Public Law 88-503

August 30, 1964
[H. R. 9419]

AN ACT

To provide for the regulation of the business of selling securities in the District of Columbia and for the licensing of persons engaged therein, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

District of Columbia Securities Act.

SECTION. 1. This Act may be cited as the "District of Columbia Securities Act".

DEFINITIONS

SEC. 2. When used in this Act, unless the context otherwise requires—

(a) "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 any individual who represents an issuer in (1) effecting transactions in an exempt security, (2) effecting exempt transactions, or (3) effecting transactions with existing employees, partners, or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in the District. A partner, officer, or director of a broker-dealer or issuer, or a person occupying similar status or performing similar functions, is an agent only if he otherwise comes within this definition.

(b) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others 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 the District if (A) he effects transactions in the District 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 trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of twelve consecutive months he does not direct more than fifteen offers to sell or buy into the District 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 the District.

54 Stat. 789.
15 USC 80a-51.

(c) "Commission" means the Public Service Commission of the District of Columbia as so designated by section 21 of this Act.

(d) "District" means the District of Columbia, either as a territorial area as defined in the first section of the Act of June 22, 1874, entitled "An Act to revise and consolidate the statutes of the United States, general and permanent in their nature, relating to the District of Columbia, in force on the first day of December, in the year of our Lord one thousand eight hundred and seventy-three" (D.C. Code, sec. 1-101), or as the government and municipal corporation of that name as created by section 2 of such Act (D.C. Code, sec. 1-102), depending on the context.

(e) For the purpose of subsection (a) of this section "exempt security" means—

(1) any security (including a revenue obligation) issued or guaranteed by the United States, any State, any political subdivision of a State, the District, 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;

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(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;

(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 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 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; or

(5) any investment contract issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan.

(f) For the purpose of subsection (a) of this section "exempt transaction" means—

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

(2) 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 secured thereby, is offered and sold as a unit;

(3) any transaction by a receiver or trustee in bankruptcy;

(4) 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;

54 Stat. 789.
15 USC 80a-51.

(5) any transaction pursuant to an offer directed by the offeror to not more than twenty-five persons in the District during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in the District, if the seller reasonably believes that all the buyers in the District are purchasing for investment;

(6) 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, and (B) the number of subscribers does not exceed twenty-five, and (C) no payment is made by any subscriber;

(7) 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, nontransferable warrants, or transferable warrants, exercisable within not more than ninety 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 the District, or (B) the issuer first files a notice specifying the terms of the offer and the Commission does not by order disallow the exemption within the next five full business days; or

(8) any transaction effected with existing employees, partners, or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given, directly or indirectly, for soliciting any person in the District.

(g) "Fraud", "deceit", and "defraud" shall not be limited to common law deceit.

(h) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(i) "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 persons 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".

(j) "Person" means an individual, a corporation, a partnership, an association, 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.

(k)(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 any 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.

(l) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participa-

tion 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 interest 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 a fixed sum of money either in a lump sum or periodically for life or some other specified period or any contract issued by an insurance company pursuant to section 41 of chapter III of the Life Insurance Act, as added by Public Law 86-520 (D.C. Code, sec. 35-541). 74 Stat. 218.

(m) "State" means any State, territory, or possession of the United States, and the Commonwealth of Puerto Rico, but not the District of Columbia.

FRAUD

SEC. 3. It shall be unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly—

(a) to employ any device, scheme, or artifice to defraud;

(b) 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 in which they are made, not misleading; or

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

LICENSE REQUIREMENT

SEC. 4. (a) It shall be unlawful for any person to transact business in the District as a broker-dealer or agent unless he is effectively licensed under this Act.

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

(c) Every license and renewal license shall expire one year from its effective date, but in any case in which timely and sufficient application for a renewal license has been made in accordance with section 5(a) no license shall expire until final action of the Commission upon such pending application. The Commission may by rule or order fix a schedule for the first renewal of licenses so that subsequent renewals may be staggered over the one-year period. For this purpose the Commission shall reduce the license fee proportionately for any initial license which may expire before one year from its effective date.

LICENSE PROCEDURE

SEC. 5. (a) A broker-dealer or agent may obtain an initial license by filing with the Commission an application executed by all partners, directors, and officers of the applicant personally engaged in the securities business in the District, together with a consent to service of process pursuant to section 15(f) of this Act. The application for

each broker-dealer applicant shall contain the following information, and for each partner, officer, or director, each person occupying a similar status or performing similar functions and each person directly or indirectly controlling such broker-dealer the information prescribed in subdivisions (3), (4), (5) and (7); and the application for each agent shall contain the information specified in subdivisions (3), (4), (5) and (7):

(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;

(4) each 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;

(5) each disciplinary action by a securities exchange or securities association within the ten years preceding the date of application;

(6) the applicant's financial condition and history; and

(7) such other matters as the Commission may by rule prescribe as being necessary or appropriate in the public interest or for the protection of investors.

Initial license; publication announcement.

The Commission may by rule or order require an applicant for an initial license to publish an announcement of the application in one or more specified newspapers published in the District. If no denial order is in effect and no proceeding is pending under section 10, a license shall become effective at noon of the thirtieth day after any application is filed. The Commission may by rule or order specify an earlier effective date, and it may by order defer the effective date until noon of the thirtieth day after the filing of any amendment to an application. A license of a broker-dealer shall be deemed to constitute a license of any agent who is a partner, officer, or director, or a person occupying a similar status or performing similar functions.

(b) An applicant for an initial or renewal license shall pay a filing fee. The filing fee for an initial or a renewal license shall, except for agents, be fixed by the Commission but shall not exceed $125 for a broker-dealer, plus an amount not exceeding $12.50 for each partner, officer, and director, and each person occupying a similar status or performing similar functions, who transacts business in the District. The filing fee for an initial license for an agent shall be $12.50. The filing fee for each renewal license for an agent shall be $5.

(c) A licensed broker-dealer may file an application for a license of a successor, whether or not the successor is then in existence, for the unexpired portion of the period during which the license of such broker-dealer is effective. There shall be no filing fee.

Net capital requirement.

(d) Each broker-dealer licensed in the District shall have and maintain a minimum net capital of $25,000, except that the Commission may, by rule, fix a minimum net capital in lesser amounts, but in no case less than $5,000 net capital, for a broker-dealer with a limited license which authorizes such broker-dealer to engage only in transactions in securities registered under the Investment Company Act of 1940. The Commission may by rule prescribe a ratio between net capital and aggregate indebtedness.

54 Stat. 789. 15 USC 80a-51.

(e) The Commission may by rule require a licensed broker-dealer or the agent of an issuer to post a surety bond issued by a corporate surety company licensed to do business in the District of Columbia in such amounts up to $25,000 and on such conditions as the Commission may determine to be necessary or appropriate in the public interest or for the protection of investors, the surety bond of a licensed broker-dealer to cover such broker-dealer and all licensed agents thereof in the District of Columbia. Every bond shall provide for suit thereon

by any person who may have a cause of action arising under section 14 of this Act, and, if the Commission by rule or order requires, by any person who may have 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 years after the sale or other act upon which such liability is based.

(f) The license of a broker-dealer or agent may be renewed by filing with the Commission prior to the expiration thereof an application containing such information as the Commission may require to indicate any material change in the information contained in the original application or any renewal thereof, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within one year prior to the date of such application for renewal.

UNLAWFUL REPRESENTATION CONCERNING LICENSING

SEC. 6. (a) Neither the fact that an application for a license has been filed nor the fact that a person is effectively licensed shall constitute a finding by the Commission that any document filed under this Act, or that any statement made therein, is true, complete, and not misleading. Neither any such fact nor the fact that an exemption is available for any person, security or transaction shall mean that the Commission has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.

(b) It shall be unlawful for any broker-dealer or agent to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection (a).

RECORDS AND REPORTS

SEC. 7. (a) Every licensed broker-dealer and agent shall make, keep, and preserve for such periods, such accounts, correspondence, memorandums, papers, books, and other records, and make such reports, as the Commission by rule shall prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) All the records and reports referred to in subsection (a) shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by the Commission, within or without the District, as the Commission may deem necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Commission, insofar as it may deem it practicable in administering this subsection, may cooperate with the securities administrator of any State, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

48 Stat. 881.
15 USC 78a.

FILING OF SALES AND ADVERTISING LITERATURE

SEC. 8. The Commission may by order require any specific broker-dealer or agent to file with the Commission any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, except sales and advertising literature describing an exempt security as defined in section 2(e) or used in an exempt transaction as defined in section 2(f).

MISLEADING FILINGS

SEC. 9. It shall be unlawful for any person to make or cause to be made, in any document filed with the Commission or in any proceeding under this Act, any statement which is, at the time and in the light of the circumstances in which it is made, false or misleading in any material respect.

DENIAL, REVOCATION, SUSPENSION, CANCELLATION, AND WITHDRAWAL OF LICENSES

SEC. 10. (a) The Commission may by order deny, suspend, or revoke any license if it finds that the order is in the public interest and that the applicant or licensee or, in the case of a broker-dealer, 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—

(1) has filed an application for a license 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 light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) has willfully violated or willfully failed to comply with any provision of this Act or any rule or order under this Act, or has violated or failed to comply with the minimum capital requirement of section 5(d) or any ratio rule prescribed thereunder;

(3) has been convicted, within the past ten years, of any misdemeanor involving a fiduciary relationship or a security or any aspect of the securities business, or of any felony, or has been acquitted of any such offense within the same period solely on the ground that he was insane at the time of its commission;

(4) 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;

(5) is the subject of an order of the Commission denying, suspending, or revoking a license as a broker-dealer or agent;

(6) is the subject of an order entered within the past five years by the securities administrator of any State or by the Securities and Exchange Commission denying or revoking a license or registration as a broker-dealer or agent, 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, or is the subject of a United States Post Office fraud order; but (i) the Commission may not institute a revocation or suspension proceeding under clause (6) more than two years from the date of the order or action relied on, and (ii) it may not enter an order under clause (6) on the basis of an order under a State act unless that order was based on facts which would currently constitute a ground for an order under this section;

(7) has engaged in dishonest or unethical practices in the securities business or while acting in any fiduciary capacity;

(8) 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 Commission may not enter an order against a broker-dealer under this clause without a finding of insolvency as to the broker-dealer; or

(9) 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 Commission may by order deny, suspend, or revoke any license if it finds that the order is in the public interest and that the applicant or licensee—

(10) has failed reasonably to supervise his agents if he is a broker-dealer; or

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

The Commission may not institute a suspension or revocation proceeding solely on the basis of a fact or transaction known to it when the license became effective unless the proceeding is instituted within the next thirty days.

(b) The following provisions shall govern the application of section 10(a)(9):

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

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

(4) The Commission shall by rule provide for an examination, which may be written or oral or both, to be taken by any class of, or all, applicants.

(c) The Commission may by order summarily postpone issuance of a license or suspend an effective license pending determination of any proceeding under this section. Upon the entry of the order, the Commission shall promptly notify the applicant or licensee, as well as the employer or prospective employer if the applicant or licensee is an agent, that it has been entered and of the reasons therefor and that within fifteen 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 Commission, the order will remain in effect until it is modified or vacated by the Commission. If hearing is requested or ordered, the Commission, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) If the Commission finds that any licensee or applicant for a license is no longer in existence, or has ceased to do business as a broker-dealer or agent, or has been adjudicated to be of unsound mind or is subject to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the Commission may by order cancel the license or application.

(e) Withdrawal of a license of a broker-dealer or agent shall become effective thirty days after receipt of an application to withdraw or within such shorter period of time as the Commission 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 days after the application is filed. If a proceeding is pending or instituted, withdrawal shall become effective at such time and upon such conditions as the Commission shall by order determine. If no proceeding is pending or instituted and withdrawal automatically

becomes effective, the Commission may nevertheless institute a revocation or suspension proceeding under section 10(a)(2) within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which the license 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 licensee (as well as the employer or prospective employer if the applicant or licensee is an agent), (2) opportunity for hearing, and (3) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record.

INVESTIGATIONS AND SUBPENAS

SEC. 11. (a) The Commission in its discretion (1) may make such public or private investigations within or without the District as it 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 Commission may determine, 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, except that no public statement, notice, or release concerning any investigation, proceeding, or order under this Act which is not a finding of a hearing examiner or of a Commissioner or a final determination of the Commission shall allege a violation of this Act or a ground for denial, suspension, or revocation of a license, unless such statement, notice, or release specifies that such allegations are unproved until final determination, and that the purpose of the investigation or proceeding is to determine whether the allegations are true.

Subpena of witnesses, etc.

(b) For the purpose of any investigation or proceeding under this Act, the Commission may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, agreements, or other documents or records which it deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpena issued to any person, the United States District Court for the District of Columbia, upon application by the Commission with the approval of the United States Attorney for the District of Columbia, may issue an order compelling such person to appear before the Commission, or the officer designated by it, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) No person shall be excused from attending and testifying or from producing any document or record before the Commission, or the officer designated by it, in obedience to a court order pursuant to subsection (c), 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 by such order compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying shall not be exempt from prosecution and punishment for perjury or contempt committed in testifying.

(e) Any person compelled to appear in person before the Commission or a representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel.

INJUNCTIONS

SEC. 12. Whenever it shall appear to the Commission that any person has engaged or is about to engage in any act or practice constituting a violation of this Act or any rule or order hereunder, it may in its discretion bring an action in the United States District Court for the District of Columbia 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 Commission to post a bond.

CRIMINAL PENALTIES

SEC. 13. (a) Any person who shall willfully violate any provision of this Act except sections 3 and 9, or who shall willfully violate section 9 knowing the representation to be false or misleading in any material respect, shall upon conviction be fined not more than $5,000 or imprisoned not more than three years, or both.

(b) Any person who shall willfully violate section 3 of this Act shall upon conviction be fined not more than $5,000 or imprisoned not more than five years, or both.

(c) Any person who shall willfully violate any rule or order under this Act shall upon conviction be fined not more than $5,000 or imprisoned not more than one year, or both; 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.

(d) No person shall be prosecuted, tried, or punished for any offense under this Act or any rule or order hereunder unless the indictment is returned or the information is filed within five years next after such offense shall have been committed.

(e) Nothing in this Act shall be construed to limit the power of the United States or of the District of Columbia to punish any person for any conduct which constitutes an offense under any other Act of Congress applicable in the District, or under any municipal ordinance or regulation of the District, or at common law.

CIVIL LIABILITIES

SEC. 14. (a) Any person who—

(1) offers or sells a security in violation of section 4(a) or 6(b) of this Act; 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, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission,

shall be liable to the person purchasing such security from him, and the purchaser may bring a civil action to recover the consideration paid for the security with interest thereon and with costs and reasonable attorney 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. For this purpose damages shall be the amount that would be recoverable upon a tender, less the market value of the security when the buyer disposed of it and interest from the date of disposition.

(b) Any person who directly or indirectly controls a seller liable under subsection (a), any partner, officer, or director of such a seller and any person occupying a similar status or performing similar functions, any employee of such a seller who materially aids in the sale, and any broker-dealer or agent who materially aids in the sale shall also be liable jointly and severally with and to the same extent as the seller, unless the nonseller who shall be so liable sustains the burden of proof that he did not know, and in the 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 shall be 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) Any liability or cause of action under this section shall survive the death of any person who, if living, would have such a liability or cause of action.

(e) No person may bring an action under this section after two years from the contract of sale. No person may bring an action 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 for the security together with interest at 6 per centum per annum from the date of payment, less the amount of any income received on the security, and if he failed to accept that offer within thirty 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 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 of 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 upon the contract.

(g) Any condition, stipulation, or provision binding any person who acquires any security to waive compliance with any provision of this Act or with any rule or order under this Act shall be void.

(h) The rights and remedies provided by this Act shall be in addition to any other rights or remedies that may exist at law or in equity, but this Act shall not create any cause of action not specified in this or section 5(e).

SCOPE OF ACT AND SERVICE OF PROCESS

SEC. 15. (a) Sections 3, 4(a), 6, and 14 shall apply to persons who sell or offer to sell when (1) an offer to sell is made in the District, or (2) an offer to buy is made and accepted in the District.

(b) Sections 3, 4(a), and 6 shall apply to persons who buy or offer to buy when (1) an offer to buy is made in the District, or (2) an offer to sell is made and accepted in the District.

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

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

(e) An offer to sell or to buy is not made in the District by anything appearing in (1) any bona fide newspaper or other publication of general, regular, and paid circulation, circulated by or on behalf of the publisher in the District which is not published in the District, or which is published in the District but has had more than two-thirds of its circulation outside the District during the past twelve months, or (2) any radio or television program received in the District which originates outside of the District.

(f) Any applicant for a license under this Act shall file with the Commission, in such form as it by rule may prescribe, an irrevocable consent appointing each member of the Commission or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor, executor, or administrator which shall arise 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 shall have filed such a consent in connection with one application or offering need not file another. Service may be made by leaving a copy of the process in the office of the Commission, but it shall not be effective unless (1) the plaintiff forthwith shall send notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the Commission, and (2) the plaintiff's affidavit of compliance with this subsection shall be filed in the case on or before the return day of the process, if any, or within such further time as the court may allow.

(g) When any person, including any nonresident of the District, shall engage in conduct prohibited or made actionable by this Act or any rule or order under this Act and he shall not have filed a consent to service of process under subsection (f) and personal jurisdiction over him cannot otherwise be obtained in the District, that conduct shall be considered equivalent to his appointment of each member of the Commission, or his successor in office, to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor, executor, or administrator which shall arise from that conduct and which shall be brought under this Act or any rule or order under this Act, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the Commission, but it shall not be effective unless (1) the plaintiff forthwith shall send notice of the service and a copy of the process by registered mail to the defendant or respondent at his last known address or shall take other steps reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of compliance with this subsection shall be filed in the case on or before the return day of the process, if any, or within such further time as the court may allow.

(h) For the purposes of subsections (f) and (g) of this section, the term "plaintiff" includes the Commission in any suit, action, or proceeding initiated by it.

(i) After service of process under this section, the court, or the Commission in a proceeding before it, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

ADMINISTRATION OF ACT

SEC. 16. (a) This Act shall be administered by the Public Service Commission of the District of Columbia. The Commission is hereby authorized to establish such offices and with such names or titles, and to appoint and employ such officers and employees and prescribe their duties, as may be necessary to carry out the provisions of this Act, and such positions shall be subject to the Classification Act of 1949.

63 Stat. 954. 5 USC 1071 note; *Ante*, p. 400.

Trust fund.

(b) All collections, including fees, received pursuant to this Act shall be deposited in the Treasury of the United States in a trust fund from which may be paid, in the same manner as provided by law for other expenditures of the District, the expenses, as authorized by the Commission, of hearings held pursuant to this Act, including stenographic and reporting services (by contract or otherwise) and rental or purchase of equipment. Whenever the amount of such trust fund exceeds $5,000, the excess shall be transferred to the funds deposited in the Treasury to the credit of the District of Columbia.

(c) Appropriations to carry out the purposes of this Act are hereby authorized.

Quorum.

(d) A majority of the members of the Commission shall constitute a quorum to do business, and any vacancy shall not impair the power of the remaining members to exercise all the powers of the Commission. In the case of any application, investigation, inquiry, hearing, or proceeding under this Act, the Commission may designate one of its members or a hearing examiner to examine documents, hear testimony, and submit to the Commission the record of testimony and such documents with his proposed findings and conclusions of fact and law.

(e) The Commission is hereby authorized to make, amend, and rescind such rules, orders, and forms as may be necessary to carry out the provisions of this Act, including, but not limited to, rules, orders, and forms governing applications and amendments thereto, investigations, inquiries, hearings, and proceedings, and including by rule definitions of 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 Commission may classify persons and matters within its jurisdiction and may prescribe different requirements for different classes.

(f) No rule, form, or order may be made, amended, or rescinded, unless the Commission finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this Act. In prescribing rules and forms the Commission may cooperate with the securities administrator of any State and the Securities and Exchange Commission with a view to effectuating the policy of this Act to achieve maximum uniformity in the form and content of license applications, records, and reports, and other documents wherever practicable.

Statements and reports, content.

(g) The Commission may by rule or order prescribe (1) the form and content of statements, records, reports, and other documents required under this Act or rules or orders thereunder, (2) the circumstances under which such statements, records, reports, or other documents shall be filed with the Commission, and (3) whether any required statements, records, reports, or other documents shall be certified by independent or certified public accountants.

(h) All rules and forms of the Commission made under this Act shall be published.

Nonliability provisions.

(i) No provision of this Act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, form, or order of the Commission, 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.

(j) A document shall be deemed to be filed or submitted to the Commission when it is received by it during regular business hours.

License applications, register.

(k) The Commission shall keep a register of all license applications which are or have ever been effective under this Act, and all denial, suspension, postponement, or revocation orders entered under this Act. Such register shall be open for public inspection during regular business hours.

Document certification.

(l) License applications and materials submitted therewith or in connection therewith may be made available to the public under such rules as the Commission may prescribe. Such rules may include, but shall not be limited to, rules prescribing reasonable fees for furnishing photostatic or other copies upon request. The Commission may certify under seal such copy or copies of any document available to the public or any entry in the register, and any copy so certified shall be admitted as evidence with the same effect as the exemplifications of record referred to in section 14-501 of the District of Columbia Code.

77 Stat. 520.

Evidence of violations.

(m) The Commission may refer evidence concerning violations of this Act or of any rule or order under this Act to the United States Attorney for the District of Columbia who may, with or without such reference, institute criminal proceedings under this Act. The Commission shall comply with any request of the Attorney General of the United States, the Postmaster General of the United States, the Securities and Exchange Commission, or the United States Attorney for the District of Columbia for any information or evidence coming to it in the administration of the Act. The Commission in its discretion may refer any information or evidence coming to it in the administration of this Act to any department or agency of the United States, to the securities administrator of any State, or to any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

48 Stat. 881.
15 USC 78a.

(n) Any hearing held by the Commission pursuant to this Act shall be public unless the Commission in its discretion and with the consent of all the parties to such hearing order that the hearing be conducted privately.

JUDICIAL REVIEW

77 Stat. 485.

SEC. 17. Section 11-742(a) of the District of Columbia Code is amended (1) by striking out "and" at the end of paragraph (8); (2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and the word "and"; and (3) by adding at the end thereof the following new paragraph:

"(10) final orders of the Public Service Commission of the District of Columbia under the provisions of the District of Columbia Securities Act."

ADVISORY COMMITTEE

SEC. 18. The President of the Board of Commissioners of the District of Columbia shall appoint a District of Columbia Securities Advisory Committee which shall consist of six members, who shall be residents of the District of Columbia or the State of Maryland or the State of Virginia, at least two of whom shall be actively engaged in

the securities business and at least two of whom shall be members of the bar of the District of Columbia. In no case shall more than three members of the Advisory Committee be members of the same political party. The members shall be selected on the basis of their experience and qualifications to advise the Public Service Commission on all phases of the securities business. The members shall be appointed for staggered terms of three years each, with two members appointed each year, to serve without compensation and eligible for reappointment for additional terms, provided that not more than two of the terms are in succession. The duration of the terms of the first members appointed hereunder shall be designated by the President of the Board of Commissioners at the time of their appointment. The members of the Advisory Committee shall select their own chairman. Meetings of the Advisory Committee shall be held when called by the Chairman of the Public Service Commission and may be attended by members of the said Commission. The Advisory Committee shall give the Public Service Commission the benefit of its advice on any and all matters pertaining to the administration of this Act, particularly the adoption, amendment or repeal of rules, regulations, and forms provided for herein.

Selection of members.

Terms.

SEVERABILITY

SEC. 19. If any provision of this Act or the application thereof to any person or circumstance shall be 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 that end the provisions of this Act are severable.

EFFECTIVE DATE

SEC. 20. (a) Sections 3, 13(b), 13(d), 16, and 21 of this Act, together with definitions of terms used therein, shall take effect upon approval of this Act.

(b) The remaining provisions of this Act shall take effect at 12:01 antemeridian on the one hundred and eightieth day after approval of this Act, or, if the one hundred and eightieth day be a holiday in the District, at 12:01 antemeridian on the first business day thereafter.

Public Service Commission of D.C., designation.

SEC. 21. The Public Utilities Commission of the District of Columbia established by paragraph 97 of section 8 of the Act of March 4, 1913, entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes" (D.C. Code, sec. 43-201) hereafter shall be known as the "Public Service Commission of the District of Columbia". Wherever reference is made to the Public Utilities Commission of the District of Columbia in any Act of Congress, or in any compact authorized by an Act of Congress, or in any regulation or order, such reference shall be held to be a reference to the Public Service Commission of the District of Columbia.

44 Stat. 920.

Approved August 30, 1964.