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CHAPTER 19

Massachusetts Uniform Securities Act

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§19.1. Introduction. On November 1, 1972 the Uniform Securities Act\(^1\) replaced the Sale of Securities Act\(^2\) as the Massachusetts state securities law. Since the last major revision of the Sale of Securities Act in 1937, many developments in the marketing of securities and in federal regulation through the Securities and Exchange Commission have occurred. The Governor's Advisory Committee on Revising the Securities Laws of the Commonwealth, after considering revisions of the Sale of Securities Act, recommended adoption of the Uniform Act with only minor changes. The Uniform Act has been adopted substantially in its entirety in twenty-four other jurisdictions,\(^3\) amended versions have been enacted in six others\(^4\) and an amended version is being considered by at least one other jurisdiction.\(^5\) It is anticipated that case law which will emerge from other adopting jurisdictions will aid in the interpretation of the New Act.\(^6\) Moreover, since the New Act is coordinated with federal legislation not only in concept but in the use of specific language, federal

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\(^1\) Acts of 1972, c. 694 amending G.L., c. 110A [hereinafter cited as New Act]. Anyone who works with the New Act, which is a variation of the Uniform Securities Act (9C Uniform Laws Annotated, approved on August 25, 1956 by National Conference of Commissioners on Uniform State Laws) [hereinafter cited as Uniform Act] must necessarily build upon LOSS AND COWETT, BLUE SKY LAW (1958), the pioneering and definitive work on the Uniform Act. Specific references to that work will be made from time to time herein. However, our debt goes beyond such references since we have relied heavily upon it; but, needless to say, if there are inadequacies in the subsequent analysis, they are entirely of our own making.

\(^2\) Acts of 1932, c. 290, §1 as amended [formerly G.L., c. 110A] [hereinafter cited as Old Act].

\(^3\) Alabama, Alaska, Arkansas, Colorado, District of Columbia (fraud and broker-dealer registration provisions only), Hawaii, Idaho, Indiana, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Oklahoma, Puerto Rico, South Carolina, Utah, Virginia, Washington, Wisconsin, Wyoming.

\(^4\) California, New Mexico, Oregon, Pennsylvania, Nevada, New Jersey.

\(^5\) Ohio.

\(^6\) New Act §415 provides: "This chapter 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 chapter with the related federal regulation."
case law may be used to indicate answers to interpretational questions.\(^7\)

The discussion which follows focuses on the New Act with specific reference from time to time to the rules adopted thereunder.

§19.2. Summary of the New Act.\(^1\) The New Act is divided into four parts dealing with (I) fraudulent and other prohibited practices, (II) registration of broker-dealers and agents, (III) registration of securities and (IV) general provisions (including definitions, exemptions, investigations, injunctions, criminal proceedings, civil liability, judicial review and other housekeeping provisions) applicable to the first three parts of the Act.

Part I, entitled “Fraudulent and Other Prohibited Practices,” has only two sections. Section 101 outlaws fraud practices in connection with the sale or purchase of a security and employs language substantially the same as that used in the Securities Act of 1933.\(^2\) The second section\(^3\) prohibits fraud practices on the part of investment advisers and, likewise, its language is substantially similar to that in the federal law.\(^4\) There are no exemptions from Part I. The sanctions for violations of this part include injunctions,\(^5\) criminal prosecution (for willful violations)\(^6\) and administrative proceedings to deny, suspend or revoke registration for a willful violation by a broker-dealer or agent.\(^7\)

Part II, entitled “Registration of Broker-Dealers and Agents,” requires any person who transacts business in the Commonwealth as a broker-dealer or agent to register annually on a calendar year basis with the Secretary of State.\(^8\) An officer, director or partner of a registered broker-dealer is automatically registered as an agent,\(^9\) but if he otherwise comes within the definition of agent,\(^10\) he must also pay the annual registration fee.\(^11\) The annual fees for registration are $200 in the case of broker-dealers and $20 in the case of agents.\(^12\) The only exemptions from the requirement of registration as broker-dealer are contained in the definition of that term\(^13\) and they relate to (1) sales to certain sophisticated purchasers;\(^14\) (2) offers or sales to not more than fifteen persons, other

\(^7\) Id.

\(^8\) Id. §201.

\(^9\) Id. §202(a).

\(^10\) Id. §401(b).

\(^11\) Id. §202(b).

\(^12\) Id. §202(b) as amended by Acts of 1973, c. 430, §8.

\(^13\) Id. §401(c).

\(^14\) Id. §§401(c) (4) (A) (ii), 401(c) (4) (A) (iii).
than the enumerated sophisticated purchasers, in Massachusetts during
any twelve consecutive months;\(^\text{15}\) (3) sales by an issuer of its own se-
curities;\(^\text{16}\) and (4) transactions by banks, savings institutions or trust
companies.\(^\text{17}\) It should be noted that unless one of the above exemptions
applies, registration is required whether or not the security involved is
itself exempt\(^\text{18}\) and whether or not it is sold in a transaction exempt
under Section 402(b). An issuer is exempt from the requirement of
registration in connection with the sale of its own securities;\(^\text{19}\) however,
employees of the issuer who represent it in the distribution of its
own securities must be registered as agents\(^\text{20}\) except in the distribution
of certain exempted securities\(^\text{21}\) or in transactions which are otherwise
exempt.\(^\text{22}\)

Section 202 requires a person applying for registration as broker-dealer
or agent to provide the Secretary of State\(^\text{23}\) with such information as
he may by rule require\(^\text{24}\) and to file a consent appointing the Secretary
to be his attorney for service of process.\(^\text{25}\) In addition, each applicant,
with certain exceptions, is required by rule to take an examination\(^\text{26}\)
and each registered broker-dealer is required by rule to maintain mini-
mum capital.\(^\text{27}\) An application for registration automatically becomes
effective thirty days after it is filed unless the Secretary has either
accelerated the effective date or instituted proceedings to deny the
application.\(^\text{28}\) The Secretary may deny, suspend or revoke any registration
if he finds that such action is in the public interest and that one of
the eleven grounds enumerated in Section 204(a)(2) exist. The grounds
for denial include lack of qualification, financial incapacity, and other
grounds which seek to eliminate the dishonest.

Once registration is
granted under Section 204, the Secretary may, nevertheless, institute
suspension or revocation proceedings based upon facts known to him
when the registration became effective, as long as the proceedings are

\(^{15}\) Id. §401(c)(4)(B).
\(^{16}\) Id. §401(c)(2).
\(^{17}\) Id. §401(c)(3).
\(^{18}\) Id. §402(a).
\(^{19}\) This is a change from prior law. See §19.5, infra.
\(^{20}\) New Act §401(b).
\(^{21}\) Id. §401(b)(1).
\(^{22}\) Id. §§401(b)(2), 401(b)(3).
\(^{23}\) The New Act shifts responsibility for administration of G.L., c. 110A from
the Department of Public Utilities to the Secretary of State [hereinafter cited as Secretary]. The Secretary has by rule delegated authority to the Supervisor of
the Securities Division [hereinafter cited as Supervisor]. See §19.5, infra.
\(^{24}\) New Act §202(a). See Rules of the Secretary of State adopted pursuant
to c. 694 of the Acts of 1972 [hereinafter cited as Rules], Rule III-B.
\(^{25}\) Id. §§202(a), 414(g).
\(^{26}\) Id. §204(b)(4). Agents of an issuer, officers and general partners of a broker-
dealer, other than such one qualifying as principal, are exempt from the examina-
tion requirement. Rule III-C.
\(^{27}\) Id. §202(d); Rule III-E.
\(^{28}\) Id. §202(a).
instituted within thirty days after the effective date. The Secretary, therefore, has sixty days from the date of an application to deny it, based upon facts disclosed in the application. Proceedings for revocation may be commenced at any time based upon facts disclosed at a later date. Section 203 gives the Secretary the power to prescribe by rule record keeping, accounting and filing procedures, and the right to make such reasonable periodic, special or other examinations as he deems necessary. The Secretary has adopted rules pursuant to Section 203 which in general impose few additional burdens of a non-procedural nature upon any broker-dealers who are members in good standing of the larger stock exchanges and to a lesser extent lighten the burdens imposed broker-dealers registered with the SEC.

Part III deals with the registration of securities and requires the registration, prior to offer or sale, of all securities, unless the security or transaction is exempt under Section 402. The New Act provides two methods for registering securities. Section 302 allows registration by coordination for any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering. Registration by coordination may be accomplished by filing the same documents which are filed in connection with a federal registration. A registration by coordination is effective at the moment the federal registration becomes effective provided it has been on file for at least ten days and certain other conditions are met.

All securities not registered under Section 302 and not exempt from the requirements of Section 301 must be registered by qualification under Section 303. The information and documents required for registration by qualification are left to the discretion of the Secretary. The Secretary has power to require a prospectus and to determine when registration will become effective under Section 303. Such powers which, as a practical matter, give the Secretary discretion to deny an application by delay or by imposing cumbersome filing requirements, might be thought too great were it not for the broad exemptions from registration requirements of the SEC constitutes compliance with Rule III-G.

29 Id. §204(a).
30 See Rules III-G and III-I (relating to records and their preservation) and Rules III-D and III-F (relating to financial statements and filing requirements).
31 Members of the New York, American, Midwest and Pacific Coast Stock Exchanges are exempt from the net capital requirements of Rule III-E. Broker-dealers registered with the SEC may file copies of financial statements and questionnaires required by such registration in lieu of the financial statements required to be filed pursuant to Rule III-D and compliance with the record keeping requirements of the SEC constitutes compliance with Rule III-G.
32 New Act §301.
33 Id. §304(e) gives the Secretary power to permit the omission of any item of information or document from any registration statement. See Rules IV-B and IV-C.
34 Id. §302(c).
35 Id. §304(e); Rules IV-B and IV-C.
36 Id. §§303(c), 303(d).
tion in Section 402 which limit the Secretary’s powers under 303 to a much narrower area than under present law. Under the New Act private placements and securities registered under the Securities Exchange Act of 1934 are exempt. Intra-state offerings as well as offerings exempt under Regulation A must be registered by qualification under Section 303. Since the offering circular required under Regulation A would normally contain the information required to be furnished under Section 303, the requirement of furnishing a prospectus thereunder should present no difficulty. The balance of Part III contains general provisions applicable to both methods of registration and to denial, suspension and revocation of security registration.

Part IV contains general provisions applicable to the preceding three parts. Section 401 contains definitions, Section 402 enumerates exempt securities and transactions, and Section 403 gives the Secretary power by rule to require the filing of advertising, although the Secretary has not exercised such power. Sections 404 and 405 make it unlawful to file misleading documents or to represent that registration or exemption implies administrative approval. Subsequent sections deal with investigations and subpoenas, injunctions, criminal penalties, civil liabilities, judicial review, rules, orders, hearings and administrative files and opinions. The conflicts of laws provisions are contained in Section 414 and the formal provisions appear in Sections 415-417.

§19.3. Changes from prior law: Exemptions. Under both the Old Act and the New Act, certain securities and transactions are exempt from registration. It should be noted that under the Old Act, an exemption usually extended to all of the provisions of the act; however, under the New Act, an exemption extends only to the requirements for registration and not to the civil and criminal anti-fraud provisions. The New Act does, however, exempt certain rearrangements of business entities from the definition of “sale” and thus from all of the provisions of the Act.

Significant changes in the exemptions with respect to securities include the following:

37 Id. §402(b)(9).
40 New Act §303.
41 Id. §304.
42 Id. §305. Rule V defines certain of those grounds for denial which are set forth in §302(a). They relate to excessive selling commissions, cheap stock, dilution and the application of proceeds. Thus for the first time there is a published statement of the ground rules to be applied in evaluating an application.
43 See §19.3, infra.
44 Id. §§407-13.
1. **Governmental securities.** The exemption under the Old Act for a security issued or guaranteed as to principal or interest by a government or governmental agency, or a public body having the power of taxation, has been broadened. It now includes securities issued or guaranteed by the United States, any state, Canada, any Canadian Province, any political subdivisions of such state or province, securities issued by agencies or instrumentalities of any of the foregoing as well as securities issued or guaranteed by other foreign governments with which the United States is currently maintaining diplomatic relations, if the security is recognized by the issuer or guarantor as a valid obligation.

2. **Bank and insurance securities.** The Old Act exemptions have been expanded to include securities of state savings institutions, federal savings and loan associations doing business in Massachusetts, corporations licensed in Massachusetts to make small loans, and federal credit unions and industrial loan associations.

3. **Listed securities.** The New Act specifically exempts securities listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Boston Stock Exchange, the Midwest Stock Exchange, the Pacific Coast Stock Exchange and any other exchanges which the Secretary by rule specifies. The Old Act provided a specific exemption for the Boston Stock Exchange only, but it vested the administrator with authority to exempt the others, and in fact, all of the above exchanges were exempted by administrative order.

4. **Securities of charitable institutions.** The New Act exempts in general terms the securities of all charities rather than only charities formed under G.L. c. 180.

5. **Short term paper.** The Old Act exemption with respect to certain evidences of indebtedness, maturing no less than fourteen months from issuance, is superseded in the New Act by an exemption applicable to commercial paper maturing within nine months of its date of issuance.

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4 Old Act §4(b).
5 New Act §§402(1), 402(2).
6 Old Act §§4(f), 4(g).
8 Id. §402(a)(8). No additional exchanges have been specified.
10 Old Act §4(g).
11 Id. §4(a).
12 New Act §402(a)(10). The Secretary has issued Rule VI-B adopting the federal interpretation of Section 3(a)(3) of the Securities Act of 1933 [15 U.S.C. §77c(a)(3) (1970)]. Securities exempt under §3(a)(3) are presently limited to prime quality negotiable commercial paper of a type which is not ordinarily purchased by the general public and is eligible for discount by federal reserve banks. See CCH Blue Sky Law Rptr. ¶ 71,037.
6. *Employees' investment contracts and securities of cooperative associations.* Exemptions, not present under the Old Act, are available under the New Act in these areas.\(^\text{13}\)

7. *Legal investments.* The Old Act exemption for securities which are a "legal investment" for any savings bank or insurance company\(^\text{14}\) has been eliminated.

Significant changes in exemptions with respect to transactions include the following:

1. **Isolated sales.** The isolated sale exemption in the New Act has been narrowed to apply solely to non-issuer transactions.\(^\text{15}\)

2. **Seasoned securities.** The New Act contains an exemption not present under the Old Act for (1) non-issuer\(^\text{16}\) sales of securities as to which certain information is listed in a recognized security manual,\(^\text{17}\) (2) securities with a fixed interest or dividend provision on which there has been no default within the preceding three years, and (3) securities registered under the Securities Exchange Act of 1934.\(^\text{18}\)

3. **Unsolicited sales.** The New Act extends the exemption for non-issuer unsolicited agency sales found in the Old Act\(^\text{19}\) to include any non-issuer unsolicited transaction and it gives the Secretary the power to require the buyer to acknowledge in writing that the transaction was unsolicited, unless the confirmation indicates that fact.\(^\text{20}\)

4. **Sales to sophisticated investors.** The New Act broadens the categories of institutions to which sales are exempt,\(^\text{21}\) however, sales to corporations, other than the specific types listed (banks, insurance companies, and investment companies, for example), are no longer exempt,\(^\text{22}\) since the rationale behind these exemptions is that only sales to sophisticated investors should remain unregulated. Where the Old Act failed to distinguish between corporations which were sophisticated and corporations which were not, the New Act protects the corner grocer, and more recently the doctor, who are frequently incorporated, but not necessarily sophisticated.

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\(^{13}\) New Act §402(a)(11). Rule VI-C (employee benefit plan investment contracts) requires the filing of notice in certain cases. Id. §402(a)(12), Rule VI-K (securities of certain cooperatives).

\(^{14}\) Old Act §4(e).

\(^{15}\) Compare New Act §402(b)(1) with Old Act §3(a).

\(^{16}\) Non-issuer is defined in Rule VI-D.

\(^{17}\) The Secretary has by rule "recognized" Moody's and Standard & Poor's. Rule VI-E.


\(^{19}\) Old Act §5A.

\(^{20}\) New Act §402(b)(3), Rule VI-F.

\(^{21}\) Compare New Act §402(b)(8) with Old Act §§3(e), 3(h).

\(^{22}\) Id. See definition of "financial institution or institutional buyer" in Rule I-C(12) for additional categories of institutions to which sales are exempt under §402(b)(8).
5. **Private placements.** The private placement exemption was frequently relied upon under the Old Act. It applied exclusively to the issuance and sale of securities by a *Massachusetts* corporation at a time when the number of its security holders did not and would not in consequence of such sale exceed twenty-five.\(^{23}\) The New Act provides a similar exemption\(^ {24}\) but with no distinction between domestic and foreign corporations. The exemption focuses on the number of offerees and the frequency of offers.\(^ {25}\) It is available where there are no more than twenty-five offerees in the Commonwealth during any period of twelve consecutive months, excluding persons to whom sales are exempt under other provisions of the New Act;\(^ {26}\) provided, (1) the seller reasonably believes that all buyers in the Commonwealth other than persons to whom sales are otherwise exempt are purchasing for "investment;" and (2) if any direct or indirect payment of commission or other remuneration for solicitation of buyers other than exempt persons is involved, a notice\(^ {27}\) is filed with the Secretary at least five full business days before the offer. The exemption is perfected if the Secretary does not disallow the exemption within such five days. As to the seller's reasonable belief that the buyers are purchasing for "investment," it would seem advisable that the investment intent be expressed in writing and retained in the seller's files. Obtaining such written statement of intent is the practice in the case of a private placement as to which an exemption pursuant to the Securities Act of 1933 is relied upon.

6. **Offers.** The New Act requires a filing prior to the offer of any security which is subject to registration,\(^ {28}\) as does the Securities Act of 1933. It is no longer possible to conduct preliminary negotiations and solicitations without a filing, as it was under the Old Act.\(^ {29}\)

7. **Employee stock options and stock purchase plans.** The exemption which existed by regulation under the Old Act\(^ {30}\) has been broadened\(^ {31}\) under the New Act\(^ {32}\) to include not only "qualified" or "employee stock purchase plan stock options" and "restricted" stock options

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\(^{23}\) Old Act §3(f).

\(^{24}\) New Act §402(b)(9).

\(^{25}\) Rule VI-G.

\(^{26}\) Id.

\(^{27}\) See Rule VI-H for the requirements of the notice.

\(^{28}\) New Act §402(b)(12).

\(^{29}\) Old Act §5.

\(^{30}\) DPU Order No. 14811 (May 26, 1965).

\(^{31}\) Rule VI-I.

\(^{32}\) The New Act in §402(c) retains in the administrator the power to exempt additional transactions and to limit or revoke exemptions for certain transactions, but it provides specific standards and procedures not contained in the Old Act, to govern such action. This exemption has been adopted pursuant to §402(c).
under the Internal Revenue Code of 1954; but also options which
would be restricted but for the date of issuance, and options on
securities registered under Section 12 of the Securities Exchange
Act of 1934.

8. *Put or call contracts.* The exemption which existed by regulation
under the Old Act has been broadened under the New Act to
include not only put and call contracts on listed securities, but also
put and call contracts on securities registered pursuant to Section

9. *Condominium interests in real estate and commodity contracts.*
The Secretary has created under the New Act an exemption for
certain condominium interests in real estate and for commodity
contracts, but not for options to purchase commodity contracts.

10. *Cash tender offers and pooled income funds.* The Secretary has
made clear that neither the making of cash tender offers nor the
issuance of interests in a pooled income fund, as defined in
Section 642(c)(5) of the Internal Revenue Code of 1954, require
registration under the Act.

11. *Business entity rearrangements including stock dividends, mergers
and reorganizations in bankruptcy.* The New Act creates an exemption
from the definition of sale, and thus from all of the provisions
of the Act, including the anti-fraud provisions for the following
transactions: (a) stock dividends and spin-offs which were exempt
transactions under the Old Act; (b) any act incident to a class
vote on a merger, consolidation, reclassification or sale of assets
in consideration of the issuance of other securities, which, in most
cases, were not exempt under the Old Act, the term “merger”
having been extended by rule to include any three party merger,
and any asset acquisition pursuant to a

35 DPU Orders No. 15851-B (November 1970); No. 15851-A (April 2, 1969);
No. 15851 (August 14, 1968).
36 Rule VI-J.
37 Note 32, supra.
39 Note 32, supra.
40 Rule VI-L.
41 Rule VI-P.
42 Rule VI-M, as to cash tender offers; Rule VI-O, as to interests in a pooled
income fund.
44 The exemption applies whether a corporation or other business entity is
involved. Rule I-C(7).
45 New Act §401(i)(6)(B).
46 Old Act §3(e).
47 New Act §401(i)(6)(C).
48 Old Act §3(e).
49 Rule I-C(15).
plan of acquisition adopted in accordance with state or federal law, neither of which were exempt under the Old Act; (c) the issuance of securities in connection with a reorganization under Chapter X of the Bankruptcy Act. The Secretary has by rule created an exemption from the securities registration provisions of the New Act for securities issued in connection with an arrangement under Chapter XI of the Bankruptcy Act. Under the Old Act any securities issued under Chapters X and XI of the Bankruptcy Act were totally exempt by regulation.

§19.4. Changes from prior law: Conflict of laws. The New Act in Section 414 has attempted to solve the difficult problem of determining with certainty what law applies to a transaction which crosses state lines. Sections 414(a) and (b) provide that certain specified sections apply when an offer to buy or an offer to sell is made and accepted in Massachusetts. Section 414(c) provides that an offer originating in State A and directed to an address in State B would be made in both states whether or not the parties were physically present in either state. Under Section 414(d) an offer is accepted in Massachusetts when acceptance is communicated to the offeror within Massachusetts if the acceptance has not been previously communicated to him outside the Commonwealth. However, the mere sending of a confirmation to State B, the delivery of the security within State A or the mailing of the check by the buyer in State B into State A will not cause the statute of State B to apply, unless the confirmation or delivery constitutes the seller's acceptance of the buyer's offer to buy or the mailing of the check constitutes the buyer's acceptance of the seller's offer to sell.

Advertisements in newspapers and other periodicals under Section 414(e) are considered offers made in Massachusetts only if the periodical is published in Massachusetts and has had at least one third of its circulation within the Commonwealth during the preceding twelve months. This eliminates the trap for the unwary which would otherwise exist where an advertisement is inserted in a magazine which happens to be

50 The asset acquisition exemption would be of particular interest to Massachusetts practitioners with respect to plans of acquisition of the stock of trust companies pursuant to G.L., c. 167A, §4A.
51 New Act §401(i)(6)(D).
53 Rule VI-N.
55 DPU Order No. 4876-A (March 21, 1939).

§19.4. 1 See Loss & Cowett, Blue Sky Law, 224-229; 402-404 (Official comment to Uniform Act §414(a)—(f)); and 404-405 (Draftsmen's comments to Uniform Act, §414(a)—(f)).
2 New Act §414(a) which applies to sellers specifies §§101 (fraud), 201(a) (broker-dealer and agent registration), 301 (securities registration), 405 (unlawful representations) and 410 (civil liability); §414(b) which applies to buyers, specifies §§101, 201(a) and 405, omitting broker-dealer registration and civil liability.
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published in Massachusetts, but whose principal circulation is out of state. An advertisement on a radio or television program originating outside the Commonwealth is not considered to be an offer within the Commonwealth. However, a person in Massachusetts who reads an advertisement in the New York Times (not an offer within Massachusetts) and places an order for the security by letter or phone to the New York broker identified in the advertisement thereby causes the New Act to apply to that security.

§19.5. Changes from prior law: Other significant changes. Other changes from the Old Act which should be noted include:

Administration. Responsibility for administration of the New Act has been transferred from the Department of Public Utilities to the Secretary of State, thereby consolidating under a single regulatory roof the administrative machinery relating to corporations, business trusts and securities. The Secretary has delegated authority for the administration of the New Act to the Supervisor of the Securities Division.

Registration of issuers. The term "broker" under the Old Act included every person (other than a salesman) who is engaged in the business of offering securities in the Commonwealth, whether issued by himself or by another. "Broker" is defined under the New Act so as to exclude "an issuer;" consequently, an issuer proposing to sell its own securities directly to investors in non-exempt transactions will no longer have to register as a broker although he may be required to register one or more of his principal officers as "agents."

Assuming that neither the security to be issued nor the manner of its issuance and sale comes within any of the exemptions provided by the New Act, an issuer will be required to file an application to register its securities prior to their issuance.

Securities registration. Securities may be registered by coordination if a registration statement is filed under the Securities Act of 1933, or by qualification. The new registration application, which is used for registration by coordination as well as registration by qualification, is simpler in form than the Notice of Intention (Form 1) and Statement (Form 2) which it replaces. Furthermore, there are no special requirements for securities which are sold to employees, or paid for in installments, which

3 Id. §414(e)(2).
4 Id. §414(e)(1).
5 Id. §414(a)(2).

§19.5. 1 Acts of 1972, c. 694, §4 amending G.L., c. 9, §10A.
2 Rule I-A.
3 Old Act §2(e).
4 New Act §401(c)(2).
5 Id. §401(b).
6 Id. §301.
8 Old Act §11E.
under the Old Act required a petition to the Department of Public Utilities.

Registration by coordination is effected by filing (1) the prescribed form,10 (2) a consent to service of process, if required;11 (3) one copy of the prospectus12 required under the Securities Act of 1933; (4) any other corporate documents or documents filed under the 1933 Act, if required by the Secretary;13 and (5) an undertaking to file all future amendments to the federal prospectus. In the case of registration by qualification, the Secretary may, in his discretion, require the preparation and filing of a registration statement containing information comparable in scope to that required by a federal registration statement.14 It should be noted that under the New Act there are broader exemptions from registration, and the requirements for filing any particular documents may be waived. In the case of offerings exempt from the Securities Act of 1933 pursuant to Regulation A,15 the Secretary will accept the offering circular in lieu of the information required by Section 303,16 although the exhibits enumerated in Sections 303(b) (13) and 303(b) (14) will be required.17

The filing fee in the case of all registrations, regardless of the amount of securities registered, has been increased from $25 to $100.18 In the absence of a stop order, a registration statement is effective for one year, or for any longer period required to complete the initial distribution of the securities covered thereby.19 However, secondary trading in securities of the same class pursuant to such a registration is effective only during the period when the registration is effective.20 This represents a departure from the Old Act under which all securities outstanding at the date of filing a Notice of Intention were forever registered in the absence of a stop order.21 The effect of this change is to prohibit secondary trading

9 Id. §11.
10 Form U-1 the Uniform Form which is acceptable in the case of issues registered under the 1933 Act in virtually every state requiring the registration of securities. Rule II-C(1).
11 The Secretary has prescribed Form U-2 (Uniform Consent to Service of Process) and Form U-2A (Uniform Form of Corporate Resolution) which are acceptable in virtually every state requiring the filing of a consent to service of process as an exhibit to an application for securities registration. Rule II-C(1).
12 New Act §302(b)(1); Rule IV-B(1).
13 Unless the Secretary requests, only the various underwriting agreements and indenture, if any, need be filed. New Act §302(b)(2); Rule IV-B(1).
14 New Act §303.
16 Rule IV-D-(1).
17 Id.
18 New Act §304(b).
19 Id. §304(g).
20 Id.
21 Old Act §5.
in securities of the same class as an issue previously registered unless an annual registration is maintained or the security is otherwise exempt.\textsuperscript{22}

\textit{Regulation of Broker-Dealers.} The Secretary has exercised his rule making power to require that broker-dealers maintain minimum capital,\textsuperscript{23} keep books and records in accordance with minimum standards,\textsuperscript{24} and file prescribed financial reports and other notices with the Secretary.\textsuperscript{25} In addition the Secretary or the Supervisor has the right to examine the books and records of a broker-dealer.\textsuperscript{26} Denial, suspension or revocation of the broker-dealer's registration may be ordered under any one of eleven statutory grounds. The effect of this expanded control is to bring those dealing with the public under state regulation so that the unqualified, the insolvent and the dishonest may be eliminated and the public protected.

\textit{Sales by non-issuers.} A person, not an issuer, who wanted to sell non-exempt securities under the Old Act had to dispose of his securities in an isolated sale\textsuperscript{27} or else file a Notice of Intention and Statement and arrange for their disposition through a registered broker.\textsuperscript{28} Under Section 402 of the New Act, the isolated sale exemption is retained,\textsuperscript{29} but, in addition, a non-issuer may make a distribution without registration and without using a broker-dealer \textit{provided} that (1) certain financial information concerning the issuer is available in a recognized securities manual,\textsuperscript{30} or (2) the security has a fixed maturity, interest or dividend provision and there has been no default during the current year or within the three preceding years;\textsuperscript{31} or (3) the security is registered under the Securities Exchange Act of 1934.\textsuperscript{32} However, the person making the "distribution" must himself be registered as a broker-dealer unless he is exempt by definition. Moreover, an exemption is available for an isolated non-issuer transaction effected by or through a registered broker-dealer.\textsuperscript{33}

\textit{Civil and Criminal Liability.} The New Act eliminates the provision contained in Section 18 of the Old Act which allowed a person who innocently violated the filing requirements of that Act\textsuperscript{34} to avoid civil liability by making a rescission offer. In addition the New Act expands

\textsuperscript{22} Exemptions might be available under §§402(a) (8), (listed on one of the enumerated exchanges); 402(b) (1), (isolated transaction); 402(b) (2), (issuer listed in an approved manual; debt security not in default for required period; security registered under Section 12(g) of the Securities Exchange Act of 1934).
\textsuperscript{23} Rule III-E.
\textsuperscript{24} Rule III-G.
\textsuperscript{25} Rule III-D; Rule III-F.
\textsuperscript{26} New Act §203(d).
\textsuperscript{27} Old Act §3 (a).
\textsuperscript{28} Id. §5.
\textsuperscript{29} New Act §402(a) (1); Rules I-C (14), VI-D.
\textsuperscript{30} Id. §402(b) (2) (A); Rule VI-E.
\textsuperscript{31} Id. §402(b) (2) (B).
\textsuperscript{32} Id. §402(b) (2) (C).
\textsuperscript{33} Id. §402(b) (1).
\textsuperscript{34} Old Act §§5, 5A.
the bases for civil and criminal liability and increases the penalties. Section 404 makes unlawful the filing of any document containing any materially false or misleading statement. Section 410 affords civil remedies against one who offers or sells a security by means of any untrue statement of a material fact or by a statement omitting a material fact which is necessary in order to make the statements not misleading in the light of the circumstances under which they are made. Following the federal securities law concept, liability is also extended to persons directly or indirectly controlling the issuer as well as to its partners, directors or officers.

There is a broad prohibitory provision in Section 101 of the New Act which, among other things, makes it unlawful to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person in connection with the offer, sale or purchase of any security. There was no corresponding provision under the Old Act.

Further, Section 408 of the New Act authorizes the Secretary to bring an action in the Superior Court to enjoin any person who has engaged or who is about to engage in any act or practice constituting a violation of any provision of that Act or any rule or order thereunder. There was no similar provision under the Old Act apart from the limited power of the Division of Investigation of Securities to forbid the sale of any security for which a Notice of Intention had been filed if the Division found that the sale of such security would be fraudulent.

§19.6. Conclusion. Although the practitioner may at first experience difficulties in operating under the New Act, any such difficulties should be due principally to its novelty. One would anticipate that his task will be made easier due to the uniformity of administration which should result from the existence of a comprehensive body of rules.

With respect to interstate offerings, the New Act should simplify the practitioner's task since it will add another jurisdiction to the list of those which permit registration by coordination with the federal registration to be effected on the uniform application form. The registration procedure for intrastate offerings will be no different from the procedure under the Old Act. Since exemptions are broader, the practitioner is likely to find that he is making fewer applications for securities registrations. The formalities of the broker-dealer and agent registration procedures will place little additional burden on members of the major stock exchanges and on non-members who are registered with the SEC. Although the exemption of issuers from the registration requirement may reduce the number of applications to some extent, the reduction should be largely offset by the new registration requirements for non-issuer sellers in exempt transactions.