over television or radio;  
3                         or

4                         (iii) Any seminar or meeting whose attendees have been invited by any general  
5                         solicitation or general advertising;

6                         (C) Any certificate or certificates or other documents representing or evidencing the  
7                         securities or, in the event there are no such certificates or documents, the limited  
8                         partnership agreement or other similar document creating the securities shall, for a  
9                         period of one year from the date of such issuance or sale, contain a legend similar to the  
10                         following:

11                         'THESE SECURITIES HAVE BEEN ISSUED OR SOLD IN RELIANCE ON  
12                         PARAGRAPH (13) OF CODE SECTION 10-5-9 OF THE "GEORGIA  
13                         SECURITIES ACT OF 1973," AND MAY NOT BE SOLD OR TRANSFERRED  
14                         EXCEPT IN A TRANSACTION WHICH IS EXEMPT UNDER SUCH ACT OR  
15                         PURSUANT TO AN EFFECTIVE REGISTRATION UNDER SUCH ACT.'; and

16                         (D) Each purchaser in this state executes a statement to the effect that such securities  
17                         have been purchased for investment for his own account. As used in this subparagraph,  
18                         the phrase 'purchase for investment' shall mean the purchase of any securities with the  
19                         intent of holding such securities for investment and without the intent of participating  
20                         directly or indirectly in a distribution of such securities. Any person who holds such  
21                         securities for a period of one year from the date such securities have been fully paid for  
22                         by such person shall be presumed to have purchased such securities for investment;

23                         (14) Any transaction involving the issuance of securities of a majority owned subsidiary  
24                         to its parent or any other majority owned subsidiary of such parent or the issuance of  
25                         securities upon organization of an issuer to the parent of such issuer or to the majority  
26                         owned subsidiaries of such parent, if, after such issuance, the issuer is a majority owned  
27                         subsidiary of such parent;

28                         (15) Any transaction involving the issuance of a security in connection with a pooled  
29                         income fund if all of the following conditions are met:

30                         (A) The fund qualifies as a recipient of tax deductible contributions under Section  
31                         642(c)(5) of the Internal Revenue Code, as now or hereafter amended;

32                         (B) Each prospective donor is furnished written disclosures which fully and fairly  
33                         describe the operation of the fund;

34                         (C) Each person soliciting gifts by means of the fund is either a volunteer or a person  
35                         who is employed in the overall fundraising activities of the charity that is the

1       beneficiary of the fund and who receives no commission or other special compensation  
2       based on the amount of gifts transferred to the pooled income fund; and

3       (D) Either:

4           (i) A bank organized under the laws of the United States or any bank or trust  
5           company organized and supervised under the laws of any state of the United States  
6           serves as trustee, investment adviser, or investment manager of the fund; or

7           (ii) An investment company registered under the Investment Company Act of 1940,  
8           as now or hereafter amended, or an insurance company licensed to do business in this  
9           state serves as investment adviser or investment manager of the fund;

10      (16) Any transaction exempted by rule under this paragraph:

11       (A) The commissioner is granted authority, if he finds it to be in the public interest, to  
12       create by rule exemptions and procedures pertaining thereto which shall further the  
13       objectives of compatibility with federal exemptions and uniformity among the states.  
14       Except as otherwise provided, any such rules shall require that the commissioner  
15       receive prior to any such sale:

16           (i) A notice of intention to sell which has been executed by the applicant which sets  
17           forth the information required by the rule;

18           (ii) A filing fee of \$250.00;

19           (iii) A consent to service of process in the form prescribed by Code Section 10-5-18  
20           which has been executed by the applicant; and

21           (iv) Such information as the commissioner may by rule or regulation require;

22       (B) The above information shall be provided according to procedures promulgated by  
23       the commissioner pursuant to this Code section and one or more of the above  
24       requirements may, by rule, be waived by the commissioner;

25       (C) The commissioner shall issue to the person who executed the notice of intention  
26       to sell a certificate which shall state the compliance or noncompliance with the filing  
27       requirements of this Code section;

28       (D) If any sale is to be made pursuant to this exemption more than 12 months after the  
29       date on which the commissioner issues his certificate under this Code section, such rule  
30       shall require the applicant to pay a renewal fee of \$100.00. The applicant shall be  
31       required to comply with this renewal requirement every 12 months so long as the  
32       offering shall continue in this state. Upon any renewal, the commissioner shall issue  
33       a certificate which shall be signed and sealed by him and which shall state the  
34       compliance or noncompliance with the renewal requirements of this Code section; or

35      (17) Any transaction involving a viatical settlement contract, provided any viatical  
36      settlement company and any viatical settlement broker involved in such transaction have

1 filed with the commissioner, not later than fifteen days after the sale thereof, a notice of  
2 such transaction on a form prescribed by the commissioner, together with a fee in an  
3 amount prescribed by the commissioner but not greater than \$250.00. Said notice shall  
4 contain such information regarding the offering as the commissioner may prescribe  
5 including at a minimum the identification of the purchaser; the person or persons in  
6 whose name the insurance policies which are the subject of such contract were issued,  
7 which information shall be confidential and not subject to public disclosure; the insurance  
8 company or companies which issued such policies and the contract numbers thereof; a  
9 copy of the viatical settlement contract and any other agreements executed by the  
10 purchaser; and a copy of all information provided to the purchaser relating to said  
11 contract prior to the sale thereof."

## SECTION 10.

13 Said title is further amended by striking subsections (c) and (f) of Code Section 10-5-10,  
14 relating to the designation of the Secretary of State as commissioner of securities and related  
15 matters, and inserting in their respective places the following:

16 "c) The commissioner shall have authority to employ examiners, clerks and stenographers,  
17 and other employees as the administration of that portion of this chapter vested in him or  
18 her may require. The commissioner shall also have authority to appoint and employ  
19 investigators who shall have, in any case that there is reason to believe a violation of this  
20 chapter has occurred or is about to occur, the right and power to serve subpoenas and to  
21 swear out and execute search warrants and arrest warrants. In the case of any attorneys  
22 employed by the commissioner, said attorneys may represent the agency in administrative  
23 hearings before the agency or the Office of State Administrative Hearings and the  
24 provisions of Code Section 24-9-21 shall apply to all communications between said  
25 attorneys and the commissioner and his or her employees related to any application review  
26 or any investigation conducted by the commissioner and any action contemplated or taken  
27 pursuant to Code Section 10-5-7 or 10-5-13."

28       "(f) The commissioner shall appoint, with the approval of the Governor, a person as  
29       assistant commissioner and delegate such of his or her powers and duties under this chapter  
30       to such assistant commissioner as he or she desires, specifically including, without  
31       limitation, the authority to preside at administrative hearings conducted by the agency  
32       pursuant to paragraph (1) of subsection (a) of Code Section 10-5-13, notwithstanding any  
33       other provision of law."

**SECTION 11.**

2 Said title is further amended by striking subsection (a) of Code Section 10-5-12, relating to  
3 unlawful practices, and inserting in its place the following:

4 "(a) It shall be unlawful for any person:

5     (1) To offer to sell or to sell any security in violation of Code Section 10-5-3, 10-5-5, or  
6     10-5-19 or any rule, regulation, or order promulgated or issued by the commissioner  
7     under this chapter;

8     (2) In connection with an offer to sell, sale, offer to purchase, or purchase of any  
9     security, directly or indirectly:

10         (A) To employ a device, scheme, or artifice to defraud;

11         (B) To make an untrue statement of a material fact or omit to state a material fact  
12         necessary in order to make the statements made, in the light of the circumstances under  
13         which they are made, not misleading; or

14         (C) To engage in an act, practice, or course of business that operates or would operate  
15         as a fraud or deceit upon a person;

16     (3) To offer or sell any security:

17         (A) Registered under subsection (b) of Code Section 10-5-5 by means of any  
18         prospectus except a prospectus which complies with paragraph (3) of subsection (b) of  
19         Code Section 10-5-5;

20         (B) Registered under subsection (e) of Code Section 10-5-5 by means of any  
21         prospectus except a prospectus which complies with paragraph (3) of subsection (e) of  
22         Code Section 10-5-5; or

23         (C) Registered under subsection (f) of Code Section 10-5-5 by means of any  
24         prospectus except a prospectus which complies with paragraph (4) of subsection (f) of  
25         Code Section 10-5-5; or

26     (4) In connection with the sale of any securities registered under this chapter:

27         (A) To make any representation concerning any future sales of securities of the same  
28         class by the issuer at a price higher than the current offering price; or

29         (B) To make any representations as to the future existence of any public market for the  
30         securities offered for sale;

31     (5) To sponsor, promote, recommend, produce, or provide any training course, seminar,  
32     or training material, written or oral, which instructs or purports to instruct, promotes, or  
33     recommends an investment or trading strategy in securities, commodities contracts, or  
34     commodities options and which contains untrue or misleading claims, statistics, promises,  
35     estimates, or other statements; or

(6) To induce or attempt to induce, by any form of communication, any other person to open an account or other relationship for the purpose of conducting an investment or trading strategy in securities, commodities contracts, or commodities options, which communication contains untrue or misleading claims, statistics, promises, estimates, or other statements."

## **SECTION 12.**

Said title is further amended by adding following subsection (c) of Code Section 10-5-13, relating to administrative, civil, and criminal actions, a new subsection (d) to read as follows:

"(d)(1) In addition to any other method provided by law for the collection of civil penalties pursuant to paragraph (1) of subsection (a) of this Code section, any civil penalty assessed by any order entered after the effective date hereof not paid when due, including any interest and costs thereon, may be collected by the commissioner by and with the same authority as is contained in Code Section 48-2-55, providing for the collection of taxes by the state revenue commissioner. If any civil penalty imposed by this chapter is not paid within ten days after notice and demand from the commissioner, the commissioner may issue an execution or writ of fieri facias directed to any levying officer designated by the commissioner, the sheriff, or the lawful deputies of the sheriff of any county of the state, requiring such officer to levy upon and sell the real or personal property of the person liable for such civil penalty found within such officer's county in sufficient amount to satisfy the execution so issued, together with interest at the legal rate and all costs of executing and collecting said execution, and to return such execution to the commissioner, together with all such sums collected under and by virtue thereof, by a time to be therein specified, not more than 60 days from the date of the execution.

(2) Nothing contained in this Code section shall prevent the commissioner from having the execution or writ of fieri facias entered upon the general execution docket prior to the time the execution is turned over to a levying officer designated by the commissioner for collection. The commissioner may file the execution with the clerk of any superior court of any county in this state. It shall then be the duty of the clerk of the superior court to enter the execution on the general execution docket of the superior court of said county in the same manner and form as prescribed by the general laws of the State of Georgia relating to executions issued by a superior court of this state.

(3) The amount of any civil penalty not paid when due, including any interest and costs, shall constitute a lien upon all property and rights to property and upon all after acquired property and rights to property, both real and personal, of the person liable for such civil penalty. The lien shall attach and be perfected as of the date such civil penalty becomes

1 due; provided, however, the lien shall not be preserved against purchasers, judgment  
2 creditors, pledgees, subsequent tax liens, or other liens or encumbrances until an  
3 execution for such penalties has been entered on the general execution docket. When the  
4 execution has been issued and docketed, the lien shall be a perfected lien upon all  
5 property and rights to property, both real and personal, of the person liable in each county  
6 in which such execution is docketed.

7 (4) In aid of execution, the commissioner may do any or all of the following:

8 (A) Examine any person, including the person liable, by taking depositions or  
9 propounding interrogatories; or

10 (B) Compel the production of documents or other items;

11 in the manner provided in Chapter 11 of Title 9 for such discovery measures prior to  
12 judgment."

### 13 SECTION 13.

14 Said title is further amended by striking subsections (a), (b), (c), and (f) of Code Section  
15 10-5-16, relating to notice of opportunity for hearing and related matters, and inserting in  
16 their respective places the following:

17 "(a) Where the commissioner has issued any order forbidding the sale of securities under  
18 Code Section 10-5-7, he shall promptly send to the issuer of such securities and to all  
19 persons who have registered such securities a notice of opportunity for hearing. Before  
20 entering an order refusing to register any person under Code Section 10-5-3 and after the  
21 entering of any order for revocation or suspension, the commissioner shall promptly send  
22 to such person and, if such person is a salesman, limited salesman, or investment adviser  
23 representative, to the dealer, limited dealer, or investment adviser who employs or proposes  
24 to employ such salesman, limited salesman, or investment adviser representative a notice  
25 of opportunity for hearing. Hearings shall be conducted pursuant to this Code section by  
26 the commissioner.

27 (b) Notices of opportunity for hearing shall be served personally by ~~investigators~~ any agent  
28 appointed by the commissioner, sent by registered or certified mail or statutory overnight  
29 delivery, return receipt requested, to the addressee's business mailing address or residential  
30 address as shown on the Central Registration Depository, Investment Adviser Registration  
31 Data Base, or other information filed with the commissioner or directed for service to the  
32 sheriff of the county where such person resides or is found; and such notice shall state:

33 (1) The order which has issued and which is proposed to be issued;

34 (2) The ground for issuing such order and proposed order; and

1       (3) That the person to whom such notice is sent will be afforded a hearing upon request  
2       if such request is made within ~~ten~~ 30 days after receipt of the notice.

3       (c) Whenever a person requests a hearing in accordance with this Code section, there shall  
4       immediately be set a date, time, and place for such hearing and the person requesting such  
5       hearing shall forthwith be notified thereof. Except as provided in subsection (b) of Code  
6       Section 10-5-4, the date set for such hearing shall be within ~~15~~ 30 days, but not earlier than  
7       five days after the request for hearing has been made, unless otherwise agreed to by the  
8       issuer of the notice and the person requesting the hearing."

9       "(f) In the case of any hearing conducted under this Code section, the commissioner or, if  
10      the authority to do so is delegated by the commissioner and notwithstanding any other law  
11      of this state, the assistant commissioner may conduct the hearing or the hearing may be  
12      conducted pursuant to Code Section 50-13-40, et seq. or he may appoint a referee to  
13      conduct the hearing who shall have the same powers and authority in conducting the  
14      hearing as are in this Code section granted to the commissioner. The referee shall have  
15      been admitted to the practice of law in this state and possess such additional qualifications  
16      as the commissioner may require.

17      In any case where a hearing is conducted by a referee, the referee shall submit to the  
18      commissioner a written report including the transcript of the testimony and evidence (if  
19      such transcript is requested by the commissioner), the findings of fact and conclusions of  
20      law, and a recommendation of the action to be taken by the commissioner. A copy of such  
21      written report and recommendations shall within five days of the time of submission  
22      thereof to the commissioner be served upon the person who requested the hearing or his  
23      attorney or other representative of record by registered or certified mail or statutory  
24      overnight delivery. That person or his attorney may, within ten days of service of the copy  
25      of such written report and recommendations, file with the commissioner written objections  
26      to the report and recommendations which shall be considered by the commissioner before  
27      a final order is entered. No recommendation of the referee shall be approved, modified, or  
28      disapproved by the commissioner until after ten days after service of such report and  
29      recommendations as herein provided. The recommendations of the referee may be  
30      approved, modified, or disapproved by the commissioner. The commissioner may direct  
31      his referee to take additional testimony or to permit the introduction of further documentary  
32      evidence. In any hearing conducted by a referee, a transcript of testimony and evidence,  
33      and objections, if any, shall have the same force and effect as if such hearing or hearings  
34      had been conducted by the commissioner. All recommendations of the referee shall be  
35      advisory only and shall not have the effect of an order of the commissioner."

1

**SECTION 14.**

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