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**CHAPTER 46
UNIFORM SECURITIES ACT**

Article 1. Fraudulent and Other Prohibited Practices.

Article 2. Registration of Broker-Dealer, Agents and Investment Advisers.

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**ARTICLE 1
FRAUDULENT AND OTHER PROHIBITED PRACTICES**

§ 46101. Sales and Purchases.

§ 46102. Advisory Activities.

§ 46101. Sales and Purchases.

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

(1) to employ any device, scheme, or artifice to defraud.

(2) to make any untrue statement of a material fact, or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or

(3) to engage in any act, practice, or course of business which operates, or would operate, as a fraud or deceit upon any person.

SOURCE: GC § 45101.

§ 46102. Advisory Activities.

(a) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise,

(1) to employ any device, scheme, or artifice to defraud the other person, or

(2) to engage in any act, practice, or course of business which operates, or would operate, as a fraud or deceit upon the other person.

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(b) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing

- (1) that the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;
- (2) that no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and
- (3) that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

Clause (1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund average over a definite period, or as of definite dates or taken as of a definite date. *Assignment*, as used in clause (2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser, having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members, and will have only a minority interest in the business.

(c) It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if

- (1) the Administrator by rule prohibits custody; or
- (2) in the absence of rule, the investment adviser fails to notify the Administrator that he has or may have custody.

SOURCE: GC § 45102.

**ARTICLE 2
REGISTRATION OF BROKER-DEALERS,
AGENTS, AND INVESTMENT ADVISORS.**

§ 46201. Registration Requirements.

§ 46202. Notification and Authorization Requirement.

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§ 46203. Registration Procedure.

§ 46204. Post-Registration Provisions.

§ 46205. Denial, Revocation, Suspension, Cancellation and Withdrawal of Registration.

§ 46206. Exemption.

§ 46201. Registration Requirements.

(a) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless he is registered under this Act.

(b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered under this Act or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or bearings or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the Administrator.

(c) It is unlawful for any person to transact business in this state as an investment adviser unless (1) he is so registered under this Act, (2) he is registered as a broker-dealer without the imposition of a condition under § 46205(b)(5), or (3) his only clients in this state are investment companies as defined in the Investment Company Act of 1940, or insurance companies.

(d) Every registration expires one (1) year from its effective date unless renewed.

SOURCE: GC § 45201.

§ 46202. Notification and Authorization requirement.

(a) It is unlawful for any person to transact business within this Territory or to maintain any place of business in the Territory or, if incorporated, organized or formed under the laws of this Territory, to transact business or maintain any place of business as either an Investment Company or as an International Finance Company, or both, unless such person:

(1) shall have filed a notification of intention with respect thereto with the Administrator under this Title together with a non-refundable filing fee of Five Hundred Dollars (\$500); and

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(2) shall have in response to such notification of intention been issued a receipt of satisfactory notification by the Administrator, which receipt has not been withdrawn."

(b) The Administrator shall issue a receipt of satisfactory notification upon a determination by him or the Governor that the proposed conduct set forth in the notification of intention:

(1) is consistent with the purposes of this Title;

(2) is not likely to prejudice investors or lenders;

(3) is not likely to impose undue administrative or other burdens on the government of Guam; and

(4) is likely to contribute to the sound and responsible development of the securities and investment industry within or in relation to Guam, and that the person filing the notice of intention is capable of maintaining ethical and responsible business standards and practices.

(c) No notification of intention may be filed, and no such receipt of satisfactory notification issued with respect to any investment company or international finance company, except one which is organized under the laws of any state of the United States, the District of Columbia, or any territory or possession of the United States other than Guam, and which maintains its principal place of business within any such other jurisdiction, unless:

(1) such notification of intention is confirmed as to its accuracy by a person:

(i) who is registered as a broker-dealer or as an investment adviser pursuant to this Title;

(ii) who has maintained such registration continuously for at least two (2) years immediately prior thereto without any action having been taken adverse to such broker-dealer or investment adviser pursuant to § 46205 of this Title or otherwise; and

(iii) who maintains a business office within Guam; and

(2) there shall exist between such broker-dealer or investment adviser and such investment company or international finance company a business relationship (whether by common ownership, managerial control, contractual relationship or otherwise) as appears

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satisfactory to the Administrator reasonably to assure that such broker-dealer or investment adviser will be able to report accurately, meaningfully and effectively to the Administrator concerning the business affairs, practices and situation of such investment company or international finance company, and to be able to cooperate effectively with the Administrator in promoting compliance with this Title and to assist the Administrator in being informed about the current affairs of such investment company or international finance company, in accordance with such reasonable obligations as the Administrator may impose either at the time of notification, or thereafter, either on such broker-dealer or investment adviser or on such investment company or international finance company or both. Whenever any such broker-dealer or investment adviser or any entity affiliated therewith through common ownership or control shall have acted as an underwriter or dealer with respect to any securities of any such investment company or international finance company or as an investment adviser thereto, within the prior two (2) years, such business relationship shall be deemed to exist absent clear and convincing evidence to the contrary.

(d) Any such receipt of satisfactory notification of intention shall be withdrawn whenever the Administrator shall reasonably determine that under the then current circumstances as known to him, no receipt of satisfactory notification would be issued upon the current filing of the notification of intention by such investment company or international finance company.

(e) For the purpose of this Title, *Investment Company* shall have the same meaning (i) as it would have pursuant to Section 3(a) of the United States Investment Company Act of 1940, without excluding any securities from the definition of 'investment securities' contained in the final sentence thereof, provided that the Administrator by rule may provide for exemptions or exclusions from such meaning consistent with Section 3 of the Investment Company Act of 1940 of the United States where the company's business activity, assets and ownership are substantially located in Guam or under such exemptions and exclusions, consistent with Section 3(b) or (c) of such Act upon substantial compliance with the procedures provided for under Subsection (c) of this Section, or (ii) as it has under any other law of the United States or Guam and *International Finance Company* shall mean any company:

(1) which is not an *investment company*;

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(2) which derives at least fifty percent (50%) of its annual gross income as interest or similar fees or revenue from any of its stockholders, or any affiliate of its stockholders or any person responsible for the existence of such stockholder relationship; and

(3) which either:

(i) has outstanding obligations with an original maturity date of longer than one (1) year in a principal amount greater than its capital;

(ii) which holds, as assets, obligations of any one debtor (including, for this purpose, obligations of all other entities which are under common ownership control with a debtor) equal to an amount greater than such company's capital; or

(iii) which has at least fifty percent (50%) of its obligations guaranteed as to principal or interest by any one or more of its debtors or convertible into the securities of any one or more of its debtors.

SOURCE: GC § 45202. Renumbered by P.L. 16-65:4. Added by P.L. 16-65:5. Subsection (a) amended by P.L. 16-115:9; subsection (e) amended by P.L. 16-115:10.

NOTE: GC §§ 45202 through 45205 inclusive, are renumbered as GC §§ 45203 through 45206, respectively by P.L. 16-65:4.

§ 46203. Registration Procedure.

(a) A broker-dealer, agent, or investment adviser may obtain an initial or renewal registration by filing with the Administrator an application together with a consent to service of process pursuant to § 46414(g). The application shall contain whatever information the Administrator by rule requires concerning such matters as (1) the applicant's form and place of organization; (2) the applicant's proposed method of doing business; (3) the qualifications and business history of the applicant; in the case of a broker-dealer or investment advisor, the qualification and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; and, in the case of an investment advisor, the qualifications and business history of any employee; (4) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and (5) the applicant's financial condition and history. The Administrator may by rule or order require an applicant for initial

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registration to publish an announcement of the application in one (1) or more specified newspapers published in this state. If no denial order is in effect and no proceeding is pending under § 46204, registration becomes effective at noon of the thirtieth (30th) day after an application is filed. The Administrator may by rule or order specify an earlier effective date, and he may by order defer the effective date until noon of the thirtieth (30th) day after the filing of any amendment. Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer, or director, or a person occupying a similar status or performing similar functions.

(b) Every applicant for initial or renewal registration *shall* pay a nonrefundable filing fee of Two Hundred Dollars (\$200.00) in the case of a broker-dealer, Fifty Dollars (\$50.00) in the case of an agent, and Two Hundred Dollars (\$200.00) in the case of an investment adviser.

(c) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

(d) The Administrator may by rule require a minimum capital for registered broker-dealers and investment advisers.

(e) The Administrator may, by rule, require registered broker-dealers, agents, and investment advisers to post surety bonds in amounts up to ten thousand dollars (\$10,000.00), and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any registrant whose net capital which may be defined by rule, exceeds twenty-five thousand dollars (\$25,000.00). Every bond shall provide for suit thereon by any person who has a cause of action under § 46410 and, if the Administrator by rule or order requires, by any person who has a cause of action not arising under this Act. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within two (2) years after the sale or other act upon which it is based.

SOURCE: GC § 45203; renumbered by P.L. 16-65:4. Subsection (b) amended by P.L. 29-002:V:I:102 (May 18, 2007).

§ 46204. Post-Registration Provisions.

(a) Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and

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other records as the Administrator by rule prescribes. All records so required shall be preserved for three (3) years unless the Administrator by rule prescribes otherwise for particular types of records.

(b) Every registered broker-dealer and investment adviser shall file such financial reports as the Administrator by rule prescribes.

(c) If the information contained in any document filed with the Administrator is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under § 46201(b).

(d) All the records referred to in subsection (a) are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator, within or without this state, as the Administrator deems necessary or appropriate in the public interests or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Administrator, insofar as he deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

SOURCE: GC § 45204; renumbered by P.L. 16-65:4.

§ 46205. Denial, Revocation, Suspension, Cancellation, and Withdrawal of Registration.

(a) The Administrator may by order deny, suspend, or revoke any registration if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser.

(A) has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

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(B) has wilfully violated or wilfully failed to comply with any provision of this Act or a predecessor act or any rule or order under this Act or a predecessor act;

(C) has been convicted, within the past ten (10) years, of any misdemeanor involving a security or any aspect of the securities business, or any felony having as one of its necessary elements a fraudulent act or an act of dishonesty in the solicitation of, acceptance, custody, or payment of money or property or a breach of trust;

(D) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(E) is the subject of an order of the Administrator denying, suspending, or revoking registration as a broker-dealer, agent, or investment adviser;

(F) is the subject of an order entered within the past five (5) years by the securities administrator of any other state or by the Securities and Exchange Commission denying or revoking registration as a broker-dealer, agent, or investment adviser, or the substantial equivalent of those terms as defined in this Act, or is the subject of an order of the Securities and Exchange Commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States Post Office fraud order; but (i) the Administrator may not institute a revocation or suspension proceeding under clause (F) more than one (1) year from the date of the order relied on, and (ii) he may not enter an order under clause (F) on the basis of an order under another state act, unless that order was based on facts which would currently constitute a ground for an order under this section;

(G) has engaged in dishonest or unethical practice in the securities business;

(H) is insolvent, either in the sense that his liabilities exceed his assets, or in the sense that he cannot meet his obligations as they mature; but the Administrator may not enter an order against a broker-dealer or investment adviser under this clause without a findings of insolvency as to the broker-dealer or investment adviser; or

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(I) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (b).

The Administrator may by order deny, suspend, revoke any registration if he finds (1) that the order is in the public interest and (2) that the applicant or registrant.

(J) has failed reasonably to supervise his agents if he is a broker-dealer, or his employees if he is an investment advisor; or

(K) has failed to pay the proper filing fee; but the Administrator may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected.

The Administrator may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within the next thirty (30) days.

(b) The following provisions govern the application of § 46204 (a)(2)(I):

(1) The Administrator may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than (A) the broker-dealer himself if he is an individual or (B) an agent of the broker-dealer.

(2) The Administrator may not enter an order against an investment adviser on the basis of the lack of the qualification of any person other than (A) the investment adviser himself if he is an individual or (B) any other person who represents the investment adviser in doing any of the acts which make him an investment adviser.

(3) The Administrator may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both.

(4) The Administrator shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer.

(5) The Administrator shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-

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dealer or agent. When he finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser, he may by order condition the applicant's registration as a broker-dealer upon his not transacting business in this state as an investment adviser.

(6) The Administrator may by rule provide for an examination, which may be written or oral or both, to be taken by any class of, or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which makes him an investment adviser.

(c) The Administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within fifteen (15) days after the receipt of a written request, the matter will be set down for hearing. If no hearing is requested and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) If the Administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the Administrator may by order cancel the registration or application.

(e) Withdrawal from registration as a broker-dealer, agent, or investment adviser becomes effective thirty(30) days after receipt of an application to withdraw, or within such shorter period of time as the Administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty (30) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Administrator by order determines. If no proceeding is pending or instituted, and withdrawal automatically becomes effective, the

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Administrator may nevertheless institute a revocation or suspension proceeding under § 46204(a)(2)(B) within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

(f) No order may be entered under any part of this section except the first sentence of subsection (c) without (1) appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent), (2) opportunity for hearing, and (3) written findings of fact and conclusions of law.

SOURCE: GC § 45205 as renumbered by P.L. 16-65:4. Paragraph (C) of Subsection (a) of GC § 45204 was amended by P.L. 13-187:221.

§ 46206. Exemption.

Title 11, Guam Code Annotated, Chapters 70, 72, 74, 76 and 78 of the Business License Law, shall not apply to any broker-dealer, agent, or investment adviser registered under this Act.

SOURCE: GC § 45206; as renumbered by P.L. 16-65:4.

**ARTICLE 3
REGISTRATION OF SECURITIES**

- § 46301. Registration Requirement.
- § 46302. Registration by Notification.
- § 46303. Registration by Coordination.
- § 46304. Registration by Qualification.
- § 46305. Provisions Applicable to Registration Generally.
- § 46306. Denial, Suspension, and Revocation of Registration.

§ 46301. Registration Requirement.

It is unlawful for any person to offer any security in Guam unless (1) it is registered under this Act or (2) the security or transaction is exempted under §46402 or (3) the security is a federal covered security. For the purposes of this Chapter the term "federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the Securities Act of 1933 (15 U.S.C. §77r(b)) or rules and regulations adopted pursuant to that Provision.

SOURCE: GC § 45301. Amended by P.L. 29-002:V:I:103 (May 18, 2007).

§ 46302. Registration by Notification.

(a) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under § 46303:

(1) any security whose issuer and any predecessors have been in continuous operation for least five (5) years if (A) there has been no default during the current fiscal year or within the three (3) preceding fiscal years in the payment of principal, interests, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision, and (B) the issuer and any predecessors during the past three (3) fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, (i) which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed and equal at least five percent (5%) of the amount of such outstanding securities (as measured by the maximum offering price or the market price on a day, selected by the registrant, within thirty (30) days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant, within ninety (90) days of the date of filing the registration statement to the extent that there is neither a readily determinable market price nor a cash offering price), or (ii) which, if the issuer and any predecessors have not had any security of the type specified in clause (i) outstanding for three (3) full fiscal years, equal at least five percent (5%) of the amount (as measured in clause (i) of all 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) any security (other than a certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease) registered for non-issuer distribution if (A) any security of the same class has ever been registered under this Act, or (B) the security being registered was originally issued pursuant to an exemption under this Act.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in § 46305(c), and the consent to service of process required in § 46414(g):

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

(2) with respect to the issuer and any significant subsidiary: its 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;

(3) with respect to any person on whose behalf any part of the offering is to be made in a non-issuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; and a statement of his reasons for making the offering;

(4) a description of the security being registered;

(5) the information and documents specified in clauses (8), (10), and (12) of § 46304(b); and

(6) in the case of any registration under § 46302(a)(2) which does not also satisfy the conditions of § 46302(a)(1), a balance sheet of the issuer as of a date within four (4) months prior to the filing of the registration statement, a summary of earnings for each of the two (2) fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than two (2) years.

(c) If no stop order is in effect and no proceeding is pending under § 46306, a registration statement under this section automatically becomes effective at three o'clock local standard time in the afternoon of the second (2nd) full business day after the filing of the registration statement or the last amendment, or at such earlier time as the Administrator determines.

SOURCE: GC § 45302.

§ 46303. Registration by Coordination.

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

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in § 46305(c) and the consent to service or process required by § 46414(g):

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(1) Three (3) copies of the latest form of prospectus filed under the Securities Act of 1933;

(2) If the Administrator by rule or otherwise requires, a copy of the articles of incorporation and by-laws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

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

(4) An undertaking to forward all future amendments to the Federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(c) A registration statement under this section automatically becomes effective at the moment the Federal registration statement becomes effective if all the following conditions are satisfied: (1) no stop order is in effect and no proceeding is pending under § 46306; (2) the registration statement has been on file with the Administrator for at least ten (10) days; and (3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two (2) full business days or such shorter period as the Administrator permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the Administrator by telephone or telegram of the date and time when the Federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. *Price amendment* means the final Federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the Administrator may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if he promptly notifies the registrant by telephone or

telegram (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order is void as of the time of its entry. The Administrator may by rule or otherwise, waive either or both of the conditions specified in clauses (2) and (3). If the Federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the Administrator of the date when the Federal registration statement is expected to become effective, the Administrator shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under § 46306, but this advice by the Administrator does not preclude the institution of such a proceeding at any time.

SOURCE: GC § 45303.

§ 46304. Registration by Qualification.

(a) Any security may be registered by qualification.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in § 46305(c) and the consent to service of process required by § 46414(g):

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

(2) with respect to every director and officer of the issuer or person occupying a similar status or performing similar functions; his name, address, and principal occupation for the past five (5) years; the amount of securities of the issuer held by him as of a specified date within thirty (30) days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any

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significant subsidiary effected within the past three (3) years or proposed to be effected;

(3) with respect to persons covered by clause (2): the remuneration paid during the past twelve (12) months and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries, and affiliates) to all those persons in the aggregate;

(4) with respect to any person owning of record, or beneficially if known, ten percent (10%) more of the outstanding shares of any class of equity security of the issuer: the information specified in clause (2) other than his occupation;

(5) with respect to every promoter if the issuer was organized within the past three (3) years: the information specified in clause (2), any amount paid to him within that period or intended to be paid to him, and the consideration for any such payment;

(6) with respect to any person on whose behalf any part of the offering is to be made in a non-issuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three (3) years or proposed to be effected; and a statement of his reasons for making the offering;

(7) the capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding, or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two (2) years or is obligated to issue any of its securities;

(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated

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aggregate underwriting and selling discounts or commissions and finders' fees (including, separately, cash, securities, contracts, or anything else of value to accrue to the underwriters or findings in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any agreement whose terms have not yet been determined; and a description of the plan or distribution of any securities which are to be offered otherwise than through an underwriter;

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

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

(11) the dates of, parties to, and general effect concisely stated, of every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two (2) years, together with a copy of every such contract; and a description of any pending litigation

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or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

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

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

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

(15) the written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement;

(16) a balance sheet of the issuer as of a date within four (4) months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three (3) fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three (3) years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

(17) such additional information as the Administrator requires by rule or order.

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

(d) The Administrator may by rule or order require as a condition of registration under this section that a prospectus containing any designated

part of the information specified in subsection (b) be sent or given to each person to whom an offer is made before or concurrently with (1) the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution, (2) the confirmation of any sale made by or for the account of any of any such persons, (3) payment pursuant to any such sale, or (4) delivery of the security pursuant to any such sale, whichever first occurs.

SOURCE: GC § 45304.

§ 46305. Provisions applicable to Registration Generally.

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

(b) Every person filing a registration statement *shall* pay a filing fee of Two Hundred Dollars (\$200.00) plus one-fifth of one percent (0.2%) of the maximum aggregate offering price at which the registered securities are to be offered in Guam, but the fee *shall* in no case be more than Two Thousand Five Hundred Dollars (\$2,500.00). When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under § 46306, the Administrator *shall* retain one-half (1/2) of the additional fee.

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

(d) Any document filed under this Act may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

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

(f) In the case of a non-issuer distribution, information may not be required under § 46304 or 46305(j) unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution

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is to be made, or can be furnished by them without unreasonably effort or expense.

(g) The Administrator may by rule or order require as a condition of registration by qualification or coordination (1) that any security issued within the past three (3) years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (2) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The Administrator may by rule or order determine the conditions of any escrow or impounding required hereunder, but he may not reject a depository solely because of location in another state,

(h) The Administrator may by rule or order require as a condition of registration that any security registered by qualification or coordination be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the Administrator or preserved for any period up to three (3) years specified in the rule or order.

(i) Every registration statement is effective for one (1) year from its effective date, or any longer period during which the security is being offered or distributed in a non-exempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, except during the time a stop order is in effect under § 46306. All outstanding securities of the same class as registered security are considered to be registered for the purpose of any non-issuer transaction (1) so long as the registration statement is effective and (2) between the thirtieth (30th) day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under § 46306 (if the registration statement did not relate in whole or in part to a non-issuer distribution) and one (1) year from the effective date of the registration statement. A registration may not be withdrawn for one (1) year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the Administrator.

(j) So long as a registration statement is effective, the Administrator may by rule or order require the person who filed the registration statement

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to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

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

SOURCE: GC § 45305. Subsection (b) amended by P.L. 29-002:V:I:104 (May 18, 2007).

§ 46306. Denial, Suspension, and Revocation of Registration.

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

(A) the registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under § 46305(k) as of its effective date, or any report under § 46305(j) is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) any provision of this Act or any rule, order, or condition lawfully imposed under this Act has been Yherefore violated, in connection with the offering, by (i) the person filing the registration statement, (ii) the issuer, or any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (iii) any underwriter;

(C) the security registered, or sought to be registered, is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other Federal or state act applicable to the offering; but (i)

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

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

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

(F) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

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

(H) when a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by § 46303(b)(4); or

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

The Administrator may not institute a stop-order proceeding against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective unless the proceeding is instituted within the next thirty (30) days.

(b) The Administrator may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify each person specified in subsection (c) that it has been entered and of the reasons therefor, and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated

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by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing to each person specified in subsection (c), may modify or vacate the order or extend it until final determination.

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

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

SOURCE: GC § 45306.

**ARTICLE 4
GENERAL PROVISIONS**

- § 46401. Definitions.
- § 46402. Exemption.
- § 46403. Filing of Sales and Advertising Literature.
- § 46404. Misleading Filings.
- § 46405. Unlawful Representations Concerning Registration or Exemption.
- § 46406. Administration of Act.
- § 46407. Investigations and Subpoenas.
- § 46408. Injunctions.
- § 46409. Criminal Penalties.
- § 46410. Civil Liabilities.
- § 46411. Judicial Review of Orders.
- § 46412. Rules, Forms, Orders and Hearings.
- § 46413. Administrative Files and Opinions.
- § 46414. Scope of the Act and Service of Process.
- § 46415. Jurisdiction.
- § 46416. Statutory Policy.
- § 46417. Short Title.
- § 46418. Severability of Provisions.
- § 46419. Saving Provision.
- § 46420. Time of Taking Effect.

§ 46401. Definitions.

When used in this Act, unless the context otherwise requires:

(a) *Administrator* means the official designated in § 46406(a).

(b) *Agent* means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. *Agent* does not include an individual who represents an issuer in (1) effecting transactions in a security exempted by clause (1), (2), (3), (8), or (9) of § 46402(a), (2) effecting transactions exempted by § 46402(b), or (3) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition.

(c) *Broker-dealer* means any person engaged in the business of effecting transactions in securities for the account of other or for his own account. *Broker-dealer* does not include (1) an agent, (2) an issuer, (3) a bank, savings institution, or trust company, or (4) a person who has no place of business in this state if (A) he effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of twelve (12) consecutive months he does not direct more than fifteen (15) offers to sell or buy into this state in any manner to persons other than those specified in clause (A), whether or not the offeror or any of the offerees is then present in this state.

(d) *Fraud, deceit, and defraud* are not limited to common-law deceit.

(e) *Guaranteed* means guaranteed as to payment of principal, interest, or dividends.

(f) *Investment adviser* means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the

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advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. *Investment adviser* does not include (1) a bank, savings institution, or trust company; (2) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession; (3) a broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them; (4) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation; (5) a person whose advice, analyses, or reports relate only to securities exempted by § 46402; (6) a person who has no place of business in this state if (A) his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of twelve (12) consecutive months he does not direct business communications into this state in any manner to more than five (5) clients other than those specified in clause (A), whether or not he or any of the persons to whom the communications are directed is then present in this state; or (7) such other person not within the intent of this paragraph as the Administrator may by rule or order designate.

(g) *Issuer* means any person who issues or proposes to issue any security, except that (1) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term *issuer* means the person or person performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and (2) with respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payments out of production under such titles or leases, there is not considered to be any *issuer*.

(h) *Non-issuer* means not directly or indirectly for the benefit of the issuer.

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(i) *Person* means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(j) (1) *Sale* or *sell* includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(2) *Offer* or *offer to sell* includes every attempt or offer to dispose of, or solicitation of an offer to buy a security or interest in a security for value.

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(4) A purported gift of assessable stock is considered to involve an offer and sale.

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(6) The terms defined in this subsection do not include (A) any bona fide pledge or loan; (B) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; (C) any act incident to a class vote by stockholders, pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation; or (D) any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.

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(k) *Securities Act of 1933, Securities Exchange Act of 1934, Public Utility Holding Company Act of 1935, and Investment Company Act of 1940* mean the federal statutes of those names as amended before or after the effective date of this Act.

(l) *Security* means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interests or instrument commonly known as a *security*, or any certificate of interest or participation in, temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. *Security* does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

(m) *State* means any state, territory, or possession of the United States, including Guam, the District of Columbia, and Puerto Rico.

(n) *District Court* means the District Court of Guam.

(o) *Telegram* includes cablegram and radiogram.

SOURCE: GC § 45401.

§ 46402. Exemption.

(a) The following securities are exempted from §§ 46301 and 46303:

(1) any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;

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

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(3) any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state;

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

(5) any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this state; but this exemption does not apply to an annuity contract, investment contract, or similar security under which the promised payments are not fixed in dollars but are substantially dependent upon the investment results of a segregated fund or account invested in securities;

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

(7) any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (A) subject to the jurisdiction of the Interstate Commerce Commission; (B) a registered holding company under the Public Utility Company Act of 1935 or a subsidiary of such a company within the meaning of that Act; (C) regulated in respect of its rates and charges by a governmental authority of the United States or any state; or (D) regulated in respect of the issuance of guarantee of the security of a governmental authority of the United States, any state, Canada, or any Canadian province;

(8) any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, or the Midwest Stock Exchange; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;

(9) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association;

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(10) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine (9) months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

(11) any investment contract issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan if the Administrator is notified in writing thirty (30) days before the inception of the plan or, with respect to plans which are in effect on the effective date of this Act, within sixty (60) days thereafter (or within thirty (30) days before they are reopened if they are closed on the effective date of this Act);

(12) any security issued by an open-end investment company registered under the Investment Company Act of 1940.

(b) The following transactions are exempted from §§ 46301 and 46403:

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

(2) any non-issuer distribution of an outstanding security if (A) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen (18) months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or (B) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three (3) preceding fiscal years, or during the existence of the issuer and any predecessors if less than three (3) years, in the payment of principal, interest, or dividends on the security;

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

(4) any transaction between the issuer or other person on whose behalf the offering is made and underwriter, or among underwriters;

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(5) any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness security thereby is offered and sold as a unit;

(6) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(7) any transaction executed by a bona fide pledgee without any purpose of evading this Act;

(8) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) any transaction pursuant to an offer directed by the offeror to not more than ten person (other than those designated in paragraph (8)) in this state during any period of twelve (12) consecutive months, whether or not the offeror or any of the offerees is then present in this state, if (A) the seller reasonably believes that all the buyers in this state (other than those designated in paragraph (8)) are purchasing for investment, and (B) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in paragraph (8)); but the Administrator may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exception, or increase or decrease the number of offerees permitted, or waive the conditions in clauses (A) or (B) with or without the substitution of a limitation on remuneration;

(10) any offer or sale of a preorganization certificate or subscription if (A) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (B) the number of subscribers does not exceed ten (10), and (C) no payment is made by any subscriber;

(11) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, non-transferable

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warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance, if (A) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (B) the issuer first files a notice specifying the terms of the offer and the Administrator does not by order disallow the exemption within the next five (5) full business days;

(12) Any offer or sale of a security if (i) the security or transaction is not subject to, or is exempted from the registration requirements of the Securities Act of 1933, other than by reason of Section 3(a) of that Act, or (ii) a registration statement relating to such security has been filed under the Securities Act of 1933 and no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under that Act, provided that the issuer or such security or a registered broker-dealer files with the Administrator a notice of intention to sell such security in such form as the Administrator may prescribe, together with a filing fee of Fifty Dollars (\$50).

(13) Any offer or sale of securities of an Investment Company or an International Finance Company to an offeree or purchaser who is neither a citizens nor a resident of the United States or of Guam.

(c) The Administrator may by order deny or revoke any exemption specified in clause (9) or (11) of subsection (a) or in subsection (b) with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the Administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this subsection. Upon the entry of a summary order, the Administrator shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within fifteen (15) days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated § 46301 or § 46403 by reason of

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any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

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

SOURCE: GC § 45402. Subsection (b)(12) repealed and reenacted by P.L. 15-102:1; subsection (b)(13) added by P.L. 16-115:11.

§ 46403. Filing of Sales and Advertising Literature.

The Administrator may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, unless the security or transaction is exempted by § 46402.

SOURCE: GC § 45403.

§ 46404. Misleading Filings.

It is unlawful for any person to make or cause to be made, in any document filed with the Administrator or in any proceeding under this Act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

SOURCE: GC § 45404.

§ 46405. Unlawful Representations Concerning Registration or Exemption.

(a) Neither (1) the fact that an application for registration under Chapter II or a registration statement under Chapter III has been filed nor (2) the fact that a person or security is effectively registered constitutes a finding by the Administrator that any document filed under this Act is true, complete, and not misleading. Neither any such fact that an exemption or exception is available for a security or a transaction means that the Administrator has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.

(b) It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with Subsection (a).

SOURCE: GC § 45405.

§ 46406. Administration of Act.

This Act shall be administered by an Administrator who shall be the Director of Revenue and Taxation, ex officio, or such other person as the Governor may appoint. The Administrator shall be under the general cognizance of the Governor, and may be assigned to such department, agency or office as the Governor shall designate for office facilities, supplies, equipment and personnel.

(b) The Administrator shall submit an annual report to the Governor after the close of each fiscal year.

(c) It is unlawful for the Administrator or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the Administrator and which is not made public. No provision of this Act authorizes the Administrator or any of his officers or employees to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this Act. No provision of this Act either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under subpoena directed to the Administrator of any of his officers or employees.

(d) All fees and charges prescribed by this Act shall be covered into the General Fund.

SOURCE: GC § 45406.

§ 46407. Investigations and Subpoenas.

(a) The Administrator in his discretion (1) may make such public or private investigations within or outside of this state as he deems necessary to determine whether any person has violated or is about to violate any provision of this Act or any rule or order hereunder, or to aid in the enforcement of this Act or in the prescribing of rules and forms hereunder, (2) may require or permit any person to file a statement in writing, under oath or otherwise as the Administrator determines, as to all the facts and circumstances concerning the matter to be investigated, and (3) may publish information concerning any violation of this Act or any rule or order hereunder.

(b) For the purpose of any investigation or proceeding under this Act, the Administrator or any officer designated by him may, administer oaths and affirmations, subpoena witnesses, compel their attendance, take

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evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Administrator deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Superior Court, upon application by the Administrator, may issue to the person an order requiring him to appear before the Administrator, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(d) No person is excused from attending and testifying or from producing any document or record before the Administrator, or in obedience to the subpoena of the Administrator or any officer designated by him or in any proceeding instituted by the Administrator, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

SOURCE: GC § 45407.

§ 46408. Injunction.

Whenever it appears to the Administrator that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Act or any rule or order hereunder, he may in his discretion bring an action in the Superior Court to enjoin the acts or practices and to enforce compliance with this Act or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The Court may not require the Administrator to post a bond.

SOURCE: GC § 45408.

§ 46409. Criminal Penalties.

(a) Any person who intentionally violates any provisions of this Act except § 46404, or who intentionally violates any rule or order under this

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Act, or who intentionally violates § 46404 knowing the statement made to be false or misleading in any material respect, shall be guilty of a felony; but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order.

(b) The Administrator may refer such evidence as is available concerning violations of this Act or any rule or order hereunder to the Attorney General, who may, with or without such a reference, institute the appropriate criminal proceedings under this Act.

(c) Nothing in this Act limits the power of this state to punish any person for any conduct which constitutes a crime by other provisions of law.

SOURCE: GC § 45409. Amended by P.L. 13-187:222.

§ 46410. Civil Liabilities.

(a) Any person who

(1) offers or sells a security of violation of §§ 46201(a), 46301, or 46405(b), or of any rule or order under § 46403 which requires the affirmative approval of sales literature before it is used, or of any condition imposed under §§ 46304(d), 46305(g), or 46305(h), or

(2) offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the buyer not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interests at six percent (6%) per year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at six percent (6%) per year from the date of disposition.

(b) Every person who directly or indirectly controls a seller liable under subsection (a), every partner, officer, or director of such a seller, every person occupying a similar status or performing similar functions,

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every employee of such a seller who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller, unless the non-seller who is so liable sustains the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(c) Any tender specified in this section may be made at any time before entry of judgment.

(d) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

(e) No person may sue under this section more than two (2) years after the contract of sale. No person may sue under this section (1) if the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid together with interest at six percent (6%) per year from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within thirty (30) days of its receipt, or (2) if the buyer received such an offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within thirty (30) days of its receipt.

(f) No person who has made or engaged in the performance of any contract in violation of any provision of this Act or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

(g) Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this Act or any rule or order hereunder is void.

(h) The rights and remedies provided by this Act are in addition to any other rights or remedies that may exist at law or in equity, but this Act does not create any cause of action not specified in this section or § 46202(e).

SOURCE: GC § 45410.

§ 46411. Judicial Review of Orders.

(a) Any person aggrieved by a final order of the Administrator may obtain a review of the order in the Superior Court by filing in court, within sixty (60) days after the entry of the order, a written petition praying that the

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order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the Administrator, and thereupon the Administrator shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. The findings of the Administrator as to the facts, if support by competent, material and substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional material evidence, and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the Administrator, the court may order the additional evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such conditions as the court considers proper. The Administrator may modify his findings and order by reason of the additional evidence and shall file in court the additional evidence together with any modified or new findings or order.

(b) The commencement of proceedings under subsection (a) does not specifically ordered by the court, operated as a stay of the Administrator's order.

SOURCE: GC § 45411.

§ 46412. Rules, Forms, Orders and Hearings.

(a) The Administrator may, from time to time, make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this Act, including rules and forms governing registration statements, applications, and reports, and defining, any terms, whether or not used in this Act, insofar as the definitions are not inconsistent with the provisions of this Act. For the purpose of rules and forms, the Administrator may classify securities, persons, and matters within his jurisdiction, and prescribe different requirements for different classes.

(b) No rule, form, or order may be made, amended, or rescinded unless the Administrator finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purpose fairly intended by the policy and provisions of this Act. In prescribing rules and forms the Administrator may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

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(c) The Administrator may by rule or order prescribe (1) the form and content of financial statements required under this Act, (2) the circumstances under which consolidated financial statements shall be filed, and (3) whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting practices.

(d) all rules and forms of the Administrator shall be published.

(e) No provision of this Act imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the Administrator, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(f) Every hearing in an administrative proceeding shall be public unless the Administrator in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.

SOURCE: GC § 45412.

§ 46413. Administrative Files and Opinions.

(a) A document is filed when it is received by the Administrator.

(b) The Administrator shall keep a register of all applications for registration and registration statements which are or have ever been effective under this Act and all denial, suspension, or revocation orders which have been entered under this Act. The register shall be open for public inspection.

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

(d) Upon request and at such reasonable charges as he prescribes, the Administrator shall furnish to any person photostatic or other copies (certified if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this Act, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(e) The Administrator in his discretion may honor requests from interested persons for interpretative opinions.

SOURCE: GC § 45413.

§ 46414. Scope of the Act and Service of Process.

(a) §§ 46101, 46201(a), 46301, 46405, and 46410 apply to persons who sell or offer to sell when (1) an offer to sell is made in this state, or (2) an offer to buy is made and accepted in this state.

(b) §§ 46101, 46201(a), and 46405 apply to person who buy or offer to buy when (1) an offer to buy is made in this state, or (2) an offer to sell is made and accepted in this state.

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer (1) originates from this state or (2) is directed by the offeror to this state and received at a place to which it is directed (or at any post office in this state in the case of a mailed offer).

(d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance (1) is communicated to the offeror in this state and (2) has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offer or in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).

(e) An offer to sell or to buy is not made in this state when (1) the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve (12) months, or (2) a radio or television program originating outside this state is received in this state.

(f) §§ 46102 and 46201(c), as well as § 46405 so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(g) Every applicant for registration under this Act and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the Administrator, in such form he by rule prescribes, an irrevocable consent appointing the Administrator or his successor in office to be his attorney to receive service of any lawful process in any non-criminal suit, action, or proceeding against

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him or his successor executor or administrator which arises under this Act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the Administrator, but is not effective unless (1) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by certified mail to the defendant or respondent at his last address on file with the Administrator and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(h) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this Act or any rule or order hereunder, and he has not filed a consent to service of process under subsection (g) and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the Administrator or his successor in office to be his attorney to receive service of any lawful processing any non-criminal suit, action, or proceeding against him or his successor executor or administrator which grows out of that conduct and which is brought under this Act or any rule or order hereunder, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process of the office of the Administrator, and it is not effective unless (1) the plaintiff, who may be the Administrator in a suit, action or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by certified mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(i) When process is served under this section, the court, or the Administrator in a proceeding before him, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

SOURCE: GC § 45414.

§ 46415. Jurisdiction.

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The Superior Court shall have exclusive original jurisdiction over all judicial proceedings, including civil and criminal, brought under this Act.

SOURCE: GC § 45415.

§ 46416. Statutory Policy.

This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of this Act with the related federal regulation.

SOURCE: GC § 45416.

§ 46417. Short Title.

This Act may be cited as the *Uniform Securities Act*.

SOURCE: GC § 45417.

§ 46418. Severability of Provision.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SOURCE: GC § 45418.

§ 46419. Saving Provision.

Prior law exclusively governs all suits, action, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this Act, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought within any period of limitation which applied when the cause of action accrued and in any event within two years after the effective date of this Act.

SOURCE: GC § 45419.

§ 46420. Time of Taking Effect.

This Act shall take effect on the sixtieth (60th) day following approval.

SOURCE: GC § 45420.
