

The Senate Banking and Financial Institutions Committee offered the following substitute to SB 488:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 10 of the Official Code of Georgia Annotated, the "Georgia
2 Securities Act of 1973," so as to revise and modernize the chapter; to provide for stronger
3 investor protections; to provide for variable annuities and viatical investments; to provide for
4 specific jurisdictional provisions; to conform the chapter with applicable federal laws
5 including the Uniform Securities Act of 2002, the National Securities Markets Improvement
6 Act of 1996, the Securities Litigation Uniform Standards Act of 1998, and the
7 Sarbanes-Oxley Act of 2002; to provide for registration and exemptions; to provide for the
8 authority for criminal history review; to provide for dealer financial statements; to provide
9 for issuer regulatory compliance with federal law; to provide for financial statement
10 certification; to modernize enforcement procedures and sanctions; to provide for emergency
11 orders; to change civil penalties; to increase criminal penalties to \$5 million; to provide for
12 cooperative multistate enforcement actions; to provide for private offerings; to provide for
13 isolated transaction exemptions; to provide for investor education; to provide for gender
14 neutrality; to make editorial revisions; to utilize generally accepted accounting terms; to
15 provide for an effective date; to provide for applicability; to provide for related matters; to
16 repeal conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

18 Chapter 5 of Title 10 of the Official Code of Georgia Annotated, the "Georgia Securities Act
19 of 1973," is amended by striking the chapter and inserting in lieu thereof the following:
20

"CHAPTER 5

21
22 10-5-1.

23 This chapter shall be known as and may be cited as the 'Georgia Securities Act of 1973.'

1 10-5-2.

2 (a) As used in this chapter, the term:

3 (1) 'Accredited investor' shall have such meaning as the commissioner may by rule or
4 regulation specify.

5 (2) 'Affiliate' or 'person affiliated with' means, when used with reference to a specified
6 person, a person who directly or indirectly through one or more intermediaries controls
7 or is controlled by or is under common control with the person specified. Any beneficial
8 owner of 20 percent or more of the combined voting power of all classes of voting
9 securities of a person or any executive officer, director, trustee, ~~or~~ general partner, or
10 member of a person is an affiliate of such person unless the shareholder, executive
11 officer, director, trustee, ~~or~~ general partner, or member shall prove that he or she in fact
12 does not control, is not controlled by, and is not under common control with such person.

13 (3) 'Assignment,' with respect to an investment advisory contract, means any direct or
14 indirect transfer or hypothecation of an investment advisory contract by the assignor or
15 any such transfer or hypothecation of a controlling block of the assignor's outstanding
16 voting securities by a ~~security holder~~ securityholder of the assignor; provided, however,
17 that, if an investment adviser is a partnership or limited liability company, no assignment
18 of an investment advisory contract is considered to result from the death or withdrawal
19 of a minority of the members of the investment adviser who have only a minority interest
20 in the business of the investment adviser or from the admission to the investment adviser
21 of one or more members who, after admission, will be only a minority of the members
22 and will have only a minority interest in the business.

23 (4) 'Beneficial owner' means, with regard to any securities, any person who owns the
24 securities or who enjoys benefits substantially equivalent to ownership. A person's
25 beneficial ownership of securities shall be deemed to include, but shall not be limited to,
26 any securities owned by:

27 (A) His or her spouse;

28 (B) His or her minor children;

29 (C) Any revocable trust of which he or she is a settlor;

30 (D) Any trust of which he or she, his or her spouse, or his or her minor children have
31 an aggregate vested beneficial interest of 20 percent or more in the income or the
32 corpus;

33 (E) Any partnership in which he or she is a general partner;

34 (F) Any corporation or limited liability company of which he or she is the beneficial
35 owner of 20 percent or more of the ~~outstanding voting securities~~ combined voting
36 power or membership interests or of which he or she is an executive officer or

1 managing member if the corporation or limited liability company has no substantial
2 business other than investment in securities; or

3 (G) Any ancestor, sibling, or lineal descendant of his or hers who resides in his or her
4 home.

5 (5) 'Blank check offering' means an offering of securities by an issuer ~~which~~ that has not
6 had any substantial gross revenues from the sale of products or services or any substantial
7 net income from any source for its latest fiscal year, which offering does not disclose the
8 industry in which the issuer will make asset or business acquisitions or does not disclose
9 guidelines under which such acquisitions will be made.

10 (6) 'Commissioner' means the commissioner of securities of this state.

11 (7) 'Control' (including 'controlling,' 'controlled by,' and 'under common control with')
12 means the possession, direct or indirect, of the power to direct or cause the direction of
13 the management and policies of a person, whether through the ownership of voting
14 securities, by contract, or otherwise.

15 (8) 'Dealer' means every person, other than a ~~salesman~~ salesperson registered under this
16 chapter, who engages, either for all or part of his, her, or its time, directly or indirectly,
17 as agent, broker, or principal in the business of offering, buying, selling, or otherwise
18 dealing or trading in securities issued by another person but does not include a:

19 (A) A bank or trust company, or any that is not a broker as such term is defined in 15
20 U.S.C. Section 78c(a)(4), or a dealer as such term is defined in 15 U.S.C. Section
21 78c(a)(5), as amended;

22 (B) Any person insofar as such person buys or sells securities for his or her own
23 account, either individually or in some fiduciary capacity, other than as a part of a
24 regular business, ~~and does not include any; or~~

25 (C) Any general partner, or any executive officer or managing member of any general
26 partner, of an issuer or executive officer of an issuer offering or selling securities of
27 such issuer unless he or she is paid a commission for the sale of such securities. Any
28 remuneration paid ~~which~~ that is directly related to the sale of securities shall be
29 considered a commission for the purposes of this paragraph.

30 (9) 'Designated dealer' means a dealer or limited dealer as respectively defined in
31 paragraphs (8) and (17) of this subsection:

32 (A) Whose commissions, commission equivalents, and markups from transactions in
33 designated securities for one of the immediately preceding three months or for two or
34 more of the immediately preceding 12 months exceeded 5 percent of its total
35 commissions, commission equivalents, and markups from transactions in securities
36 during those months; or

1 (B) Who has been a market maker in the designated security that is the subject of the
2 transaction in the immediately preceding 12 months.

3 (10) 'Designated ~~salesman~~ salesperson' means a ~~salesman~~ salesperson or limited
4 ~~salesman~~ salesperson as respectively defined in paragraphs (25) and (18) of this
5 subsection who is employed, appointed, or authorized by a designated dealer or by an
6 issuer to sell designated securities.

7 (11) 'Designated security' means any equity security the selling price of which is less
8 than \$5.00 (provided, however, if the designated security is a unit composed of one or
9 more securities, that the unit price divided by the number of components of the unit other
10 than warrants, options, rights, or similar securities must be less than \$5.00 and that any
11 component of the unit that is a warrant, option, right, or similar security, or a convertible
12 security, must have an exercise price or conversion price of less than \$5.00). 'Designated
13 security' shall not include a security:

14 (A) Registered, or approved for registration upon notice of issuance, on a national
15 securities exchange that makes transaction reports available pursuant to Exchange Act
16 Rule 11Aa3-1, as promulgated by the ~~United States Securities and Exchange~~
17 ~~Commission~~ (17 CFR S.E.C. (17 C.F.R. Section 240.11Aa3-1));

18 (B) Authorized, or approved for authorization upon notice of issuance, for quotation
19 on the National Association of ~~Securities Dealers Automated Quotation (NASDAQ)~~
20 ~~System~~ Security Dealers' Automated Quotation system (NASDAQ);

21 (C) Issued by an investment company registered under the Investment Company Act
22 of 1940 (15 U.S.C. ~~8a-1~~ Section 80a-1, et seq., as amended);

23 (D) ~~Which~~ That is a put option or call option issued by the Options Clearing
24 Corporation; or

25 (E) Whose issuer has net tangible assets in excess of \$2 million, as demonstrated by
26 financial statements dated less than 15 months previously that the designated dealer has
27 reviewed and has a reasonable basis to believe are true and complete in relation to the
28 date of the transaction with the person, and:

29 (i) In the event the issuer is other than a foreign private issuer, are the most recent
30 financial statements for the issuer that have been audited and reported on by an
31 independent public accountant in accordance with the provisions of ~~Rule 210.2~~
32 Regulation S-X2-02, as promulgated by the ~~United States Securities and Exchange~~
33 ~~Commission~~ (17 CFR S.E.C. (17 C.F.R. Section 210.2-02)); or

34 (ii) In the event the issuer is a foreign private issuer, are the most recent financial
35 statements for the issuer that have been filed with the ~~United States Securities and~~
36 ~~Exchange Commission~~; ~~furnished to the United States Securities and Exchange~~
37 ~~Commission pursuant to SEC Rule 12g3-2(b)~~ (17 CFR S.E.C.; furnished to the S.E.C.

1 pursuant to Exchange Act Rule 12g3-2(b) (17 C.F.R. Section 240.12g3-2(b)); or
 2 prepared in accordance with generally accepted accounting principles in the country
 3 of incorporation, audited in compliance with the requirements of that jurisdiction, and
 4 reported on by an accountant duly registered and in good standing in accordance with
 5 the regulations of that jurisdiction.

6 (12) 'Established customer' means any person for whom the dealer ~~or~~ limited dealer, or
 7 designated dealer, or a clearing broker-dealer on behalf of such dealer ~~or~~ limited dealer,
 8 or designated dealer, carries an account, and who with such dealer ~~or~~ limited dealer, or
 9 designated dealer:

10 (A) Has effected a securities transaction, or made a deposit of funds or securities, more
 11 than one year prior to the date of determination; or

12 (B) Has made three purchases of designated securities that occurred on separate days
 13 and involved different issuers.

14 (13) 'Executive officer' means the chief executive officer, the president, the principal
 15 financial officer, the principal operating officer, each vice president with responsibility
 16 involving policy-making functions for a significant aspect of a person's business, ~~the~~
 17 ~~secretary, the treasurer,~~ or any other person performing similar functions with respect to
 18 any organization, whether incorporated or unincorporated.

19 (13.1) 'Federal covered adviser' means a person who is registered with the ~~Securities and~~
 20 ~~Exchange Commission~~ S.E.C. pursuant to Section 203 of the ~~federal~~ Investment Advisers
 21 Act of 1940 (15 U.S.C. Section 80b-1, et seq., as amended).

22 (13.2) 'Federal covered security' means any security that is a covered security under
 23 Section 18(b) of the Securities Act of 1933 (15 U.S.C. Section 77a, et seq., as amended)
 24 or regulations promulgated thereunder.

25 (14) 'Investment adviser' means any person who, for compensation, engages in the
 26 business of advising others, either directly or through publications or writings, as to the
 27 value of securities or as to the advisability of investing in, purchasing, or selling securities
 28 or who, for compensation and as part of a regular business, issues or promulgates
 29 analyses or reports concerning securities. As used in this chapter, the term 'certified
 30 public accountant' means a certified public accountant or a firm thereof, registered
 31 pursuant to Chapter 3 of Title 43. 'Investment adviser' shall also include any person who
 32 holds himself or herself out as a 'financial planner' or 'investment adviser' other than a
 33 certified public accountant. The term 'investment adviser' does not include a person who
 34 is excluded from the definition of 'investment adviser' under Section 202(a)(11) of the
 35 ~~federal~~ Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1, et seq., as amended);
 36 a 'federal covered adviser' as defined in paragraph (13.1) of this subsection; or a certified
 37 public accountant whose performance of investment advisory services is solely incidental

1 to the practice of his or her profession or who does not accept or receive, directly or
 2 indirectly, any commission, payment, referral, or other form of remuneration as a result
 3 of the purchase or sale of a specific security by a client, does not recommend the
 4 purchase or sale of specific securities, and does not have custody of client funds or
 5 securities for investment purposes. A person shall not be considered an investment
 6 adviser solely as a result of using a nationally recognized designation such as Certified
 7 Financial Planner, Chartered Financial Consultant, Personal Financial Specialist, or a
 8 similar designation as determined by the office of Secretary of State. Unless a person
 9 holds himself or herself out as such, the term 'investment adviser' also does not include
 10 ~~(i) an:~~

11 (A) An investment adviser representative; ~~(ii) a~~

12 (B) A lawyer, engineer, or teacher whose performance of investment advisory services
 13 is solely incidental to the practice of his or her profession; ~~(iii) a~~

14 (C) A securities dealer or his or her agent whose performance of these services is
 15 solely incidental to the conduct of his or her business as a securities dealer and who
 16 receives no special compensation for such services; ~~(iv) a~~

17 (D) A publisher of any newspaper, news column, newsletter, news magazine, or
 18 business or financial publication or service, whether communicated in hard copy form,
 19 by electronic means, or otherwise, that does not consist of the rendering of advice on
 20 the basis of the specific situation of each client; or ~~(v) such~~

21 (E) Such other persons not within the intent of this paragraph as the commissioner may
 22 designate by rule or order.

23 (15) 'Investment adviser representative' means:

24 (A) With respect to an investment adviser, any individual, other than an investment
 25 adviser, who is a partner, officer, or director (or a person occupying a similar status or
 26 performing similar functions) of an investment adviser or any other individual who, on
 27 behalf of an investment adviser, engages in the business of advising others as to the
 28 value of securities or as to the advisability of investing in, purchasing, or selling
 29 securities or who, for compensation and as part of a regular business, issues or
 30 promulgates analyses or reports concerning securities; or

31 (B) With respect to a federal covered adviser, any individual defined as an 'investment
 32 adviser representative' by ~~Rule 203A-3 of the Securities and Exchange Commission~~
 33 ~~under the federal Investment Advisers Act of 1940, Section 275.203A, provided~~
 34 Investment Advisers Act Rule 203A-3 (17 C.F.R. Section 275.203A-3) of the S.E.C.
 35 under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1, et seq., as
 36 amended), provided that such representative has a 'place of business,' as defined by
 37 Investment Advisers Act Rule 203A-3 (17 C.F.R. Section 275.203A-3), in this state.

1 (16) 'Issuer' means every person who issues or proposes to issue any security, except
2 that, with respect to certificates of deposit, voting-trust certificates, or collateral-trust
3 certificates or with respect to certificates of interest or shares in an unincorporated
4 investment trust not having a board of directors (or persons performing similar functions)
5 or of the fixed, restricted management, or unit type, the term 'issuer' means the person or
6 persons performing the acts and assuming the duties of depositor or manager pursuant to
7 the provisions of the trust or other agreement or instrument under which such securities
8 are issued; except that, in the case of an unincorporated association ~~which~~ that provides
9 by its articles for limited liability of any or all of its members or in the case of a trust,
10 committee, or other legal entity, the trustees or members thereof shall not be individually
11 liable as issuers of any security issued by the association, trust, committee, or other legal
12 entity; except that, with respect to equipment-trust certificates or like securities, the term
13 'issuer' means the person by whom the equipment or property is or is to be used; and
14 except that, with respect to fractional undivided interests in oil, gas, or other mineral
15 rights, the term 'issuer' means the owner of any such right or of any interest in such right
16 (whether whole or fractional) who creates fractional interests therein for the purpose of
17 public offering.

18 (17) 'Limited dealer' means a dealer who is authorized under this chapter to act as a
19 dealer only with respect to a certain issue of or a certain class or type of securities
20 specified by the commissioner.

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

34 (19) 'Majority owned subsidiary' means a subsidiary more than 50 percent of whose
35 outstanding ~~securities representing the right, other than as affected by events of default,~~
36 ~~to vote for the election of directors is~~ voting shares are owned by the subsidiary's parent,

1 by one or more of the parent's other majority owned subsidiaries, or by the subsidiary's
2 parent and one or more of the parent's other majority owned subsidiaries.

3 (20) 'Market maker' means any specialist permitted to act as a dealer, any dealer acting
4 in the capacity of block positioner, and any dealer who, with respect to a security, holds
5 ~~himself~~ itself out (by entering quotations in an inter-dealer communications system or
6 otherwise) as being willing to buy and sell such security for ~~his~~ its own account on a
7 regular or continuous basis.

8 (21) 'Parent' means, when used with reference to a specified person, an affiliate
9 controlling such person directly, or indirectly through one or more intermediaries.

10 (22) 'Person' means an individual, a corporation, a partnership, a limited liability
11 company, an association, a joint-stock company, a trust, or any unincorporated
12 organization.

13 (23) 'Prospectus' means any prospectus, notice, circular, advertisement, sales literature,
14 letter, offering circular, offering sheet, or communication, written or by radio ~~or~~
15 ~~television, which,~~ television, or other electronic media that offers any security for sale or
16 ~~which that~~ is used in connection with any such offer or ~~which that~~ confirms the sale of
17 any security, except that:

18 (A) A confirmation of the sale of a security ~~which that~~ is sent or given after the
19 effective date of the registration statement shall not be deemed a prospectus if it is
20 proved that prior to or at the same time with such confirmation a written prospectus,
21 meeting the requirements of paragraph (3) of subsection (b), paragraph (3) of
22 subsection ~~(e)~~(d), or paragraph (4) of subsection ~~(f)~~(e) of Code Section 10-5-5 as
23 appropriate to form of registration under this chapter, at the time of such confirmation,
24 was sent or given to the person to whom the confirmation was sent or given; and

25 (B) A notice, circular, advertisement, sales literature, letter, or communication in
26 respect of a security shall not be deemed to be a prospectus if it states from whom a
27 written prospectus meeting the requirements of paragraph (3) of subsection (b),
28 paragraph (3) of subsection ~~(e)~~(d), or paragraph (4) of subsection ~~(f)~~(e) of Code Section
29 10-5-5 may be obtained and, in addition, does no more than identify the security, state
30 the price thereof, state by whom orders will be executed, and contain such other
31 information as the commissioner, by rules or regulations, deemed necessary or
32 appropriate in the public interest and for the protection of investors, and subject to such
33 terms and conditions as may be prescribed therein, may permit.

34 (24) 'Sale' or 'sell' means and shall include every contract of sale or disposition of a
35 security or interest in a security for value. The term 'offer to sell,' 'offer for sale,' or 'offer'
36 shall include every attempt or offer to dispose of or solicitation of an offer to buy a
37 security or interest in a security for value. The terms defined in this paragraph shall not

1 include preliminary negotiations or agreements between an issuer or any person on whose
 2 behalf an offering is to be made and any underwriter or among underwriters who are or
 3 are to be in privity of contract with an issuer or any person on whose behalf an offering
 4 is to be made. Any security given or delivered with or as a bonus on account of any
 5 purchase of securities or any other thing shall be conclusively presumed to constitute a
 6 part of the subject of such purchase and to have been offered and sold for value. The issue
 7 or transfer of a right or privilege, when originally issued or transferred with a security,
 8 giving the holder of such security the right to convert such security into another security
 9 of the same issuer or of another person or giving a right to subscribe to another security
 10 of the same issuer or of another person, which right cannot be exercised until some future
 11 date, shall not be deemed to be an offer or sale of such other security; but the issue or
 12 transfer of such other security upon the exercise of such right of conversion or
 13 subscription shall be deemed a sale of such other security.

14 (25) 'Salesperson' means an individual, other than a dealer ~~or~~ limited dealer, or
 15 designated dealer registered under this chapter, employed or appointed or authorized by
 16 a dealer, limited dealer, designated dealer, or issuer to sell securities in this state. The
 17 general partners ~~or~~ executive officers, or managing members of a dealer ~~or a~~ limited
 18 dealer, or designated dealer engaged in the offer or sale of securities and any general
 19 partners of an issuer ~~or~~ executive officers or managing members of any general partner
 20 of an issuer, or executive officers or managing members of an issuer offering or selling
 21 securities of such issuer shall not be deemed to be salespersons within the meaning of this
 22 definition unless they are paid a commission for the sale of such securities. Any
 23 remuneration paid ~~which~~ that is directly related to the sale of securities shall be
 24 considered a commission for the purposes of this paragraph. The term 'salesperson' does
 25 not include an individual who represents a dealer in effecting only transactions in this
 26 state ~~which~~ that are described in Section 15(h)(2) of the Securities Exchange Act of 1934
 27 (15 U.S.C. Section 78a, et seq., as amended) or an individual who represents an issuer in
 28 effecting transactions in a federal covered security as described in ~~Sections~~ Section
 29 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. Section 77a, et seq., as
 30 amended).

31 (25.1) 'S.E.C.' means the United States Securities and Exchange Commission.

32 (26) 'Security' means any note, stock, treasury stock, bond, debenture, evidence of
 33 indebtedness, certificate of indebtedness, investment certificate, certificate of interest or
 34 participation in any profit-sharing agreement, certificate of interest in oil, gas, or other
 35 mineral rights, collateral trust certificates, preorganization certificate or subscription,
 36 transferable share, investment contract, viatical investment, voting-trust certificate,
 37 limited partnership interest, or beneficial interest in profits or earnings, or any other

1 instrument commonly known as a security, including any certificate of interest or
 2 participation in, temporary or interim certificate for, receipt for, guaranty of, or warrant
 3 or right to subscribe to or purchase, any of the foregoing. The term 'investment contract'
 4 shall include but is not limited to an investment ~~which~~ that holds out the possibility of
 5 return on risk capital even though the investor's efforts are necessary to receive such
 6 return if:

7 (A) Such return is dependent upon essential managerial or sales efforts of the issuer or
 8 its affiliates;

9 (B) One of the inducements to invest is the promise of promotional or sales efforts of
 10 the issuer or its affiliates in the investor's behalf; and

11 (C) The investor shall thereby acquire the right to earn a commission or other
 12 compensation from sales of rights to sell goods, services, or other investment contracts
 13 of the issuer or its affiliates.

14 Security shall not mean any insurance or endowment policy or annuity contract under
 15 which an insurance company promises to pay a fixed number of dollars either in a lump
 16 sum or periodically for life or some other specified period ~~nor any variable annuity~~
 17 ~~contract as provided for~~ and regulated under Title 33 and issued by a life insurance
 18 company licensed to do business in the State of Georgia nor shall it mean any interest in
 19 a residential unit and a rental management arrangement relating to such residential unit
 20 so long as the owner-participants under the rental management arrangement, whether
 21 optional or mandatory, do not participate directly in the income derived from the rental
 22 of units owned by others.

23 ~~(27) 'Securities of the same class' means:~~

24 ~~(A) All common stock of an issuer, regardless of varying series or designations, and~~
 25 ~~all securities convertible into common stock or conferring the right to acquire common~~
 26 ~~stock; or~~

27 ~~(B) All preferred stock of an issuer, regardless of varying preferences, series, or~~
 28 ~~designations, and all securities convertible into preferred stock or conferring the right~~
 29 ~~to acquire preferred stock.~~

30 (27) 'Securities of the same class' means all securities of an issuer that are of
 31 substantially similar character, the holders of which enjoy substantially similar rights and
 32 privileges.

33 (28) 'Significant subsidiary' means a subsidiary meeting any one of the following
 34 conditions:

35 (A) The assets of the subsidiary or the investments in and advances to the subsidiary
 36 by its parent and the parent's other subsidiaries, if any, exceed 10 percent of the assets
 37 of the parent and its subsidiaries on a consolidated basis;

1 (B) The sales and operating revenues of the subsidiary exceed 10 percent of the sales
2 and operating revenues of its parent and the parent's subsidiaries on a consolidated
3 basis; or

4 (C) The subsidiary is the parent of one or more subsidiaries and, together with such
5 subsidiaries, would, if considered in the aggregate, constitute a significant subsidiary.

6 (29) 'State' means any state, territory, or possession of the United States, the District of
7 Columbia, Puerto Rico, and the Virgin Islands.

8 (30) 'Subsidiary' means, when used with reference to a specified person, an affiliate
9 controlled by such person, directly or indirectly, through one or more intermediaries.

10 (31) 'Underwriter' means any person who has purchased from an issuer or an affiliate of
11 an issuer with a view to or offers or sells for an issuer or an affiliate of an issuer in
12 connection with the distribution of any security or participates or has a direct or indirect
13 participation in any such undertaking or participates or has a participation in the direct
14 or indirect underwriting of any such undertaking; provided, however, that a person shall
15 be presumed not to be an underwriter with respect to any securities ~~which he~~ that he or
16 she has owned beneficially for at least one year; and provided, further, that a dealer shall
17 not be considered an underwriter with respect to any securities ~~which~~ that do not
18 represent part of an unsold allotment to or subscription by the dealer as a participant in
19 the distribution of such securities by the issuer or an affiliate of the issuer; provided,
20 further, that, in the case of securities acquired on the conversion of another security
21 without payment of additional consideration, the length of time such securities have been
22 beneficially owned by a person shall include the period during which the convertible
23 security was beneficially owned and the period during which the security acquired on
24 conversion has been beneficially owned.

25 (32) 'Viatical investment' means the contractual right to receive any portion of the death
26 benefit or ownership of a life insurance policy or certificate for consideration that is less
27 than the expected death benefit of the life insurance policy or certificate. Viatical
28 investment does not include:

29 (A) Any sale or transfer of any portion of the death benefit or ownership of a life
30 insurance policy or certificate by the insured or policy owner to a viatical issuer or to
31 any person or entity regularly engaged in the business of reselling or transferring such
32 benefits to viatical issuers;

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

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

1 (D) The sale or transfer of any portion of the death benefit or ownership of a life
2 insurance policy by an individual who enters into no more than one agreement in a
3 calendar year regarding the transfer of life insurance policies insuring the life of only
4 one person for consideration that is less than the death benefit, unless any third party
5 receives, directly or indirectly, any fee, commission, or other remuneration in
6 connection with said assignment.

7 (33) 'Viatical issuer' means, in the case of a fractional or pooled interest in viatical
8 investments, any person who creates, for the purpose of sale, the fractional or pooled
9 interest, and in the case of a viatical investment that is not fractionalized or pooled, any
10 person engaged in the business of effecting transactions in viatical investments. A
11 viatical issuer pursuant to this Code section is an issuer within the definition contained
12 in this Code section.

13 (b) For the purpose of this chapter, an offer to sell or to purchase a security is made in this
14 state, whether or not either party is then present in this state, if the offer originates from
15 within this state or is directed by the offeror to a place in this state and received at the place
16 to which it is directed.

17 (c) For the purpose of this chapter, an offer to purchase or to sell is accepted in this state,
18 whether or not either party is then present in this state, if the acceptance is communicated
19 to the offeror in this state and the offeree reasonably believes the offeror to be present in
20 this state and the acceptance is received at the place in this state to which it is directed and
21 has not previously been communicated to the offeror, orally or in a record, outside this
22 state.

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

32 (1) The program or communication is syndicated and distributed from outside this state
33 for redistribution to the general public in this state;

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

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

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

7 Code Section 10-5-12 shall apply to a person if the person engages in an act, practice, or
 8 course of business instrumental in effecting prohibited or actionable conduct in this state,
 9 whether or not either party is then present in this state.

10 (e) This chapter shall apply to any person who engages in an act, practice, or course of
 11 business as an investment adviser, investment adviser representative, or federal covered
 12 adviser that is instrumental in effecting prohibited actionable conduct in this state, whether
 13 or not either party is then present in this state.

14 ~~(b)~~(f) The rules of statutory construction contained in Chapter 3 of Title 1 shall apply to
 15 this chapter.

16 10-5-3.

17 (a) *Generally.* No dealer, limited dealer, ~~salesperson, or limited salesperson,~~ as defined by
 18 this chapter, shall offer for sale or sell any securities within or from this state, except in
 19 transactions exempt under paragraph (1), (2), (6), (7), (8), (9), (11), or (12) of Code Section
 20 ~~10-5-9, unless he or she is a registered dealer, limited dealer, salesperson, or limited~~
 21 ~~salesperson pursuant to this Code section; provided, however, that a real estate broker or~~
 22 ~~salesperson licensed to sell real estate in this state shall not be required to register as a~~
 23 ~~dealer or a limited dealer or as a salesperson or a limited~~ designated dealer, salesperson,
 24 limited salesperson, or designated salesperson, as defined by this chapter, shall offer for
 25 sale or sell any securities within, into, or from this state, except in transactions that are
 26 exempt under paragraph (1), (2), (5), (6), (7), (8), (9), (11), (12), (16), or (17) of subsection
 27 (a) of Code Section 10-5-9 or subsection (c) or (d) of Code Section 10-5-9, unless he or she
 28 is a registered dealer, limited dealer, designated dealer, salesperson, limited salesperson,
 29 or designated salesperson pursuant to this Code section; provided, however, that a real
 30 estate broker or salesperson licensed to sell real estate in this state shall not be required to
 31 register as a dealer, limited dealer, or designated dealer or as a salesperson, limited
 32 salesperson, or designated salesperson under this chapter in connection with a sale by him
 33 or her of a security consisting of any interest in a residential unit and any rental
 34 management arrangement relating thereto. No investment adviser or investment adviser
 35 representative, as defined by this chapter, shall transact business within, into, or from this

1 state unless he or she is a registered investment adviser or investment adviser representative
2 pursuant to this Code section.

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

6 (1) Any investment adviser, federal covered ~~advisers~~ adviser, or investment adviser
7 representative whose only clients are insurance companies; or

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

12 (c) *Dealers and limited dealers.*

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

17 (1)(A) The name of the applicant;

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

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

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

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

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

34 (7)(G) 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~~ (15 U.S.C. Section
36 78a, et seq., as amended) and whether any such registration of the applicant has ever

1 been denied, revoked, or suspended or is then the subject of proceedings for revocation
 2 or suspension by the ~~Securities and Exchange Commission~~ S.E.C.;

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

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

12 ~~(10)~~(J) A balance sheet as of a date within 90 days prior to the date of filing. This
 13 balance sheet need not be ~~certified~~ audited. If the balance sheet is not ~~certified~~ audited,
 14 there shall be filed in addition a ~~certified~~ an audited balance sheet as of a date within
 15 one year prior to the date of filing unless the fiscal year of the applicant has ended
 16 within 90 days prior to the date of filing, in which case the balance sheet may be dated
 17 as of the end of the fiscal year preceding such last fiscal year. Such balance sheets shall
 18 be prepared in accordance with generally accepted accounting principles and, if
 19 required to be ~~certified~~ audited, shall be ~~certified~~ audited by an independent public
 20 accountant duly registered and in good standing as such under the laws of the place of
 21 his or her residence or principal office. In the case of a dealer or limited dealer that is
 22 registered or that has applied to be registered under the Securities Exchange Act of
 23 1934 (15 U.S.C. Section 78a, et seq., as amended), compliance with the financial
 24 statement requirements of said act and of any self-regulatory organization of which he
 25 or she is a member or is applying to be a member shall constitute compliance with this
 26 subsection; however, the commissioner may require the filing of such other or
 27 additional financial information as the commissioner may deem necessary or
 28 appropriate in the public interest or for the protection of the public; and

29 ~~(11)~~(K) Whether the applicant or any general partner, limited partner, director,
 30 affiliate, ~~or~~ executive officer, managing member, or a person holding a similar position
 31 of such applicant has ever been subject to any injunction or disciplinary proceeding of
 32 the ~~Securities and Exchange Commission~~ S.E.C. or any state securities commission
 33 involving a security or any aspect of the securities business, has ever been convicted
 34 of or charged with a misdemeanor of which fraud is an essential element or ~~which~~ that
 35 involves a security or any aspect of the securities business, or has ever been convicted
 36 of or charged with a felony and, if so, all pertinent information with respect to such
 37 injunction, disciplinary proceeding, conviction, or charge.

1 (2) The commissioner ~~may waive the furnishing of any information required by this~~
2 ~~subsection (other than the requirements with respect to financial statements provided for~~
3 ~~in paragraph (10) of this subsection).~~ in his or her discretion, may determine that any
4 information required by this subsection need not be furnished and may require such
5 additional information as to the previous history, records, or association of the applicant,
6 its general partners, limited partners, directors, affiliates, or executive officers, or persons
7 holding similar positions as he or she may deem necessary to establish whether or not the
8 applicant should be registered as a dealer under this chapter.

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

24 (4) There shall be filed with such application an irrevocable written consent of the
25 applicant to the service of process upon the commissioner in actions against such
26 applicant in the manner and form provided in Code Section 10-5-18 and payment of the
27 prescribed registration fee.

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

34 (6) The procedure and requirements relative to the registration of a dealer as provided
35 in this subsection shall likewise apply to the registration of a limited dealer, except that
36 an applicant for registration as a limited dealer shall furnish the commissioner, as part of
37 his or her application, information as to the particular issue or class or type of securities

1 with respect to which he or she desires to act as a dealer. Any license, certificate, or other
 2 evidence of registration issued by the commissioner to a limited dealer shall specify the
 3 issue or class or type of securities with respect to which such registration authorizes such
 4 limited dealer to act as a dealer.

5 (d) *Salespersons and limited salespersons.*

6 (1) Application for registration as a salesperson or a limited salesperson may be made
 7 by any individual. Such applicant must be associated with the dealer, limited dealer, or
 8 issuer submitting the application. Such application for registration shall be made in a
 9 manner prescribed by the commissioner, shall be verified by the applicant and by the
 10 dealer, limited dealer, or issuer employing or proposing to employ such applicant, shall
 11 be duly verified under oath, shall be filed with the commissioner, and shall contain the
 12 following information:

13 ~~(1)~~(A) Name and residence and business addresses of the applicant;

14 ~~(2)~~(B) Name of the dealer, limited dealer, or issuer employing or proposing to employ
 15 the applicant;

16 ~~(3)~~(C) Names and addresses of three persons of whom the commissioner may inquire
 17 as to the character and business reputation of the applicant;

18 ~~(4)~~(D) Applicant's age and education;

19 ~~(5)~~(E) The nature of employment and names and addresses of employers of the
 20 applicant for the period of ten years immediately preceding the date of application;

21 ~~(6)~~(F) Other state or federal laws under which the applicant has ever been registered
 22 as a securities broker, dealer, or salesperson and, if any such registration has ever been
 23 refused, canceled, suspended, or revoked or if such a proceeding is pending, full details
 24 with respect thereto; and

25 ~~(7)~~(G) Whether the applicant has ever been subject to any injunction or disciplinary
 26 proceeding of the ~~Securities and Exchange Commission~~ S.E.C. or any state securities
 27 commission involving a security or any aspect of the securities business, has ever been
 28 convicted of or charged with a misdemeanor of which fraud is an essential element or
 29 ~~which that~~ which that involves a security or any aspect of the securities business, or has ever been
 30 convicted of or charged with a felony, and, if so, all pertinent information with respect
 31 to such injunction, disciplinary proceeding, conviction, or charge.

32 (2) The commissioner ~~may waive the furnishing of any information required by this~~
 33 ~~subsection, in his or her discretion, may determine that any information required by this~~
 34 subsection need not be furnished and may require such additional information as to
 35 applicant's previous business experience as he or she may deem necessary to determine
 36 whether or not the applicant should be registered as a salesperson under the provisions

1 of this chapter. There shall be filed with such application payment of the prescribed
2 registration fee.

3 (3) When an applicant has fully complied with the provisions of this subsection and
4 subsections (j) and (k) of this Code section, the commissioner shall register such
5 applicant as a salesperson, unless he or she finds that such applicant is not of good
6 business reputation or does not appear to be qualified by training, experience, or
7 knowledge of the securities business to act as a salesperson of securities. When the
8 commissioner has registered an applicant as a salesperson, he or she shall immediately
9 notify the applicant of such registration.

10 (4) No dealer, limited dealer, or issuer shall employ any salesperson or limited
11 salesperson who is not registered as required by this chapter; and each such person shall
12 promptly notify the commissioner of the termination of the employment by him or her
13 of a salesperson or limited salesperson; and the registration of such salesperson or limited
14 salesperson shall automatically be terminated from the time of termination of such
15 employment. ~~Any license, certificate, or other evidence of such registration which such~~
16 ~~salesperson or limited salesperson has been issued shall immediately be returned to the~~
17 ~~commissioner.~~

18 (5) The procedure relative to the registration of a salesperson as provided in this
19 subsection shall likewise apply to the registration of a limited salesperson, except that an
20 applicant for registration as a limited salesperson shall furnish the commissioner with
21 information as to the particular issue or class or type of securities ~~which~~ that he or she
22 desires to sell or offer for sale. Any license, certificate, or other evidence of registration
23 issued by the commissioner to a limited salesperson shall specify the issue or class or
24 type of securities ~~which~~ that such registration authorizes such limited salesperson to sell
25 or offer for sale.

26 (6) No applicant shall be registered as a salesperson or limited salesperson under this
27 chapter nor any such registration be renewed, unless such person has passed a written
28 examination administered by the commissioner or someone acting under his or her
29 direction or unless such applicant presents proof satisfactory to the commissioner
30 showing that he or she has previously passed a similar examination conducted by the
31 National Association of Securities Dealers, Inc., or any other examination substantially
32 similar to that given by the commissioner, as the commissioner may determine. The
33 commissioner is further authorized to prescribe the time, manner, and procedure relative
34 to the holding of such examination and may impose a fee against the applicant taking said
35 examination to cover the costs thereof.

1 (7) There shall be filed with such application an irrevocable written consent of the
 2 applicant to the service of process upon the commissioner in actions against the applicant
 3 in the manner and form provided in Code Section 10-5-18.

4 (8) In addition to the requirements of this subsection, an application for registration by
 5 any individual who, upon registration, would be a designated salesperson shall contain
 6 a certification that the applicant has completed or has begun and will complete a
 7 four-month period of training with a dealer or designated dealer registered under this
 8 chapter before offering to sell, selling, offering to purchase, or purchasing any designated
 9 security.

10 (e) *Investment advisers.*

11 (1) Application for registration as an investment adviser may be made by any person.
 12 Such application for registration shall be made in a manner prescribed by the
 13 commissioner, shall be verified by the applicant, shall be filed with the commissioner,
 14 and shall contain the following information:

15 ~~(1)~~(A) The name and form of organization under which the investment adviser engages
 16 or intends to engage in business in this state;

17 ~~(2)~~(B) The name of the state or other sovereign power under which such investment
 18 adviser is organized;

19 ~~(3)~~(C) The location of the investment adviser's principal place of business and branch
 20 offices, if any;

21 ~~(4)~~(D) The names and addresses of the investment adviser's partners, executive
 22 officers, directors, managing members, and persons performing similar functions, or,
 23 if such an investment adviser is an individual, the name and residence and business
 24 addresses of such individual;

25 ~~(5)~~(E) The number of the investment adviser's employees;

26 ~~(6)~~(F) The education, the business affiliations for the past ten years, and the present
 27 business affiliations of such investment adviser and of such investment adviser's
 28 partners, executive officers, directors, managing members, and persons performing
 29 similar functions and of any controlling person thereof;

30 ~~(7)~~(G) The nature of the business of such investment adviser, including the manner of
 31 giving advice and rendering analyses or reports;

32 ~~(8)~~(H) Investment A balance sheet for the most recent fiscal year for investment
 33 advisers with custody of client funds or securities or requiring prepayment of more than
 34 \$500.00 in fees per client six or more months in advance ~~must provide a balance sheet~~
 35 ~~for the most recent fiscal year~~. Said balance sheet shall be prepared in accordance with
 36 generally accepted accounting principles and shall, as the commissioner may by rule
 37 specify, be audited by an independent public accountant;

1 ~~(9)~~(I) The nature and scope of the authority of such investment adviser with respect to
2 clients' funds and accounts;

3 ~~(10)~~(J) The basis or bases upon which such investment adviser is compensated;

4 ~~(11)~~(K) Whether such investment adviser, any investment adviser representative, or
5 any person associated with such investment adviser is subject to any disqualification
6 ~~which~~ that would be a basis for denial, suspension, or revocation of registration of such
7 investment adviser under the provisions of subsection (h) of this Code section or under
8 the provisions of Code Section 10-5-4 of this chapter; and

9 ~~(12)~~(L) A statement as to whether the principal business of such investment adviser
10 consists or is to consist of acting as investment adviser, and a statement as to whether
11 a substantial part of the business of such investment adviser consists or is to consist of
12 rendering investment supervisory services.

13 (2) The commissioner ~~may waive the furnishing of any information required by this~~
14 ~~subsection, in his or her discretion, may determine that any information required by this~~
15 ~~subsection need not be furnished~~ and may require such additional information as to the
16 previous history, records, or association of the applicant, its general partners, limited
17 partners, directors, affiliates, or executive officers as he or she may deem necessary to
18 establish whether or not the applicant should be registered as an investment adviser under
19 this chapter. The commissioner may further, if he or she finds it to be in the best interests
20 of the public, by rule or regulation create procedures and exemptions relating to
21 investment advisers which procedures and exemptions would have as their objectives
22 compatibility with federal exemptions and uniformity among the states.

23 ~~No applicant shall be registered as an investment adviser under this chapter nor shall any~~
24 ~~such registration be renewed unless the applicant, if an individual, and each investment~~
25 ~~adviser representative of such applicant has passed a written examination approved by the~~
26 ~~commissioner.~~

27 (3) An investment adviser, if an individual, shall not offer or provide investment advice
28 without having passed a written examination approved by the commissioner.

29 (4) There shall be filed with such application an irrevocable written consent of the
30 applicant to the service of process upon the commissioner in actions against such
31 applicant in the manner and form provided in Code Section 10-5-18 and payment of the
32 prescribed registration fee.

33 (5) When an applicant has fully complied with this subsection and subsection (j) of this
34 Code section, the commissioner shall register such applicant as an investment adviser
35 unless he or she shall find that the applicant is not of good business reputation or does not
36 appear qualified by training or experience to act as an investment adviser. When the

1 commissioner has registered an applicant as an investment adviser, he or she shall
2 immediately notify the applicant of such registration.

3 (f) *Investment adviser representatives.*

4 (1) Application for registration as an investment adviser representative may be made by
5 any individual. Such application for registration shall be made in a manner prescribed by
6 the commissioner, shall be verified by the applicant and by the investment adviser or
7 federal covered adviser employing or proposing to employ such applicant, shall be filed
8 with the commissioner, and shall contain the following information:

9 ~~(1)~~(A) Name and residence and business addresses of the applicant;

10 ~~(2)~~(B) Name of the investment adviser or federal covered adviser employing or
11 proposing to employ the applicant;

12 ~~(3)~~(C) Applicant's age and education;

13 ~~(4)~~(D) The nature of employment and names and addresses of employers of the
14 applicant for the period of ten years immediately preceding the date of application;

15 ~~(5)~~(E) Other state or federal laws under which the applicant has ever made a notice
16 filing or been registered as an investment adviser or investment adviser representative
17 and, if any such registration or notice filing has ever been refused, canceled, suspended,
18 or revoked or, if such a proceeding is pending, full details with respect thereto; and

19 ~~(6)~~(F) Whether the applicant has ever been subject to any injunction or disciplinary
20 proceeding of the ~~Securities and Exchange Commission~~ S.E.C. or any state securities
21 commission involving a security or any aspect of the securities or investment advisory
22 business, has ever been convicted of or charged with a misdemeanor of which fraud is
23 an essential element or ~~which~~ that involves a security or any aspect of the securities
24 business, or has ever been convicted of or charged with a felony and, if so, all pertinent
25 information with respect to such injunction, disciplinary proceeding, conviction, or
26 charge.

27 (2) The commissioner ~~may waive the furnishing of any information required by this~~
28 subsection, in his or her discretion, may determine that any information required by this
29 subsection need not be furnished and may require such additional information as to the
30 applicant's previous business experience as he or she may deem necessary to determine
31 whether or not the applicant should be registered as an investment adviser representative
32 under the provisions of this chapter. There shall be filed with such application payment
33 of the prescribed registration fee. The commissioner may further, if he or she finds it to
34 be in the best interests of the public, by rule or regulation create procedures and
35 exemptions relating to investment adviser representatives which procedures and
36 exemptions would have as their objectives compatibility with federal exemptions and
37 uniformity among the states.

1 (3) When an applicant has fully complied with the provisions of this subsection and
 2 subsection (j) of this Code section, the commissioner shall register such applicant as an
 3 investment adviser representative, unless he or she finds that such applicant is not of good
 4 business reputation or does not appear to be qualified by training, experience, or
 5 knowledge of the securities business to act as an investment adviser representative. When
 6 the commissioner has registered an applicant as an investment adviser representative, the
 7 applicant shall be immediately notified of such registration.

8 (4) No investment adviser shall employ any investment adviser representative who is not
 9 registered as required by this chapter, and each such person shall promptly notify the
 10 commissioner of the termination of the employment by him or her of an investment
 11 adviser representative; and the registration of such investment adviser representative shall
 12 automatically be terminated from the time of termination of such employment. No
 13 investment adviser representative shall conduct business on behalf of a federal covered
 14 adviser unless such representative is registered as required by this chapter. An investment
 15 adviser representative of a federal covered adviser shall promptly notify the
 16 commissioner of the termination of his or her employment with the adviser and such
 17 representative's registration shall automatically terminate as of the date the employment
 18 terminated.

19 (5) ~~No applicant shall be registered as an investment adviser representative under this~~
 20 ~~chapter nor any such registration be renewed, unless such person has~~ An investment
 21 adviser representative shall not offer or provide investment advice without having passed
 22 a written examination approved by the commissioner.

23 (6) There shall be filed with such application an irrevocable written consent of the
 24 applicant to the service of process upon the commissioner in actions against the applicant
 25 in the manner and form provided in Code Section 10-5-18.

26 (g) *Federal covered advisers.* No federal covered adviser shall transact business within,
 27 into, or from this state unless such adviser has made a notice filing with the commissioner.
 28 Such notice filing shall consist of a copy of those documents filed by the adviser with the
 29 ~~Securities and Exchange Commission~~ S.E.C. that the commissioner, by rule or regulation,
 30 requires to be filed together with the fee required by subsection (j) of this Code section. A
 31 notice filing shall be effective upon receipt by the commissioner.

32 (h) *Refusal of registration; finding applicant 'not of good business reputation.'*

33 (1) If, after affording an applicant a hearing or an opportunity for a hearing as provided
 34 in Code Section 10-5-16, the commissioner finds that there are sufficient grounds to
 35 refuse to register the applicant as provided in this Code section, he or she shall issue an
 36 order refusing to register the applicant. The order shall state specifically the grounds for
 37 its issuance. A copy of the order shall be mailed to the applicant at his or her business

1 address and, if the application is for registration as a salesperson, limited salesperson, or
 2 investment adviser representative, to the dealer, limited dealer, issuer, or investment
 3 adviser who proposed to employ such applicant.

4 (2) If the commissioner shall find that an applicant has committed any act or made any
 5 omission ~~which~~ that would constitute a sufficient ground for revocation of a dealer's,
 6 limited dealer's, salesperson's, limited salesperson's, investment adviser's, or investment
 7 adviser representative's registration under Code Section 10-5-4, such act or omission may
 8 constitute a sufficient ground for a finding by the commissioner, under subsection (c), (d),
 9 (e), or (f) of this Code section, that such applicant is 'not of 'good business reputation.'

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

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

13 (2) Registration of dealers, limited dealers, salespersons, limited salespersons,
 14 investment advisers, and investment adviser representatives must be renewed each year
 15 by the submission of a renewal application containing the information required in an
 16 application for registration, to the extent that such information has not previously been
 17 included in an application or renewal application previously filed, by the payment of the
 18 proper registration fee, and, in the case of a dealer or limited dealer, by the filing of a
 19 balance sheet as of a date within 90 days prior to the date of filing. This balance sheet
 20 need not be ~~certified~~ audited. If the balance sheet is not ~~certified~~ audited, there shall be
 21 filed in addition ~~a certified~~ an audited balance sheet as of a date within one year of the
 22 date of filing unless the fiscal year of the applicant has ended within 90 days prior to the
 23 date of filing, in which case the balance sheet may be dated as of the end of the preceding
 24 fiscal year. Such balance sheets shall be prepared in accordance with generally accepted
 25 accounting principles and, if required to be ~~certified~~ audited, shall be ~~certified~~ audited by
 26 an independent public accountant duly registered and in good standing as such under the
 27 laws of the place of his or her residence or principal office. ~~The commissioner may~~
 28 ~~provide by rule or regulation that a dealer or limited dealer which is registered under the~~
 29 ~~Securities Exchange Act of 1934 may file with such dealer's renewal application a copy~~
 30 ~~of such dealer's financial statements prepared pursuant to the Securities Exchange Act~~
 31 ~~of 1934 in lieu of a balance sheet. In the case of a dealer or limited dealer that is~~
 32 ~~registered or that has applied to be registered under the Securities Exchange Act of 1934~~
 33 ~~(15 U.S.C. Section 78a, et seq., as amended), compliance with the financial statement~~
 34 ~~requirements required thereunder and of any self-regulatory organization of which he or~~
 35 ~~she is a member or is applying to be a member shall constitute compliance with this~~
 36 ~~subsection; however, the commissioner may require the filing of such other or additional~~

1 financial information as may be necessary or appropriate in the public interest or for the
 2 protection of the public.

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

8 (4) Upon any change in the general partners, limited partners, directors, affiliates, ~~or~~
 9 executive officers, or managing members of a dealer, limited dealer, or investment
 10 adviser, such dealer, limited dealer, or investment adviser shall promptly notify the
 11 commissioner and shall furnish to him or her in writing such information concerning such
 12 persons ~~which~~ that has not previously been filed as required in an original application for
 13 registration. Upon any change in the general partners, limited partners, directors,
 14 affiliates, or executive officers of a federal covered adviser, such adviser shall provide
 15 the commissioner with a copy of any information concerning such change at the same
 16 time such information is filed with the ~~Securities and Exchange Commission~~ S.E.C.

17 (j) *Fees.* The fee for the initial registration of a dealer, limited dealer, or investment
 18 adviser, or the initial notice filing by a federal covered adviser, shall be \$250.00. The
 19 annual renewal fee for a dealer, limited dealer, investment adviser, or federal covered
 20 adviser shall be \$100.00. The initial registration fee and transfer fee for each salesperson,
 21 limited salesperson, and investment adviser representative shall be \$50.00. The annual
 22 renewal fee for each salesperson, limited salesperson, and investment adviser
 23 representative shall be \$40.00. Notwithstanding the foregoing, if, at the time of registration
 24 or renewal application, any investment adviser representative applicant or registrant is
 25 registered in this state as a salesperson with a dealer through the Central Registration
 26 Depository, operated by the National Association of Securities Dealers, and the dealer and
 27 investment adviser or federal covered adviser employing the investment adviser
 28 representative have the same Central Registration Depository number, then the investment
 29 adviser representative shall not be required to pay the investment adviser representative
 30 registration or renewal fee as set out in this subsection.

31 (k) *Bonds.*

32 (1) Except as otherwise provided in this subsection, no applicant shall be registered as
 33 a dealer, limited dealer, salesperson, or limited salesperson under this chapter nor shall
 34 any such registration be renewed until the applicant files with the commissioner bond
 35 satisfactory to the commissioner in the sum of \$25,000.00 as to dealers and limited
 36 dealers and \$2,500.00 as to salespersons and limited salespersons, payable to the State
 37 of Georgia for the use of all interested persons and conditioned upon the faithful

1 compliance by the principal with any and all provisions of this chapter and any
2 regulations and orders issued by the commissioner. Any such bond may be canceled by
3 the principal or surety by giving notice to the commissioner, but such cancellation shall
4 not affect any cause of action accruing thereon prior to cancellation and such cancellation
5 shall result in automatic cancellation of the principal's registration until new bond
6 satisfactory to the commissioner is filed. Any action on such bond must be brought within
7 two years after accrual of the cause of action. The amounts ~~above-prescribed~~ set forth in
8 this paragraph for the bonds required of salespersons, limited salespersons, dealers, and
9 limited dealers shall be construed as being the aggregate liability recoverable against such
10 bonds, regardless of the number of claimants, and shall not be construed as individual
11 liability.

12 (2)(A) The requirement for filing of such bond by an applicant for registration or
13 renewal of registration as a dealer or limited dealer shall not be applicable if:

14 (i) Such applicant is registered under the Securities Exchange Act of 1934 (15 U.S.C.
15 Section 78a, et seq., as amended); or

16 (ii) As of the dates of the most recent balance sheet ~~certified~~ audited by an
17 independent public accountant filed by such applicant pursuant to this Code section
18 and any subsequent ~~noncertified~~ unaudited balance sheet so filed, such applicant had
19 a minimum capital of not less than \$250,000.00. For the purposes of this division,
20 minimum capital shall mean net worth as determined in accordance with generally
21 accepted accounting principles, unless for the purposes of this division the
22 commissioner shall adopt rules and regulations for determining the minimum capital
23 of a dealer or limited dealer, in which case minimum capital shall be determined in
24 accordance with such rules and regulations. The ~~aforsaid~~ balance sheets filed by such
25 applicant shall be used to determine the applicant's minimum capital unless the
26 commissioner shall have adopted the rules or regulations authorized in ~~the preceding~~
27 ~~sentence~~ this division, in which case the applicant's minimum capital shall be
28 determined from schedules prepared in accordance with such rules and regulations.
29 The schedule prepared as of the date of the ~~certified~~ audited balance sheet referred to
30 ~~above shall be certified~~ in this division shall be audited as having been prepared in
31 accordance with the rules or regulations adopted by the commissioner, as provided
32 in this division, by an independent public accountant duly registered and in good
33 standing as such under the laws of the place of his or her residence.

34 (B) The requirement for the filing of such bond by an applicant for registration or
35 renewal of registration as a salesperson or limited salesperson shall not be applicable
36 if the dealer or limited dealer by whom such applicant is employed or is to be employed
37 is not subject to the bond requirements of this Code section.

1 (3)(A) The requirement for filing such bond by an applicant for registration or renewal
 2 of registration as a dealer or limited dealer shall not be applicable if such applicant has
 3 deposited in trust with the commissioner:

4 (A)(i) A certificate of deposit evidencing a deposit with a financial institution
 5 satisfactory to the commissioner in the amount of \$25,000.00 payable to the applicant
 6 and assigned to the commissioner;

7 (B)(ii) An irrevocable letter of credit addressed to the commissioner in the amount
 8 of \$25,000.00, issued by a bank ~~which~~ that is a member of the Federal Reserve
 9 System and conditioned only upon the rendering of a judgment by a court of
 10 competent jurisdiction in which the applicant is found liable for damages under this
 11 chapter; or

12 (C)(iii) Obligations of the United States, an agency thereof, or of the State of Georgia
 13 ~~which~~ that mature in not more than two years and ~~which~~ that have a market value as
 14 of the date of deposit of at least \$25,000.00.

15 Such deposits shall be held for the benefit of all persons to whom the applicant is liable
 16 for damages under this chapter for a period of two years after such applicant's
 17 registration has expired or been revoked; provided, however, that such deposits shall
 18 not be released at any time while there is pending against the applicant an action
 19 (including any direct appeal of such action or an appeal based on a petition for certiorari
 20 jurisdiction), of which the commissioner has notice, in a court of competent jurisdiction
 21 in which it is alleged that the applicant is liable for damages under this chapter. Such
 22 deposits shall not be released except upon application to and the written order of the
 23 commissioner. The commissioner shall have no liability for any such release of any
 24 deposit or part thereof so made by him or her in good faith. The commissioner may
 25 designate any regularly constituted state depository having trust powers domiciled in
 26 this state as a depository to receive and hold any such deposit. Any such deposit so held
 27 shall be at the expense of the applicant. Such depository shall give to the commissioner
 28 proper trust and safekeeping receipt upon which the commissioner shall give official
 29 receipt to the applicant. The State of Georgia shall be responsible for the safekeeping
 30 and return of all deposits made pursuant to this Code section. So long as the applicant
 31 complies with this chapter, the applicant may demand, receive, ~~sue~~ bring an action for,
 32 and recover the income from the securities deposited or may exchange and substitute
 33 for the letter of credit or securities deposited or a part thereof, with the approval of the
 34 commissioner, a letter of credit or securities of the kinds specified ~~above~~ in this
 35 subparagraph of equivalent or greater value. No judgment creditor or other claimant of
 36 applicant shall levy upon any deposit held pursuant to this ~~paragraph~~ subparagraph or
 37 upon any part thereof, except as specified in this ~~paragraph~~ subparagraph. Whenever

1 any person shall file an action in a court of competent jurisdiction in which it is alleged
2 that the applicant is liable for damages under this chapter, such person, in order to
3 secure his or her recovery, may give notice to the commissioner of such alleged liability
4 and of the amount of damages claimed, after which notice the commissioner shall be
5 bound to retain, subject to the order of the Superior Court of Fulton County, as provided
6 below in subparagraph (B) of this paragraph, a sufficient amount of the deposit to pay
7 the judgment in the action.

8 (B) In the event that the applicant prevails in such action and in the event that such
9 deposits have been held by the commissioner for a period of at least two years after the
10 applicant's registration has expired or been revoked, then such deposits shall be
11 released to the applicant; provided, however, that such deposits shall not be released at
12 any time while there is pending against the applicant an action (including any direct
13 appeal of such action or an appeal based on a petition for certiorari jurisdiction), of
14 which the commissioner has notice, in a court of competent jurisdiction in which it is
15 alleged that the applicant is liable for damages under this chapter. In the event that a
16 judgment is rendered in such action by which it is determined that the applicant is liable
17 for damages under this chapter, and the applicant has not paid the judgment within ten
18 days of the date the judgment became final, or in the event the applicant petitions for
19 the Supreme Court of the United States to take certiorari jurisdiction over such action,
20 and the applicant has not paid the judgment within ten days of the date the Supreme
21 Court of the United States denies certiorari jurisdiction or within ten days of the date
22 the Supreme Court of the United States affirms the judgment, then said person may
23 petition the Superior Court of Fulton County for an order directing the commissioner
24 to reduce such deposit or a portion thereof sufficient to pay the judgment, to cash or its
25 equivalent and to pay such judgment to the extent the judgment may be satisfied with
26 the proceeds of the deposit. If there shall remain any residue from the deposit and if at
27 least two years have passed since the expiration or revocation of the applicant's
28 registration, the commissioner shall pay over such residue to the applicant, taking his
29 or her receipt for the residue, which shall be filed and recorded with the other papers
30 of the case, unless there is pending against the applicant an action (including any direct
31 appeal of such action or an appeal based on a petition for certiorari jurisdiction), of
32 which the commissioner has notice, in a court of competent jurisdiction in which it is
33 alleged that the applicant is liable for damages under this chapter, in which case the
34 commissioner shall hold or dispose of such residue in accordance with the provisions
35 of this paragraph relating to the holding or disposing of the entire deposit. In the event
36 that more than one final judgment is rendered against the applicant for violation of this
37 chapter, the judgment creditors shall be paid in full from such deposit or residue

1 thereof, to the extent the deposit or residue is sufficient to pay the judgment, in the
2 order in which the judgment creditors petitioned the Superior Court of Fulton County.

3 (4) Anything in this subsection to the contrary notwithstanding, the commissioner shall
4 comply with any order of a Georgia or United States court of competent jurisdiction to
5 turn over any deposit held by him or her pursuant to paragraph (3) of this subsection or
6 the proceeds from any bond held by him or her pursuant to paragraph (1) of this
7 subsection to a trustee or receiver for the use and sole benefit of persons on whose behalf
8 the commissioner holds such deposit or proceeds.

9 (1) *Records.*

10 (1) Every dealer, limited dealer, salesperson, or limited salesperson registered under this
11 chapter shall make and keep such accounts and other records with respect to sales of
12 securities in this state, whether or not pursuant to exemptions contained in Code Section
13 10-5-8 or 10-5-9, as the commissioner may by rule or regulation require. Every
14 investment adviser or investment adviser representative registered under this chapter shall
15 make and keep such accounts and records with respect to its business activities in this
16 state as the commissioner by rule or regulation may require. All records so required shall
17 be preserved for five years unless the commissioner shall provide otherwise. ~~All records~~
18 ~~of such dealers, limited dealers, salespersons, limited salespersons, investment advisers,~~
19 ~~or investment adviser representatives are subject to such reasonable periodic, special, or~~
20 ~~other examinations by representatives of the commissioner, within or outside this state,~~
21 ~~as the commissioner deems necessary or appropriate in the public interest or for the~~
22 ~~protection of the public.~~

23 (2) The requirements of this subsection shall not apply to:

24 (A) A dealer or limited dealer that is registered under the Securities Exchange Act of
25 1934 (15 U.S.C. Section 78a, et seq., as amended); or

26 (B) An investment adviser that maintains its principal place of business in a state other
27 than this state, provided that such adviser is registered in the state where it maintains
28 its principal place of business and is in compliance with such state's record-keeping
29 requirements, if any.

30 (m) *Amendment of dealers', limited dealers', or investment advisers' registrations.*

31 (1) The registration of a dealer, limited dealer, or investment adviser shall be amended
32 to reflect a change of name, home and business ~~address~~ addresses, branch offices,
33 principals, state of incorporation, corporate forms (including a merger of two registered
34 dealers or investment advisers), or any other change ~~which~~ that does not materially affect
35 the business of the dealer, limited dealer, or investment adviser. Applications by dealers,
36 limited dealers, and investment advisers to amend their registrations shall be made in a
37 manner ~~which~~ that the commissioner may, by rule or regulation, prescribe, and the

1 commissioner may ~~charge~~, by rule or regulation, prescribe a fee for the filing of such
2 amendments.

3 ~~(A) A fee for such amendments, which fee shall not exceed the fee provided for~~
4 ~~renewal of such registrations; and~~

5 ~~(B) A fee of \$1.00 for each salesperson's or limited salesperson's license which must~~
6 ~~be altered because of the amendment.~~

7 (2) Whenever a federal covered adviser files with the ~~Securities and Exchange~~
8 ~~Commission~~ S.E.C. an amendment to its federal registration, such adviser shall file at the
9 same time a copy of such amendment with the commissioner.

10 (n) *Successors to dealers, limited dealers, or investment advisers.* In the event that a
11 dealer, limited dealer, or investment adviser succeeds to and continues the business of
12 another registered dealer, limited dealer, or investment adviser, the registration of the
13 predecessor shall be deemed to remain effective as the registration of the successor for a
14 period of 75 days after such succession, provided that an application for registration is filed
15 within 30 days after succession on a form prescribed by the commissioner. In the event an
16 investment adviser or federal covered adviser is a successor to and continues the business
17 of a federal covered adviser, the notice filing of the predecessor adviser shall be deemed
18 effective for 30 days after such succession.

19 (o) *Dissemination of information.* With respect to investment advisers, the commissioner
20 may require that certain information be furnished or disseminated as necessary or
21 appropriate in the public interest or for the protection of investors and advisory clients. To
22 the extent determined by the commissioner in his or her discretion, information furnished
23 to clients or prospective clients of an investment adviser which information would be in
24 compliance with the disclosure requirements of a federal covered adviser pursuant to the
25 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1, et seq., as amended) and the
26 rules thereunder may be used in whole or partial satisfaction of this requirement. With
27 respect to dealers, limited dealers, salespersons, and limited salespersons, the commissioner
28 shall make available to any person so requesting information concerning whether a dealer,
29 limited dealer, salesperson, or limited salesperson is or indicates that he or she is a
30 designated dealer or designated salesperson, as well as information possessed by the
31 commissioner concerning any public administrative, civil, or criminal proceedings against
32 and sanctions imposed on any designated dealer or its employees, affiliates, or
33 salespersons.

34 (p) *Designated dealer and salesperson certification notice.* Within 30 days after any
35 dealer, limited dealer, salesperson, or limited salesperson becomes a designated dealer or
36 designated salesperson, said dealer, limited dealer, salesperson, or limited salesperson shall
37 inform the commissioner of such in writing and shall submit the certification required by

1 subsection (d) of this Code section, and any other information or material requested by the
2 commissioner.

3 (q) Transactional confirmations.

4 (1) In connection with the public sale or purchase of securities, every dealer and limited
5 dealer subject to this chapter shall send written confirmations of transactions ~~which~~ that
6 are fully descriptive of the transaction in compliance and accordance with such rules and
7 regulations as the commissioner may promulgate.

8 (2) With respect to transactions in designated securities made or caused to be made by
9 designated dealers, in addition to the information required to be contained on
10 confirmations under paragraph (1) of this subsection, each written confirmation required
11 to be sent under paragraph (1) of this subsection shall be accompanied by the following
12 information, ~~which~~ that shall be clearly explained and identified:

13 (A) The price at which the dealer is currently selling or offering to sell the security and
14 the price at which the dealer is currently buying or offering to buy the security; and

15 (B) All commissions, fees, bonuses, or other compensation payable to the dealer and
16 salesperson as a result of the transaction.

17 (r) Withdrawal of registration application. Withdrawal of an application for registration
18 by a dealer, limited dealer, designated dealer, investment adviser, federal covered adviser,
19 investment adviser representative, salesperson, or limited salesperson shall become
20 effective 90 days after filing of the application to withdraw or within such shorter period
21 as required by rule or order under this Code section, unless a proceeding is pending when
22 the withdrawal application is filed. If a proceeding is pending, withdrawal shall become
23 effective when and upon such conditions as required by rule or order under this Code
24 section. The commissioner may institute a proceeding under this chapter within one year
25 after the withdrawal became effective and may issue an order pursuant to Code Section
26 10-5-4 or 10-5-13.

27 (s) Applicant fingerprinting and criminal history record information. Each applicant filing
28 an application to become a salesperson, limited salesperson, designated salesperson,
29 investment adviser, federal covered adviser, or investment adviser representative shall
30 submit a complete set of his or her fingerprints taken by an authorized law enforcement
31 officer to the Georgia Bureau of Investigation or Federal Bureau of Investigation or
32 through the Central Registration Depository, operated by the National Association of
33 Securities Dealers, for state and federal processing. The commissioner and his or her staff
34 are authorized to review the criminal history record information generated by the
35 processing of the fingerprints. The commissioner may promulgate rules and regulations
36 for the administration of this subsection.

1 (t) Continuing education. The commissioner may adopt a rule that requires a salesperson,
 2 limited salesperson, designated salesperson, investment adviser (if an individual), or
 3 investment adviser representative registered under this Code section to participate in
 4 appropriate continuing education programs.

5 10-5-4.

6 (a) The commissioner, by order issued under this Code section or Code Section 10-5-13,
 7 may deny, suspend, or revoke a registration; limit the securities or investment advisory
 8 activities that an applicant or registered person may perform in this state; bar an applicant
 9 or registered person from association with a registered dealer, limited dealer, designated
 10 dealer, or investment adviser; or bar a person who is a partner, officer, director, or a person
 11 occupying a similar status or performing a similar function for an applicant or registered
 12 person from employment with a registered dealer, limited dealer, or designated dealer,
 13 investment adviser, or federal covered adviser, if the commissioner finds that the order is
 14 in the public interest and that the applicant or registered person or, in the case of a dealer,
 15 limited dealer, designated dealer, or investment adviser, a partner, officer, or director, a
 16 person occupying a similar status or performing similar functions, or a person directly or
 17 indirectly controlling the dealer, limited dealer, designated dealer, or investment adviser:

18 (1) Has filed an application for registration with the commissioner ~~which~~ that, as of its
 19 effective date or any date after filing in the case of an order denying effectiveness, was
 20 incomplete in a material respect or contained a statement that was, in light of the
 21 circumstances under which it was made, false or misleading with respect to a material
 22 fact;

23 (2) Has willfully violated or willfully failed to comply with this chapter, a prior
 24 enactment of this chapter, an order, or a rule promulgated by the commissioner under this
 25 chapter or a prior enactment;

26 (3) Is the subject of an adjudication or determination, after notice and opportunity for
 27 hearing, ~~within the last five years by a securities agency or administrator of another state~~
 28 ~~or a court of competent jurisdiction~~ by the S.E.C.; the Commodity Futures Trading
 29 Commission; the Federal Trade Commission; a federal depository institution regulator;
 30 or a depository institution, insurance, or other financial services regulator of a state that
 31 the person has willfully violated the Securities Act of 1933; (15 U.S.C. Section 77a, et
 32 seq., as amended); the Securities Exchange Act of 1934 (15 U.S.C. Section 78a, et seq.,
 33 as amended); the Investment Advisers Act of 1940; (15 U.S.C. Section 80b-1, et seq., as
 34 amended); the Investment Company Act of 1940; (15 U.S.C. Section 80a-1, et seq., as
 35 amended); the Commodity Exchange Act; ~~or the securities law of another state, but only~~
 36 ~~if the acts constituting the violation of that state's law would constitute a violation of this~~

1 ~~chapter had the acts occurred in this state; the securities or commodities law of a state;~~
 2 ~~or a federal or state law under which a business involving investments, franchises,~~
 3 ~~insurance, banking, or finance is regulated;~~

4 (4) ~~Within the last ten years has been convicted of a felony or misdemeanor, which the~~
 5 ~~commissioner finds;~~

6 ~~(5) Within the last ten years has been convicted of a misdemeanor that the commissioner~~
 7 ~~finds:~~

8 (A) ~~Involves~~ Involves the purchase or sale of a security, the taking of a false oath, the
 9 making of a false report, bribery, perjury, burglary, or conspiracy to commit any of the
 10 foregoing offenses; or

11 (B) ~~Arises~~ Arose out of the conduct of business as a dealer ~~or,~~ limited dealer,
 12 ~~investment designated dealer, salesperson, limited salesperson, designated salesperson,~~
 13 ~~investment adviser, investment adviser representative, federal covered~~ adviser, financial
 14 institution, insurance company, or fiduciary; ~~or~~

15 (C) ~~Involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent~~
 16 ~~concealment, embezzlement, fraudulent conversion, or misappropriation of funds or~~
 17 ~~securities;~~

18 (5) ~~Is permanently or temporarily enjoined by a court of competent jurisdiction from~~
 19 ~~acting as an investment adviser, underwriter, dealer or limited dealer or as an affiliated~~
 20 ~~person or employee of an investment company, depository institution, or insurance~~
 21 ~~company or from engaging in or continuing conduct or practice in connection with any~~
 22 ~~of the foregoing activities or in connection with the purchase or sale of a security;~~

23 (6) ~~Is the subject of an order of the commissioner denying, suspending, or revoking the~~
 24 ~~person's registration as a dealer, limited dealer, salesman, limited salesman, investment~~
 25 ~~adviser, or investment adviser representative;~~

26 (7) ~~Is the subject of any of the following orders which are effective at the time of the~~
 27 ~~commissioner's order and were issued within five years before the commissioner's order:~~

28 (A) ~~An order by the securities agency or administrator of another state, a Canadian~~
 29 ~~province or territory, or the Securities and Exchange Commission, entered after notice~~
 30 ~~and opportunity for hearing, denying, suspending, or revoking the person's registration~~
 31 ~~as a dealer, limited dealer, salesman, limited salesman, investment adviser, or~~
 32 ~~investment adviser representative, or the substantial equivalent of those terms as~~
 33 ~~defined in this chapter;~~

34 (B) ~~A suspension or expulsion from membership in or association with a member of~~
 35 ~~a self-regulatory organization registered under the Securities Exchange Act of 1934 or~~
 36 ~~the Commodity Exchange Act;~~

37 (C) ~~A United States Postal Service fraud order;~~

1 ~~(D) A cease and desist order entered after notice and opportunity for hearing by the~~
 2 ~~commissioner, the securities agency or administrator of another state, a Canadian~~
 3 ~~province or territory, the Securities and Exchange Commission, or the Commodity~~
 4 ~~Futures Trading Commission; or~~

5 ~~(E) An order by the Commodity Futures Trading Commission denying, suspending,~~
 6 ~~or revoking registration under the Commodity Exchange Act;~~

7 ~~(8) Has engaged in unethical or dishonest practices in the securities business, as defined~~
 8 ~~in the rules and regulations of the commissioner;~~

9 (6) Is enjoined or restrained by a court of competent jurisdiction in an action instituted
 10 by the commissioner under this chapter or a predecessor Act, a state, the S.E.C., or the
 11 United States from engaging in or continuing an act, practice, or course of business
 12 involving an aspect of a business involving securities, commodities, investments,
 13 franchises, insurance, banking, or finance;

14 (7) Is the subject of an order or sanction issued after notice and opportunity for hearing:

15 (A) By the securities, depository institution, insurance, or other financial services
 16 regulator of a state, or by the S.E.C. or other federal agency denying, revoking, barring,
 17 suspending, or limiting the registration as a dealer, limited dealer, designated dealer,
 18 salesperson, limited salesperson, designated salesperson, investment adviser, federal
 19 covered adviser, or investment adviser representative;

20 (B) By the securities regulator of a state, the S.E.C., or a self-regulatory organization
 21 against a dealer, limited dealer, designated dealer, salesperson, limited salesperson,
 22 designated salesperson, investment adviser, federal covered adviser, or investment
 23 adviser representative;

24 (C) By a court adjudicating a United States Postal Service fraud;

25 (D) By the insurance regulator of a state denying, suspending, revoking, or limiting the
 26 registration of an insurance agent; or

27 (E) By a depository institution regulator suspending or barring a person from the
 28 banking or depository institution business;

29 (8) Refuses to allow or otherwise impedes the commissioner from conducting an audit
 30 or inspection under this chapter or refuses access to an applicant's or registrant's office
 31 to conduct an audit or inspection under this chapter;

32 (9) Has engaged in unethical or dishonest practices in the securities, commodities,
 33 investment, franchise, banking, finance, or insurance business, as defined in the rules and
 34 regulations promulgated under this chapter;

35 ~~(9)~~(10) Is insolvent, either in the sense that liabilities exceed assets or in the sense that
 36 obligations cannot be met as they mature, but the commissioner may not enter an order
 37 against a dealer, limited dealer, designated dealer, or investment adviser under this

1 paragraph without a finding of insolvency as to the dealer, limited dealer, designated
 2 dealer, or investment adviser;

3 ~~(10)~~(11) Is determined by the commissioner, in compliance with Code Section 10-5-3,
 4 not to be qualified on the basis of the lack of training, experience, and knowledge of the
 5 securities business;

6 ~~(11)~~(12) Has failed reasonably to supervise ~~salesmen, limited salesmen~~ salespersons,
 7 limited salespersons, designated salespersons, investment adviser representatives, ~~or~~
 8 employees; or any other individual who is or was subject to the registrant's supervision;

9 ~~(12)~~(13) Has failed to pay the proper filing fee within 30 days after being notified by the
 10 commissioner of a deficiency, but the commissioner shall vacate an order under this
 11 paragraph when the deficiency is corrected;

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

15 (14) After notice and opportunity for a hearing, has been found:

16 (A) By a court of competent jurisdiction to have willfully violated the laws of a foreign
 17 jurisdiction under which the business of securities, commodities, investment,
 18 franchises, insurance, banking, or finance is regulated;

19 (B) To have been the subject of an order of a securities regulator of a foreign
 20 jurisdiction denying, revoking, or suspending the right to engage in the business of
 21 securities as a dealer, limited dealer, designated dealer, salesperson, limited salesperson,
 22 designated salesperson, investment adviser, investment adviser representative, or
 23 similar person; or

24 (C) To have been suspended or expelled from membership or participation in a
 25 securities exchange or securities association operating under the securities laws of a
 26 foreign jurisdiction;

27 (15) Has failed to comply with a subpoena or order issued by the commissioner; or

28 (16) Has violated the record-keeping requirements of this chapter, the Securities
 29 Exchange Commission, or any self-regulatory organization of which the dealer, limited
 30 dealer, or designated dealer is a member.

31 (b) Except in a proceeding where fraud or deceit is alleged, the commissioner may not
 32 begin a proceeding under this Code section based solely on material facts actually known
 33 by the commissioner unless an investigation or the proceeding is instituted within one year
 34 after the commissioner actually acquires knowledge of the material facts.

35 (c) If the commissioner finds that an applicant or registered person is no longer in
 36 existence; has ceased to do business as a dealer, ~~salesman, limited dealer, limited salesman~~
 37 limited dealer, designated dealer, salesperson, limited salesperson, designated salesperson,

1 investment adviser, or investment adviser representative; is adjudicated mentally
2 incompetent or subjected to the control of a committee, conservator, or guardian; or cannot
3 be located after reasonable search, the commissioner, by order, may deny the application
4 or revoke the registration.

5 (d) The commissioner may at any time require a dealer, limited dealer, or investment
6 adviser to file with him or her a financial statement showing the financial condition of such
7 dealer, limited dealer, or investment adviser as of the most recent practicable date but such
8 financial statement need not be ~~certified~~ audited.

9 (e) The commissioner, by order, may deny, suspend, deny renewal of, or revoke the
10 registration of a salesperson, limited salesperson, designated salesperson, investment
11 adviser (if an individual), or investment adviser representative upon notice to the
12 commissioner by either a court of competent jurisdiction or the child support agency within
13 the Department of Human Resources that the applicant for or holder of such a registration
14 is not in compliance with an order for child support as defined in Code Section 19-6-28.1
15 or Code Section 19-11-9.3. Notwithstanding the provisions of Code Section 10-5-16, the
16 hearings and appeals procedures provided in Code Section 19-6-28.1 or Code Section
17 19-11-9.3, where applicable, shall be the only such procedures required and the
18 commissioner shall not be required to provide a hearing or notice of opportunity for
19 hearing pursuant to a proceeding under this subsection.

20 (f) The commissioner, by order, may deny, suspend, deny renewal of, or revoke the
21 registration of a salesperson, limited salesperson, designated salesperson, investment
22 adviser (if an individual), or investment adviser representative upon notice to the
23 commissioner by the Georgia Higher Education Assistance Corporation that the applicant
24 for or holder of either such license is a borrower in default who is not in satisfactory
25 repayment status as defined in Code Section 20-3-295. Notwithstanding the provisions of
26 Code Section 10-5-16, the hearings and appeals procedures provided in Code Section
27 20-3-295, where applicable, shall be the only such procedures required and the
28 commissioner shall not be required to provide a hearing or notice of opportunity for
29 hearing pursuant to a proceeding under this subsection.

30 (g) The commissioner, by order, may summarily deny, suspend, revoke, or limit the
31 registration of a dealer, limited dealer, designated dealer, salesperson, limited salesperson,
32 designated salesperson, investment adviser (if an individual), or investment adviser
33 representative:

34 (1) Upon notice to the commissioner by a court of competent jurisdiction to deny,
35 suspend, revoke, or limit the registration of such applicant or registrant; or

36 (2) If the commissioner receives notice of refusal of payment from a financial institution
37 or insufficient funds in connection with the payment of any fees, fines, or penalties.

1 10-5-5.

2 (a) *Generally.* It shall be unlawful for any person to offer for sale or to ~~sell any securities~~
3 ~~to any person~~ sell a security in this state unless:

4 (1) ~~They are subject to an effective registration statement~~ The security is registered under
5 this chapter;

6 (2) The security or transaction is exempt under Code Section 10-5-8 ~~or Code Section,~~
7 10-5-9, or 10-5-9.1, respectively; or

8 (3) The security is a federal covered security.

9 (b) *Registration by qualification.*

10 (1) Any security may be registered by qualification under the terms and conditions
11 provided in this subsection by filing a registration statement ~~which~~ that shall be signed
12 by the issuer, its chief executive officer, its principal financial officer, its comptroller or
13 principal accounting officer, and the majority of its board of directors or persons
14 performing similar functions (or, if there is no board of directors or persons performing
15 similar functions, by the majority of the persons or board having the power of
16 management of the issuer). A registration statement shall be deemed effective only as to
17 the securities specified therein as proposed to be offered.

18 (2) The registration statement shall contain the information specified in paragraph (1) of
19 subsection (c) of this Code section and shall be accompanied by the documents specified
20 in paragraph (2) of subsection (c) of this Code section except that the commissioner may
21 by rules or regulations provide that any such information or document (other than the
22 requirements with respect to financial statements provided for in paragraph (1) of
23 subsection (c) of this Code section) need not be included with respect to any class of
24 issuers or securities if he or she finds that the requirement of such information or
25 document is inapplicable to such class and that disclosure fully adequate for the
26 protection of investors is otherwise required to be included within the registration
27 statement. If any accountant, attorney, engineer, or appraiser or any person whose
28 profession gives authority to a statement made by him or her is named in the registration
29 statement as having prepared an opinion referred to in the registration statement or as
30 having certified any part of the registration statement or is named as having prepared or
31 certified a report of valuation for use in connection with the registration statement, the
32 written consent of such person to the references to him or her in the registration statement
33 shall be filed with the commissioner prior to the effectiveness of the registration
34 statement. Any such registration statement shall contain such other information and be
35 accompanied by such other documents as the commissioner may by rules or regulations
36 require as being necessary or appropriate in the public interest or for the protection of
37 investors. Each registration statement ~~which~~ that is filed under this subsection shall be

1 accompanied by the payment of the filing fee prescribed in subsection (a) of Code
2 Section 10-5-6, an issuer's bond required by subsection (b) of Code Section 10-5-6, and,
3 if required under subsection (c) of Code Section 10-5-6, a consent to service of process
4 meeting the requirements of Code Section 10-5-18.

5 (3) A prospectus ~~which~~ that is part of a registration statement effective under this
6 subsection and ~~which~~ that contains the information specified in paragraph (1) of
7 subsection (c) of this Code section, except to the extent modified by rules or regulations
8 promulgated by the commissioner as provided in paragraph (2) of this subsection, shall
9 be delivered to any purchaser prior to or simultaneously with the execution by the
10 purchaser of a written agreement to purchase, the delivery of a confirmation of sale, or
11 the payment for securities offered by means of such prospectus, whichever occurs first.

12 (4)(A) Any person who purchases securities registered under this subsection from the
13 issuer, any affiliate of such issuer, or any underwriter shall have the unqualified and
14 unwaivable right to rescind such purchase within 72 hours of the execution by such
15 person of a written agreement to purchase, the delivery of a confirmation of sale, or the
16 payment for such securities, whichever shall occur first. Such rescission shall be
17 effective upon actual delivery or mailing of notice of rescission to the person specified
18 in subparagraph (c)(1)(P) of this Code section.

19 (B) It shall be unlawful for any person specified in subparagraph (c)(1)(P) of this Code
20 section as the person responsible for making any repayment required in this
21 subparagraph to fail to return within seven days of receipt of notice of rescission any
22 consideration received from a person exercising the right of rescission specified in
23 subparagraph (A) of this paragraph. Any part of such consideration ~~which~~ that consists
24 of an obligation on the part of a person exercising said right of rescission ~~which~~ that
25 was entered into in connection with the transaction rescinded and ~~which~~ that requires
26 such person to make future payments to the issuer, affiliate of the issuer, or underwriter
27 shall be marked canceled and shall be returned to such person exercising the right of
28 rescission. Within seven days of receipt by the person exercising the right of rescission
29 of all consideration given to the issuer, affiliate of such issuer, or underwriter in
30 connection with the transaction rescinded, the person exercising the right of rescission
31 shall deliver to the person specified in subparagraph (c)(1)(P) of this Code section any
32 securities issued in connection with the transaction rescinded.

33 (C) Following receipt of notice of rescission by the person specified in subparagraph
34 (c)(1)(P) of this Code section as the person responsible for making any repayment
35 required in subparagraph (B) of this paragraph, it shall be unlawful for any agent of the
36 issuer, of an affiliate of such issuer, or of an underwriter to contact such person
37 exercising the right of rescission specified in subparagraph (A) of this paragraph for the

1 purpose of influencing the person exercising the right of rescission to withdraw any
2 notice of rescission or for the purpose of making further sales of any securities of such
3 issuer until all consideration given to the issuer, affiliate of such issuer, or underwriter
4 has been returned to such person exercising the right of rescission, as provided in
5 subparagraph (B) of this paragraph.

6 (5) A registration statement under this subsection becomes effective when the
7 commissioner so orders.

8 (c) *Registration statement.*

9 (1) Every registration statement filed under subsection (b) of this Code section shall
10 contain the following information:

11 (A) With respect to the issuer: its name, street address, form of organization, and its
12 telephone number; the state or foreign jurisdiction and date of its organization; the
13 general character and location of its business; a description of its physical properties
14 and equipment; and a statement of the general competitive conditions in the industry
15 or business in which it is or will be engaged;

16 (B) With respect to every director and executive officer of the issuer or person
17 occupying a similar status or performing similar functions: his or her name, address,
18 and principal occupation for the past five years; any criminal convictions or pending
19 criminal proceedings involving the sale of securities of any such person or any
20 disciplinary action taken or pending against any such person by the ~~Securities and~~
21 ~~Exchange Commission~~ S.E.C., the National Association of Securities Dealers, the
22 commissioner, or any state securities regulatory authority; the amount of securities of
23 the issuer beneficially owned by him or her as of a specified date within 30 days of the
24 filing of the registration statement; and a statement (including price information) of all
25 transactions by such person in securities of the issuer beneficially owned by him or her
26 during the two years preceding such date; the amount of the securities covered by the
27 registration statement to which he or she has indicated his or her intention to subscribe;
28 and with respect to each such person and any affiliate of such person or affiliate of a
29 person specified in subparagraph (E) or (F) of this paragraph, a description of any
30 material interest in any material transaction with the issuer or any significant subsidiary
31 effected within the past three years or proposed to be effected;

32 (C) With respect to any person named as serving or as having agreed to serve as an
33 advisory director of the issuer or in a similar capacity: a description of the exact
34 relationship that will exist between the issuer and such person; the compensation paid
35 or to be paid to such person to serve in such capacity; and the amount of time that such
36 person will actually spend on the affairs of the issuer; and in addition, each such person

1 shall file with the commissioner a written consent to the use of his or her name in the
2 prospectus prior to the effectiveness of the registration statement;

3 (D) The remuneration paid during the past 12 months and estimated to be paid during
4 the next 12 months, directly or indirectly, by the issuer (together with all predecessors,
5 subsidiaries, and affiliates) to each of the three highest paid executive officers or
6 directors of the issuer and to all those persons covered by subparagraph (B) of this
7 paragraph in the aggregate;

8 (E) With respect to any person owning of record or beneficially, if known, 10 percent
9 or more of the outstanding shares of any class of equity security of the issuer: the
10 information specified in subparagraph (B) of this paragraph other than his or her
11 occupation;

12 (F) With respect to every promoter if the issuer was organized within the past three
13 years: the information specified in subparagraph (B) of this paragraph; any amount paid
14 to him or her within that period or intended to be paid to him or her; and the
15 consideration for any such payment;

16 (G) With respect to any person other than an issuer on whose behalf any part of the
17 offering is to be made: his or her name and address; the amount of securities of the
18 issuer beneficially owned by him or her as of the date of the filing of the registration
19 statement; and a description of any material interest in any material transaction with the
20 issuer or any significant subsidiary effected within the past three years or proposed to
21 be effected;

22 (H) The capitalization (including short-term debt and long-term debt), both as of the
23 latest practicable date within 90 days and as adjusted to give effect to the proposed
24 offering, of the issuer and all subsidiaries whose financial statements are filed with the
25 registration statement on either a consolidated or an individual basis, including a
26 description of each security outstanding or being registered or otherwise offered, and
27 a statement of the amount and kind of consideration (whether in the form of cash,
28 physical assets, services, patents, good will, or anything else) for which the issuer or
29 any subsidiary has issued any of its securities within the past two years or is obligated
30 to issue any of its securities;

31 (I) The kind and amount of securities to be offered; the proposed offering price or the
32 method by which it is to be computed; any variation therefrom at which any portion of
33 the offering is to be made to any person or class of persons other than the underwriters,
34 with a specification of any such person or class; the basis upon which the offering is to
35 be made if otherwise than for cash; the estimated aggregate underwriting and selling
36 discounts or commissions and finders' fees (including separately, cash, securities,
37 contracts, or anything else of value to accrue to the underwriters or finders in

1 connection with the offering) or, if the selling discounts or commissions are variable,
2 the basis of determining them and their maximum and minimum amounts; the estimated
3 aggregate amounts of other selling expenses, including legal, engineering, printing, and
4 accounting charges; the name and address of every underwriter and every recipient of
5 a finder's fee; and a description of the plan of distribution of the securities ~~which~~ that
6 are to be offered;

7 (J) The net estimated cash proceeds to be received by the issuer from the offering after
8 deducting all estimated expenses of the offering; the purposes for which the proceeds
9 are to be used by the issuer; the amount proposed to be used for each purpose; the
10 proposed order of priority in which the proceeds will be used for the purposes stated in
11 the event the offering is not pursuant to an underwriting agreement under which no
12 securities will be sold unless all securities to be offered are sold; the amounts of any
13 funds to be raised from other sources to achieve the purposes stated; and the nature of
14 the sources of any such funds;

15 (K) In any case where the securities to be offered are to be sold in any manner except
16 an underwriting agreement under which no securities will be sold unless all securities
17 to be offered are sold and where the issuer of such securities:

18 (i) Has not had any substantial gross revenues from the sale of products or services
19 or any substantial net income from any source for any fiscal year ended during the
20 past three years; and

21 (ii) Has not succeeded and does not intend to succeed to any business ~~which~~ that has
22 had any substantial gross revenues from the sale of products or services or any
23 substantial net income from any source for any fiscal year ended during the past three
24 years,

25 the minimum amount of funds to be derived from the offering after expenses of the
26 offering ~~which~~ that the issuer reasonably believes to be necessary to enable the issuer
27 to operate the business it proposes to conduct;

28 (L) A description of any stock options or other security options outstanding or to be
29 created in connection with the offering, together with the amount of any such options
30 held or to be held by every person required to be named in subparagraph (B), (E), (F),
31 (G), or (I) of this paragraph and by any person who holds or will hold, after giving
32 effect to the proposed offering, 10 percent or more of the securities subject to such
33 options;

34 (M) The dates of, parties to, and general description concisely stated of every
35 management contract or other material contract made or to be made otherwise than in
36 the ordinary course of business if it is to be performed in whole or in part at or after the
37 filing of the registration statement;

1 (N) A description of any pending litigation or proceeding to which the issuer is a party
2 and ~~which~~ that could materially adversely affect its business or assets (including any
3 such litigation or proceeding known to be contemplated by governmental authorities);

4 (O) The following financial statements:

5 (i) A balance sheet of the issuer or a consolidated balance sheet of the issuer and its
6 subsidiaries prepared in accordance with generally accepted accounting principles as
7 of a date within 90 days prior to the filing of the registration statement and, if such
8 balance sheet is not ~~certified~~ audited, also a ~~certified~~ an audited balance sheet of the
9 issuer or a ~~certified~~ an audited consolidated balance sheet of the issuer and its
10 subsidiaries prepared in accordance with generally accepted accounting principles as
11 of a date not more than one year prior to the date of filing unless the last fiscal year
12 of the issuer has ended within 90 days prior to the date of filing, in which case such
13 ~~certified~~ audited balance sheet may be as of the end of the fiscal year preceding such
14 last fiscal year;

15 (ii) A ~~profit and loss statement, analysis of surplus, and a statement of source and~~
16 ~~application of funds~~ statement of income, a statement of shareholder's equity, a
17 statement of changes in net assets, and a statement of cash flow of the issuer or
18 consolidated statements of the issuer and its subsidiaries, all of which statements shall
19 be ~~certified~~ audited and prepared in accordance with generally accepted accounting
20 principles for each of the three fiscal years preceding the date of the most recent
21 ~~certified~~ audited balance sheet filed and for the interim period, if any, between the
22 close of the most recent of such fiscal years and the date of the most recent balance
23 sheet filed and, with respect to the ~~profit and loss statement~~ of income, for the
24 corresponding period of the preceding year, but statements for such interim and
25 corresponding periods need not be ~~certified~~ audited; or, if the issuer and its
26 predecessors have been in existence for less than three fiscal years, the ~~profit and loss~~
27 statement of income and other required statements for the periods for which it has
28 been in existence; and

29 (iii) If a substantial part of the proceeds of the offering is to be applied to the
30 purchase of any business, the same financial statements ~~which~~ that would be required
31 if that business were the registrant;
32 provided, however, that, if the issuer does not report its accounts in the normal course
33 of its business on a consolidated basis, then it may furnish, in lieu of consolidated
34 statements, individual statements for it and its majority owned subsidiaries, provided
35 that, if any such financial statements are required to be ~~certified~~ audited, they shall be
36 ~~certified~~ audited by an independent public accountant duly registered and in good

1 standing as such under the laws of the place of ~~his residence~~ such accountant's domicile
 2 or principal office;

3 (P) On the inside back cover page in the case of a printed prospectus or the final page
 4 in the case of a prospectus reproduced by any other means, notices in a form
 5 satisfactory to the commissioner ~~which~~ that shall provide a means of exercising the
 6 right of rescission provided in paragraph (4) of subsection (b) of this Code section and
 7 ~~which~~ that shall be addressed to the commissioner and to the person responsible for
 8 making any repayment specified in subparagraph (b)(4)(B) of this Code section; and
 9 on the inside front cover page of the prospectus in the case of a printed prospectus or
 10 on the second page of the prospectus in the case of a prospectus reproduced by any
 11 other means, in boldface print or capital type, the following legend:

12 'ANY PERSON WHO PURCHASES THE SECURITIES OFFERED HEREBY
 13 SHALL HAVE THE UNQUALIFIED AND UNWAIVABLE RIGHT TO RESCIND
 14 SUCH PURCHASE WITHIN 72 HOURS OF THE EXECUTION OF A WRITTEN
 15 AGREEMENT TO PURCHASE ANY SECURITIES OFFERED HEREBY, THE
 16 DELIVERY OF A CONFIRMATION OF SALE, OR THE PAYMENT FOR ANY
 17 SECURITIES OFFERED HEREBY, WHICHEVER SHALL OCCUR FIRST.
 18 RESCISSION MAY BE ACCOMPLISHED BY COMPLETING AND MAILING
 19 THE FORMS PROVIDED ON PAGE ____ OF THIS PROSPECTUS.'

20 (2) Every registration statement filed under subsection (b) of this Code section shall be
 21 accompanied by the following documents:

22 (A) A copy of the prospectus proposed to be used in complying with the requirements
 23 of paragraph (3) of subsection (b) of this Code section;

24 (B) A copy of any notice, circular, advertisement, sales literature, letter, or
 25 communication (if any such notice, circular, advertisement, sales literature, letter, or
 26 communication is to be used in connection with the offering) in respect of a security
 27 ~~which~~ that states from whom a written prospectus meeting the requirements of
 28 paragraph (3) of subsection (b) of this Code section may be obtained and ~~which~~ that
 29 does no more than identify the security, state the price thereof, state by whom orders
 30 will be executed, and contain such other information as the commissioner, by rules or
 31 regulations, deemed necessary or appropriate in the public interest and for the
 32 protection of investors and subject to such terms and conditions as may be prescribed
 33 therein, may permit;

34 (C) A specimen or copy of the security being registered; a copy of the issuer's articles
 35 of incorporation and bylaws or their substantial equivalents, as currently in effect; and
 36 a copy of any indenture or other instrument relating to the security to be registered;

1 (D) A signed opinion of legal counsel ~~which~~ that shall state whether or not the security,
 2 when sold, will be legally issued, fully paid, and nonassessable and, if a debt security,
 3 a binding obligation of the issuer;

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

6 (F) A copy of every management or other material contract referred to in subparagraph
 7 (c)(1)(H) of this Code section;

8 (G) A signed copy of any professional opinions or any reports or certifications
 9 specifically referred to in the prospectus;

10 (H) A copy of any literature concerning the issuer or the offering given to any persons
 11 directly engaged in the sale of the securities; ~~and~~

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

15 (J) A written statement from the issuer's chief executive officer and principal financial
 16 officer, or persons performing similar functions, certifying that the financial statements
 17 and other financial information included in the prospectus, offering memorandum, or
 18 registration statement fairly present, to the best of their knowledge and belief, in all
 19 material respects the financial condition and results of operations of the issuer.

20 ~~(d) Registration by notification.~~

21 ~~(1) Any security whose issuer or any predecessors have been in continuous operation for~~
 22 ~~at least five years may be registered by notification, whether or not it is also eligible for~~
 23 ~~registration by qualification under subsection (b) of this Code section, if:~~

24 ~~(A) There has been no default during the current fiscal year nor within three preceding~~
 25 ~~fiscal years in the payment of principal, interest, or dividends on any security of the~~
 26 ~~issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend~~
 27 ~~provision; and~~

28 ~~(B) The issuer and any predecessors during the past three fiscal years have had average~~
 29 ~~net earnings, determined in accordance with generally accepted accounting principles,~~
 30 ~~which are applicable to all securities without a fixed maturity or a fixed interest or~~
 31 ~~dividend provision and which:~~

32 ~~(i) Equal at least 5 percent of the amount of securities without a fixed maturity or a~~
 33 ~~fixed interest or dividend provision outstanding at the date the registration statement~~
 34 ~~is filed (as measured by the maximum offering price or the market price on a day~~
 35 ~~selected by the registrant within 30 days before the date of filing the registration~~
 36 ~~statement, whichever is higher or, if there is neither a readily determinable market~~

price nor an offering price, as measured by book value on a day selected by the registrant and within 90 days of the date of filing the registration statement); or

(ii) If the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for three full fiscal years, equal at least 5 percent of the amount (as measured by the maximum public offering price) of such securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued.

(2) A registration statement under this subsection shall be signed by the issuer, any other person on whose behalf the offering is to be made, any registered dealer, limited dealer, or by any duly authorized agent of any such person and shall contain the following information or documents, in addition to payment of the filing fee prescribed in subsection (a) of Code Section 10-5-6, and, if required under subsection (c) of Code Section 10-5-6, a consent to service of process meeting the requirements of Code Section 10-5-18:

(A) A statement demonstrating eligibility for registration by notification;

(B) The issuer's name, address, and form of organization; the state (or foreign jurisdiction) and the date of its organization; and the general character and location of its business;

(C) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: his name and address and the amount of securities of the issuer held by him as of the date of the filing of the registration statement;

(D) The information specified in subparagraph (c)(1)(H) of this Code section; and

(E) Any prospectus proposed to be used in offering the securities in this state and a copy of any underwriting or selling agreement relating to the offering.

(3) If no stop order is in effect and no proceeding is pending under Code Section 10-5-16, 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 fifth full business day after the filing of the registration statement, or at such earlier time as the commissioner determines.

~~(e)~~(d) *Small issue registration.*

(1) The sale of securities of an issuer by or on behalf of such issuer or an affiliate of such issuer may be made pursuant to a registration statement filed under this subsection if:

(A) The aggregate amount of the total offering, within or outside this state, shall not exceed \$1 million, less the aggregate offering price for all securities sold within the 12 months before the start of and during the offering of securities under this subsection in reliance on the exemption in paragraph (13) of Code Section 10-5-9 or in violation of

1 this Code section; provided, however, that the ~~commissioners~~ commissioner shall have
2 authority to increase, by rule or regulation, the limitation on the aggregate offering
3 amount in order to further the objectives of compatibility with federal exemptions and
4 uniformity among states; or

5 (B) The aggregate number of persons in this state purchasing securities registered
6 under this subsection from the issuer and all affiliates of the issuer during any 12 month
7 period shall not exceed 50 persons, including persons who acquire such securities in
8 transactions ~~which~~ that are otherwise exempt from registration in paragraph (13) of
9 Code Section 10-5-9; however, any certificate or certificates representing securities
10 issued in a transaction subject to the numerical limitation on the number of investors
11 pursuant to this paragraph shall be marked for a period of one year from the date of
12 their issuance or sale to indicate clearly that they were registered pursuant to this
13 subsection and that they may not be sold or transferred except in a transaction ~~which~~
14 that is exempt under this chapter or pursuant to an effective registration statement under
15 this chapter or in a transaction ~~which~~ that is otherwise in compliance with this chapter
16 and shall be executed with a statement to the effect that such securities have been
17 purchased for investment, as such phrase is defined in paragraph (13) of Code Section
18 10-5-9, for his or her own account.

19 (2) A registration statement under this subsection shall be signed by the issuer, its chief
20 executive officer, its principal financial officer, its comptroller or principal accounting
21 officer, and a majority of the board of directors or persons performing similar functions
22 (or, if there is no board of directors or persons performing similar functions, by the
23 majority of the persons or board having the power of management of the issuer). If the
24 issuer is not a corporation registered with the Secretary of State, the registration statement
25 shall also include a copy of the issuer's articles of incorporation and bylaws or their
26 substantial equivalents, as currently in effect, and a copy of any indenture or similar
27 instrument relating to the security to be registered.

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

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

4 (B) The following financial statements ~~which~~ that may, but need not, be ~~certified~~
5 audited:

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

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

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

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

29 (E) A written statement from the issuer's chief executive officer and principal financial
30 officer, or persons performing similar functions, certifying that the financial statements
31 and other financial information included in the prospectus, offering memorandum, or
32 registration statement fairly present, to the best of their knowledge and belief, in all
33 material respects the financial condition and results of operations of the issuer; and

34 (F) Any additional information ~~which~~ that is needed to comply with Code Section
35 10-5-12 and ~~which~~ that is not otherwise disclosed to the purchaser.

1 (4) The commissioner shall be authorized to accept a prospectus prepared by the issuer
2 if the prospectus has been subjected to an examination ~~which~~ that, in the discretion of the
3 commissioner, is equal to or greater than the examination provided by the commissioner.

4 (5) ~~Registration statements filed pursuant to this subsection will become effective if~~ If
5 no stop order is in effect and no proceeding is pending under Code Section 10-5-16, or
6 if the commissioner has not notified the registrant in writing of deficiencies in the
7 registration statement, then a registration statement filed pursuant to this subsection shall
8 become effective at 3:00 P.M. eastern standard time or eastern daylight time, whichever
9 is applicable, of the tenth full business day after the filing of the registration statement or
10 at such earlier time as the commissioner orders.

11 (6) Preliminary negotiations and agreements in contemplation of a registration and sale
12 of a security pursuant to this subsection shall not constitute an 'offer to sell,' 'offer for
13 sale,' 'offer,' or 'sale' of a security for the purposes of this Code section unless, before a
14 registration statement relating thereto is effective, the seller receives some consideration
15 for such security, a contract for sale of such security is executed, or the security is sold.
16 Purchasers of securities registered pursuant to this subsection shall have the right to
17 rescind such purchases on the terms and conditions set forth in paragraph (4) of
18 subsection (b) of this Code section.

19 (7) In case any of the financial statements contained in the registration statement filed
20 under this subsection are ~~certified~~ audited, they shall be ~~certified~~ audited by an
21 independent public accountant duly registered and in good standing as such under the
22 laws of the place of ~~his residence~~ such accountant's domicile or principal office.

23 (8) If any accountant, attorney, engineer, or appraiser or any person whose profession
24 gives authority to a statement made by him or her is named in the registration statement
25 as having prepared an opinion referred to in the registration statement or as having
26 certified any part of the registration statement or is named as having prepared or certified
27 a report of valuation for use in connection with the registration statement, the written
28 consent of such person to the references to him or her in the registration statement shall
29 be filed with the commissioner prior to the effectiveness of the registration statement.

30 (9) The commissioner shall be authorized to participate in any program designed to
31 promote and achieve compatibility with federal law and uniformity among the states and
32 to promulgate such rules and regulations as may be necessary to achieve such
33 compatibility and uniformity.

34 (10) The commissioner shall treat as confidential and not subject to public inspection all
35 material filed by or on behalf of the issuer pursuant to this subsection unless he or she
36 shall determine that such treatment is not consistent with the public interest, in which

1 case he or she may make public such of the filed information as he or she may deem
2 necessary for protection of the public interest.

3 (11) The commissioner may modify any legend required by this subsection to conform
4 to standardized legends, but any modification shall ensure that the legend contains
5 substantially the same information required by this chapter.

6 ~~(f)~~(e) *Nonprofit issuer registration.*

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

8 (A) Not for private profit; and

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

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

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

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

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

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

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

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

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

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

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

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

12 (J) If any accountant, attorney, engineer, or appraiser or any person whose profession
13 gives authority to a statement made by him or her is named in the registration statement
14 as having prepared an opinion referred to in the registration statement or as having
15 certified any part of the registration statement or is named as having prepared or
16 certified a report of valuation for use in connection with the registration statement, the
17 written consent of such person to the references to him or her in the registration
18 statement; and

19 (K) A copy of any trust indenture required by paragraph (3) of this subsection.

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

27 (B) Each such trustee shall be an attorney duly admitted to practice before the highest
28 court of any state who is not regularly employed by the issuer or underwriter of the
29 securities subject to the indenture or a corporation ~~which~~ that is organized and doing
30 business under the laws of the United States or any state, ~~which~~ that is qualified to ~~do~~
31 conduct business as a corporation in Georgia, ~~which~~ that is authorized to exercise
32 corporate trust powers, and ~~which~~ that is subject to supervision or examination by an
33 agency or authority of the United States or the state of its incorporation or principal
34 place of business:

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

1 (I) Serves as trustee under an indenture covering any other securities of the issuer
2 of the securities subject to the indenture;

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

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

7 (IV) Is the beneficial owner of, or holds as collateral security for an obligation
8 ~~which~~ that is in default, 5 percent or more of the voting securities of, or 10 percent
9 or more of any other class of security of the issuer of the securities subject to the
10 indenture; or

11 (V) Is the beneficial owner of, or holds as collateral security for an obligation
12 ~~which~~ that is in default, 10 percent or more of any class of security of any person
13 who, to the knowledge of such attorney or corporation, owns 50 percent or more of
14 the voting securities of the issuer or any guarantor of the securities subject to the
15 indenture; and

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

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

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

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

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

27 (ii) A provision that the trustee, in case of any failure to make, when due, any
28 payment into any sinking fund for the repayment of the securities subject to the
29 indenture or any payment of the principal of or interest on the securities subject to the
30 indenture, which failure is not corrected within 30 days of the date such payment was
31 due, shall have the authority to commence a civil action to recover on behalf of the
32 holders of the securities subject to the indenture all payments of principal and interest
33 ~~which~~ that are due and have not been paid; to declare the entire outstanding principal
34 balance of and accrued but unpaid interest on such securities to be immediately due
35 and payable and to commence a civil action to recover such principal and interest on
36 behalf of the holders of the securities subject to the indenture; to take possession of
37 and dispose of any collateral security subject to the indenture; and to secure such

1 additional relief as the parties to the indenture shall provide; and a provision that,
2 upon occurrence of any such failure, the trustee shall notify, to the extent that it can
3 identify them, the holders of such securities of the occurrence of such failure and of
4 its intentions with respect thereto.

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

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

14 (B) The following financial statements:

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

18 (ii) A statement of ~~source and application of funds~~ cash flows of the issuer or
19 consolidated statements of the issuer and its subsidiaries prepared in accordance with
20 generally accepted accounting principles for each of the two fiscal years preceding the
21 date of the balance sheet filed and for the interim period, if any, between the close of
22 the most recent of such fiscal years and the date of the balance sheet filed and for the
23 corresponding period of the preceding year or, if the issuer and its predecessors have
24 been in existence for less than two fiscal years, the statement of ~~source and~~
25 ~~application of funds~~ cash flows for the periods for which it has been in existence;
26 provided, however, that, if the issuer does not report its accounts in the normal course
27 of its business on a consolidated basis, then it may furnish, in lieu of consolidated
28 statements, individual statements for it and its majority owned subsidiaries;

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

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

33 (E) With respect to any underwriter of the securities being registered: a description of
34 all fees, commissions, expenses, and other payments and remunerations received or to
35 be received directly or indirectly by such underwriter and its affiliates in connection
36 with the sale of the securities being registered and a description of any affiliation,
37 interest, or arrangement such underwriter may have with any building contractor,

1 supplier, paying agent, or other person who may receive any proceeds from the sale of
2 the securities being registered;

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

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

9 (5) In case any of the financial statements contained in the registration statement filed
10 under this subsection are ~~certified~~ audited, they shall be ~~certified~~ audited by an
11 independent public accountant duly registered and in good standing as such under the
12 laws of the place of ~~his residence~~ such accountant's domicile or principal office.

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

18 ~~(g) Notice filings by issuers of federal covered securities.~~

19 ~~(1) Any security that is a federal covered security under Section 18(b)(2) of the~~
20 ~~Securities Act of 1933 may be offered for sale and sold into, from, or within this state~~
21 ~~only upon the commissioner's receipt of a copy of the registration statement and all other~~
22 ~~documents filed by the issuer with the Securities and Exchange Commission or, in lieu~~
23 ~~of filing such registration statement and other documents, a notice as prescribed by the~~
24 ~~commissioner by rule or regulation, a consent to service of process, and payment of a fee~~
25 ~~of \$250.00 for each fund or unit investment trust. Such notice filing shall meet the~~
26 ~~following conditions:~~

27 ~~(A) Unless otherwise extended by the commissioner, an initial notice filing under this~~
28 ~~paragraph shall be effective for a period of 14 months commencing upon the later of~~
29 ~~the date the notice or registration statement, as applicable, is received by the~~
30 ~~commissioner or the date the offering is effective with the Securities and Exchange~~
31 ~~Commission. A notice filing may be renewed by filing, prior to its expiration, a renewal~~
32 ~~notice as prescribed by the commissioner together with a renewal fee of \$100.00 for~~
33 ~~each fund or unit investment trust renewed. A renewal notice filing shall be effective~~
34 ~~upon expiration of the previous notice filing.~~

35 ~~(B) A notice filing may be amended as provided by the commissioner by rule or~~
36 ~~regulation.~~

1 ~~(C) A notice filing may be terminated by an issuer upon providing notice to the~~
2 ~~commissioner.~~

3 ~~(2) The commissioner, by rule or regulation, may require the filing of any document filed~~
4 ~~with the Securities and Exchange Commission under the Securities Act of 1933 for any~~
5 ~~security that is a federal covered security under Section 18(b)(3) or (4) of the Securities~~
6 ~~Act of 1933, together with any fees required under this chapter and a consent to service~~
7 ~~of process.~~

8 ~~(3) The commissioner may issue a stop order suspending the offer or sale of a federal~~
9 ~~covered security in this state if the commissioner reasonably believes there has been a~~
10 ~~violation of the provisions of this Code section.~~

11 ~~(4) The commissioner, by rule or regulation, may, if he or she deems it to be in the best~~
12 ~~interests of the public, waive any or all of the provisions of this Code section.~~

13 (6) A written statement from the issuer's chief executive officer and principal financial
14 officer, or persons performing similar functions, certifying that the financial statements
15 and other financial information included in the prospectus, offering memorandum, or
16 registration statement fairly present, to the best of their knowledge and belief, in all
17 material respects the financial condition and results of operations of the issuer.

18 (7) No material provided to any investor may make reference to any appraisal or other
19 opinion of the value of any property, the purchase, construction, or improvement of
20 which is related to the offering, unless the appraisal or opinion is prepared by an appraiser
21 licensed to do business as an appraiser in the state where the property is located, if
22 applicable, with such professional certification or standards as the commissioner may by
23 rule prescribe, and unless such appraisal addresses in its value determination the value
24 of the property both before and after any planned improvements, if applicable, and makes
25 allowance in its value determination for a sale of the property through foreclosure or
26 other distress circumstances rather than in an arm's length sale. If no such appraisal is
27 referenced, then the offering material shall clearly disclose on the inside front cover page
28 of the prospectus in the case of a printed prospectus or on the second page of the
29 prospectus in the case of a prospectus reproduced by any other means, in boldface print
30 or capital type, the following legend:

31 'NO APPRAISAL

32 NO APPRAISAL RELATING TO THE VALUE OF THE PROPERTY IS BEING
33 OFFERED FOR CONSIDERATION BY THE INVESTOR, AND THE INVESTOR
34 SHOULD MAKE HIS OR HER OWN INVESTIGATION AND ANALYSIS TO
35 ASCERTAIN THE VALUE OF THE PROPERTY AND WHETHER THAT VALUE
36 IS ADEQUATE PROTECTION FOR THIS INVESTMENT.'

1 (8) If no stop order is in effect and no proceeding is pending under Code Section 10-5-16
 2 or if the commissioner has not notified the registrant in writing of deficiencies in the
 3 registration statement, then a registration statement filed pursuant to this subsection shall
 4 become effective at 3:00 P.M. eastern standard time or eastern daylight time, whichever
 5 is applicable, of the tenth full business day after the filing of the registration statement or
 6 at such earlier time as the commissioner orders.

7 (f) *Regulatory authority.* The commissioner is authorized to promulgate such rules and
 8 regulations as relate to the registration provisions set forth in this Code section as he or she
 9 may deem necessary to achieve compatibility and uniformity with federal law and laws
 10 among the several states.

11 10-5-6.

12 (a) Every person registering securities pursuant to subsection (b), ~~(d), or (e)~~ or (d) of Code
 13 Section 10-5-5 shall pay a filing fee of one-twentieth of 1 percent of the maximum
 14 aggregate offering price at which the registered securities are to be offered in this state; but
 15 the fee shall not be less than \$250.00. When a registration statement is withdrawn before
 16 the effective date or before a preeffective stop order is entered under Code Section 10-5-7,
 17 the commissioner shall retain \$250.00 and return the remainder of the fee, if any, to the
 18 applicant.

19 (b)(1) No securities shall be registered by qualification under subsection (b) of Code
 20 Section 10-5-5 until the issuer first files with the commissioner a bond satisfactory to the
 21 commissioner in the sum of \$25,000.00, payable to the State of Georgia for the use of all
 22 interested persons and conditioned upon the faithful compliance by the applicant with this
 23 chapter and any regulations and orders issued by the commissioner; provided, however,
 24 that the issuer shall not be required to file a bond if the securities subject to the
 25 registration statement will be sold in Georgia solely through dealers or limited dealers
 26 who are registered under this chapter. Any such bond may be canceled by the applicant
 27 or surety by giving notice to the commissioner; but such cancellation shall not affect any
 28 cause of action accruing thereon prior to cancellation and such cancellation shall result
 29 in automatic cancellation of the registration of the securities until new bond satisfactory
 30 to the commissioner is filed. Any action on such bond must be brought within two years
 31 after accrual of the cause of action. The \$25,000.00 amount shall be construed as being
 32 the aggregate liability recoverable against the bond, regardless of the number of
 33 claimants, and shall not be construed as individual liability.

34 (2)(A) The requirement for filing such bond by an issuer ~~which~~ that has applied for
 35 registration of its securities by qualification under subsection (b) of Code Section

1 10-5-5 shall not be applicable if such issuer has deposited in trust with the
2 commissioner:

3 ~~(A)~~(i) A certificate of deposit evidencing a deposit with a financial institution
4 satisfactory to the commissioner in the amount of \$25,000.00 payable to the issuer
5 and assigned to the commissioner;

6 ~~(B)~~(ii) An irrevocable letter of credit addressed to the commissioner in the amount
7 of \$25,000.00, issued by a bank ~~which is a member of the Federal Reserve System~~
8 whose deposits are federally insured and conditioned only upon the rendering of a
9 judgment by a court of competent jurisdiction in which the issuer is found liable for
10 damages under this chapter; or

11 ~~(C)~~(iii) Obligations of the United States, an agency thereof, or of the State of Georgia
12 ~~which that~~ mature in not more than two years and ~~which that~~ have a market value as
13 of the date of deposit of at least \$25,000.00.

14 Such deposits shall be held for the benefit of all persons to whom the issuer is liable for
15 damages under this chapter for a period of two years after such issuer's registration has
16 expired or been revoked; provided, however, that such deposits shall not be released at
17 any time while there is pending against the issuer an action (including any direct appeal
18 of such action or an appeal based on a petition for certiorari jurisdiction), of which the
19 commissioner has notice, in a court of competent jurisdiction in which it is alleged that
20 the issuer is liable for damages under this chapter. Such deposits shall not be released
21 except upon application to and the written order of the commissioner. The commissioner
22 shall have no liability for any such release of any deposit or part thereof so made by him
23 or her in good faith. The commissioner may designate any regularly constituted state
24 depository having trust powers domiciled in this state as a depository to receive and hold
25 any such deposit. Any such deposit so held shall be at the expense of the issuer. Such
26 depository shall give to the commissioner proper trust and safekeeping receipt upon
27 which the commissioner shall give official receipt to the issuer. The State of Georgia
28 shall be responsible for the safekeeping and return of all deposits made pursuant to this
29 Code section. So long as the issuer complies with this chapter, the issuer may demand,
30 receive, ~~sue~~ bring an action for, and recover the income from the securities deposited or
31 may exchange and substitute for the letter of credit or securities deposited, or a part
32 thereof, with the approval of the commissioner, a letter of credit or securities of the kinds
33 specified above of equivalent or greater value. No judgment creditor or other claimant of
34 the issuer shall levy upon any deposit held pursuant to this Code section or upon any part
35 thereof except as specified in this subsection. Whenever any person shall file an action
36 in a court of competent jurisdiction in which it is alleged that the issuer is liable for
37 damages under this chapter, such person, in order to secure his or her recovery, may give

1 notice to the commissioner of such alleged liability and of the amount of damages
2 claimed, after which notice the commissioner shall be bound to retain, subject to the order
3 of the Superior Court of Fulton County, as provided ~~below~~ in subparagraph (B) of this
4 paragraph, a sufficient amount of the deposit to pay to the judgment in said action.

5 (B) In the event that the issuer prevails in such action and in the event that such
6 deposits have been held by the commissioner for a period of at least two years after
7 such issuer's registration has expired or been revoked, then the deposits shall be
8 released to the issuer; provided, however, that such deposits shall not be released at any
9 time while there is pending against the issuer an action (including any direct appeal of
10 such action or an appeal based on a petition for certiorari jurisdiction) of which the
11 commissioner has notice in a court of competent jurisdiction in which it is alleged that
12 the issuer is liable for damages under this chapter. In the event that a judgment is
13 rendered in such action by which it is determined that the issuer is liable for damages
14 under this chapter and the issuer has not paid the judgment within ten days of the date
15 the judgment became final or in the event such issuer petitions for the Supreme Court
16 of the United States to take certiorari jurisdiction over such action and the issuer has not
17 paid the judgment within ten days of the date the Supreme Court of the United States
18 denies certiorari jurisdiction or within ten days of the date the Supreme Court of the
19 United States affirms the judgment, then the person may petition the Superior Court of
20 Fulton County for an order directing the commissioner to reduce such deposit or a
21 portion thereof sufficient to pay such judgment to cash or its equivalent and to pay such
22 judgment to the extent the judgment may be satisfied with the proceeds of such deposit.
23 If there shall remain any residue from such deposit and if at least two years have passed
24 since the expiration or revocation of such issuer's registration, the commissioner shall
25 pay over such residue to the issuer, taking his or her receipt for the residue, ~~which~~ that
26 shall be filed and recorded with the other papers of the case unless there is pending
27 against the issuer an action (including any direct appeal of such action or an appeal
28 based on a petition for certiorari jurisdiction) of which the commissioner has notice in
29 a court of competent jurisdiction in which it is alleged that the issuer is liable for
30 damages under this chapter, in which case the commissioner shall hold or dispose of
31 such residue in accordance with the provisions of this ~~paragraph~~ subparagraph relating
32 to the holding or disposing of the entire deposit. In the event that more than one final
33 judgment is rendered against the issuer for violations of this chapter, the judgment
34 creditors shall be paid in full from such deposit or residue thereof to the extent the
35 deposit or residue is sufficient to pay such judgments in the order in which such
36 judgment creditors petitioned the Superior Court of Fulton County.

1 (3) Anything in this subsection to the contrary notwithstanding, the commissioner shall
2 comply with any order of a Georgia or United States court of competent jurisdiction to
3 turn over any deposit held by him or her pursuant to paragraph (2) of this subsection or
4 the proceeds of any bond held by him or her pursuant to paragraph (1) of this subsection
5 to a trustee or receiver for the use and sole benefit of persons on whose behalf the
6 commissioner holds such deposit or proceeds.

7 (c) Every person who proposes to offer in this state a security required to be registered
8 under Code Section 10-5-5 who has not previously filed with the commissioner an
9 irrevocable consent to service of process in the form prescribed by Code Section 10-5-18
10 shall, as a condition of registration, file with the commissioner such a consent.

11 (d) Every offering circular or prospectus used in connection with an offering of securities
12 registered under Code Section 10-5-5 shall contain the following legend on the cover page
13 thereof in boldface print or capital type:

14 **THESE SECURITIES HAVE BEEN REGISTERED WITH THE SECURITIES**
15 **COMMISSIONER OF THE STATE OF GEORGIA. THE SECURITIES**
16 **COMMISSIONER, BY ACCEPTING REGISTRATION, DOES NOT IN ANY WAY**
17 **ENDORSE OR RECOMMEND THE PURCHASE OF ANY OF THESE SECURITIES.**

18 (e) In any case where securities are to be registered for sale in this state and where the
19 issuer of such securities has not had any substantial gross revenues from the sale of
20 products or services or any substantial net income from any source for any fiscal year
21 ended during the past three years and has not succeeded and does not intend to succeed to
22 any business ~~which~~ that has had any substantial gross revenues from the sale of products
23 or services or any substantial net income from any source for any fiscal year ended during
24 the past three years, the commissioner may by regulation or order require either or both of
25 the following as a condition of registration under this chapter:

26 (1) Except in an offering pursuant to an underwriting agreement under which no
27 securities will be sold unless all securities to be offered are sold, the deposit in escrow of
28 not less than 85 percent of the proceeds from the sale of the registered securities until
29 such escrow account contains the amount specified in subparagraph (c)(1)(K) of Code
30 Section 10-5-5; and

31 (2) The deposit in an escrow account for a period not exceeding one year from the
32 termination of effectiveness of the registration statement or any renewal thereof of:

33 (A) Any securities of the same class issued or transferred to a person who is an
34 executive officer, director, general partner, or affiliate of the issuer or to any other
35 person authorized to sell such securities for the issuer except a dealer or a limited dealer
36 registered under this chapter and selling pursuant to an underwriting agreement ~~which~~

1 that is disclosed in the prospectus delivered to each purchaser and still beneficially
2 owned by such person; or

3 (B) Any securities of the same class as the securities registered ~~which~~ that are to be
4 issued to a person specified in subparagraph (A) of this paragraph;

5 at a price below the proposed offering price of such securities or for a consideration other
6 than cash. No interest in any security held in such an escrow account shall be offered for
7 sale, sold, assigned, or transferred during the term of such escrow account without the
8 written consent of the commissioner.

9 (f) Any document filed under this chapter or a predecessor Act within five years preceding
10 the filing of a registration statement may be incorporated by reference as an exhibit to any
11 registration statement filed under Code Section 10-5-5 to the extent that the document is
12 currently accurate.

13 (g) The commissioner may treat any exhibit filed under subparagraph (c)(2)(F) of Code
14 Section 10-5-5 as confidential and not subject to public inspection upon a showing,
15 satisfactory to him or her, that disclosure of such information or document to the public
16 would be detrimental to the applicant for registration or to the issuer and that confidential
17 treatment is consistent with the public interest.

18 (h) Any registration statement filed under this chapter may be withdrawn prior to the
19 effectiveness of the registration statement or the issuance of a preeffective stop order under
20 Code Section 10-5-7.

21 (i) A registration under Code Section 10-5-5 shall be effective for 12 months from its
22 effective date. If the securities registered for sale are not sold within 12 months and the
23 applicant desires to continue the offering under substantially the same terms, a renewal
24 registration statement may be filed with the commissioner. Such renewal registration
25 statement shall recite the total number of shares or principal amount of securities sold in
26 this state under the original (together with any renewal) registration and shall in all
27 respects, including currency of information, comply with the requirements for an original
28 registration. The commissioner shall examine applications for renewal by the same
29 standards as for original applications and upon that basis grant or deny the renewal
30 registrations. Such registrations, if granted, shall be effective for a period of 12 months. In
31 lieu of the filing fee prescribed by subsection (a) of this Code section, the commissioner
32 shall charge a renewal fee of \$100.00 for such renewal registrations. Successive renewal
33 registration statements may be filed when appropriate. The prospectus delivery
34 requirements of paragraph (3) of subsection (b) of Code Section 10-5-5 shall apply to sales
35 of securities pursuant to a renewal registration.

36 (j)(1)(A) Every issuer ~~which~~ that has registered securities for sale in this state under
37 ~~subsections (b) and (d)~~ subsection (b) of Code Section 10-5-5 shall:

1 (i) For a period of 12 months following the effective date of such registration
2 statement or any renewals thereof, file with the commissioner within 60 days of the
3 close of each fiscal quarter of such issuer except the last fiscal quarter of each fiscal
4 year; the following financial statements prepared in accordance with generally
5 accepted accounting principles:

6 (I) A consolidated ~~profit and loss~~ statement of income of the issuer and its
7 subsidiaries for each such fiscal quarter and for the corresponding period of the
8 preceding fiscal year if the issuer or any predecessor was then in existence; and

9 (II) Such other financial statements as the commissioner shall, by rule or regulation,
10 require;

11 provided, however, that no such financial statements need be filed following
12 termination of such registration statement; and

13 (ii) For a period beginning on the effective date of such registration statement and
14 ending 12 months after the termination date of the registration statement or any
15 renewals thereof, file with the commissioner within 90 days of the close of such
16 issuer's fiscal year the following financial statements prepared in accordance with
17 generally accepted accounting principles:

18 (I) A consolidated balance sheet of the issuer and its subsidiaries as of the end of
19 such fiscal year;

20 (II) A consolidated ~~profit and loss~~ statement of income of the issuer and its
21 subsidiaries for such fiscal year and for the preceding fiscal year if the issuer or any
22 predecessor was then in existence; and

23 (III) Such other financial statements as the commissioner may, by rule or
24 regulation, require;

25 provided, however, that such financial statements shall be ~~certified~~ audited by an
26 independent public accountant duly registered and in good standing as such under the
27 laws of the place of ~~his residence~~ such accountant's domicile or principal office;

28 (B) If a substantial part of the proceeds of the issue is to be applied to the purchase of
29 any business, the financial statements of the business to be purchased ~~which~~ that would
30 be required in divisions (i) and (ii) of subparagraph (A) of this paragraph if that
31 business were the issuer; shall be filed with the commissioner upon request of the
32 commissioner.

33 (C) If the issuer does not report its accounts in the normal course of its business on a
34 consolidated basis, then it may furnish, in lieu of the consolidated statements required
35 in divisions (i) and (ii) of subparagraph (A) of this paragraph, individual statements for
36 it and its majority owned subsidiaries; and, if the business to be purchased described
37 in subparagraph (B) of this paragraph does not report its accounts in the normal course

1 of its business on a consolidated basis, then the issuer may furnish in lieu of the
2 consolidated statements required in subparagraph (B) of this paragraph individual
3 statements for such business and its majority owned subsidiaries.

4 (2) Every issuer ~~which~~ that has registered securities for sale in this state under subsection
5 ~~(e)~~(d) of Code Section 10-5-5 shall, for a period beginning with the effective date of the
6 registration statement and ending 12 months after the termination date of such registration
7 statement or any renewals thereof, file with the commissioner within 90 days of the close
8 of such issuer's fiscal year the following financial statements prepared in accordance with
9 generally accepted accounting principles:

10 (A) A consolidated balance sheet of the issuer and its subsidiaries as of the end of such
11 fiscal year;

12 (B) A consolidated ~~profit and loss~~ statement of income of the issuer and its subsidiaries
13 for such fiscal year and for the preceding fiscal year if the issuer or any predecessor was
14 then in existence; and

15 (C) Such other financial statements as the commissioner may, by rule or regulation,
16 require.

17 (3) Each filing provided in paragraphs (1) and (2) of this subsection shall be
18 accompanied by a filing fee of \$10.00.

19 (4) A copy of each financial statement filed with the commissioner pursuant to this
20 subsection shall be delivered with any prospectus required to be delivered pursuant to
21 paragraph (3) of subsection (b) of Code Section 10-5-5.

22 (k)(1) If any registration statement ~~which~~ that has become effective under ~~the 'Georgia~~
23 ~~Securities Act of 1957'~~ or this chapter or a predecessor Act contains a statement of
24 material fact ~~which~~ that was untrue on the date the registration statement became
25 effective or if the registration statement fails to state a material fact ~~which~~ that, on the
26 date the registration statement became effective, was necessary to make the statements
27 made, in light of the circumstances under which they were made, not misleading, then
28 such registration statement ~~may~~ shall be amended by filing with the commissioner such
29 information and such changes in any prospectus used in connection with the registration
30 statement as may be necessary to correct such untruth or failure. Such amendment shall
31 be signed by the persons required to sign the original registration statement under Code
32 Section 10-5-5. Any such amendment shall become effective when the commissioner so
33 orders.

34 (2) Any prospectus forming part of a registration statement ~~which~~ that has become
35 effective under ~~the 'Georgia Securities Act of 1957'~~ or this chapter or a predecessor Act
36 may be supplemented without amending such registration statement by adding
37 information regarding factual developments ~~which~~ that occurred after the effective date

1 of such registration statement and by deleting statements of fact ~~which~~ that, as a result of
 2 such developments, may be misleading or immaterial. If no stop order or deficiency
 3 notice with respect to the registration statement is in effect, the prospectus, as
 4 supplemented, may be used after:

5 (A) Three o'clock P.M. eastern standard time or eastern daylight time, whichever is
 6 applicable, on the fifth full business day after the filing of ~~five~~ ten copies of the
 7 prospectus, as supplemented, with the commissioner; or

8 (B) Such shorter time as the commissioner, by order, may allow.

9 10-5-7.

10 (a) The commissioner may issue a stop order denying effectiveness to or suspending or
 11 revoking the effectiveness of any registration ~~or certificate issued as a result of a filing~~
 12 ~~pursuant to paragraph (5) or (16) of Code Section 10-5-9 (and shall give notice of such~~
 13 ~~issuance pursuant to Code Section 10-5-16) if he~~ filed pursuant to Code Section 10-5-5 or
 14 a certificate of filing issued pursuant to Code Section 10-5-9 or 10-5-9.1, if he or she finds
 15 that the order is in the public interest and that:

16 (1) The registration statement filed pursuant to Code Section 10-5-5 or documents
 17 required to be filed pursuant to ~~paragraph (5) or (16) of Code Section 10-5-9~~ or 10-5-9.1
 18 as of their effective date, or as of any earlier date in the case of an order denying
 19 effectiveness, contain an untrue statement of a material fact or omit to state a material fact
 20 required to be stated therein or necessary to make the statements therein not misleading;

21 (2) Any prospectus used or to be used in connection with the offering contains an untrue
 22 statement of a material fact or omits to state a material fact required to be stated therein
 23 or necessary to make the statements therein not misleading;

24 (3) This chapter or any rule, order, or condition lawfully imposed under this chapter has
 25 been willfully violated in connection with the offering by:

26 (A) The person filing the registration statement;

27 (B) The issuer, any partner, executive officer, or director of the issuer, any person
 28 occupying a similar status or performing similar functions, or any affiliate, but only if
 29 the person filing the registration statement is directly or indirectly controlled by or
 30 acting for the issuer; or

31 (C) Any underwriter;

32 (4) The security registered or exempted or sought to be registered or exempted is the
 33 subject of a stop order of any federal or state securities commission or agency or similar
 34 order or a permanent or temporary injunction of any court of competent jurisdiction
 35 entered under any other federal or state Act applicable to the offering; but:

1 (A) The commissioner may not institute a proceeding against an effective registration
 2 statement or certificate of exemption under this paragraph more than one year from the
 3 date of the order or injunction relied on; and

4 (B) The commissioner may not enter an order under this paragraph on the basis of an
 5 order or injunction entered under the laws of any other state ~~Act~~ unless that order or
 6 injunction was based on facts ~~which~~ that would currently constitute a ground for a stop
 7 order under this Code section;

8 (5) The offering has worked or tended to work a fraud upon purchasers or would so
 9 operate;

10 (6) ~~The security is sought to be registered by notification and is not eligible for such~~
 11 ~~registration; or~~ notice filing pursuant to Code Section 10-5-9 or 10-5-9.1; or

12 (7) ~~With respect to filings pursuant to paragraph (5) or (16) of a registration filed~~
 13 ~~pursuant to Code Section 10-5-5, or a filing pursuant to Code Section 10-5-9 or 10-5-9.1,~~
 14 the offering is a blank check offering.

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

27 (c) No stop order issued under any ~~part~~ provision of this Code section except the first
 28 sentence of subsection (b) of this Code section shall become effective until and unless the
 29 commissioner has complied with Code Section 10-5-16.

30 (d) The commissioner may vacate or modify a stop order if he or she finds that the
 31 conditions ~~which~~ that prompted its entry have changed or that it is otherwise in the public
 32 interest to do so.

33 10-5-8.

34 Code Section 10-5-5 shall not apply to any of the following securities:

35 (1) Any security (including a revenue obligation) issued or guaranteed by the United
 36 States, any state, any political subdivision of a state, or any agency, authority, public

1 corporation, or other instrumentality of one or more of the foregoing, including any
 2 underlying or separate security ~~which~~ that secures any of the foregoing securities;

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

8 (3) Any security issued by or guaranteed by any bank organized under the laws of the
 9 United States or any bank, savings institution, or trust company organized and supervised
 10 under the laws of any state, including any interest or participation in any common trust
 11 fund or similar fund maintained by a bank exclusively for the collective investment and
 12 reinvestment of assets contributed thereto by such bank in its capacity as a trustee,
 13 executor, administrator, or guardian;

14 (4) Any security issued by and representing an interest in or a debt of, or guaranteed by,
 15 any federal savings and loan association or any building and loan or similar association
 16 organized under the laws of any state and authorized to do business in this state;

17 (5) Any security issued by a farmers' cooperative association as defined in Section 521
 18 of the Internal Revenue Code, as now or hereafter amended;

19 (6) Any security issued or guaranteed by any ~~federal credit union or any credit union,~~
 20 ~~industrial loan association, or similar association organized and supervised under the laws~~
 21 ~~of this state;~~ credit union or similar institution that is organized or chartered under the
 22 laws of a state or of the United States, authorized to receive deposits, and supervised and
 23 examined by an official or agency of a state or the United States if its deposits or share
 24 accounts are insured to the maximum amount authorized by statute by the Federal
 25 Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a
 26 successor entity authorized by federal law. A credit union or similar institution that is
 27 organized or chartered under the laws of a state or of the United States does not include:

28 (A) An insurance company or other organization primarily engaged in the business of
 29 insurance;

30 (B) A Morris Plan bank; or

31 (C) An industrial loan company.

32 (7) Any security issued or guaranteed by any railroad, other common carrier, public
 33 utility, or holding company ~~which~~ that is:

34 (A) Subject to the jurisdiction of the Interstate Commerce Commission;

35 (B) A registered holding company under the Public Utility Holding Company Act of
 36 1935, as ~~now or hereafter~~ amended, or a subsidiary of such a company within the
 37 meaning of that act;

1 (C) Regulated in respect of its rates and charges by a governmental authority of the
2 United States or any state; or

3 (D) Regulated in respect of the issuance or guarantee of the security by a governmental
4 authority of the United States, any state, Canada, or any Canadian province;

5 (8) Securities listed or approved for listing upon notice of issuance on the New York
6 Stock Exchange, the American Stock Exchange, the ~~Midwest~~ Chicago Stock Exchange,
7 the ~~Pacific Coast~~ Stock Exchange, the Philadelphia-Baltimore-Washington Stock
8 Exchange, or any other stock exchange approved by the commissioner as provided in this
9 paragraph; and all securities senior or substantially equal in rank to any securities so
10 listed or approved, any security represented by subscription rights ~~which~~ that have been
11 so listed or approved, or any warrant or right to purchase or subscribe to any of the
12 foregoing, provided that the commissioner may by written order approve any stock
13 exchange in addition to those specified in this paragraph if he or she finds that it would
14 be in the public interest for securities listed on such exchange to be exempt under this
15 paragraph ~~and provided that the commissioner shall have power at any time by written~~
16 ~~order to withdraw the approval theretofore so granted.~~ The commissioner may, at any
17 time, by written order withdraw the availability of this exemption to any entity named in
18 this paragraph or approved by prior written order;

19 (8.1) A security designated or approved for designation upon issuance as a national
20 market system security by the National Association of ~~Securities Dealers, Inc.~~ Security
21 Dealers' Automated Quotation system (NASDAQ), any other security of the same issuer
22 ~~which~~ that is of senior or substantially equal rank, a security called for by subscription
23 right or warrant so designated, or a warrant or a right to purchase or subscribe to any of
24 the foregoing;

25 (9) A note, draft, bill of exchange, or banker's acceptance ~~which~~ that arises out of a
26 current transaction, or the proceeds of which have been or are to be used for one or more
27 current transactions, and ~~which~~ that has a maturity period at the time of issuance not
28 exceeding nine months exclusive of days of grace, or any renewal thereof which has a
29 maturity period likewise limited. This exemption shall apply only to prime quality
30 negotiable commercial paper not ordinarily purchased by members of the general public,
31 which paper is issued to facilitate well recognized types of current operational business
32 requirements and is eligible for discounting by ~~Federal Reserve Banks~~ federal reserve
33 banks;

34 (10) Notes issued in connection with the acquisition of real or personal property or
35 renewals thereof, if such notes are issued to the sellers of such property and are secured
36 by all or part of ~~the real or personal~~ such property so acquired;

1 (11) Any security ~~which~~ that meets all of the following conditions:

2 (A) If the issuer is not organized under the laws of the United States or a state, it has
3 appointed a duly authorized agent in the United States for service of process and has
4 set forth the name and address of such agent in any prospectus offering such securities
5 for sale;

6 (B) A class of the issuer's securities is registered under Section 12 of the Securities
7 Exchange Act of 1934 (15 U.S.C. Section 78a, et seq., as amended) and has been so
8 registered for the three years immediately preceding the offering date;

9 (C) Neither the issuer nor a significant subsidiary has had a material default during the
10 last seven years (or during the issuer's existence if less than seven years) in the payment
11 of:

12 (i) Principal, interest, dividend, or sinking fund installment on preferred stock or
13 indebtedness for borrowed money; or

14 (ii) Rentals under leases with terms of three years or more;

15 (D) The issuer has had consolidated net income (before extraordinary items and the
16 cumulative effect of accounting changes) of at least \$1 million in four of its last five
17 fiscal years including its last fiscal year and, if the offering is of interest-bearing
18 securities, has had for its last fiscal year such net income, but before deduction for
19 income taxes and depreciation, of at least one and one-half times the issuer's annual
20 interest expense, giving effect to the proposed offering and the intended use of the
21 proceeds. 'Last fiscal year' means the most recent year for which audited financial
22 statements are available, provided that such statements cover a fiscal period ended not
23 more than 15 months from the commencement of the offering;

24 (E) If the offering is of stock or shares, other than preferred stock or shares, such
25 securities have voting rights; and

26 (F) If the offering is of stock or shares, other than preferred stock or shares, such
27 securities are owned beneficially or of record, on any date within six months prior to
28 the commencement of the offering, by at least 1,200 persons, and on such date there are
29 at least 750,000 such shares outstanding with an aggregate market value, based on the
30 average ~~bid~~ closing sales price for that day, of at least \$3.75 million. In connection with
31 the determination of the number of persons who are beneficial owners of the stock or
32 shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes
33 of this Code section upon written information furnished by the record owners; or

34 (12) Viatical investments.

1 10-5-9.

2 (a) Except as expressly provided in this Code section, Code Section 10-5-3 shall not apply
 3 to any offer or sale of a security in connection with any transaction described in paragraph
 4 (1), (2), ~~(5)~~, (6), (7), (8), (9), (11), ~~or (12)~~ of this Code section (12), (16), or (17) of this
 5 subsection or subsection (c) or (d) of this Code section; and Code Section 10-5-5 shall not
 6 apply to any offer or sale of or subscriptions for any security in connection with any of the
 7 following transactions:

8 (1) Any transaction by an executor, administrator, or guardian who is not an affiliate of
 9 the issuer of the security sold or offered for sale or by a sheriff, marshal, conservator,
 10 receiver, or trustee in bankruptcy;

11 (2) Any transaction executed by a bona fide pledgee without any purpose of evading this
 12 chapter, provided that such pledgee is not the issuer of the securities, an underwriter of
 13 the securities, or an affiliate of the issuer of the securities;

14 (3) Any transaction in securities not involving the issuer of the securities, an underwriter
 15 of the securities, or an affiliate of the issuer of the securities;

16 (4) Any transaction in securities by an affiliate of the issuer of such securities, provided
 17 that:

18 (A) Such affiliate is not acting as an underwriter in the sale of such securities;

19 (B) Such securities are sold by the affiliate through a dealer registered under Code
 20 Section 10-5-3 acting as agent for the account of the affiliate of the issuer;

21 (C) There is no solicitation, directly or indirectly, of orders to purchase any such
 22 securities by the affiliate or any dealer offering such securities for sale by him or her;

23 (D) The dealer does no more than execute orders to sell as a broker and receives no
 24 more than the usual or customary broker's commission; and

25 (E) The affiliate makes no payments in connection with the execution of such
 26 transactions other than the broker's commission permitted under subparagraph (D) of
 27 this paragraph;

28 ~~(5) Any transaction in securities pursuant to a registration statement effective under the~~
 29 ~~Securities Act of 1933, as now or hereafter amended, or of securities exempt from the~~
 30 ~~registration requirements of such Act pursuant to Regulation A, B, E, or F adopted under~~
 31 ~~Section 3(b) or 3(c) thereof or pursuant to any other exemption under such sections which~~
 32 ~~the commissioner has, by rule or regulation, approved, but only during the continuance~~
 33 ~~of such exemption, provided that the commissioner has received prior to such sale:~~

34 ~~(A) A notice of intention to sell which has been executed by the issuer, any other~~
 35 ~~person on whose behalf the offering is to be made, a dealer or limited dealer registered~~
 36 ~~under this chapter, or any duly authorized agent of any such person and which sets forth~~

1 the name and address of the applicant, the name and address of the issuer, and the title
2 of the securities to be offered in this state;

3 ~~(B) A copy of the initial registration statement (excluding exhibits) or the notification~~
4 ~~on Form 1-A, 1-B, 1-E, or 1-F (or any form substituted therefor) and related offering~~
5 ~~circular or offering sheet (but excluding other exhibits) filed with the Securities and~~
6 ~~Exchange Commission or, in the case of an exemption under Section 3(b) or 3(c) of the~~
7 ~~Securities Act of 1933, which has been approved by the commissioner under this~~
8 ~~paragraph, copies of such information or documents as the commissioner may, by rule~~
9 ~~or regulation, require;~~

10 ~~(C) A filing fee of \$250.00; and~~

11 ~~(D) A consent to service of process in the form prescribed by Code Section 10-5-18~~
12 ~~which has been executed by the person who executed the notice of intention to sell~~
13 ~~unless such person has previously filed with the commissioner an irrevocable consent~~
14 ~~to service of process in the form prescribed by Code Section 10-5-18.~~

15 The commissioner shall issue to the person who executed the notice of intention to sell
16 a certificate which shall be signed and sealed by the commissioner and which shall state
17 the compliance or noncompliance with the requirements of subparagraphs (A) through
18 (D) of this paragraph of the items filed pursuant to such subparagraphs. This paragraph
19 shall not apply to any transaction which is otherwise exempt under this Code section or
20 to a transaction involving a federal covered security which is subject to the requirements
21 of subsection (g) of Code Section 10-5-5. In the event any offer is to be made pursuant
22 to this exemption more than 14 months after the date on which the commissioner issues
23 his or her certificate under this Code section, then it shall be necessary for said issuer to
24 file with the commissioner a copy of the prospectus which said issuer is currently
25 utilizing for the purposes of making such offer and a renewal fee of \$100.00. The
26 commissioner shall issue a certificate which shall be signed and sealed by him or her and
27 which shall state the compliance or noncompliance with these provisions. The issuer shall
28 be required to comply with these renewal requirements every 14 months so long as the
29 offering shall continue in this state;

30 (5) An isolated transaction in securities by an affiliate of the issuer of such securities,
31 provided that:

32 (A) Such transaction is not one of repeated and successive transactions of a like
33 character;

34 (B) Such affiliate is not an underwriter of such securities;

35 (C) No commission or other remuneration is paid, directly or indirectly, relating to
36 such transaction;

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

3 (i) Publicly disseminated advertisements or sales literature, through the mails or
 4 otherwise;

5 (ii) Any advertisement, article, notice, or other communication published in any
 6 newspaper, magazine, or other similar media, or broadcast over television, radio, the
 7 Internet, or unsolicited e-mail; and

8 (iii) Any seminar or meeting whose attendees have been invited by any general
 9 solicitation or general advertising; and

10 (E) Any certificate or certificates or other documents representing or evidencing the
 11 securities or, in the event there are no such certificates or documents, the limited
 12 partnership agreement or other similar document creating the securities contains, for a
 13 period of one year from the date of such sale, a legend similar to the following:

14 'THESE SECURITIES HAVE BEEN SOLD IN RELIANCE ON PARAGRAPH (5)
 15 OF CODE SECTION 10-5-9 OF THE "GEORGIA SECURITIES ACT OF 1973"
 16 AND MAY NOT BE SOLD OR TRANSFERRED EXCEPT IN A TRANSACTION
 17 THAT IS EXEMPT UNDER SUCH ACT OR PURSUANT TO AN EFFECTIVE
 18 REGISTRATION UNDER SUCH ACT';

19 (6)(A) Any transaction involving the issuance and delivery of securities by an issuer
 20 to its own ~~security holders~~ securityholders as a result of a dividend or other distribution
 21 (whether the person distributing the dividend or other distribution is the issuer of the
 22 security or not), a split of securities, or recapitalization, provided that the recipient does
 23 not pay any consideration or surrender the right to a distribution in cash or property
 24 other than such securities; or

25 (B) The sale of any fractional interest resulting from such dividend, split, distribution,
 26 or recapitalization;

27 (7) Any transaction involving the sale of securities to a bank, savings institution, trust
 28 company, insurance company, investment company as defined in the Investment
 29 Company Act of 1940, ~~as now or hereafter amended~~ (15 U.S.C. Section 80a-1, et seq.,
 30 as amended), real estate investment trust, small business investment corporation, pension
 31 or profit-sharing plan or trust, other financial institution, or a dealer, whether the
 32 purchaser is acting for itself or in some fiduciary capacity;

33 (8) Any transaction pursuant to an offer exclusively to existing ~~security holders~~
 34 securityholders of the issuer or a subsidiary of the issuer, including persons who at the
 35 time of the transaction are holders of convertible securities of the issuer or a subsidiary
 36 of the issuer, if:

1 (A) The offer is for a security of the issuer in exchange exclusively for an outstanding
2 security of the issuer or a subsidiary of the issuer and any payments ~~which~~ that may be
3 necessary to effect an equitable adjustment in respect of dividends, interest, or
4 fractional securities; and

5 (B) No commission or other remuneration is paid or given directly or indirectly for
6 soliciting any exchange by a ~~security holder in this state;~~ and securityholder in this
7 state.

8 ~~(C) Provided~~ provided that the transactional exemption of this ~~paragraph~~ subsection shall
9 not apply to transactions involving promissory notes issued in reliance upon paragraph
10 (9) of Code Section 10-5-8;

11 (9) Any transaction involving the issuance of a security:

12 (A) In connection with a stock bonus plan requiring payment of no consideration other
13 than services;

14 (B) In connection with an employee stock purchase plan as defined in Section 423 of
15 the Internal Revenue Code, as now or hereafter amended, or a stock bonus plan,
16 pension plan, profit-sharing plan, or retirement plan for employees or self-employed
17 individuals qualified under Section 401 of the Internal Revenue Code, as now or
18 hereafter amended, or individual retirement accounts qualified under Section 408 of the
19 Internal Revenue Code, as now or hereafter amended; provided, however, that the
20 issuance of any such security representing an interest in a collective investment fund
21 shall be exempt only if such security is issued pursuant to a plan established and
22 administered by a bank organized under the laws of the United States or any bank or
23 trust company organized and supervised under the laws of any state of the United States
24 or sponsored by any investment company registered under the Investment Company
25 Act of 1940, ~~as now or hereafter amended;~~ (15 U.S.C. Section 80a-1, et seq., as
26 amended) or sponsored by any insurance company licensed to do business in this state;

27 (C) In connection with a ~~stock option plan~~ written compensatory stock purchase, stock
28 option, stock appreciation rights, deferred compensation, or similar equity incentive
29 plan (including an individual compensatory agreement), in which no person except an
30 employee of the issuer or of an affiliate of such issuer; a director of the issuer; or a
31 consultant or adviser of the issuer may participate, if no consideration is paid for any
32 ~~options securities~~ granted other than services; provided, however, that a consultant and
33 adviser may participate only if:

34 (i) He or she is a natural person;

35 (ii) He or she provides bona fide services to the issuer, its parent, its majority owned
36 subsidiaries, or the majority owned subsidiaries of the issuer's parent; and

1 (iii) The services are not in connection with the offer or sale of securities in a
 2 capital-raising transaction and do not directly or indirectly promote or maintain a
 3 market for the issuer's securities; or

4 (D) In connection with the issuance of securities upon the exercise of options granted
 5 pursuant to such a stock option plan;

6 (10) Any offer (but not a sale) of a security for which a registration statement has been
 7 filed under the Securities Act of 1933,~~as now or hereafter amended,~~ (15 U.S.C. Section
 8 77a, et seq., as amended) if no stop order or refusal order is in effect and no public
 9 proceeding or examination looking toward such an order is pending under such act;

10 (11) Any transaction incident to a judicially approved reorganization in which a security
 11 is issued in exchange for one or more outstanding securities, claims, or property interests,
 12 or partly in such exchange and partly for cash;

13 (12) Any transaction involving the issuance or transfer of securities of the issuer by the
 14 issuer or by a subsidiary of the issuer to a corporation or its shareholders, to a business
 15 or real estate investment trust or the holders of beneficial interest thereof, to a limited
 16 liability company or its members, or to a partnership or limited partnership or the partners
 17 thereof in connection with a merger, share exchange, consolidation, reclassification of
 18 securities, or sale or transfer of corporate, trust, or partnership assets in consideration of
 19 the issuance or transfer of such securities, where the transaction must be approved by the
 20 holders of at least a majority of the voting shares, beneficial interests, or partnership
 21 interests of such corporation, trust, or partnership pursuant to its articles or certificate of
 22 incorporation, corporate charter or trust instrument, partnership agreement, or the
 23 applicable corporation, trust, or partnership statute;

24 (13) Any transaction involving the issuance or sale of securities of an issuer by or on
 25 behalf of the issuer or an affiliate of the issuer if all of the following conditions are met:

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

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

35 (i) Publicly disseminated advertisements or sales literature, through the mails or
 36 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 the Internet, or unsolicited e-mail; 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~~ THAT IS EXEMPT UNDER SUCH ACT
 15 OR 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 or her own account. As used in this
 18 subparagraph, the ~~phrase~~ term 'purchase for investment' shall mean the purchase of any
 19 securities with the intent of holding such securities for investment and without the
 20 intent of participating directly or indirectly in a distribution of such securities, except
 21 in a transaction that is registered under this chapter or exempt from such registration,
 22 provided that such investment is not offered or sold in reliance on this paragraph. Any
 23 person who holds such securities for a period of one year from the date such securities
 24 have been fully paid for by such person shall be presumed to have purchased such
 25 securities for investment;

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

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

33 (A) The fund qualifies as a recipient of tax deductible contributions under Section
 34 642(c)(5) of the Internal Revenue Code, as now or hereafter amended;

35 (B) Each prospective donor is furnished written disclosures ~~which~~ that fully and fairly
 36 describe the operation of the fund;

1 (C) Each person soliciting gifts by means of the fund is either a volunteer or a person
 2 who is employed in the overall fundraising activities of the charity that is the
 3 beneficiary of the fund and who receives no commission or other special compensation
 4 based on the amount of gifts transferred to the pooled income fund; and

5 (D) Either:

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

9 (ii) An investment company registered under the Investment Company Act of 1940;
 10 ~~as now or hereafter amended;~~ (15 U.S.C. Section 80a-1, et seq., as amended) or an
 11 insurance company licensed to do business in this state serves as investment adviser
 12 or investment manager of the fund;

13 (16) Any transaction in compliance with an order issued by the commissioner or a court
 14 of competent jurisdiction; and

15 (17) Any transaction in a variable annuity contract as provided for and regulated under
 16 Title 33 and issued by a life insurance company licensed to do business in this state,
 17 provided that such security is offered or sold in compliance with the Securities Exchange
 18 Act of 1934 (15 U.S.C. Section 78a, et seq., as amended) and the Securities Act of 1933
 19 (15 U.S.C. Section 77a, et seq., as amended).

20 (b) For any ~~(16)~~ Any transaction exempted by rule under this paragraph subsection:

21 ~~(A)~~ (1) The commissioner is granted authority, if he or she finds it to be in the public
 22 interest, to create by rule exemptions and procedures pertaining thereto ~~which~~ that shall
 23 further the objectives of compatibility with federal exemptions and uniformity among the
 24 states. Except as otherwise provided, any such rules shall require that the commissioner
 25 receive prior to any such sale:

26 ~~(i)~~ (A) A notice of intention to sell ~~which~~ that has been executed by the applicant ~~which~~
 27 that sets forth the information required by the rule;

28 ~~(ii)~~ (B) A filing fee of \$250.00;

29 ~~(iii)~~ (C) A consent to service of process in the form prescribed by Code Section 10-5-18
 30 ~~which~~ that has been executed by the applicant; and

31 ~~(iv)~~ (D) Such information as the commissioner may by rule or regulation require;

32 ~~(B)~~ (2) The ~~above~~ information required pursuant to paragraph (1) of this subsection shall
 33 be provided according to procedures promulgated by the commissioner pursuant to this
 34 Code section and one or more of ~~the above~~ such requirements may, by rule, ~~be waived~~
 35 not be required by the commissioner;

1 ~~(C)~~(3) The commissioner shall issue to the person who executed the notice of intention
 2 to sell a certificate ~~which~~ that shall state the compliance or noncompliance with the filing
 3 requirements of this Code section; and

4 ~~(D)~~(4) If any sale is to be made pursuant to this exemption more than 12 months after the
 5 date on which the commissioner issues his or her certificate under this Code section, such
 6 rule shall require the applicant to pay a renewal fee of \$100.00. The applicant shall be
 7 required to comply with this renewal requirement every 12 months so long as the offering
 8 shall continue in this state. Upon any renewal, the commissioner shall issue a certificate
 9 ~~which shall be signed and sealed by him and which~~ that shall state the compliance or
 10 noncompliance with the renewal requirements of this Code section.

11 (c) The commissioner may, if he or she deems it to be in the public interest, provide, by
 12 rule or regulation, an exemption for any transaction in securities with or for an individual
 13 from another state or from a foreign country who is temporarily present in the State of
 14 Georgia and maintains his or her domicile in another state or a foreign country.

15 (d) The commissioner may, if he or she deems it to be in the public interest, provide, by
 16 rule or regulation, an exemption for any transaction in securities with or for an individual
 17 from a foreign country who is present in this state whose transactions are in a self-directed
 18 individual retirement plan or account of which the individual is the holder or contributor.

19 10-5-9.1.

20 (a) Unless otherwise exempt under Code Section 10-5-8 or 10-5-9, any security that is a
 21 federal covered security, as defined in Section 18(b)(2) of the Securities Act of 1933 (15
 22 U.S.C. Section 77a, et seq., as amended), may be sold or offered for sale in this state only
 23 upon the filing of a notice in the form and manner prescribed by rule or regulation by the
 24 commissioner and the payment of a filing fee of \$250.00 for each fund or unit investment
 25 trust.

26 (b) Unless otherwise exempt under Code Section 10-5-8 or 10-5-9, any security that is a
 27 federal covered security, as defined in Section 18(b)(4)(D) of the Securities Act of 1933
 28 (15 U.S.C. Section 77a, et seq., as amended), may be sold or offered for sale in this state
 29 only upon the filing of a notice in the form and manner prescribed by rule or regulation by
 30 the commissioner and the payment of a filing fee of \$250.00.

31 (c) Unless otherwise exempt under Code Section 10-5-8 or 10-5-9, any security that is
 32 subject to a registration statement effective under the Securities Act of 1933 (15 U.S.C.
 33 Section 77a, et seq., as amended) or a security exempt from the registration requirements
 34 of the Securities Act of 1933 (15 U.S.C. Section 77a, et seq., as amended) pursuant to
 35 Regulation A, B, E, or F adopted under Section 3(b) or 3(c) thereof, may be sold or offered

1 for sale in this state only upon the filing of a notice in the form and manner prescribed by
2 rule or regulation by the commissioner and the payment of a filing fee of \$250.00.

3 (d) With respect to a security that is a federal covered security under Section 18(b)(3) or
4 18(b)(4)(A)-(C) of the Securities Act of 1933 (15 U.S.C. Section 77a, et seq., as amended)
5 that is not otherwise exempt under Code Section 10-5-8 or 10-5-9, a rule or regulation
6 under this chapter may require a notice filing by or on behalf of an issuer to include
7 documents filed with the S.E.C. and the payment of a fee of \$250.00.

8 (e) A notice filing under subsection (a), (b), (c), or (d) of this Code section is effective for
9 one year. Upon or before expiration, the issuer may renew a notice filing by filing a copy
10 of those records filed by the issuer with the S.E.C. that are required by rule or regulation
11 under this chapter to be filed and by paying a renewal fee of \$100.00.

12 (f) A notice filing under subsection (a), (b), (c), or (d) of this Code section may be
13 amended or terminated as provided by the commissioner by rule or regulation.

14 (g) Notwithstanding any provision of this chapter to the contrary, the failure to comply
15 with the notice filing requirements of this Code section shall not subject any person to civil
16 liability under Code Section 10-5-14 or to criminal penalties under Code Section 10-5-24.

17 (h) The commissioner may issue a stop order suspending the offer or sale of a security
18 being offered or sold in this state pursuant to this Code section if the commissioner
19 reasonably believes there has been a violation of the provisions of this chapter, including,
20 but not limited to, the failure to submit any filing or fee required under this Code section.

21 (i) The commissioner may issue an order imposing sanctions provided for in Code Section
22 10-5-13 if the commissioner reasonably believes there has been a violation of the
23 provisions of this chapter.

24 (j) The commissioner, by rule or regulation, may, if he or she deems it to be in the public
25 interest, waive any or all of the provisions of this Code section.

26 (k) The commissioner may promulgate rules and regulations implementing the notice
27 filing requirements and the documents required to be filed with the commissioner.

28 10-5-10.

29 (a) The administration of this chapter shall be vested in the Secretary of State, who is
30 designated commissioner of securities.

31 (b) The commissioner shall have the authority to administer oaths in and to prescribe
32 forms for all matters arising under this chapter, including requiring the submission of
33 electronic applications, registrations, notice filings, and forms. The commissioner shall
34 cooperate with the administrators of the securities laws of other states and of the United
35 States with a view to assisting those administrators in the enforcement of their securities
36 and investment adviser laws and to achieving maximum uniformity in the interpretation of

1 like provisions of the laws administered by them and in the forms ~~which~~ that are required
2 to be filed under such laws.

3 (c) The commissioner shall have authority to employ examiners, clerks and stenographers,
4 and other employees as the administration of that portion of this chapter vested in him or
5 her may require. The commissioner shall also have authority to appoint and employ
6 investigators who shall have, in any case that there is reason to believe a violation of this
7 chapter has occurred or is about to occur, the right and power to serve subpoenas and to
8 swear out and execute search warrants and arrest warrants.

9 (d) The commissioner shall have the power to make such rules and regulations from time
10 to time as he or she may deem necessary and proper for the administration, enforcement,
11 and proceedings of this chapter. Such rules and regulations shall be adopted, promulgated,
12 and contested as provided in Chapter 13 of Title 50, the 'Georgia Administrative Procedure
13 Act.'

14 (e) The commissioner or any persons employed by him or her shall be paid, in addition to
15 their regular compensation, the transportation fare, board, lodging, and other traveling
16 expenses necessary and actually incurred by each of them in the performance of their duties
17 under this chapter.

18 (f) The commissioner shall appoint, ~~with the approval of the Governor,~~ a person as
19 assistant commissioner and delegate such of his or her powers and duties under this chapter
20 to such assistant commissioner as ~~he desires~~ the commissioner determines to be
21 appropriate.

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

32 (h) Neither the commissioner, the assistant commissioner, nor any employee of the
33 commissioner may use for personal gain or benefit information filed with or obtained by
34 the commissioner ~~which~~ that is not public information nor may the commissioner, assistant
35 commissioner, or any employee of the commissioner conduct securities dealings based
36 upon information filed with or obtained by the commissioner, even though such

1 information is known to the public, if there has not been a sufficient period for the
2 securities markets to assimilate the information.

3 (i) Except as provided in subsection (j) of this Code section, information and documents
4 filed with or obtained by the commissioner are public information and are available for
5 public examination.

6 (j) The following information and documents do not constitute public information under
7 subsection (i) of this Code section and shall be confidential:

8 (1) Information or documents obtained or prepared by the commissioner in connection
9 with an investigation under Code Section 10-5-11 or in connection with an examination
10 or audit, including any analysis or impressions of such information or documents, under
11 this chapter;

12 (2) Information or documents filed with the commissioner in connection with a
13 registration statement or ~~exemption notice~~ filing under this chapter ~~which that~~ constitute
14 trade secrets or commercial or financial information of a person for which that person is
15 entitled to and has asserted a claim of confidentiality or privilege authorized by law; ~~and~~

16 (3) Any document or record specifically designated as confidential in accordance with
17 this chapter or the rules and regulations promulgated under this chapter; and

18 (4) Documents prepared by the commissioner relating to an application or filing under
19 Code Section 10-5-3, 10-5-5, 10-5-9, or 10-5-9.1.

20 (k) The commissioner may develop and implement investment education and financial
21 literacy initiatives to inform the public about investing in securities, with particular
22 emphasis on the prevention and detection of securities fraud. In developing and
23 implementing these initiatives, the commissioner may collaborate with public and nonprofit
24 organizations with an interest in investor or investment education or financial literacy. The
25 commissioner may accept or administer one or more grants or donations from any person
26 to develop and implement such investment education and financial literacy initiatives.

27 (l) The commissioner is authorized to participate in investment education initiatives and
28 programs administered by any nonprofit or governmental organization or trust whose
29 purposes include investment education and financial literacy.

30 (m) To encourage uniform interpretation and administration of this chapter and effective
31 securities regulation and enforcement, the commissioner is authorized to adopt rules to
32 facilitate consistency with federal securities statutes and regulations.

33 (n) The commissioner may cooperate with the S.E.C., self-regulatory organizations, and
34 other state securities administrators in programs to distribute restitution or disgorgement
35 proceeds.

1 10-5-11.

2 (a) The commissioner, at his or her discretion:

3 (1) May make such public or private investigations within or outside of this state as he
4 or she deems necessary to determine whether any person has violated or is about to
5 violate this chapter or any rule, regulation, or order under this chapter or to aid in the
6 enforcement of this chapter or in the prescribing of rules and regulations hereunder;

7 (2) May require or permit any person to file a statement in writing, under oath or
8 otherwise as the commissioner determines, as to all the facts and circumstances
9 concerning the matter to be investigated; and

10 (3) ~~May~~ Notwithstanding any other provision of this chapter, may publish information
11 concerning any violation of this chapter or any rule, regulation, or order under this
12 chapter.

13 (b)(1) For the purpose of conducting any investigation as provided in this Code section,
14 the commissioner shall have the power to administer oaths, to call any party to testify
15 under oath at such investigations, to require the attendance of witnesses, to require the
16 production of books, records, and papers, and to take the depositions of witnesses; and
17 for such purposes the commissioner is authorized to issue a subpoena for any witness or
18 a subpoena for the production of documentary evidence. Said subpoenas may be served
19 by registered or certified mail or statutory overnight delivery, return receipt requested,
20 to the addressee's business ~~mailing address~~ or residential address as shown on the Central
21 Registration Depository or Investment Adviser Registration Depository or to the
22 addressee's business mailing address or served personally by investigators appointed by
23 the commissioner or shall be directed for service to the sheriff of the county where such
24 witness resides or is found or where the person in custody of any books, records, or
25 papers resides or is found. The fees and mileage of the sheriff, witness, or person shall
26 be paid from the funds in the state treasury for the use of the commissioner in the same
27 manner that other expenses of the commissioner are paid.

28 (2) The commissioner may issue and apply to enforce subpoenas in this state at the
29 request of a securities agency or administrator of another state if the activities constituting
30 an alleged violation for which the information is sought would be a violation of this
31 chapter if the activities had occurred in this state.

32 (c) In case of refusal to obey a subpoena issued under any Code section of this chapter to
33 any person, a superior court of appropriate jurisdiction, upon application by the
34 commissioner, may issue to the person an order requiring him or her to appear before the
35 court to show cause why he or she should not be held in contempt for refusal to obey the
36 subpoena. Failure to obey a subpoena may be punished by the court as contempt of court.

1 (d)(1) The commissioner may, with the approval of the Attorney General, issue to any
2 person who has been or may be called to a hearing or other proceeding under this chapter
3 a written order requiring the individual to give testimony or provide other information
4 ~~which he~~ that he or she refuses to give or provide on the basis of his or her privilege
5 against self-incrimination. Such order shall be issued only if the commissioner shall find
6 that:

7 (A) The testimony or other information from such individual may be in the public
8 interest; and

9 (B) Such individual has refused or is likely to refuse to testify or provide other
10 information on the basis of his or her privilege against self-incrimination.

11 (2) Whenever any witness refuses, on the basis of his or her privilege against
12 self-incrimination, to testify or provide other information at any hearing or other
13 proceeding under this chapter and the person presiding over the proceeding delivers to
14 the witness a written order issued under paragraph (1) of this subsection, the witness may
15 not refuse to comply with the order on the basis of his or her privilege against
16 self-incrimination; but no testimony or other information compelled under the order as
17 to which the witness could validly assert his or her privilege against self-incrimination
18 (or any information directly or indirectly derived from such testimony or other
19 information) may be used against the witness in any criminal case, except a prosecution
20 for perjury, false swearing, giving a false statement to the commissioner pursuant to this
21 chapter, or otherwise failing to comply with the order.

22 (e) In the case of any investigation or examination conducted under this Code section, the
23 commissioner may ~~hold hearings or he may~~ appoint an investigative agent or examiner to
24 conduct the ~~hearings~~ investigation or examination who shall have the same powers and
25 authority ~~in conducting the hearings~~ as are in this Code section granted to the
26 commissioner. The agent shall possess such qualifications as the commissioner may
27 require. ~~A transcript of the testimony and evidence and objections resulting from such~~
28 ~~hearings shall be taken unless waived in writing by all parties present at the hearings.~~
29 ~~Copies of the transcript shall be available to all parties present at the hearing upon payment~~
30 ~~of a reasonable expense of reproducing the transcript.~~ All recommendations of the
31 investigative agent shall be advisory only and shall not have the effect of an order of the
32 commissioner.

33 (f) In any case where ~~hearings~~ investigations or examinations are conducted by an
34 investigative agent or examiner, he or she shall submit to the commissioner a written
35 report, including the transcript of the testimony in evidence (if requested by the
36 commissioner); ~~the findings of the hearing, and a recommendation~~ and the findings and
37 recommendations of the action to be taken by the commissioner. The recommendation of

1 the agent ~~shall~~ may be approved, modified, or disapproved by the commissioner. The
 2 commissioner may direct an investigative agent ~~to~~ or examiner to conduct further
 3 investigation or take additional testimony or ~~permit introduction of~~ acquire further
 4 documentary evidence as may be necessary.

5 (g) In addition to any other hearings and investigations ~~which~~ that the commissioner is
 6 authorized or required by this chapter to hold, the commissioner is also authorized to hold
 7 general investigative hearings on his or her own motion with respect to any matter under
 8 this chapter. A general investigative hearing as provided for in this subsection may be
 9 conducted by any person designated by the commissioner for that purpose and may, but
 10 need not be, transcribed by the commissioner or by any other interested party. No formal
 11 action may be taken as a result of such investigative hearing; but the commissioner may
 12 take such action as he or she deems appropriate, based on the information developed in the
 13 hearing and on any other information ~~which he~~ that he or she may have.

14 (h) To encourage uniform interpretation and administration of this chapter and effective
 15 securities and investment adviser regulation and enforcement, the commissioner may
 16 cooperate with the securities agencies or administrators of one or more states, Canadian
 17 provinces or territories, or another country, the ~~Securities and Exchange Commission~~
 18 S.E.C., the Commodity Futures Trading Commission, the Securities Investor Protection
 19 Corporation, any self-regulatory organization, any national or international organization
 20 of securities officials or agencies, ~~and~~ or any governmental law enforcement or regulatory
 21 agency. ~~Said cooperation includes~~ The cooperation authorized may include, but is not
 22 limited to, the following actions:

- 23 (1) Making a joint registration examination or investigation;
- 24 (2) Holding a joint administrative hearing;
- 25 (3) Filing and prosecuting a joint civil or administrative proceeding;
- 26 (4) Sharing and exchanging personnel;
- 27 (5) Sharing and exchanging information and documents subject to the restrictions of
- 28 subsection (i) of this Code section; ~~and~~
- 29 (6) Formulating, in accordance with Chapter 13 of Title 50, the 'Georgia Administrative
- 30 Procedure Act,' rules or proposed rules on matters such as statements of policy,
- 31 guidelines, and interpretative opinions and releases; and
- 32 (7) Participating in any multistate regulatory investigation or proceeding and
- 33 participating in any financial or regulatory settlement resulting therefrom.

34 (i) The commissioner may disclose such information or documents obtained in connection
 35 with an investigation under this Code section ~~to the extent provided in this Code section.~~
 36 ~~The commissioner may further disclose such information~~ if disclosure is for the purpose
 37 of a civil, administrative, or criminal investigation or proceeding. ~~Any securities agency~~

1 ~~or law enforcement agency~~ whether by the commissioner or any agency with securities or
2 law enforcement powers. Any agency with securities or law enforcement powers receiving
3 such information or documents must represent that, under the applicable law, protections
4 exist to preserve the integrity, confidentiality, and security of the information.

5 (j) The records of a dealer, limited dealer, designated dealer, issuer, investment adviser,
6 federal covered adviser, investment adviser representative, salesperson, or limited
7 salesperson who is registered or required to be registered under this chapter are subject to
8 such reasonable periodic, special, or other audits, examinations, or inspections by a
9 representative of the commissioner, within or outside this state, as the commissioner deems
10 necessary or appropriate in the public interest and for the protection of investors. Such
11 audit, examination, or inspection may be made at any time and without prior notice. The
12 commissioner may copy and remove for audit, examination, or inspection copies of all
13 records the commissioner reasonably deems necessary or appropriate to conduct such audit,
14 examination, or inspection under this chapter.

15 (k) All records relating to the preparation of financial plans and the giving of investment
16 advice prepared and maintained by a certified public accountant who holds himself or
17 herself out as a 'financial planner' or investment adviser are subject to reasonable
18 examination by representatives of the commissioner, within or outside this state, as the
19 commissioner deems necessary or appropriate to determine whether any person has
20 violated or is about to violate this chapter or any rule, regulation, or order under this
21 chapter. This provision shall not be construed to require, or authorize the commissioner
22 to require, such certified public accountant to disclose the identity, investments, or affairs
23 of any client of such certified public accountant, except insofar as such disclosure may be
24 necessary or appropriate in a particular proceeding or investigation having as its object the
25 enforcement of this chapter.

26 10-5-12.

27 (a) It shall be unlawful for any person:

28 (1) To offer to sell or to sell any security in violation of ~~Code Section 10-5-3, 10-5-5, or~~
29 ~~10-5-19~~ this chapter or any rule, regulation, or order promulgated or issued by the
30 commissioner under this chapter;

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

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

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

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

3 (3) To offer or sell any security:

4 (A) Registered under subsection (b) of Code Section 10-5-5 by means of any
5 prospectus except a prospectus ~~which~~ that complies with paragraph (3) of
6 subsection (b) of Code Section 10-5-5;

7 (B) Registered under subsection ~~(e)~~(d) of Code Section 10-5-5 by means of any
8 prospectus except a prospectus ~~which~~ that complies with paragraph (3) of subsection
9 ~~(e)~~(d) of Code Section 10-5-5; or

10 (C) Registered under subsection ~~(f)~~(e) of Code Section 10-5-5 by means of any
11 prospectus except a prospectus ~~which~~ that complies with paragraph (4) of subsection
12 ~~(f)~~(e) of Code Section 10-5-5; or

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

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

16 (B) To make any ~~representations~~ representation as to the future existence of any public
17 market for the securities offered for sale;

18 (5) To sponsor, promote, recommend, produce, or provide any training course, seminar,
19 or training material, written or oral, that instructs or purports to instruct, promotes, or
20 recommends an investment or trading strategy in securities and that contains materially
21 untrue or misleading claims, statistics, promises, estimates, or other statements;

22 (6) To induce or attempt to induce, by any form of communication, any other person to
23 open an account or other relationship for the purpose of conducting an investment or
24 trading strategy in securities, which communication contains materially untrue or
25 misleading claims, statistics, promises, estimates, or other statements; or

26 (7) To violate any provision of this chapter or any rule, regulation, or order promulgated
27 or issued by the commissioner under this chapter.

28 (b) It shall be unlawful for any person to make to any prospective purchaser, customer, or
29 client any representation that the filing or effectiveness of a registration statement ~~or~~ the
30 registration, or notice filing of any security under Code Section 10-5-5, 10-5-9, or 10-5-9.1,
31 or the existence of any exemption for any security or transaction means that the
32 commissioner has passed in any way upon the truth, completeness, or accuracy of such
33 registration statement or the merits of such security or has recommended or given approval
34 to such security or transaction.

1 (c) It shall be unlawful for any person who:

2 (1) Is a dealer, limited dealer, designated dealer, salesperson, limited salesperson,
3 designated salesperson, investment adviser, federal covered adviser, or investment
4 adviser representative under this chapter;

5 (2) Is making a notice filing or filing an application for registration as a dealer, limited
6 dealer, designated dealer, salesperson, limited salesperson, designated salesperson,
7 investment adviser, or investment adviser representative under this chapter;

8 (3) Is an issuer ~~which~~ that has filed a registration statement or notice filing with respect
9 to securities it intends to issue; or

10 (4) Is an affiliate of any of the persons described in paragraph (1), (2), or (3) of this
11 subsection

12 knowingly to cause to be made, in any document filed with the commissioner or in any
13 proceeding under this chapter, any statement ~~which~~ that is, at the time it is made and in
14 light of the circumstances under which it is made, false or misleading in any material
15 respect.

16 (d) Without limiting the general applicability of subsections (a), (b), and (c) of this Code
17 section, it shall be unlawful to:

18 (1) Quote a fictitious price with respect to a security;

19 (2) Effect a transaction in a security ~~which~~ that involves no change in the beneficial
20 ownership of the security for the purpose of creating a false or misleading appearance of
21 active trading in a security or with respect to the market for the security;

22 (3) Enter an order for the purchase of a security with the knowledge that an order of
23 substantially the same size and at substantially the same time and price for the sale of the
24 security has been, or will be, entered by or for the same, or affiliated, person for the
25 purpose of creating a false or misleading appearance of active trading in a security or
26 with respect to the market for the security;

27 (4) Enter an order for the sale of a security with the knowledge that an order at
28 substantially the same time and price for the purchase of the security has been, or will be,
29 entered by or for the same, or affiliated, person for the purpose of creating a false or
30 misleading appearance of active trading in a security or with respect to the market for the
31 security;

32 (5) Misappropriate, convert, or improperly withhold any funds or other property in
33 connection with an offer or sale of any security; or

34 (6) Employ any other deceptive or fraudulent device, scheme, or artifice to manipulate
35 the market in a security.

36 (e) Transactions effected in compliance with the applicable provisions of the Securities
37 Exchange Act of 1934 (15 U.S.C. Section 78a, et seq., as amended) and the rules and

1 regulations of the ~~Securities and Exchange Commission~~ S.E.C. thereunder shall not be
2 deemed to constitute market manipulation under subsection (d) of this Code section.

3 (f) It shall be unlawful for any person to transact business ~~within or from~~ in this state as
4 an investment adviser, federal covered adviser, or investment adviser representative in
5 violation of Code Section 10-5-3 or any rule, regulation, or order promulgated or issued by
6 the commissioner under this chapter.

7 (g) It shall be unlawful for any person to hold himself or herself out as, or otherwise
8 represent that he or she is, a 'financial planner' or 'investment adviser' or use as descriptive
9 of his or her business the term 'financial planner' or 'investment adviser' or such similar
10 term as may be specified in rules and regulations promulgated by the commissioner unless
11 said person is a certified public accountant, is registered as an investment adviser or
12 investment adviser representative under this chapter, or is a federal covered adviser who
13 has made a notice filing under this chapter. The use of the term 'financial planner' or
14 'investment adviser' or a similar term to describe a person's business shall not be used in
15 such a way so as to be deceptive, as that term may be defined in the rules and regulations
16 promulgated by the commissioner.

17 (h)(1) It shall be unlawful for any investment adviser, federal covered adviser, or
18 investment adviser representative in the course of his or her business as such:

19 (A) To employ any device, scheme, or artifice to defraud; or

20 (B) To engage in any transaction, practice, or course of business ~~which~~ that operates
21 or would operate as a fraud or deceit.

22 (2) It shall be unlawful for any investment adviser, federal covered adviser, or
23 investment adviser representative in the course of business to engage in dishonest or
24 unethical practices, as the commissioner may define by rule.

25 (i) It shall be unlawful for any person registered as an investment adviser or investment
26 adviser representative under this chapter or for any federal covered adviser who has made
27 a notice filing under this chapter to represent or imply in any manner whatsoever that such
28 person has been sponsored, recommended, or approved or that his or her abilities or
29 qualifications have in any respect been passed upon by the State of Georgia or any agency
30 or any officer thereof; provided, however, that this provision shall not be construed to
31 prohibit a statement that a person is so registered under this chapter if such statement is true
32 in fact and if the effect of such registration is not misrepresented.

33 (j) Except as may be permitted by rule or order of the commissioner, it shall be unlawful
34 for any investment adviser to enter into, extend, or renew any investment advisory contract
35 unless it provides in writing:

36 (1) That the investment adviser shall not be compensated on the basis of a share of
37 capital gains upon or capital appreciation of the funds or any portion of the funds of the

1 client; provided, however, that the prohibitions of this paragraph shall not prohibit an
 2 investment advisory contract ~~which~~ that provides for compensation based on the total
 3 value of a fund averaged over a definite period, as of definite dates, or taken as of a
 4 definite date;

5 (2) That no assignment of the contract may be made by the investment adviser without
 6 the consent of the other party to the contract; and

7 (3) That the investment adviser, if a partnership or limited liability company, shall notify
 8 the other party to the contract of any change in the membership of the partnership or any
 9 change in the members of the limited liability company within a reasonable time after the
 10 change.

11 (k) The provisions of subsections (h) and (i) of this Code section and paragraph (1) of
 12 subsection (j) of this Code section shall be applicable to any certified public accountant
 13 who holds himself or herself out as a 'financial planner' or 'investment adviser.'¹

14 (l) All records relating to the preparation of financial plans and the giving of investment
 15 advice prepared and maintained by a certified public accountant who holds himself or
 16 herself out as a 'financial planner' or 'investment adviser' are subject to reasonable
 17 examination by representatives of the commissioner, within or outside this state, as the
 18 commissioner deems necessary or appropriate to determine whether any person has
 19 violated or is about to violate this chapter or any rule, regulation, or order under this
 20 chapter. This provision shall not be construed to require, or authorize the commissioner to
 21 require, such certified public accountant to disclose the identity, investments, or affairs of
 22 any client of such certified public accountant, except insofar as such disclosure may be
 23 necessary or appropriate in a particular proceeding or investigation having as its object the
 24 enforcement of this chapter.

25 (m)(1) In order to prevent fraudulent, deceptive, or manipulative acts or practices, it shall
 26 be unlawful for any designated dealer or designated ~~salesman~~ salesperson to sell a
 27 designated security to, or to effect the purchase of a designated security by, any person
 28 unless the transaction is exempt under paragraph (6) of this subsection or, prior to the
 29 transaction;

30 (A) ~~the~~ The designated dealer and designated ~~salesman~~ salesperson, if involved, have
 31 approved the person's account for transactions in designated securities in accordance
 32 with the procedures set forth in paragraph (2) of this subsection; and

33 (B) ~~the~~ The designated dealer and designated ~~salesman~~ salesperson, if involved, have
 34 submitted to the person a risk disclosure document in a form approved by the
 35 commissioner and have thereafter received from the person a written agreement to the
 36 transaction in compliance with the requirements of paragraph (3) of this subsection.

1 (2) In order to approve a person's account for transactions in designated securities, the
2 designated dealer or designated ~~salesman~~ salesperson must:

3 (A) Obtain from the person information concerning the person's financial situation
4 (including, but not limited to, net worth and annual income), investment experience,
5 and investment objectives;

6 (B) Reasonably determine, based on the information required by subparagraph (A) of
7 this paragraph and any other information known by the designated dealer or ~~salesman~~
8 designated salesperson, that transactions in designated securities are suitable for the
9 person and that the person (or the person's independent adviser in these transactions)
10 has sufficient knowledge and experience in financial matters, such that the person (or
11 adviser) reasonably may be expected to be capable of evaluating the risks of
12 transactions in designated securities;

13 (C) Deliver to the person a written statement:

14 (i) Setting forth the basis on which the designated dealer and ~~salesman~~ designated
15 salesperson made the determination required by subparagraph (B) of this paragraph;

16 (ii) Stating in a highlighted format that it is unlawful for the designated dealer or
17 ~~salesman~~ designated salesperson to effect a transaction in a designated security
18 subject to the provisions of subparagraph (B) of paragraph (1) of this subsection
19 unless the designated dealer and ~~salesman~~ designated salesperson have received, prior
20 to the transaction, a written agreement to the transaction from the person; and

21 (iii) Stating in a highlighted format immediately preceding the customer's signature
22 line that:

23 (I) The designated dealer and ~~salesman~~ designated salesperson are required by this
24 subsection to provide the person with the written statement; and

25 (II) The person should not sign and return the written statement to the designated
26 dealer or ~~salesman~~ designated salesperson if it does not accurately reflect the
27 person's financial situation, investment experience, and investment objectives; and

28 (D) Obtain from the person a manually signed and dated copy of the written statement
29 required by subparagraph (C) of this paragraph.

30 (3) The written agreement to the transaction required by subparagraph (B) of paragraph
31 (1) of this subsection shall:

32 (A) Be signed by the purchaser and dated;

33 (B) Set forth the identity and quantity of the designated security to be purchased;

34 (C) Prominently disclose, in close proximity to the signature lines of the agreement,
35 that the purchaser has a right to rescind the agreement, in accordance with paragraph
36 (4) of this subsection;

1 (D) Disclose all commissions, fees, bonuses, or other compensation payable to the
2 dealer and ~~salesman~~ salesperson as a result of the transaction; and

3 (E) Disclose the price at which the dealer, limited dealer, designated dealer,
4 salesperson, limited salesperson, or designated salesperson is currently selling or
5 offering to sell the security and the price at which the dealer, limited dealer, designated
6 dealer, salesperson, limited salesperson, or designated salesperson is currently buying
7 or offering to buy the security.

8 (4)(A) Any person purchasing a designated security from a designated dealer or
9 designated ~~salesman~~ salesperson shall have an unqualified right to rescind the
10 transaction within three business days of receipt of the confirmation of the transaction.

11 (B) To exercise the right to rescind, the purchaser shall notify the designated dealer in
12 writing and shall send the notice by mail or other means to the designated dealer's place
13 of business by ~~midnight~~ 12:00 Midnight of the third business day following receipt of
14 the confirmation of the transaction.

15 (C) If the designated dealer does not send a confirmation as required by paragraph (2)
16 of subsection (p) of Code Section 10-5-3, the right to rescind under this subsection shall
17 expire two years after the purchase of securities or upon the purchaser's sale of the
18 security, whichever occurs first.

19 (D) In a transaction subject to rescission under this paragraph, the designated dealer
20 shall send to the purchaser a written notice of the right to rescind. Such notice shall be
21 included in or accompany the confirmation of the transaction and shall include:

22 (i) A disclosure of the purchaser's right to rescind under subparagraphs (A) and (B)
23 of this paragraph;

24 (ii) A description of how to exercise the right to rescind; and

25 (iii) A form ~~which~~ that may be used to effect a rescission and ~~which~~ that sets forth
26 the designated dealer's address to which such form may be delivered.

27 (5) A designated dealer, or another dealer on behalf of such designated dealer, shall
28 disclose, on each statement of account sent to account holders having a designated
29 security shown as a 'long' position in the person's account as of the statement date, the
30 price at which the designated dealer is offering to buy such security or, if no such price
31 is available, the average of the bid prices by other dealers and the date of the most recent
32 bid available from the designated dealer and the amount of money represented by the
33 long position, if it were to be sold at the bid price shown on the statement.

34 (6) The requirements of paragraph (1) of this subsection ~~do~~ shall not apply to:

35 (A) Transactions in which the purchaser is an accredited investor of the designated
36 dealer or ~~salesman~~ designated salesperson;

- 1 (B) Transactions that are not recommended by the designated dealer or ~~salesman~~
 2 designated salesperson;
- 3 (C) Transactions by a designated dealer or ~~salesman~~ designated salesperson who is not
 4 and has not been a market maker in the designated security that is the subject of the
 5 transaction in the immediately preceding 12 months;
- 6 (D) Transactions in which the purchaser is an established customer of the designated
 7 dealer or ~~salesman~~ designated salesperson; or
- 8 (E) Any transaction or transactions that, upon prior written request or upon his or her
 9 own motion, the commissioner conditionally or unconditionally exempts as not
 10 encompassed within the purposes of this subsection.
- 11 (7) The requirements of paragraph (4) of this subsection ~~do~~ shall not apply to:
- 12 (A) Transactions in which the purchaser is an accredited investor of the designated
 13 dealer or ~~salesman~~ designated salesperson;
- 14 (B) Transactions that are not recommended by the designated dealer or ~~salesman~~
 15 designated salesperson; or
- 16 (C) Any transaction or transactions that, upon prior written request or upon his or her
 17 own motion, the commissioner conditionally or unconditionally exempts as not
 18 encompassed within the purposes of this subsection.
- 19 (8) Compliance with ~~SEC Rule 15c2-6 (17 CFR .240.15c2-6~~ Exchange Act Rules 15g-2,
 20 15g-3, 15g-4, 15g-5, 15g-6, 15g-8, 15g-9, and 15g-100 (17 C.F.R. Section 240.15g-2,
 21 15g-3, 15g-4, 15g-5, 15g-6, 15g-8, 15g-9, and 15g-100, as amended) shall be deemed to
 22 be compliance with paragraph (2) of this subsection.
- 23 (n) It shall be unlawful for any designated dealer or designated ~~salesman~~ salesperson to
 24 charge or receive any commission, fee, bonus, markup, or other compensation with respect
 25 to a transaction involving the purchase or sale of designated securities ~~which~~ that, singly
 26 or in combination, exceeds 10 percent of the purchase or sales price of the securities
 27 involved in the transaction.
- 28 (o) It shall be unlawful for any dealer, limited dealer, ~~salesman, or limited salesman~~
 29 designated dealer, salesperson, limited salesperson, or designated salesperson who is
 30 participating or otherwise financially interested in the primary or secondary distribution of
 31 any security ~~which~~ that is not admitted to trading on a national securities exchange to
 32 represent to a customer that any security is being offered to such customer 'at the market'
 33 or at a price related to the market price unless such dealer, limited dealer, ~~salesman, or~~
 34 ~~limited salesman~~ designated dealer, salesperson, limited salesperson, or designated
 35 salesperson knows or has reasonable grounds to believe that a market for such security
 36 exists other than that made, created, or controlled by him or her, or by any person for

1 whom he or she is acting or with whom he or she is associated in such distribution, or by
 2 any person controlled by, controlling, or under common control with him or her.

3 (p) It shall be unlawful for any designated dealer to offer or sell in or from the State of
 4 Georgia a designated security unless the designated dealer:

5 (1) At the time of the offer and sale has entered upon a quotation system, approved by
 6 the commissioner, a firm bid to purchase at least 100 shares of the stock sold at a firm
 7 price; and

8 (2) Actually intends to purchase and, when called upon to do so by any person, actually
 9 will purchase at least 100 shares at such price, and does not intend to reduce, and does
 10 not reduce below the quoted bid price, the price for which it actually purchases additional
 11 shares, except in reasonable response to market or economic circumstances or conditions.

12 ~~(q) It shall be unlawful for any person to offer for sale or to sell viatical investments in or
 13 from this state unless the following requirements are met:~~

14 ~~(1) The viatical issuer first files with the commissioner a statement which provides the
 15 following information:~~

16 ~~(A) A full description of the types of viatical investments to be offered or sold,
 17 including without limitation statements as to whether the underlying policies or
 18 certificates will be whole, fractionalized, or pooled, whether the underlying policies are
 19 currently owned by the viatical issuer or will be acquired in the future, and whether the
 20 investors will be sold only policies or certificates owned by the viatical issuer at the
 21 time of the investment or will have their investments matched to policies that may be
 22 acquired after the date of the investment;~~

23 ~~(B) The financial statements of the viatical issuer, prepared in conformity with
 24 generally accepted accounting principles;~~

25 ~~(C) A list of all dealers, salespersons, and agents authorized by the viatical issuer to
 26 sell in this state, together with their securities registration numbers;~~

27 ~~(D) A list of all states in which the viatical issuer is licensed to purchase viatical
 28 settlement contracts, has an application pending, or has been denied exemption or
 29 registration;~~

30 ~~(E) A list of all states in which the viatical issuer sells viatical investments pursuant to
 31 exemption, is licensed to sell viatical investments, has an application pending, or has
 32 been denied exemption or registration;~~

33 ~~(F) A copy of any escrow agreements for the escrow of proceeds or for the escrow of
 34 funds for the payment of premiums;~~

35 ~~(G) A copy of all advertisements or sales literature and the text of any script to be used
 36 in conjunction with the solicitation, offer, or sale of a viatical investment;~~

1 ~~(H) A copy of all documents to be used to disclose the risk factors associated with the~~
2 ~~sale of a viatical investment; and~~

3 ~~(I) A copy of all documents to be used to conduct any determination of suitability of~~
4 ~~a viatical investment to the particular investor.~~

5 ~~The viatical issuer shall have an affirmative duty to file with the commissioner a~~
6 ~~supplemental or amended statement if at any time there is a material change to any of the~~
7 ~~information provided in the statement;~~

8 ~~(2) The viatical issuer files an annual report that shall include such information~~
9 ~~pertaining to the offer, sale, or status of any viatical investment as the commissioner may~~
10 ~~by rule require;~~

11 ~~(3) In connection with the offer or sale of any viatical investment, the viatical issuer,~~
12 ~~dealer, salesperson, and agent offering or selling the viatical investment shall not make~~
13 ~~any projections or representations regarding rates of return of any investment or~~
14 ~~prospective investment other than a rate of return expressed on an annual basis. Such~~
15 ~~projection or representation must be based upon a written opinion of life expectancy by~~
16 ~~a qualified physician;~~

17 ~~(4) The viatical issuer, dealer, salesperson, and agent shall, for a minimum of five years~~
18 ~~after the date of maturity of any policy that is the subject of a viatical investment, retain~~
19 ~~and provide to the commissioner upon request copies of documents relating to the offer~~
20 ~~or sale of viatical investments that the commissioner may by rule require and shall make~~
21 ~~said documents available for inspection by the commissioner upon request; and~~

22 ~~(5) Neither the viatical issuer nor any of its officers, directors, partners, 10 percent or~~
23 ~~greater stockholders, promoters, affiliates, nor the escrow agent nor any selling agent of~~
24 ~~the viatical investment being offered, nor any officer, director, or partner of the selling~~
25 ~~agent shall have:~~

26 ~~(A) Within the last five years filed a registration statement which is the subject of a~~
27 ~~currently effective stop order entered by any state securities administrator or the United~~
28 ~~States Securities and Exchange Commission;~~

29 ~~(B) Within the last five years been convicted of any felony or misdemeanor in~~
30 ~~connection with the purchase or sale of any security or any felony involving fraud or~~
31 ~~deceit, including, but not limited to, forgery, embezzlement, obtaining money under~~
32 ~~false pretenses, larceny, or conspiracy to defraud;~~

33 ~~(C) Within the last five years been subject to an administrative order or decision issued~~
34 ~~by any state securities or insurance administrator or the United States Securities and~~
35 ~~Exchange Commission which administrative order or decision has not been vacated;~~

36 ~~(D) Within the last five years been subject to any administrative order or decision~~
37 ~~issued by any state or federal regulatory authority or any financial services~~

1 ~~self-regulatory organization in which fraud or deceit was found, which administrative~~
 2 ~~order or decision has not been vacated;~~

3 ~~(E) Within the last five years been subject to an order or decision issued by any state~~
 4 ~~securities administrator, which order or decision has not been vacated and prohibits the~~
 5 ~~use of any exemption from registration in connection with the purchase or sale of~~
 6 ~~securities; or~~

7 ~~(F) Within the last five years been subject to any order, judgment, or decree of any~~
 8 ~~court of competent jurisdiction temporarily, preliminarily, or permanently restraining~~
 9 ~~or enjoining the person from engaging in or continuing any conduct or practice in~~
 10 ~~connection with the purchase or sale of any security or involving the making of any~~
 11 ~~false filing with any state.~~

12 10-5-13.

13 (a) Whenever it may appear to the commissioner, either upon complaint or otherwise, that
 14 any person has engaged in or is engaging in or is about to engage in any act or practice or
 15 transaction ~~which~~ that is prohibited by this chapter or by any rule, regulation, or order of
 16 the commissioner promulgated or issued pursuant to any Code section of this chapter or
 17 ~~which~~ that is declared to be unlawful under this chapter, or has failed to comply with a
 18 subpoena or order, including an order to produce documents, issued by the commissioner,
 19 the commissioner may, at his or her discretion, act under any or all of the following
 20 paragraphs:

21 (1) Impose administrative sanctions or remedies as provided in this paragraph: ~~(A)~~
 22 Subject to notice and opportunity for hearing in accordance with Code Section 10-5-16,
 23 unless the right to notice is waived by the person against whom the sanction or remedy
 24 is imposed, the commissioner may:

25 ~~(i)~~(A) Issue a cease and desist order against any person;

26 ~~(ii)~~(B) Censure ~~the~~ any person if the person is registered as an issuer, dealer, limited
 27 dealer, designated dealer, salesperson, limited salesperson, designated salesperson,
 28 investment adviser, federal covered adviser, or investment adviser representative;

29 ~~(iii)~~(C) Bar or suspend ~~the~~ any person from association with a registered dealer, a
 30 limited dealer, ~~or an~~ designated dealer, investment adviser, or federal covered adviser
 31 in this state; ~~or~~

32 ~~(iv)~~ Issue an order against an applicant, registered person, or other person who
 33 willfully violates this chapter, imposing a civil penalty up to a maximum of
 34 \$50,000.00 for a single violation or up to \$500,000.00 for multiple violations in a
 35 single proceeding or a series of related proceedings;

36 ~~(B) Imposition of the sanctions under this paragraph is limited as follows:~~

~~(i) If the commissioner revokes the registration of a dealer, limited dealer, salesperson, limited salesperson, investment adviser, or investment adviser representative or bars a person from association with a registered dealer, limited dealer, or investment adviser under subparagraph (A) of this paragraph, the imposition of that sanction precludes imposition of the sanction specified in division (iv) of subparagraph (A) of this paragraph; and~~

~~(ii) The imposition by the commissioner of one or more sanctions under this paragraph with respect to a specific violation precludes the commissioner from later imposing any other sanctions under this paragraph with respect to the violation;~~

~~(C) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under subparagraph (A) of this paragraph, the commissioner shall consider, among other factors, the frequency, persistence, and willfulness of the conduct constituting a violation of this chapter or a rule promulgated thereunder or an order of the commissioner, the number of persons adversely affected by the conduct, and the resources of the person committing the violation;~~

(D) Issue an order against any person who willfully violates this chapter, imposing a civil penalty up to a maximum of \$100,000.00 for a single violation or up to \$5 million for multiple violations in a single proceeding or a series of related proceedings;

(E) Issue an order for the appointment of an individual qualified by education and experience as an auditor, examiner, or regulatory monitor; or

(F) Order such other relief as the commissioner deems just and equitable;

(2) Seek civil sanctions remedies by applying to any superior court of competent jurisdiction in this state, which court:

(A) Upon a showing by the commissioner that a person has violated this chapter, a rule promulgated thereunder, or an order of the commissioner, may enter or grant:

(i) A temporary restraining order, permanent or temporary injunction, or a writ of prohibition or mandamus;

(ii) A civil penalty up to a maximum of ~~\$50,000.00~~ \$100,000.00 for a single violation or up to ~~\$500,000.00~~ \$5 million for multiple violations in a single proceeding or a series of related proceedings;

(iii) A declaratory judgment;

(iv) Restitution to investors;

(v) The appointment of a receiver, auditor, examiner, monitor, or conservator for ~~the defendant or the defendant's~~ such person or such person's assets;

(vi) An order of disgorgement; or

(vii) ~~Other~~ Such other relief as the court deems just and equitable;

1 (B) May, upon a showing by the commissioner that ~~the defendant~~ such person is about
 2 to violate this chapter, a rule promulgated thereunder, or an order of the commissioner,
 3 issue:

- 4 (i) A temporary restraining order;
- 5 (ii) A temporary or permanent injunction;
- 6 (iii) A writ of prohibition or mandamus; or
- 7 (iv) Such other relief as the court deems just and equitable;

8 (C) In determining the appropriate relief to grant, shall consider enforcement action
 9 taken and sanctions imposed by the commissioner under paragraph (1) of this
 10 subsection in connection with the transaction or transactions constituting a violation of
 11 this chapter, a rule promulgated thereunder, or an order of the commissioner; and

12 (D) Upon a showing by the securities agency or administrator of another state that a
 13 person has violated the securities or investment adviser law of that state, a rule
 14 promulgated thereunder, or an order of said agency or administrator, in addition to any
 15 other legal or equitable remedies, may impose one or more of the following remedies:

- 16 (i) The appointment of a receiver, auditor, examiner, monitor, conservator, or
 17 ancillary receiver or conservator for ~~the defendant or the defendant's~~ such person or
 18 such person's assets located in this state; and
- 19 (ii) Such other relief as the court deems just and equitable; or

20 (3) Transmit such evidence as may be available concerning such act, practice, or
 21 transaction to any district attorney or to the Attorney General, who may, at his or her
 22 individual discretion, institute ~~the necessary~~ such criminal or other proceedings ~~which~~
 23 that may be appropriate.

24 (b) In any proceedings for an injunction, the commissioner may apply for and be entitled
 25 to have issued the court's subpoena requiring:

- 26 (1) The appearance forthwith of any ~~defendant~~ person and his, her, or its agents,
 27 employees, partners, officers, ~~or directors,~~ or members; and
- 28 (2) The production of such documents, books, and records as may appear necessary for
 29 the ~~hearing upon~~ consideration of the petition for an injunction.

30 Upon proof of any of the offenses described in this Code section, the court may grant such
 31 injunction and appoint a receiver or an auditor and issue such other orders for the
 32 protection of investors as the facts may warrant.

33 (c) In any criminal proceeding either the district attorney or the Attorney General or both
 34 may apply for and be entitled to have issued the court's subpoena requiring:

- 35 (1) The appearance forthwith of any ~~defendant or his~~ person and his, her, or its agents,
 36 employees, partners, officers, ~~or directors,~~ or members; and

1 (2) The production of such documents, books, and records as may appear necessary for
2 the prosecution of such criminal proceedings.

3 (d)(1) In the event that civil penalties are imposed under this Code section, the
4 commissioner may, in addition to any other method provided by law for the collection
5 of civil penalties imposed pursuant to paragraph (1) of subsection (a) of this Code
6 section, collect any civil penalty assessed by any order entered after July 1, 2004, that is
7 not paid when due, including any interest and costs thereon, by and with the same
8 authority as is contained in Code Section 48-2-55, providing for the collection of taxes
9 by the state revenue commissioner. If any civil penalty imposed by this chapter is not
10 paid within ten days after notice and demand from the commissioner, then the
11 commissioner may refer the matter to the Attorney General, who may, in his or her
12 discretion, institute the appropriate civil proceeding for the collection of all sums due the
13 state.

14 (2) In aid of collection or execution, the commissioner or the Attorney General may do
15 any or all of the following:

16 (A) Examine any person, including the person liable, by taking depositions or
17 propounding interrogatories in the manner provided for in Chapter 11 of Title 9, the
18 'Georgia Civil Practice Act' or;

19 (B) Compel the production of documents or other items in the manner provided for in
20 Chapter 11 of Title 9, the 'Georgia Civil Practice Act,' for such discovery measures
21 prior to judgment.

22 10-5-14.

23 (a) Any person who violates subsection (a) of Code Section 10-5-12 shall be liable to the
24 person buying such security; and such buyer may ~~sue~~ bring an action in any court of
25 competent jurisdiction to recover the consideration paid in cash (or the fair value thereof
26 at the time the consideration was paid if such consideration was not paid in cash) for the
27 security with interest thereon from the date of payment down to the date of repayment as
28 computed in paragraph (1) of subsection (d) of this Code section (less the amount of any
29 income received thereon), together with all taxable court costs and reasonable attorney's
30 fees, upon the tender, where practicable, of the security at any time before the entry of
31 judgment, or for damages if he or she no longer owns the security. Damages are the amount
32 which that equals the difference between the fair value of the consideration the buyer gave
33 for the security and the fair value of the security at the time the buyer disposed of it, plus
34 interest thereon from the date of payment down to the date of repayment as computed in
35 paragraph (2) of subsection (d) of this Code section. A person who offers or sells a security

1 in violation of paragraph (2) of subsection (a) of Code Section 10-5-12 is not liable under
2 this subsection if:

3 (1) The purchaser knew of the untrue statement of a material fact or omission of a
4 statement of a material fact; or

5 (2) The seller did not know and in the exercise of reasonable care could not have known
6 of the untrue statement or misleading omission.

7 (b) Every contract between a certified public accountant who holds himself or herself out
8 as a 'financial planner' or an 'investment adviser' and an advisory client or between an
9 investment adviser and an advisory client made in violation of any provision of this chapter
10 and every such contract heretofore or hereafter made, the performance of which involves
11 the violation of or continuance of any relationship or practice in violation of any provision
12 of this chapter or any rule, regulation, or order thereunder, shall be void:

13 (1) As regards the rights of any person who, in violation of any such provision, rule,
14 regulation, or order shall have made or engaged in the performance of any such contract;
15 and

16 (2) As regards the rights of any person who, not being a party to such contract, shall have
17 acquired any right thereunder with actual knowledge of the facts by reason of which the
18 making or performance of such contract was in violation of any such provision.

19 The advisory client who is a party to such a contract may ~~sue~~ bring an action to recover the
20 consideration paid under such contract to such investment adviser or investment adviser
21 representative, together with interest thereon at the ~~annual rate of 6 percent~~ legal rate of
22 interest, as defined in Code Section 7-4-2, from the date of payment of the consideration,
23 plus costs and reasonable attorney's fees.

24 (c) Every person who directly or indirectly controls a person liable under subsection (a),
25 (b), or (h) of this Code section, every general partner, executive officer, managing member,
26 or director of such person liable under subsection (a), (b), or (h) of this Code section, every
27 person occupying a similar status or performing similar functions, and every dealer, limited
28 dealer, ~~salesman, or limited salesman~~ designated dealer, salesperson, limited salesperson,
29 designated salesperson, investment adviser, investment adviser representative, or federal
30 covered adviser who participates in any material way in the sale is liable jointly and
31 severally with and to the same extent as the person whose liability arises under subsection
32 (a), (b), or (h) of this Code section unless the person whose liability arises under this
33 subsection sustains the burden of proof that he or she did not know and in the exercise of
34 reasonable care could not have known of the existence of the facts by reason of which
35 liability is alleged to exist. There is contribution as in the case of contract among several
36 persons so liable.

1 (d) With respect to the purchase, sale, or offer to purchase or sell a security, no person may
 2 ~~sue bring an action under this Code section more than two years from the date of the~~
 3 ~~contract for sale or sale, if there is no contract for sale. With respect to the purchase, sale,~~
 4 ~~or offer to purchase or sell a security, no person may sue under this Code section:~~

5 (1) If the buyer received a written offer, ~~before suit~~ prior to an action being brought and
 6 at a time when he or she owned the security; to repay in cash or by certified or official
 7 bank check, within 30 days from the date of acceptance of such offer in exchange for the
 8 securities, the fair value of the consideration paid (determined as of the date such
 9 payment was originally paid by the buyer), together with interest on such amount for the
 10 period from the date of payment down to the date of repayment, such interest to be
 11 computed in case the security consists of an interest-bearing obligation at the same rate
 12 as provided in the security or, in case the security consists of other than an
 13 interest-bearing obligation, at the ~~rate of 6 percent~~ legal rate of interest as defined in Code
 14 Section 7-4-2, per annum, less, in every case, the amount of any income received on the
 15 security, and:

16 (A) Such offeree does not accept the offer within 30 days of its receipt; or

17 (B) If such offer was accepted, the terms thereof were complied with by the offeror;
 18 or

19 (2) If the buyer received a written offer ~~before suit~~ prior to an action being brought and
 20 at a time when he or she did not own the security to repay in cash or by certified or
 21 official bank check, within 30 days from the date of acceptance of such offer, an amount
 22 equal to the difference between the fair value of the consideration the buyer gave for the
 23 security and the fair value of the security at the time the buyer disposed of it, together
 24 with interest on such amount for the period from the date of payment down to the date
 25 of repayment, such interest to be computed in case the security consists of an
 26 interest-bearing obligation at the same rate as provided in the security or, in case the
 27 security consists of other than an interest-bearing obligation, at the ~~rate of 6 percent~~ legal
 28 rate of interest as defined in Code Section 7-4-2, per annum, less, in every case, the
 29 amount of any income received on the security, and:

30 (A) Such offeree does not accept the offer within 30 days of its receipt; or

31 (B) If such offer was accepted, the terms thereof were complied with by the offeror,
 32 provided that no written offer shall be effective within the meaning of this subsection
 33 unless it would be exempt under Code Section 10-5-9 or, if registration would have been
 34 required, ~~then~~ unless such rescission offer has been registered and effected under a
 35 ~~subsection of~~ Code Section 10-5-5. Any person who is paid for his or her security in the
 36 amount provided by this subsection shall be foreclosed from asserting any remedies under

1 this chapter regardless of whether the other requirements of this subsection have been
2 complied with.

3 (e) With respect to the activities of a certified public accountant who holds himself out as
4 a 'financial planner' or an 'investment adviser' or an investment adviser or investment
5 adviser representative, ~~no person may sue~~ or herself out as a 'financial planner,' an
6 investment adviser, or an investment adviser representative, no person may bring an action
7 under this Code section more than two years from the date of the transaction upon which
8 the ~~suit~~ action is based.

9 (f) Every cause of action under this chapter survives the death of any person who might
10 have been a plaintiff or defendant.

11 (g) Nothing in this chapter shall limit any statutory or common-law right of any person in
12 any court for any act involving the sale of a security.

13 (h) Any designated dealer or designated ~~salesman~~ salesperson who materially violates
14 Code Section 10-5-4 or 10-5-5 or subsection (a) or (d) of Code Section 10-5-12 with
15 respect to a transaction involving a designated security shall be liable to the person buying
16 such security for:

17 (1) The consideration paid in cash (or the fair value of the consideration paid at the time
18 it was paid if such consideration was not paid in cash) for such security with interest
19 thereon from the date of payment to the date of repayment as computed under paragraph
20 (1) of subsection (d) of this Code section, less the amount of any income paid thereon,
21 upon the tender of the security at any time before the entry of judgment;

22 (2) An additional amount equal to three times the amount calculated pursuant to
23 paragraph (1) of this subsection; and

24 (3) Court costs and reasonable attorney's fees.

25 (i) The form of action provided by Code Section 9-11-23 may be used in any action
26 brought pursuant to subsection (h) of this Code section, and, in such case, it shall be
27 conclusively presumed that a class of persons numbering ten or more who purchased the
28 same designated security from or through the same designated dealer or designated
29 ~~salesman~~ salesperson shall constitute a class so numerous as to make it impracticable to
30 bring them all before the courts.

31 (j) With respect to the purchase, sale, or offer to purchase or sell a security, no person may
32 bring an action under this Code section:

33 (1) For a violation of subsection (a) of Code Section 10-5-3, subsection (a) of Code
34 Section 10-5-5, or subsection (b) or (i) of Code Section 10-5-12 more than two years
35 from the date of the contract for sale or, if there is no contract for sale, the date of the
36 sale; or

1 (2) Other than for a violation of subsection (a) of Code Section 10-5-3, subsection (a) of
 2 Code Section 10-5-5, or subsection (b) or (i) of Code Section 10-5-12, unless an action
 3 is instituted within the earlier of two years after discovery of the facts constituting the
 4 violation or five years after the violation.

5 10-5-15.

6 For the purposes of venue for any civil or criminal action under this chapter, any violation
 7 of this chapter or of any rule, regulation, or order promulgated under this chapter shall be
 8 considered to have been committed in any county in which any act was performed in
 9 furtherance of the transaction ~~which~~ that violated the chapter, in the county of any
 10 violator's principal place of business in this state, in the county of the issuer's principal
 11 place of business in this state, and in any county in which any violator had control or
 12 possession of any proceeds of the violation or of any books, records, documents, or other
 13 material or objects ~~which~~ that were used in furtherance of the violation.

14 10-5-16.

15 ~~(a) Where the commissioner has issued any order forbidding the sale of securities under~~
 16 ~~Code Section 10-5-7, he shall promptly send to the issuer of such securities and to all~~
 17 ~~persons who have registered such securities a notice of opportunity for hearing. Before~~
 18 ~~entering an order refusing to register any person under Code Section 10-5-3 and after the~~
 19 ~~entering of any order for revocation or suspension, the commissioner shall promptly send~~
 20 ~~to such person and, if such person is a salesman, limited salesman, or investment adviser~~
 21 ~~representative, to the dealer, limited dealer, or investment adviser who employs or proposes~~
 22 ~~to employ such salesman, limited salesman, or investment adviser representative a notice~~
 23 ~~of opportunity for hearing. Hearings shall be conducted pursuant to this Code section by~~
 24 ~~the commissioner~~ initiates a contested case or proceeding or has issued an order pursuant
 25 to Code Section 10-5-3, 10-5-4, 10-5-5, 10-5-7, 10-5-9, 10-5-9.1, 10-5-12, or 10-5-13 or
 26 the rules pursuant to this chapter, he or she shall promptly send to the respondent and, if
 27 the respondent is registered or is an applicant for registration pursuant to this chapter, to
 28 his or her employing dealer, limited dealer, investment adviser, federal covered adviser, or
 29 issuer a notice of hearing or a notice of opportunity for hearing. Hearings under this
 30 chapter shall be conducted pursuant to this Code section and may be conducted by the
 31 commissioner or assistant commissioner.

32 (b) Notices of opportunity for hearing shall be served personally by ~~investigators~~ any agent
 33 appointed by the commissioner, sent by registered or certified mail or statutory overnight
 34 delivery, return receipt requested, to the addressee's business mailing address or residential
 35 address as shown on the Central Registration Depository, Investment Adviser Registration

1 Depository, or other information filed with the commissioner or directed for service to the
 2 sheriff of the county where such person resides or is found; and such notice shall state:

3 (1) The order ~~which has issued and which~~ that has issued or that is proposed to be issued;

4 (2) The ground for issuing such order ~~and~~ or proposed order; and

5 (3) ~~That~~ The date, time, and place of hearing or that the person to whom such notice is
 6 sent will be afforded a hearing upon request if such request is made within ~~ten~~ 30 days
 7 after receipt of the notice.

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

14 (d) For the purpose of conducting any hearing as provided in this Code section, the
 15 commissioner shall have the power to administer oaths; to call any party to testify under
 16 oath at such hearings; to require the attendance of witnesses; and the production of books,
 17 records, and papers; and to take the depositions of witnesses; and for such purposes the
 18 commissioner is authorized, at the request of the person requesting the hearing or upon his
 19 or her own initiative, to issue a subpoena for any witness or a subpoena for production of
 20 documentary evidence to compel the production of any books, records, or papers. The
 21 subpoenas may be served by registered or certified mail or statutory overnight delivery,
 22 return receipt requested, to the addressee's business mailing address or by investigators
 23 appointed by the commissioner or shall be directed for service to the sheriff of the county
 24 where such witness resides or is found or where the person in custody of any books,
 25 records, or papers resides or is found. The fees and mileage of the sheriff, witness, or
 26 person shall be paid from the funds in the state treasury for the use of the commissioner in
 27 the same manner that other expenses of the commissioner are paid.

28 (e) At any hearing conducted under this Code section, a party or an affected person may
 29 appear in his or her own behalf or may be represented by an attorney. A stenographic
 30 record of the testimony and other evidence submitted shall be taken unless the
 31 commissioner and the person requesting the hearing shall agree that such a stenographic
 32 record of the testimony shall not be taken. The commissioner shall pass upon the
 33 admissibility of such evidence, but a party may at any time make objections to any such
 34 rulings thereon; and, if the commissioner refuses to admit evidence, the party offering the
 35 same shall make a proffer thereof and such proffer shall be made a part of the record of the
 36 hearing.

1 ~~(f) In the case of any hearing conducted under this Code section, the commissioner may~~
 2 ~~conduct the hearing or he may appoint a referee to conduct the hearing who shall have the~~
 3 ~~same powers and authority in conducting the hearing as are in this Code section granted~~
 4 ~~to the commissioner. The referee shall have been admitted to the practice of law in this~~
 5 ~~state and possess such additional qualifications as the commissioner may require.~~

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

25 ~~(g)(f)~~ If the commissioner does not receive a request for a hearing within the prescribed
 26 time, he or she may permit an order previously entered to remain in effect or he or she may
 27 enter a the proposed order. If a hearing is requested and conducted as provided in this
 28 Code section, the commissioner shall issue a written order ~~which~~ that shall:

- 29 (1) Set forth his or her findings with respect to the matters involved; and
- 30 (2) Enter an order in accordance with his or her findings.

31 (g) All orders entered pursuant to Code Sections 10-5-3, 10-5-4, 10-5-5, 10-5-7, 10-5-9.1,
 32 10-5-12, and 10-5-13 shall be entered pursuant to this Code section, except where,
 33 notwithstanding any other provision of this chapter:

- 34 (1) The commissioner deems that the public health, safety, or welfare imperatively
 35 requires emergency action and incorporates a finding to that effect in the order, in which
 36 case the order may be effective immediately pending proceedings, which proceedings
 37 shall be promptly instituted and determined;

1 (2) The order is issued pursuant to subsection (b) of Code Section 10-5-7; or

2 (3) The order is expressly required, by a judgment or a statute, to be made without the
 3 right to a hearing or continuance of any type.

4 10-5-17.

5 (a) An appeal may be taken from any order of the commissioner resulting from a hearing
 6 held in accordance with Code Section 10-5-16 by any person adversely affected thereby
 7 to the Superior Court of Fulton County by serving on the commissioner, within 20 days
 8 after the date of entry of such order, a written notice of appeal, signed by the appellant,
 9 stating:

10 (1) The order from which the appeal is taken;

11 (2) The ground upon which a reversal or modification of the order is sought; and

12 (3) A demand for a certified transcript of the record of the order.

13 (b) Upon receipt of the notice of appeal, the commissioner shall, within ten days thereafter,
 14 make, certify, and deliver to the appellant a transcript of the record of the order from which
 15 the appeal is taken, provided that the appellant shall pay the reasonable costs of such
 16 transcript. The appellant shall, within five days after receipt of the transcript, file such
 17 transcript and a copy of the notice of appeal with the clerk of the court. The notice of
 18 appeal and transcript of the record shall constitute appellant's complaint. The complaint
 19 shall thereupon be entered on the trial calendar of the court.

20 (c) If the order of the commissioner shall be reversed, the court shall by its mandate
 21 specifically direct the commissioner as to his or her further action in the matter, including
 22 the making and entering of any order or orders in connection therewith and the conditions,
 23 limitations, or restrictions to be therein contained.

24 10-5-18.

25 Where a consent to service of process is required under this chapter, such consent to
 26 service of process shall be in the form prescribed by the commissioner, shall be
 27 irrevocable, and shall provide that actions arising out of or founded upon the sale of any
 28 securities in violation of this chapter may be commenced against the person executing such
 29 consent in any court of competent jurisdiction and proper venue within this state by the
 30 service of process or pleadings upon the commissioner. Service of any such process or
 31 pleadings in any such action against a person who has filed a consent to service with the
 32 commissioner shall, if made on the commissioner, be by duplicate copies, one of which
 33 shall be filed in the office of the commissioner and the other shall immediately be
 34 forwarded by the commissioner by registered or certified mail or statutory overnight

1 delivery to the person against whom such process or pleadings are directed at his ~~latest~~ or
 2 her most recent address on file in the office of the commissioner.

3 10-5-19.

4 (a) As used in this Code section, the terms 'check,' 'holder,' 'holder in due course,' 'maker,'
 5 and 'note' shall have the same meanings as are given such terms in Code Section 11-1-201
 6 and Articles 3 and 4 of Title 11. The rights of a person who is not a holder in due course
 7 shall be subject to the defenses and claims set out in subsection (a) of Code Section
 8 11-3-305 and the first sentence of Code Section 11-3-306. The negotiability of any
 9 installment obligation referred to in this Code section shall be determined in accordance
 10 with Article 3 of Title 11.

11 (b) ~~With regard to~~ A holder of any installment obligation ~~which~~ that may be deemed to be
 12 negotiable, any note, or any postdated check, issued to an issuer, an affiliate of such issuer,
 13 or any underwriter in connection with the purchase of any securities of such issuer
 14 registered under this chapter, ~~no holder of such negotiable installment obligation, note, or~~
 15 ~~postdated check~~ shall not have the rights of a holder in due course in any action to enforce
 16 such negotiable installment obligation, note, or postdated check against the maker thereof
 17 ~~if such negotiable installment obligation, note, or postdated check bears the legend~~
 18 ~~described in subsection (c) of this Code section.~~

19 (c) It shall be unlawful for any issuer, affiliate of such issuer, or underwriter to receive any
 20 installment obligation ~~which~~ that may be deemed to be negotiable, any note, or postdated
 21 check as consideration for the sale of any securities of such issuer registered under this
 22 chapter unless such negotiable installment obligation, note, or postdated check bears a
 23 legend indicating that such negotiable installment obligation, note, or postdated check was
 24 received as consideration for the sale of securities in a transaction registered under this
 25 chapter and that, in any action against the maker of such negotiable installment obligation,
 26 note, or postdated check, any holder thereof shall not have the rights of a holder in due
 27 course.

28 10-5-20.

29 Any condition, stipulation, or provision binding any person acquiring any security or
 30 receiving investment advice to waive:

- 31 (1) Compliance with any provision of this chapter or of the rules and regulations
 32 promulgated under this chapter;
- 33 (2) Any rights provided by this chapter or by the rules and regulations promulgated
 34 under this chapter; or

1 (3) Any defenses arising under this chapter or under the rules and regulations
 2 promulgated under this chapter
 3 shall be void.

4 10-5-21.

5 For any action taken or any proceeding had under this chapter or under color of law, the
 6 commissioner shall be immune from liability and ~~suit~~ action to the same extent that any
 7 judge of any court of general jurisdiction in this state would be immune.

8 10-5-22.

9 (a) In a civil or administrative proceeding under this chapter, a person claiming an
 10 exemption or an exception from a definition has the burden of proving this exemption or
 11 exception.

12 (b) In a criminal proceeding, the burden of going forward with evidence of a claim of
 13 exemption or exception from a definition is on the person claiming the exemption or
 14 exception.

15 (c) In an administrative proceeding under this chapter, a person claiming exclusion from
 16 the registration provisions of Code Section 10-5-5 as a federal covered security has the
 17 burden of proving that the security is a federal covered security.

18 ~~(e)~~(d) In any action, civil or criminal, copies, photostatic or otherwise, certified by the
 19 commissioner, of any documents filed in his or her office and of any of his or her records
 20 shall be admissible with the same effect as the original of such documents or records would
 21 have if actually produced.

22 ~~(d)~~(e) In any action, civil or criminal, a certificate signed and sealed by the commissioner,
 23 stating compliance or noncompliance with this chapter, shall constitute prima-facie
 24 evidence of such compliance or noncompliance with this chapter and shall be admissible
 25 in any such action.

26 10-5-23.

27 (a) Any criminal proceeding or civil proceeding, including₂ but not limited to₂ judicial
 28 review of all administrative orders, instituted under this chapter shall be governed by the
 29 provisions of this chapter as such provisions existed in full force and effect on the date of
 30 the alleged commission of the underlying facts or circumstances ~~which constitutes~~ that
 31 constitute evidence of the commission of a crime or violation of this chapter,
 32 notwithstanding any subsequent amendment to this chapter, unless the General Assembly
 33 shall specifically declare otherwise, except that no civil or criminal proceeding shall be

1 instituted after the lapse of the appropriate period of limitation ~~which~~ that was in effect at
 2 the time the cause of action arose or the alleged commission of the crime occurred.

3 (b) On or after July 1, 2004, a registration statement under Code Section 10-5-5 that was
 4 effective on June 30, 2004, shall remain in full force and effect until such registration
 5 statement has expired.

6 (c) Any registration statement under Code Section 10-5-5 that expires on or after July 1,
 7 2004, may only be renewed in compliance with the provisions of this chapter.

8 (d) Any transaction made on or after July 1, 2003, but prior to July 1, 2004, that was made
 9 in good faith reliance upon, or compliance with, this chapter as it existed on the date of the
 10 transaction; an exemption thereto; a rule or regulation authorized pursuant thereto; or a
 11 statement of policy, interpretative opinion, declaratory ruling, or no action determination
 12 based thereon may be governed by this chapter as it existed on the date of the transaction.
 13 In any proceeding under this chapter, a person claiming good faith reliance or compliance
 14 based on this subsection has the burden of proving such good faith or compliance.

15 ~~10-5-23.1.~~

16 ~~Notwithstanding any other provision of this chapter, the commissioner shall not be required~~
 17 ~~to accept applications for registration or to register investment adviser representatives until~~
 18 ~~the Central Registration Depository, as provided for in Code Section 10-5-10, is fully~~
 19 ~~operational with respect to the registration of investment adviser representatives.~~

20 10-5-24.

21 (a) Any person who shall willfully violate any provision of this chapter shall be guilty of
 22 a felony and, upon conviction thereof, shall be punished by a fine of not more than
 23 ~~\$500,000.00~~ \$5 million or imprisonment for not less than one and not more than five ten
 24 years, or both.

25 (b) Nothing in this chapter shall limit any statutory or common-law right of the state to
 26 punish any person for violation of any law."

27 SECTION 2.

28 This Act shall become effective on July 1, 2004. This Act shall only apply to matters
 29 governed under this chapter arising on or after July 1, 2004. Any matter arising prior to that
 30 date shall continue to be governed by the laws in effect at the time such matter arose.

31 SECTION 3.

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