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Senate Engrossed

State of Arizona
Senate
Forty-fifth Legislature
Second Regular Session
2002

SENATE BILL 1107

AN ACT

AMENDING SECTIONS 40-106, 44-1843, 44-1848, 44-1850, 44-1872, 44-1894, 44-1895, 44-1941, 44-1948, 44-1961, 44-1962, 44-1974, 44-2003, 44-2031, 44-2032, 44-2054, 44-3101, 44-3152, 44-3158, 44-3201, 44-3214, 44-3291 AND 44-3292, ARIZONA REVISED STATUTES; RELATING TO THE CORPORATION COMMISSION SECURITIES DIVISION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 40-106, Arizona Revised Statutes, is amended to
3 read:

4 40-106. Legal services

5 A. The attorney general shall be attorney for the securities division
6 of the commission and the commission for matters arising out of securities
7 division activity. AT THE COMMISSION'S DISCRETION, THE ATTORNEYS EMPLOYED BY
8 THE SECURITIES DIVISION MAY REPRESENT THE COMMISSION IN ADMINISTRATIVE AND
9 CIVIL MATTERS ARISING UNDER TITLE 44, CHAPTER 12 OR 13.

10 B. The executive secretary of the commission may employ attorneys to
11 represent the commission and each commissioner, in regard to matters in
12 connection with the other powers and duties of the commission.

13 Sec. 2. Section 44-1843, Arizona Revised Statutes, is amended to read:

14 44-1843. Exempt securities; fee; filing

15 A. Sections 44-1841 and 44-1842, section 44-1843.02, subsections B
16 and C and sections 44-3321 and 44-3325 do not apply to any of the following
17 classes of securities:

18 1. Securities issued or guaranteed by the United States, ~~or~~ by any
19 state, territory or insular possession ~~thereof~~ OF THE UNITED STATES, ~~or~~ by
20 any political subdivision of such state, territory or insular possession, ~~or~~
21 by the District of Columbia, ~~—~~ or by any agency or instrumentality of one or
22 more of any of the foregoing. This exemption shall not apply to securities
23 regulated pursuant to section 44-1843.01.

24 2. Securities issued by a national bank, a bank or a credit or loan
25 association organized pursuant to an act of Congress and supervised by the
26 United States or an agency ~~thereof~~ OF THE UNITED STATES, or issued by a state
27 bank or savings institution the business of which is supervised and regulated
28 by an agency of this state or of the United States.

29 3. Securities issued by a savings and loan association subject to
30 supervision by an agency of this state.

31 4. Insurance or endowment policies, VARIABLE CONTRACTS, annuity
32 contracts or optional annuity contracts issued by a person subject to the
33 supervision of and licensed by the insurance commissioner, the bank
34 commissioner or any agency of the United States, any state or the District of
35 Columbia performing like functions.

36 5. Securities issued or guaranteed either as to principal, interest or
37 dividend by a railroad or public utility if the issuance of its securities is
38 regulated by an agency of the United States, a state, territory or insular
39 possession ~~thereof~~ OF THE UNITED STATES, an agency of the District of
40 Columbia, ~~—~~ or an agency of the Dominion of Canada or any province ~~thereof~~ OF
41 THE DOMINION OF CANADA, and also equipment trust certificates in respect to
42 equipment conditionally sold or leased to a railroad or public utility, if
43 other securities issued by such railroad or public utility would be exempt
44 under this paragraph.

1 6. Securities issued by a person that is organized and operated
2 exclusively for religious, educational, benevolent, fraternal, charitable or
3 reformatory purposes and not for pecuniary profit, and no part of the net
4 earnings of which inures to the benefit of any person, private stockholder or
5 individual and securities issued by or any interest or participation in any
6 pooled income fund, collective trust fund, collective investment fund or
7 similar fund that is excluded from the definition of an investment company
8 under section 3(c)(10)(B) of the investment company act of 1940. The
9 exemption prescribed in this paragraph does not apply to any of the
10 following, unless excluded from the definition of an investment company under
11 section 3(c)(10)(B) of the investment company act of 1940:

12 (a) Securities made liens upon revenue producing property subject to
13 taxation.

14 (b) Securities issued by a nonprofit organization that is engaged in,
15 intends to engage in, controls, finances, ~~or~~ or lends funds or property to
16 other entities engaged in the construction, operation, maintenance or
17 management of a hospital, sanitarium, rest home, clinic, medical hotel,
18 mortuary, cemetery, mausoleum or other similar facilities.

19 (c) Interest bearing or noninterest bearing debt securities.

20 (d) Securities whose terms include significant features that are
21 common to debt securities and that the commission finds are the functional
22 equivalent of debt securities.

23 7. Securities listed or approved for listing upon the issuance thereof
24 upon the New York stock exchange, the American stock exchange, the midwest
25 stock exchange or any other national securities exchange **THAT IS** registered
26 under the securities exchange act of 1934 **AND** that is designated by the
27 commission as provided in this paragraph, and securities designated or
28 approved for designation on notice of issuance on the national market system
29 of a national securities association registered under the securities exchange
30 act of 1934, and all securities senior or equal in rank to any securities so
31 listed or approved for listing, designated or approved for designation or
32 represented by subscription rights or warrants that have been so listed,
33 designated or approved and any warrant or right to purchase or subscribe to
34 any of the foregoing. In addition to the securities exchanges prescribed in
35 this paragraph, the commission may by order designate any registered national
36 securities exchange if it finds that it would be in the public interest for
37 securities listed ~~thereon~~ **ON THE EXCHANGE** to be exempt. The commission may
38 at any time by order withdraw a designation of an exchange or association
39 made under this paragraph.

40 8. Commercial paper that arises out of a current transaction or the
41 proceeds of which have been or are to be used for current transactions, that
42 evidences an obligation to pay cash within nine months of the date of
43 issuance or sale, exclusive of days of grace, or any renewal of such paper
44 that is likewise limited, or any guarantee of such paper or of any such
45 renewal.

1 organization which is engaged in, intends to engage in, controls, finances,
2 or lends funds or property to other entities engaged in the construction,
3 operation, maintenance, ~~or~~ management of a hospital, sanitarium, rest home,
4 clinic, medical hotel, mortuary, cemetery, mausoleum or other similar
5 facilities, ~~or~~ who engages in transactions described in section 44-1844,
6 subsection A, paragraph 1, 4, 11 or 18 or section 44-1845, ~~or~~ shall be
7 registered under article 9 of this chapter.

8 ~~B.~~ C. Any rule adopted pursuant to this section shall require
9 registration of a dealer or salesman engaged in transactions described in
10 section 44-1844, subsection A, paragraph 1 only if such dealer or salesman is
11 engaged principally and primarily in the business of making a series of
12 private offerings. For the purposes of this subsection, "series" means in
13 excess of four private offerings in any consecutive twelve-month period.

14 ~~C.~~ D. ~~The provisions of~~ Subsection A- B of this section ~~do~~ DOES not
15 apply to transactions involving the following securities:

- 16 1. Securities issued by those financial institutions and enterprises
17 licensed and regulated pursuant to title 6.
- 18 2. Stock and stock options issued pursuant to an employee stock option
19 plan.
- 20 3. Promissory notes issued in the normal course of business.
- 21 4. Securities issued to corporations not formed for the purpose of
22 evasion of this section.
- 23 5. Securities issued in exchange for all or substantially all of the
24 capital stock of another corporation.
- 25 6. Such other securities transactions as the commission may exempt by
26 rule.

27 Sec. 4. Section 44-1850, Arizona Revised Statutes, is amended to read:
28 44-1850. Viatical or life settlement investment contracts

29 A. ~~Sections SECTION 44-1841 and 44-1842 do~~ DOES not apply to viatical
30 or life settlement investment contracts if either:

31 1. The person who assigns, transfers, sells, devises or bequests any
32 portion of the death benefit under or ownership of either an insurance policy
33 or certificate of insurance does not enter into more than three viatical or
34 life settlement investment contracts in any calendar year.

35 2. All of the following apply:

36 (a) At least ten days before the initial sale of a viatical or life
37 settlement investment contract within or from this state, and every twelve
38 months after the initial filing date if the issuer continues to offer
39 securities within or from this state, the issuer files with the commission
40 all of the following:

41 (i) A notice of the issuer's intent to sell securities pursuant to
42 this section that includes the issuer's name, the issuer's type of
43 organization, the state in which the issuer is organized, the date the issuer
44 intends to begin selling securities within or from this state, the issuer's
45 principal business and mailing address and a statement that the issuer is not

1 prohibited pursuant to subsection E of this section from claiming an
2 exemption pursuant to THIS subsection ~~A of this section~~. An authorized
3 officer of the issuer shall sign the notice and the signature shall be
4 notarized.

5 (ii) A consent to service of process.

6 (iii) An audit report of an independent certified public accountant
7 together with a balance sheet and related statements of income OR OPERATIONS,
8 STOCKHOLDERS' EQUITY OR retained earnings and cash flows that reflect the
9 issuer's financial position, the results of ~~the issuer's~~ operations and ~~the~~
10 ~~issuer's~~ cash flows as of a date within fifteen months before the date of
11 FILING the notice prescribed in this subdivision. The financial statements
12 listed in this subdivision shall be prepared in conformity with generally
13 accepted accounting principles and shall be examined ~~according to~~ IN
14 ACCORDANCE WITH generally accepted auditing standards. If the date of the
15 audit report is more than one hundred twenty days before the date of FILING
16 the notice prescribed in this subdivision, the issuer shall provide unaudited
17 interim financial statements PREPARED IN CONFORMITY WITH GENERALLY ACCEPTED
18 ACCOUNTING PRINCIPLES.

19 (b) The issuer discloses to the offeree in writing all of the
20 following:

21 (i) The purchaser's right to rescind or cancel the investment and
22 receive a refund.

23 (ii) The name, address and telephone number of the issuing insurance
24 company.

25 (iii) The total value of the policy and the percentage of the policy
26 the purchaser will own.

27 (iv) The policy number, issue date and type.

28 (v) If a group policy, the name, address and telephone number of the
29 group and, if applicable, the material terms and conditions of converting the
30 policy to an individual policy, including the amount of increased premiums.

31 (vi) If a term policy, the term and the name, address and telephone
32 number of the person who will be responsible for renewing the policy if
33 necessary.

34 (vii) Whether the policy is contestable.

35 (viii) If a contestable policy, the risk that the insurance company
36 may cancel the policy or refuse to pay a claim made during the contestable
37 period.

38 (ix) The policy premiums and terms of policy payments.

39 (x) The amount of the purchaser's monies that will be set aside to pay
40 premiums.

41 (xi) The name, address and telephone number of the person who will be
42 the policy owner and the person who will be responsible for paying premiums.

43 (xii) The date on which the purchaser will be required to pay premiums
44 if necessary and the amount of the premium.

1 (xiii) The separate amounts of the purchaser's monies that will be
2 used to pay the seller's commission, purchase the policy and pay
3 administrative expenses and other transaction costs.

4 (xiv) Any other disclosure required by the commission.

5 B. At least ten days before use within this state, an issuer shall
6 file with the commission all advertising and sales materials that will be
7 published, exhibited, broadcast or otherwise used, directly or indirectly, in
8 the offer or sale of a viatical or life settlement investment contract.

9 C. A purchaser of a viatical or life settlement investment contract
10 that was purchased pursuant to this section may rescind or cancel the
11 viatical or life settlement investment contract pursuant to this
12 section. The purchaser may rescind or cancel the investment at any time
13 before seven calendar days after the date the purchaser pays the required
14 consideration to the issuer or the issuer's agent or the date the purchaser
15 receives the written disclosures required under subsection A of this section,
16 whichever is later. The purchaser shall notify the issuer or the issuer's
17 agent in writing of the rescission or cancellation. No specific form is
18 required for the rescission or cancellation. The rescission or cancellation
19 is effective when personally delivered, deposited in the United States mail
20 or deposited with a commercial courier or delivery service. The issuer shall
21 refund all the purchaser's money within seven calendar days after receiving
22 the notice of rescission or cancellation.

23 D. The commission may deny or revoke an exemption pursuant to
24 subsection A of this section. A denial or revocation of the exemption is
25 effective on the date the commission signs the notice of denial or
26 revocation. The commission may deny or revoke the exemption if the
27 commission finds any of the following:

28 1. The notice filing, advertising materials, sales materials or
29 disclosures made to offerees are incomplete, inaccurate or misleading.

30 2. The sale of the securities operates or would operate as a fraud or
31 deceit on investors.

32 3. The issuer is insolvent or is in an unsound financial condition.

33 4. The issuer has refused to allow the commission to examine the
34 issuer's affairs or has failed or refused to provide information to the
35 commission that is required by this chapter or any rule or order of the
36 commission.

37 5. The issuer has failed to reasonably supervise the issuer's
38 salesmen.

39 6. The issuer has knowingly retained a salesman after notice that the
40 salesman has committed an offense under this chapter or has been convicted of
41 an offense or is subject to an order or judgment as described in subsection E
42 of this section.

43 E. The securities of an issuer are not exempt pursuant to subsection A
44 of this section if the issuer or any of its affiliates, directors, officers,

1 general partners or beneficial owners of at least ten per cent of any class
2 of its equity securities or managing underwriter of the securities:

3 1. Has been convicted of a felony involving racketeering or a
4 transaction in securities or of which fraud is an essential element or of any
5 offense listed in section 13-2301, subsection D, paragraph 4.

6 2. Has been convicted within the ten years before or at any time after
7 the filing of a notice of intent to sell securities pursuant to this section
8 of a misdemeanor involving racketeering or a transaction in securities or of
9 which fraud or dishonesty is an essential element.

10 3. Is subject to an order or judgment of a court of competent
11 jurisdiction OR ANY STATE OR FEDERAL ADMINISTRATIVE TRIBUNAL entered within
12 ten years before or at any time after the filing of a notice of intent to
13 sell securities pursuant to this section and that either:

14 (a) Enjoins or restrains that person from engaging in or continuing
15 any conduct or practice in connection with the sale or purchase of securities
16 or the business of insurance.

17 (b) Involves fraud, deceit, racketeering or consumer protection laws.

18 4. Is subject to the reporting requirements of the securities exchange
19 act of 1934 and has not filed all required reports during the twelve calendar
20 months before the filing of a notice of intent to sell securities pursuant to
21 this section.

22 5. Is subject to an order of an administrative tribunal, AN SRO or the
23 SEC denying, suspending or revoking for at least six months a membership,
24 registration or license to do any of the following:

25 (a) Act as a broker, dealer or salesman of securities.

26 (b) Act as an investment adviser or investment adviser representative
27 as defined in section 44-3101.

28 F. The commission at its discretion may waive any disqualification
29 caused by subsection E of this section if the waiver would not be contrary to
30 the public interest. A disqualification under subsection E of this section
31 ceases to exist if the basis for the disqualification has been removed by the
32 jurisdiction that created it.

33 G. Subsection E, paragraph 3, subdivision (a) of this section does not
34 exclude securities from the exemption provided in subsection A of this
35 section, but may be a basis for denial or revocation pursuant to subsection D
36 of this section, if all of the following apply:

37 1. The order of judgment is related to a viatical or life settlement
38 investment contract.

39 2. The issuer provides the commission with a copy of the order or
40 judgment at the time the initial notice is filed pursuant to subsection A,
41 paragraph 2, subdivision (a) of this section or within twenty business days
42 after entry of the order or judgment, whichever occurs last.

43 3. At the time the order or judgment is entered, the law of the
44 issuing jurisdiction does not include a specific statute, regulation, rule or

1 controlling judicial decision that requires the registration of a viatical or
2 life settlement investment contract or its equivalent as a security.

3 H. Attempted compliance with this section does not act as an exclusive
4 election.

5 Sec. 5. Section 44-1872, Arizona Revised Statutes, is amended to read:
6 44-1872. Procedure for registration by description;
7 registration statement; consent to service of
8 process

9 Securities qualified under section 44-1871 for registration by
10 description shall be registered by payment of the registration fee prescribed
11 in ~~subsection C of~~ section 44-1861, **SUBSECTION C**, and filing of the following
12 with the commission by the issuer or a registered dealer:

13 1. A registration statement signed and verified under oath by the
14 issuer or dealer filing the statement and including the following together
15 with other information prescribed by the commission:

16 (a) Name and business address of the person filing the statement.

17 (b) Name and business address of issuer, and address of issuer's
18 principal office in this state, if any.

19 (c) Title of securities being registered, total amount of securities
20 to be offered, offering price per unit and in the aggregate, amount of
21 underwriting discounts or commissions or other selling expense per unit and
22 in the aggregate, ~~and the net amount to be received by the issuer per unit~~
23 and in the aggregate.

24 (d) Amount of securities to be offered in this state, offering price
25 per unit and in the aggregate, ~~and the amount of the registration fee~~
26 computed in accordance with ~~subsection C of~~ section 44-1861, **SUBSECTION C**.

27 (e) If the securities are registered under the securities act of 1933,
28 a copy of the definitive prospectus filed with the SEC.

29 (f) A statement of the facts showing that the securities are entitled
30 to be registered by description, **INCLUDING AN AUDIT REPORT OF AN INDEPENDENT**
31 **CERTIFIED PUBLIC ACCOUNTANT FOR THE LAST THREE FISCAL YEARS** together with a
32 balance sheet, ~~surplus statements and profit and loss statements~~ **AND RELATED**
33 **STATEMENTS OF INCOME OR OPERATIONS, STOCKHOLDERS' EQUITY OR RETAINED EARNINGS**
34 **AND CASH FLOWS THAT REFLECT THE ISSUER'S FINANCIAL POSITION, THE RESULTS OF**
35 **OPERATIONS AND CASH FLOWS**, which if the securities being registered are
36 commodity investment contracts or commodity option contracts may be those of
37 either the issuer or of the dealer filing the statement, meeting the
38 standards of section 44-1871. ~~THE FINANCIAL STATEMENTS REQUIRED BY THIS~~
39 **SUBDIVISION MUST BE** prepared ~~in accordance with~~ **IN CONFORMITY WITH** generally
40 accepted accounting principles and ~~certified by an independent public or~~
41 ~~certified public accountant~~ **EXAMINED IN ACCORDANCE WITH GENERALLY ACCEPTED**
42 **AUDITING STANDARDS**.

43 (g) The commission, or the director of securities if proper authority
44 has been delegated to ~~him~~ **THE DIRECTOR**, may require that an offering circular
45 describing the securities and containing other information prescribed by the

1 commission or the director be filed with the statement and be delivered to
2 each offeree of such securities by the person filing the statement.

3 2. If the person who is registering the securities is not a registered
4 dealer or is not a corporation organized under the laws of this state, a
5 consent to service of process conforming to the requirements of section
6 44-1862.

7 Sec. 6. Section 44-1894, Arizona Revised Statutes, is amended to read:
8 44-1894. Prospectus; contents; use of consolidated financial
9 statements; amendment or supplement to prospectus
10 required to show material change

11 A. Except as provided in section 44-1901, the prospectus required by
12 section 44-1892 shall be filed with the application, and shall include the
13 following, together with other information the commission requires:

14 1. The name and address of the issuer, date of incorporation or
15 organization, general character of the business transacted or to be
16 transacted, ~~and~~ and a description of the principal assets of the issuer.

17 2. The name and address and business experience of each officer and
18 director of the issuer, if a corporation or unincorporated association, of
19 each trustee or other fiduciary, if a trust, or of each partner, if a
20 partnership.

21 3. The total authorized capital of the issuer, the total amount of
22 each class of securities authorized and the total amount of securities of
23 each class issued and outstanding.

24 4. The total amount of each class of securities held by each officer
25 or director, if a corporation or unincorporated association, by each trustee
26 or other fiduciary, if a trust, by each partner, if a partnership, and by
27 each beneficial owner of ten per cent or more of any class of securities.

28 5. The total amount of securities of each class issued or to be issued
29 for options, contracts, leases, patents, assignments, services or expenses,
30 goodwill or other intangible assets, the name and address of each person to
31 whom the securities have been or are to be issued, ~~and~~ and the consideration
32 received or to be received by the issuer therefor.

33 6. The title or descriptive name and amount of the securities to be
34 offered, the offering price per unit and in the aggregate, the name and
35 address of the principal underwriter and the nature of the underwriting
36 commitment, the amount of underwriting discounts or commissions or other
37 selling expenses per unit and in the aggregate, ~~and~~ and the net per unit and in
38 the aggregate to be received by the issuer. The statement of underwriting
39 discounts or commissions or other selling expense shall include the maximum
40 amount to be paid by the issuer in cash or otherwise, directly or indirectly,
41 in connection with the sale of the securities.

42 7. The specific purposes for which funds to be derived from the sale
43 of the securities are to be used, ~~and~~ and the approximate amount to be devoted
44 to each purpose.

1 8. A description of all material contracts to which the issuer is a
2 party and of all material litigation involving the issuer.

3 9. A balance sheet **THAT REFLECTS THE ISSUER'S FINANCIAL POSITION** as of
4 a date not more than ~~ninety ONE HUNDRED TWENTY~~ days ~~prior to~~ **BEFORE** the date
5 of filing, and, if the balance sheet is not certified, also a certified
6 balance sheet as of a date not more than one year ~~prior to~~ **BEFORE** the date of
7 filing unless the fiscal year of the issuer has ended within ~~ninety ONE~~
8 **HUNDRED TWENTY** days ~~prior to~~ **BEFORE** the date of filing, in which case the
9 certified balance sheet may be as of the end of the preceding fiscal year.

10 10. ~~Profit and loss and surplus~~ **Statements OF INCOME OR OPERATIONS,**
11 **STOCKHOLDERS' EQUITY OR RETAINED EARNINGS AND CASH FLOWS THAT REFLECT THE**
12 **ISSUER'S RESULTS OF OPERATIONS AND CASH FLOWS** for each of the three fiscal
13 years preceding the date of the most recent balance sheet filed and for the
14 period, if any, between the close of the most recent of such fiscal years and
15 the date of the most recent balance sheet filed, **OR OTHER FINANCIAL**
16 **INFORMATION THE COMMISSION ESTABLISHES BY ORDER OR RULE.** ~~, or,~~ If the issuer
17 has been in existence for less than three fiscal years, ~~profit and loss and~~
18 ~~surplus~~ **statements OF INCOME OR OPERATIONS, STOCKHOLDERS' EQUITY OR RETAINED**
19 **EARNINGS AND CASH FLOWS SHALL BE** for the period of the issuer's existence.

20 B. If the issuer has one or more subsidiaries, the commission or the
21 director may require, in addition to the balance sheet and ~~profit and loss~~
22 ~~and surplus statements~~ **RELATED STATEMENTS OF INCOME OR OPERATIONS,**
23 **STOCKHOLDERS' EQUITY OR RETAINED EARNINGS AND CASH FLOWS** required by
24 subsection A, paragraphs 9 and 10 of this section, a consolidated balance
25 sheet and **RELATED** consolidated ~~profit and loss and surplus~~ **statements OF**
26 **INCOME OR OPERATIONS, STOCKHOLDERS' EQUITY OR RETAINED EARNINGS AND CASH**
27 **FLOWS THAT REFLECT THE CONSOLIDATED FINANCIAL POSITION, RESULTS OF OPERATIONS**
28 **AND CASH FLOWS** for the issuer and its subsidiaries as of the same dates ~~as~~
29 ~~the balance sheet and profit and loss and surplus statements~~ **AS REQUIRED BY**
30 **SUBSECTION A, PARAGRAPHS 9 AND 10 OF THIS SECTION.**

31 C. If any material change occurs in the matters set forth in the
32 prospectus filed under section 44-1892 and this section, or if any material
33 change occurs in the plan of business of the issuer as set forth in the
34 prospectus, each change shall be included in an amended prospectus or in a
35 supplement to the prospectus which shall be promptly filed with the
36 commission.

37 D. In connection with the registration of real property investment
38 contracts, in addition to other information required by this chapter, the
39 prospectus shall include the following:

40 1. A legal description or address of the property subject to the lien
41 securing the note or contract being made or sold.

42 2. The name and address of the fee owner of the property subject to
43 the lien securing the note or contract being made or sold.

1 3. Such information relative to the ability of the person liable on
2 the obligation to meet the contractual payments, as the commission may
3 require.

4 4. The existence of any improvements on the property or any utilities
5 on or adjacent to the property which will service the property.

6 5. Terms and conditions of the contract or note being made or sold,
7 including the principal balance owed, and the status of the principal and
8 interest payments on the contract or note.

9 6. The terms and conditions of all prior recorded encumbrances which
10 constitute liens on the property, the principal balance of such encumbrances
11 and the status of principal and interest payments on the encumbrances.

12 7. Any assessments and tax liens of record on the property securing
13 the contract or note being sold.

14 8. An independent appraisal of the value of the property subject to
15 the lien securing the note or contract being made or sold. The appraisal
16 shall state the value of the property as it exists on the date the appraisal
17 is made.

18 9. The qualifications of the appraiser and the methods used in making
19 the appraisal.

20 10. The loan to value ratio.

21 11. A description and amount of all fees paid by the borrower and
22 investor.

23 12. A description of the method by which the yield is calculated.

24 E. Notwithstanding the provisions of this section, nothing in this
25 section prevents the commission from entering into formal or informal
26 agreements with the administrators of the securities laws of other states,
27 Canada or Mexico and, as deemed appropriate by the commission, with the north
28 American securities administrators association for the establishment of an
29 international, national or regional coordinated uniform review of equity,
30 debt or any other class of securities to reduce the regulatory burden and
31 expense of registering public offerings in multiple states, Canada and
32 Mexico.

33 Sec. 7. Section 44-1895, Arizona Revised Statutes, is amended to read:

34 44-1895. Preparation of required financial statements

35 Financial statements required under this article for registration of
36 securities by qualification shall be:

37 1. Prepared in ~~accordance~~ CONFORMITY with generally accepted
38 accounting principles. ~~and certified, if certification~~

39 2. EXAMINED IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS.

40 3. IF REPORTING is necessary, REPORTED ON by an independent ~~public or~~
41 certified public accountant.

1 Sec. 8. Section 44-1941, Arizona Revised Statutes, is amended to read:
2 44-1941. Application for registration as dealer; contents;
3 filing; consent to service of process; fee;
4 exemption

5 A. Application for registration as a dealer may be made by any person.
6 An application for registration shall be signed by the applicant. The
7 application shall be filed with the commission, ~~and~~ and shall contain the
8 following, together with other information the commission prescribes:

9 1. The name of the applicant.

10 2. The address of the principal place of business of the applicant and
11 the addresses of all branch offices, if any, of the applicant in this state.

12 3. The character of business organization of the applicant and the
13 date of organization.

14 4. The names and business addresses of all members, partners,
15 officers, directors, trustees or managers of the applicant, a statement of
16 the limitations, if any, of the liability of any partner, member, manager or
17 trustee and a statement setting forth in chronological order the business
18 history of each partner, member, officer, director, trustee or manager during
19 the preceding ten years.

20 5. A brief description of the general character of the business
21 conducted or to be conducted by the applicant.

22 6. A list of each state in which the applicant is registered as a
23 dealer and whether or not the registration of the applicant as a dealer has
24 been refused, cancelled, suspended or withdrawn in any state and, if so, a
25 complete statement of the facts with respect thereto.

26 7. A statement showing whether the applicant is registered as a dealer
27 under the securities exchange act of 1934 and whether any such registration
28 of the applicant has been denied, revoked or suspended or made the subject of
29 proceedings for denial, revocation or suspension by the SEC.

30 8. The name of each organization of dealers of which the applicant is
31 a member, or before which any application for membership on the part of the
32 applicant is pending, and whether any such membership of the applicant has
33 been denied, revoked or suspended or made the subject of proceedings for
34 denial, revocation or suspension.

35 9. The name of each securities exchange of which the applicant or any
36 of its partners, officers, directors, trustees, members, managers or
37 employees is a member and whether any such membership has been denied,
38 revoked or suspended or made the subject of proceedings for denial,
39 revocation or suspension.

40 10. For an applicant that is subject to the securities exchange act of
41 1934, any financial information that is required to be provided to the SEC or
42 its designee, under the securities exchange act of 1934 to the extent
43 requested by the commission. ~~For~~ All other applicants, ~~SHALL PROVIDE~~ an
44 audit report of an independent certified public accountant together with a
45 balance sheet, ~~AND~~ related statements of income ~~OR OPERATIONS~~, stockholders'

1 equity or retained earnings and cash flows THAT REFLECT THE DEALER'S
2 FINANCIAL POSITION, RESULTS OF OPERATIONS AND CASH FLOWS. THE FINANCIAL
3 STATEMENTS LISTED IN THIS SUBSECTION MUST BE prepared in accordance
4 CONFORMITY with generally accepted accounting principles ~~showing the~~
5 ~~financial condition of the applicant~~ AND EXAMINED IN ACCORDANCE WITH
6 GENERALLY ACCEPTED AUDITING STANDARDS as of the most recent practicable date
7 before the date of the application or the financial information established
8 by the commission by rule.

9 11. A statement showing whether the applicant or an officer, director,
10 partner, member, trustee, or manager of the applicant has within the past
11 ten years been convicted of or charged with a felony or misdemeanor of which
12 fraud is an essential element, or a felony or misdemeanor involving the
13 purchase or sale of securities or arising out of the conduct of the business
14 of the applicant as a dealer in securities, and, if so, a complete statement
15 of the facts with respect to the felony or misdemeanor.

16 12. A statement showing whether the applicant, or any officer,
17 director, partner, member, trustee or manager of the applicant, has been
18 enjoined or restrained by a court of competent jurisdiction in connection
19 with any transaction involving the purchase or sale of securities and, if so,
20 a complete statement of the facts with respect to the transaction.

21 B. An application for registration as a dealer shall be accompanied by
22 a written consent to service of process on the commission in actions against
23 that dealer, conforming to the requirements of section 44-1862, and payment
24 of the registration fee prescribed by section 44-1861, subsection A or B.

25 C. The commission by rule or order may provide limited registration
26 requirements for any dealer or class of dealers or exempt any dealer or class
27 of dealers from registration under this article if the commission determines
28 that registration is not necessary to protect the public interest due to the
29 special characteristics of the securities or transactions in which the dealer
30 or class of dealers is involved.

31 Sec. 9. Section 44-1948, Arizona Revised Statutes, is amended to read:
32 44-1948. Reporting requirements of dealers and salesmen; real
33 property records

34 A. Dealers and salesmen shall retain registration by filing:

35 1. A supplemental statement showing changes in the facts set forth in
36 the original application for registration as supplemented or amended as such
37 changes occur or within ninety days after the change.

38 2. In the case of a dealer that is registered under the securities
39 exchange act of 1934 and to the extent requested by the commission, any
40 financial information that is required to be provided to the SEC or its
41 designee under the securities exchange act of 1934. The dealer shall
42 simultaneously file the same financial information with the commission.

43 3. In the case of a dealer that is not registered under the securities
44 exchange act of 1934, annually and within ninety days of the audit report
45 date, the audit report of an independent certified public accountant,

1 together with a balance sheet, ~~AND~~ related statements of income OR
2 OPERATIONS, stockholders' equity or retained earnings and cash flows THAT
3 REFLECT THE DEALER'S FINANCIAL POSITION, THE RESULTS OF OPERATIONS AND CASH
4 FLOWS prepared in ~~accordance~~ CONFORMITY with generally accepted accounting
5 principles ~~showing the financial condition of the dealer~~ AND EXAMINED IN
6 ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS.

7 B. Dealers shall maintain files in connection with transactions
8 involving real property investment contracts that include listings, deposit
9 receipts, cancelled checks, copies of contracts, agreements and sellers'
10 statements, documents concerning appraisals and credit investigations and all
11 other correspondence relating to the purchase and sale of real property
12 investment contracts. Dealers shall maintain books, records and accounts in
13 ~~accordance~~ CONFORMITY with generally accepted accounting principles, showing
14 the receipt and disbursement of funds received by dealers and salesmen in
15 connection with the purchase and sale of real property investment contracts.

16 Dealers shall maintain files and records relating to transactions involving
17 real property investment contracts for five years from the date the
18 registration expires. The files and records are subject to inspection at all
19 times by authorized representatives of the commission.

20 Sec. 10. Section 44-1961, Arizona Revised Statutes, is amended to
21 read:

22 44-1961. Grounds for denial, revocation or suspension of dealer
23 registration; administrative remedies

24 A. After a hearing or notice and opportunity for a hearing as provided
25 in article 11 of this chapter, the commission may enter an order suspending
26 for a period of not to exceed one year, denying or revoking the registration
27 of a dealer if the commission finds that:

28 1. The application for registration of the dealer, ~~or~~ any financial
29 statement, ~~or other~~ document or OTHER exhibit filed ~~therewith,~~ WITH THE
30 APPLICATION or any supplement or amendment ~~thereto~~ TO THE APPLICATION is
31 incomplete, inaccurate or misleading.

32 2. The dealer is insolvent or is in an unsound financial condition.

33 3. The dealer has violated this chapter or any rule or order of the
34 commission ~~thereunder~~ UNDER THIS CHAPTER.

35 4. The dealer purchases or sells securities at such variations from
36 current market prices as, in the light of all the circumstances, are
37 unconscionable.

38 5. The dealer has failed to file with the commission any record,
39 report, financial statement or other information required under this chapter
40 or any rule or order of the commission ~~thereunder~~ UNDER THIS CHAPTER, or has
41 refused to permit an examination into the dealer's affairs.

42 6. The dealer is lacking in integrity, ~~or~~ is not of good business
43 reputation, ~~or~~ is not qualified by training or experience.

44 7. The dealer has knowingly retained a salesman after notice that the
45 salesman has committed an offense under this chapter.

1 8. The dealer has been convicted within ten years preceding the date
2 of filing the application for registration as a dealer, or at anytime
3 thereafter, of a felony or misdemeanor involving a transaction in securities,
4 ~~or~~ of which fraud is an essential element,~~—~~ or arising out of the conduct of
5 any business in securities.

6 9. The dealer is permanently or temporarily enjoined by order,
7 judgment or decree of an administrative tribunal or a court of competent
8 jurisdiction from engaging in or continuing any conduct or practice in
9 connection with the sale or purchase of securities.

10 10. The dealer is subject to an order of an administrative tribunal, an
11 SRO or the SEC denying, suspending or revoking membership or registration as
12 a broker or dealer in securities or an investment adviser or investment
13 adviser representative for at least six months.

14 11. The dealer has been guilty of any fraudulent act or practice in
15 connection with the purchase or sale of securities.

16 12. The dealer has failed to reasonably supervise its salesmen.

17 13. The dealer has engaged in dishonest or unethical practices in the
18 securities industry.

19 14. THE DEALER HAS ENGAGED IN DISHONEST OR UNETHICAL PRACTICES IN
20 BUSINESS OR FINANCIAL MATTERS.

21 B. IN ADDITION TO DENYING, REVOKING OR SUSPENDING THE REGISTRATION, IF
22 THE COMMISSION FINDS THAT A DEALER HAS ENGAGED IN AN ACT, PRACTICE OR
23 TRANSACTION DESCRIBED IN SUBSECTION A, PARAGRAPH 4, 12 OR 13, THE COMMISSION
24 MAY DO ONE OR MORE OF THE FOLLOWING:

25 1. ASSESS ADMINISTRATIVE PENALTIES.

26 2. ORDER THE DEALER TO CEASE AND DESIST FROM ENGAGING IN THE ACT,
27 PRACTICE OR TRANSACTION OR DOING ANY OTHER ACT IN FURTHERANCE OF THE ACT,
28 PRACTICE OR TRANSACTION.

29 3. TAKE APPROPRIATE AFFIRMATIVE ACTION, AS PRESCRIBED BY THE
30 COMMISSION, TO CORRECT THE CONDITIONS RESULTING FROM THE ACT, PRACTICE OR
31 TRANSACTION, INCLUDING A REQUIREMENT TO PROVIDE RESTITUTION.

32 ~~B.~~ C. It is sufficient cause for denial, revocation or suspension of
33 registration of a dealer as provided in this section, if the dealer is a
34 partnership, corporation, unincorporated association or trust, that a member
35 of the partnership, ~~or~~ an officer or director of the corporation or
36 unincorporated association, ~~or~~ a trustee or other fiduciary of such trust,~~—~~
37 or a person controlling, controlled by,~~—~~ or under common control with the
38 dealer,~~—~~ has been guilty of any act or omission which would be A sufficient
39 ground for denying or revoking the registration of an individual dealer.

40 ~~C.~~ D. If the registration of a dealer is revoked or denied, that
41 dealer may not file with the commission an application for registration under
42 this chapter or for licensure under chapter 13 of this title for at least one
43 year after the date of the revocation or denial.

44 Sec. 11. Section 44-1962, Arizona Revised Statutes, is amended to
45 read:

1 2. ORDER THE SALESMAN TO CEASE AND DESIST FROM ENGAGING IN THE ACT,
2 PRACTICE OR TRANSACTION OR DOING ANY OTHER ACT IN FURTHERANCE OF THE ACT,
3 PRACTICE OR TRANSACTION.

4 3. TAKE APPROPRIATE AFFIRMATIVE ACTION, AS PRESCRIBED BY THE
5 COMMISSION, TO CORRECT THE CONDITIONS RESULTING FROM THE ACT, PRACTICE OR
6 TRANSACTION, INCLUDING A REQUIREMENT TO PROVIDE RESTITUTION.

7 ~~B.~~ C. If the registration of a salesman is revoked or denied, that
8 salesman may not file with the commission an application for registration
9 under this chapter or for licensure under chapter 13 of this title for at
10 least one year after the date of the revocation or denial.

11 Sec. 12. Section 44-1974, Arizona Revised Statutes, is amended to
12 read:

13 44-1974. Rehearings

14 ~~Rehearings may be instituted or granted by the commission and shall be~~
15 THE COMMISSION MAY INSTITUTE OR GRANT REHEARINGS ON APPLICATION MADE WITHIN
16 TWENTY CALENDAR DAYS AFTER ENTRY OF AN ORDER OR DECISION. UNLESS OTHERWISE
17 ORDERED, FILING AN APPLICATION FOR REHEARING DOES NOT STAY THE COMMISSION'S
18 DECISION OR ORDER. IF THE COMMISSION DOES NOT GRANT A REHEARING WITHIN
19 TWENTY CALENDAR DAYS, THE APPLICATION IS CONSIDERED TO BE DENIED. REHEARINGS
20 ARE subject to the provisions of this article.

21 Sec. 13. Section 44-2003, Arizona Revised Statutes, is amended to
22 read:

23 44-2003. Joint and several liability; proportionate liability;
24 determination of responsibility; uncollectible
25 share; settlement discharge; limitation on actions;
26 definitions

27 A. Subject to the provisions of this section, an action brought under
28 section 44-2001, 44-2002 or 44-2032 may be brought against any person,
29 including any dealer, salesman or agent, who made, participated in or induced
30 the unlawful sale or purchase, and such persons shall be jointly and
31 severally liable to the ~~purchaser or seller~~ PERSON WHO IS entitled to
32 maintain such action. No person shall be deemed to have participated in any
33 sale or purchase solely by reason of having acted in the ordinary course of
34 that person's professional capacity in connection with that sale or purchase.

35 B. Any covered person against whom a final judgment is entered in a
36 private action is jointly and severally liable for damages only if the trier
37 of fact determines that the covered person recklessly or knowingly committed
38 a violation of this chapter.

39 C. A covered person against whom a final judgment is entered in a
40 private action is liable solely for the portion of the judgment that
41 corresponds to the percentage of responsibility of the covered person as
42 prescribed in subsection D of this section. In any case in which a
43 contractual relationship permits, a covered person who prevails in any
44 private action may recover the attorney fees and costs of that covered person
45 for the private action.

1 D. The court in a private action shall instruct the jury to answer
2 special interrogatories, or if there is no jury, make findings, for each
3 covered person and any other person the parties claim to have caused or
4 contributed to the loss incurred by the plaintiff, including any person who
5 has entered into a settlement with the plaintiff or plaintiffs, concerning
6 each of the following:

7 1. Whether the person committed a violation of this chapter.

8 2. The percentage of responsibility of the person, measured as a
9 percentage of the total fault of all persons who caused or contributed to the
10 loss incurred by the plaintiff.

11 3. Whether the person knowingly committed a violation of this chapter.

12 E. The responses to the interrogatories or findings under subsection D
13 of this section shall specify the total amount of damages that the plaintiff
14 is entitled to recover and the percentage of responsibility of each covered
15 person found to have caused or contributed to the loss incurred by the
16 plaintiff or plaintiffs. In determining the percentage of responsibility
17 under this section, the trier of fact shall consider both the nature and
18 extent of:

19 1. The conduct of each covered person found to have caused or
20 contributed to the loss incurred by the plaintiff or plaintiffs.

21 2. The causal relationship between the conduct of each covered person
22 and the damages incurred by the plaintiff or plaintiffs.

23 F. Notwithstanding subsection C of this section, on a motion made
24 within six months after a final judgment is entered in any private action, if
25 the court determines that all or part of the share of the judgment of the
26 covered person is not collectible against that covered person and is also not
27 collectible against a covered person described in subsection B of this
28 section, each covered person described in subsection C of this section is
29 liable for the uncollectible share as follows:

30 1. Each covered person is jointly and severally liable for the
31 uncollectible share if the plaintiff establishes that the plaintiff is an
32 individual whose recoverable damages under the final judgment are greater
33 than ten per cent of the net worth of the plaintiff, and the plaintiff's net
34 worth is less than two hundred thousand dollars, excluding the value of the
35 plaintiff's owned primary residence.

36 2. With respect to any plaintiff not described in paragraph 1 of this
37 subsection, each covered person is liable for the uncollectible share in
38 proportion to the percentage of responsibility of that covered person, except
39 that the total liability of a covered person under this subsection may not
40 exceed fifty per cent of the proportionate share of that covered person, as
41 determined under subsection E of this section.

42 G. For purposes of subsection F of this section, net worth is
43 determined as of the date immediately preceding the date of the purchase or
44 sale by the plaintiff of the security that is the subject of the action and
45 is equal to the fair market value of assets, minus liabilities, including the

1 net value of the plaintiff's investments in real and personal property and
2 personal residences.

3 H. The total payments required pursuant to subsection F of this
4 section shall not exceed the amount of the uncollectible share. A covered
5 person against whom judgment is not collectible is subject to contribution
6 and to any continuing liability to the plaintiff on the judgment.

7 I. To the extent that a covered person is required to make an
8 additional payment pursuant to subsection F of this section, the covered
9 person may recover contribution from any of the following or any combination
10 of the following:

11 1. The covered person originally liable to make the payment.

12 2. Any covered person liable jointly and severally pursuant to
13 subsection B of this section.

14 3. Any covered person who is held proportionately liable pursuant to
15 this section, who is liable to make the same payment and who has paid less
16 than the person's proportionate share of that payment.

17 4. Any other person WHO IS responsible for the conduct giving rise to
18 the payment ~~that~~ AND WHO would have been liable to make the same payment.

19 J. The standard for allocation of damages under subsections B, C and D
20 of this section and the procedure for reallocation of uncollectible shares
21 under subsection F of this section shall not be disclosed to members of the
22 jury.

23 K. If a covered person settles any private action at any time before a
24 final verdict or judgment, the court shall enter an order discharging the
25 covered person from all claims for contribution brought by other persons. On
26 entry of the settlement by the court, the court shall enter a bar order
27 constituting the final discharge of all obligations to the plaintiff of the
28 settling covered person arising out of the action. The order bars all future
29 claims for contribution arising out of the action by:

30 1. Any person against the settling covered person.

31 2. The settling covered person against any person, other than a person
32 whose liability has been extinguished by the settlement of the settling
33 covered person.

34 L. If a covered person enters into a settlement with the
35 plaintiff before a final verdict or judgment, the verdict or judgment shall
36 be reduced by the greater of either:

37 1. The amount that corresponds to the percentage of responsibility of
38 that covered person.

39 2. The amount paid to the plaintiff by that covered person.

1 M. Except as provided in subsection K of this section, a covered
2 person who becomes jointly and severally liable for damages in any private
3 action may recover contribution from any other person who, if joined in the
4 original action, would have been liable for the same damages. A claim for
5 contribution shall be determined based on the percentage of responsibility of
6 the claimant and of each person against whom a claim for contribution is
7 made.

8 N. In any private action determining liability, an action for
9 contribution shall be brought within six months after the entry of a final,
10 nonappealable judgment in the action, except that an action for contribution
11 brought by a covered person who was required to make an additional payment
12 pursuant to subsection F of this section may be brought within six months
13 after the date on which the payment was made.

14 O. For purposes of this section, reckless conduct by a covered person
15 does not constitute a knowing violation of this chapter by the covered
16 person.

17 P. For the purposes of this section:

18 1. "Covered person" means a defendant in any private action arising
19 under sections 44-1991 and 44-1992 or a defendant who is an outside director
20 in a private action arising under section 44-1997.

21 2. "Knowingly committed a violation of this chapter" means either:

22 (a) In an action that is based on an untrue statement of material fact
23 or omission of a material fact necessary to make the statement not
24 misleading, the covered person makes an untrue statement of a material fact
25 with actual knowledge that the representation is false or omits the statement
26 of a fact necessary in order to make the statement made not misleading, with
27 actual knowledge that, as a result of the omission, one of the material
28 representations of the covered person is false and other persons are likely
29 to reasonably rely on that misrepresentation or omission.

30 (b) In an action that is based on any conduct that is not described in
31 subdivision (a), the covered person engages in conduct with actual knowledge
32 of the facts and circumstances that make the conduct of that covered person a
33 violation of this chapter.

34 Sec. 14. Section 44-2031, Arizona Revised Statutes, is amended to
35 read:

36 44-2031. Jurisdiction and venue of offenses and actions;
37 joinder of spouse

38 A. The superior court in this state shall have jurisdiction ~~of~~
39 ~~offenses and~~ OVER violations of this chapter, ~~and~~ the rules, ~~regulations~~ and
40 orders of the commission ~~thereunder~~, UNDER THIS CHAPTER and ~~of~~ all actions
41 brought to enforce any liability or duty created under this chapter, except
42 actions or proceedings brought under section 44-2032, paragraph 2, 3 or 4 or
43 appeals filed under article 12 of this chapter, ~~of~~ OVER which the superior
44 court in Maricopa county shall have exclusive jurisdiction.

1 B. Any action authorized by this chapter may be brought in the county
2 ~~wherein~~ IN WHICH the defendant is found, ~~or~~ is an inhabitant or transacts
3 business, or in the county where the transaction took place, and in such
4 cases, process may be served in any other county ~~of~~ IN which the defendant is
5 an inhabitant or ~~where~~ IN WHICH the defendant is found.

6 C. THE COMMISSION MAY JOIN THE SPOUSE IN ANY ACTION AUTHORIZED BY THIS
7 CHAPTER TO DETERMINE THE LIABILITY OF THE MARITAL COMMUNITY.

8 Sec. 15. Section 44-2032, Arizona Revised Statutes, is amended to
9 read:

10 44-2032. Cease and desist orders; civil penalty; injunctions;
11 civil restitution; prosecutions for violations

12 ~~When~~ IF it appears to the commission, either on complaint or otherwise,
13 that any person has engaged in, is engaging in, ~~or~~ or is about to engage in any
14 act, practice or transaction that constitutes a violation of this chapter, or
15 any rule or order of the commission ~~thereunder~~ UNDER THIS CHAPTER, the
16 commission may, in its discretion:

17 1. Issue an order directing such person to cease and desist from
18 engaging in the act, practice or transaction, or doing any other act in
19 furtherance of the act, practice or transaction, and to take appropriate
20 affirmative action within a reasonable period of time, as prescribed by the
21 commission, to correct the conditions resulting from the act, practice or
22 transaction including, without limitation, a requirement to provide
23 restitution as prescribed by rules of the commission. IF A PERSON FAILS TO
24 COMPLY WITH AN ORDER ISSUED UNDER THIS PARAGRAPH, THE SUPERIOR COURT IN
25 MARICOPA COUNTY, ON APPLICATION BY THE COMMISSION SHALL:

26 (a) ISSUE AN ORDER TO SHOW CAUSE WHY THE PERSON HAS NOT COMPLIED WITH
27 THE COMMISSION'S ORDER. ON A SHOWING THAT THE PERSON HAS VIOLATED THE
28 COMMISSION'S ORDER, THE COURT MAY EXERCISE ITS CONTEMPT POWERS AND IMPOSE A
29 CIVIL PENALTY OF NOT MORE THAN TWENTY THOUSAND DOLLARS FOR EACH VIOLATION AS
30 THE COURT CONSIDERS TO BE JUST AND PROPER.

31 (b) AWARD REASONABLE COSTS, INCLUDING ATTORNEY FEES, TO THE
32 COMMISSION, UNLESS OTHER CIRCUMSTANCES MAKE AN AWARD OF COSTS UNJUST. ANY
33 COSTS, INCLUDING ATTORNEY FEES, COLLECTED PURSUANT TO THIS PARAGRAPH SHALL BE
34 DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE STATE GENERAL FUND.

35 2. Apply to the superior court in Maricopa county or any federal court
36 for an injunction restraining the person from the violation, and on a showing
37 by the commission that the person has engaged in, is engaging in or is about
38 to engage in an act, practice or transaction in violation of this chapter or
39 any rule or order of the commission, a temporary restraining order,
40 preliminary injunction, ~~or~~ or permanent injunction shall be granted without
41 bond. Process in those actions may be served on the defendant in any county
42 of this state in which the defendant transacts business or is found.

1 3. Apply to the superior court in Maricopa county or any federal court
2 for an order restoring to any person in interest any monies or property, real
3 or personal, that may have been acquired or transferred in violation of this
4 chapter.

5 4. **PETITION THE SUPERIOR COURT IN MARICOPA COUNTY OR** transmit any
6 evidence available concerning the act, practice or transaction to the
7 attorney general and the attorney general may petition the superior court in
8 Maricopa county for the appointment of a conservator to reorganize the
9 affairs of, or a receiver to wind up the affairs of, the violator. Process
10 in those actions may be served on the defendant in any county in this state
11 where the defendant transacts business or may be found.

12 5. Transmit any evidence available concerning the act, practice or
13 transaction to **A COUNTY ATTORNEY**, the attorney general **OR THE UNITED STATES**
14 **ATTORNEY** who may, with or without the transmittal, directly institute or
15 cause to be instituted any criminal proceedings as the evidence warrants.

16 Sec. 16. Section 44-2054, Arizona Revised Statutes, is amended to
17 read:

18 44-2054. Loans from the commerce and economic development
19 commission fund; repayment; allocation

20 A. The commerce and economic development commission, ~~on request of the~~
21 ~~corporation commission~~, shall make one or more loans, if it believes the
22 loans are prudent, from the commerce and economic development commission fund
23 established by section 41-1505.10 to any private entity for the purpose of
24 establishing an exchange located in this state, subsequent expansion or
25 improvement of the exchange or funding any operating deficits. Monies
26 borrowed from the commerce and economic development commission may be used
27 for the purpose of developing an exchange, including acquiring necessary
28 computer hardware and software and telecommunications equipment, renting
29 space, hiring staff, obtaining registration of an exchange with the SEC,
30 funding initial operating deficits, acquiring listings and marketing the
31 exchange's services and all other necessary or appropriate purposes for
32 creation and operation of a securities exchange. The commerce and economic
33 development commission may impose conditions and restrictions on the loan as
34 it deems necessary and in the public interest.

35 B. Revenues of an exchange receiving one or more loans under
36 subsection A of this section, after payment of all operating expenses, shall
37 be used to repay loans from the commerce and economic development commission
38 fund. All loan repayments and fees collected pursuant to section 44-1843,
39 subsection B, section 44-1861, subsections C and E, section 44-1892,
40 paragraph 3 and section 44-3324, subsection H, paragraph 2 shall be used by
41 the commerce and economic development commission for the purposes prescribed
42 by section 41-1505.06, subsection A, paragraph 5 or subsection A of this
43 section, except that each year on January 2, five hundred thousand dollars
44 shall be transferred from the commerce and economic development commission
45 fund to the securities regulatory and enforcement fund established by section

1 44-2039 for the purpose of enforcing this chapter and chapter 13 of this
2 title and regulating the exchange and operating the public reference rooms
3 established by section 44-2055. ~~The director of the securities division of~~
4 ~~the corporation commission shall abstain from all votes of the commerce and~~
5 ~~economic development commission relating to loans to an entity for the~~
6 ~~purpose of establishing a securities exchange.~~

7 Sec. 17. Section 44-3101, Arizona Revised Statutes, is amended to
8 read:

9 44-3101. Definitions

10 In this chapter, unless the context otherwise requires:

11 1. "Closed-end company" means any management company other than an
12 open-end company or unit investment trust.

13 2. "Depository institution" means a bank, savings and loan association
14 or trust company whose business is supervised and regulated by an agency of
15 this state or the United States, or an employee, as defined in title 10,
16 chapter 1, of any such bank, savings and loan association or trust company
17 while acting within the scope of the employee's employment.

18 3. "Federal covered adviser" means an investment adviser registered
19 under the investment advisers act of 1940.

20 4. "IARD" means the investment adviser registration depository
21 operated by the national association of securities dealers.

22 5. "Investment adviser" means any person who, for compensation,
23 engages in the business of advising others, either directly or through
24 publications or writings, as to the value of securities or as to the
25 advisability of investing in, purchasing or selling securities or who, for
26 compensation and as a part of a regular business, issues or promulgates
27 analyses or reports concerning securities. Investment adviser includes
28 financial planners and other persons who, as an integral component of other
29 financially related services, provide the foregoing investment advisory
30 services to others for compensation and as part of a business or who hold
31 themselves out as providing the foregoing investment advisory services to
32 others for compensation. Investment adviser does not include:

33 (a) An investment adviser representative.

34 (b) A depository institution.

35 (c) A lawyer, law firm, certified public accountant or accounting firm
36 whose performance of the investment advisory services is solely incidental to
37 the practice of the person's profession or who does not do any of the
38 following:

39 (i) Exercise investment discretion with respect to the assets of
40 clients or maintain custody of the assets of clients for the purpose of
41 investing the assets, except if the person is acting in a bona fide fiduciary
42 capacity such as an executor, trustee, personal representative, estate or
43 trust agent, guardian or conservator.

1 (ii) Accept or receive directly or indirectly any commission, fee or
2 other remuneration contingent on the purchase or sale of any specific
3 security by a client of the person.

4 (iii) Give advice on the purchase or sale of specific securities other
5 than advice about specific securities that is based on financial statement
6 analysis or tax considerations that are reasonably related to and in
7 connection with the person's profession.

8 (d) A publisher, employee or columnist of any newspaper, news column,
9 newsletter, news magazine or business or financial publication or service,
10 whether communicated in hard copy form, by electronic means or otherwise,
11 that does not consist of the rendering of advice on the basis of the specific
12 investment situation of each client.

13 (e) An insurance company or ~~agent~~ INSURANCE PRODUCER that is licensed
14 or authorized by the department of insurance to transact the business of
15 insurance, including the sale of annuities, whose performance of the
16 investment advisory services is solely incidental to the conduct of business
17 as an insurance company or ~~agent~~ INSURANCE PRODUCER and that receives no
18 special compensation for providing investment advisory services.

19 (f) A real estate salesperson or real estate broker who is licensed or
20 authorized by the state real estate department to transact the business of
21 real estate, whose performance as an investment adviser is solely incidental
22 to the conduct of the individual's business as a broker or salesman and who
23 receives no special compensation for providing investment advisory services.

24 (g) Any officer, director, partner or employee of an entity engaged in
25 selling interest in entities that invest in real property, including
26 partnerships, corporations or sole proprietorships, if such transactions are
27 otherwise subject to the securities laws of the United States or this state.

28 (h) Mortgage brokers or mortgage bankers who are licensed by the state
29 banking department to transact the business of a mortgage broker or mortgage
30 banker, and their employees, whose performance of any investment advisory
31 service is solely incidental to the conduct of the business of a mortgage
32 broker or mortgage banker and who receives no special compensation for
33 providing investment advisory services.

34 6. "Investment adviser representative" means any partner, officer or
35 director of an investment adviser, any individual who occupies a status or
36 performs functions similar to a partner, officer or director of an investment
37 adviser or any other individual who is employed by or associated with an
38 investment adviser, except clerical or ministerial personnel, and who does
39 any of the following:

40 (a) Makes any recommendations or otherwise renders advice regarding
41 securities.

42 (b) Manages accounts or portfolios of clients.

1 (c) Determines which recommendation or advice regarding securities
2 should be given to a client if the individual is a member of the investment
3 adviser's investment committee that determines general investment advice to
4 be given to clients or the individual determines general client advice if the
5 investment adviser has no investment committee, except that if an investment
6 adviser has more than five individuals who make recommendations or give
7 advice, only the supervisors of those individuals are investment adviser
8 representatives.

9 (d) Solicits, offers or negotiates for the sale of or sells investment
10 advisory services.

11 (e) Directly supervises employees who perform any of the acts
12 described in this paragraph.

13 7. "Investment advisers act of 1940" means the act of Congress known
14 as the investment advisers act of 1940 (15 United States Code section 80b).

15 8. "Investment company" means any company that is registered under the
16 investment company act of 1940.

17 9. "Investment company act of 1940" means the act of Congress known as
18 the investment company act of 1940 (15 United States Code section 80a).

19 10. "Licensed investment adviser" means an investment adviser licensed
20 under this chapter.

21 11. "Licensed investment adviser representative" means an investment
22 adviser representative licensed under this chapter.

23 12. "Open-end company" means a management company that is offering for
24 sale or has outstanding any redeemable security of which it is the issuer.

25 13. "Solely incidental to the practice of the person's profession" and
26 "solely incidental to the conduct of the person's business" means that the
27 person does not hold itself out to the public as a provider of investment
28 advisory services, the investment advisory services are rendered in
29 connection with and reasonably related to the professional services or
30 business transactions being provided or consummated and the fee charged for
31 the investment advisory services is based on the same factors used by the
32 person to determine the fees for the person's professional or business
33 services.

34 14. "Unit investment trust" means an investment company that is
35 organized under a trust indenture, contract of custodianship or agency or
36 similar instrument, that does not have a board of directors and that issues
37 only redeemable securities, each of which represents an undivided interest in
38 a unit of specified securities, but does not include a voting trust.

39 Sec. 18. Section 44-3152, Arizona Revised Statutes, is amended to
40 read:

41 44-3152. Exemption of certain investment advisers and
42 investment adviser representatives

43 A. An investment adviser is not required to be licensed or make a
44 notice filing under this chapter if that investment adviser does not have a
45 place of business in this state and either:

1 1. Its only clients in this state are investment companies, other
2 investment advisers, dealers, depository institutions, insurance companies,
3 employee benefit plans with assets of not less than one million dollars and
4 governmental agencies or instrumentalities, whether acting for themselves or
5 as trustees with investment control.

6 2. During the preceding twelve months it had fewer than six clients
7 who are residents of this state other than those clients specified in
8 paragraph 1.

9 B. If the commission determines that it is not necessary for any
10 investment adviser or class of investment advisers or investment adviser
11 representative or class of investment adviser representatives to be licensed
12 to protect the public interest because of the special characteristics of the
13 securities or transactions in which the investment adviser or investment
14 adviser representative may be involved, the commission may by rule or order
15 provide limited licensure requirements or exempt these persons from licensure
16 under this article.

17 C. ~~This chapter does not apply to any~~ A dealer or salesman that is
18 registered with the commission pursuant to chapter 12, article 9 of this
19 title **IS NOT REQUIRED TO BE LICENSED, MAKE A NOTICE FILING OR COMPLY WITH**
20 **REPORTING REQUIREMENTS UNDER THIS ARTICLE.**

21 D. The authorized use of the designation "chartered financial
22 consultant" by an insurance ~~agent~~ **PRODUCER** licensed by the department of
23 insurance does not in and of itself constitute holding oneself out to the
24 public as an investment adviser or require a license under this article.

25 Sec. 19. Section 44-3158, Arizona Revised Statutes, is amended to
26 read:

27 44-3158. Expiration, renewal or transfer of licensure;
28 automatic suspension

29 A. All licenses expire on December 31 of each year unless renewed
30 before expiration **BY PAYMENT THROUGH THE IARD OF THE FEES PRESCRIBED BY**
31 **SECTION 44-3181. IF THE IARD DOES NOT PROVIDE FOR RECEIPT OF A FILING, THE**
32 **FILING MAY BE MADE WITH THE COMMISSION BY MAIL OR ANY OTHER REASONABLE METHOD**
33 **THAT IS ACCEPTABLE TO THE COMMISSION.**

34 B. An investment adviser representative may transfer that investment
35 adviser representative's license to an investment adviser that is either
36 licensed by the commission or that has made a notice filing with the
37 commission by filing a completed application for licensure and remitting a
38 transfer fee to the commission through the IARD. If the IARD does not
39 provide for receipt of a filing, the filing may be made with the commission
40 by mail or any other reasonable method that is acceptable to the
41 commission. The license of an investment adviser representative will
42 automatically be suspended from the time of termination of employment with an
43 investment adviser until the investment adviser representative is employed by
44 another licensed or federal covered adviser, the director is notified of the
45 employment by the investment adviser in writing and the investment adviser is

1 notified of approval of the licensure by the director by mail, through the
2 IARD or by any other reasonable method established by the commission or the
3 investment adviser representative has complied with all requirements in
4 accordance with a temporary investment adviser representative transfer
5 program. The commission may adopt rules providing for temporary transfer of
6 licensure of investment adviser representatives.

7 Sec. 20. Section 44-3201, Arizona Revised Statutes, is amended to
8 read:

9 44-3201. Grounds for denial, revocation or suspension of
10 license; administrative remedies

11 A. After a hearing or notice and an opportunity for a hearing as
12 provided in article 7 of this chapter, the commission may enter an order
13 suspending for a period of not more than one year, denying or revoking the
14 license of an investment adviser or investment adviser representative if the
15 commission finds that it is in the public interest and any one or a
16 combination of the following:

17 1. The application for licensure of the investment adviser or
18 investment adviser representative, any financial statement, document or other
19 exhibit filed with an application or any supplement or amendment to an
20 application is incomplete, inaccurate or misleading.

21 2. The investment adviser is insolvent or is in an unsound financial
22 condition.

23 3. The investment adviser or investment adviser representative
24 violates this chapter or any rule or order of the commission adopted or
25 issued under this chapter.

26 4. The investment adviser or investment adviser representative fails
27 to file with the commission any record, report, financial statement or other
28 information required under this chapter or any rule or order of the
29 commission adopted or issued under this chapter or refuses to permit an
30 examination pursuant to section 44-3132.

31 5. The investment adviser knowingly retains an unlicensed investment
32 adviser representative who is required to be licensed under this chapter.

33 6. The investment adviser permits any person to render investment
34 advice in violation of this chapter.

35 7. The investment adviser representative is not employed by a licensed
36 or federal covered adviser.

37 8. The investment adviser or investment adviser representative has
38 been convicted within ten years preceding the date of filing an application
39 for licensure as an investment adviser or investment adviser representative,
40 or at any time after the date of filing an application, of a felony or
41 misdemeanor involving a transaction in securities, ~~or~~ of which fraud is an
42 essential element or arising out of the conduct of any business involving
43 securities or any aspect of the securities business.

1 9. The investment adviser or investment adviser representative is
2 permanently or temporarily enjoined by order, judgment or decree of an
3 administrative tribunal or a court of competent jurisdiction from engaging in
4 or continuing any conduct or practice involving a violation of any federal or
5 state securities laws or a violation of any other regulatory licensing
6 requirements.

7 10. The investment adviser or investment adviser representative is
8 subject to an order of an administrative tribunal, an SRO or the SEC denying,
9 revoking or suspending membership, licensure or registration as a broker or
10 dealer in securities or as an investment adviser or investment adviser
11 representative for at least six months.

12 11. The investment adviser or investment adviser representative has
13 been found civilly or criminally liable, by any court of competent
14 jurisdiction or other governmental authority in a civil or criminal action
15 not subsequently reversed, suspended or vacated, for any fraudulent act or
16 practice in connection with any aspect of the securities business.

17 12. The investment adviser fails to reasonably supervise its investment
18 adviser representatives or employees to assure their compliance with this
19 chapter.

20 13. The investment adviser or investment adviser representative engages
21 in dishonest or unethical practices in the securities industry.

22 14. THE INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE ENGAGES
23 IN DISHONEST OR UNETHICAL PRACTICES IN BUSINESS OR FINANCIAL MATTERS.

24 B. IN ADDITION TO DENYING, REVOKING OR SUSPENDING THE LICENSE, IF THE
25 COMMISSION FINDS THAT AN INVESTMENT ADVISER OR INVESTMENT ADVISER
26 REPRESENTATIVE HAS ENGAGED IN AN ACT, PRACTICE OR TRANSACTION DESCRIBED IN
27 SUBSECTION A, PARAGRAPH 6, 12 OR 13, THE COMMISSION MAY DO ONE OR MORE OF THE
28 FOLLOWING:

29 1. ASSESS ADMINISTRATIVE PENALTIES.

30 2. ORDER THE INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE
31 TO CEASE AND DESIST FROM ENGAGING IN THE ACT, PRACTICE OR TRANSACTION OR
32 DOING ANY OTHER ACT IN FURTHERANCE OF THE ACT, PRACTICE OR TRANSACTION.

33 3. TAKE APPROPRIATE AFFIRMATIVE ACTION, AS PRESCRIBED BY THE
34 COMMISSION, TO CORRECT THE CONDITIONS RESULTING FROM THE ACT, PRACTICE OR
35 TRANSACTION, INCLUDING A REQUIREMENT TO PROVIDE RESTITUTION.

36 ~~B.~~ C. If the investment adviser is a partnership, corporation,
37 unincorporated association, limited liability company or trust, it is
38 sufficient cause for denial of licensure if a member of the partnership, an
39 officer or director of the corporation or unincorporated association, a
40 manager of a limited liability company, a trustee or any other fiduciary of a
41 trust or a person controlling, controlled by or under common control with the
42 investment adviser has been found civilly or criminally liable, by any court
43 of competent jurisdiction or other governmental authority in a civil or
44 criminal action not subsequently reversed, suspended or vacated, for any act

1 or omission that would be sufficient grounds for denying the licensure of an
2 individual investment adviser.

3 ~~C.~~ D. If the license of an investment adviser or investment adviser
4 representative is revoked or denied, that investment adviser or investment
5 adviser representative may not file with the commission for licensure under
6 this chapter or for registration under chapter 12 of this title for at least
7 one year from the date of the revocation or denial.

8 Sec. 21. Section 44-3214, Arizona Revised Statutes, is amended to
9 read:

10 44-3214. Rehearings

11 The commission may institute or grant rehearings ON APPLICATION MADE
12 WITHIN TWENTY CALENDAR DAYS AFTER ENTRY OF AN ORDER OR DECISION. UNLESS
13 OTHERWISE ORDERED, FILING AN APPLICATION FOR REHEARING DOES NOT STAY THE
14 COMMISSION'S DECISION OR ORDER. IF THE COMMISSION DOES NOT GRANT A REHEARING
15 WITHIN TWENTY CALENDAR DAYS, THE APPLICATION IS CONSIDERED TO BE
16 DENIED. Rehearings are subject to this article.

17 Sec. 22. Section 44-3291, Arizona Revised Statutes, is amended to
18 read:

19 44-3291. Jurisdiction and venue of offenses and actions;
20 joinder of spouse

21 A. The superior court has jurisdiction over violations of this
22 chapter, the rules and orders of the commission adopted or issued under this
23 chapter and all actions brought to enforce any liability or duty created
24 under this chapter, except actions or proceedings brought under section
25 44-3292, paragraph 2, 3 or 4 or appeals filed under article 8 of this
26 chapter, over which the superior court in Maricopa county has exclusive
27 jurisdiction.

28 B. Any action authorized by this chapter may be brought in the county
29 in which the defendant is found, is an inhabitant or transacts business or in
30 the county in which the transaction took place. Process may be served on any
31 defendant in any county of this state in which the defendant is an inhabitant
32 or in which the defendant is found.

33 C. THE COMMISSION MAY JOIN THE SPOUSE IN ANY ACTION AUTHORIZED BY THIS
34 CHAPTER TO DETERMINE THE LIABILITY OF THE MARITAL COMMUNITY.

35 Sec. 23. Section 44-3292, Arizona Revised Statutes, is amended to
36 read:

37 44-3292. Cease and desist orders; injunctions; civil
38 restitution; prosecutions for violations

39 If it appears to the commission, either on complaint or otherwise, that
40 any person has engaged in, is engaging in or is about to engage in any act,
41 practice or transaction that constitutes a violation of this chapter or any
42 rule or order of the commission adopted or issued under this chapter, the
43 commission may:

44 1. Issue an order directing the person to cease and desist from
45 engaging in the act, practice or transaction, or doing any act in furtherance

1 of the act, practice or transaction, and to take appropriate affirmative
2 action within a reasonable period of time, as prescribed by the commission,
3 to correct the conditions resulting from the act, practice or transaction
4 including a requirement to provide restitution as prescribed by rules of the
5 commission. IF A PERSON FAILS TO COMPLY WITH AN ORDER ISSUED UNDER THIS
6 PARAGRAPH, THE SUPERIOR COURT IN MARICOPA COUNTY, ON APPLICATION BY THE
7 COMMISSION, SHALL:

8 (a) ISSUE AN ORDER TO SHOW CAUSE WHY THE PERSON HAS NOT COMPLIED WITH
9 THE COMMISSION'S ORDER. ON A SHOWING THAT THE PERSON HAS VIOLATED THE
10 COMMISSION'S ORDER, THE COURT MAY EXERCISE ITS CONTEMPT POWERS AND IMPOSE A
11 CIVIL PENALTY OF NOT MORE THAN TWENTY THOUSAND DOLLARS FOR EACH VIOLATION AS
12 THE COURT CONSIDERS TO BE JUST AND PROPER.

13 (b) AWARD REASONABLE COSTS, INCLUDING ATTORNEY FEES, TO THE COMMISSION
14 UNLESS OTHER CIRCUMSTANCES MAKE AN AWARD OF COSTS UNJUST. ANY COSTS,
15 INCLUDING ATTORNEY FEES, COLLECTED PURSUANT TO THIS PARAGRAPH SHALL BE
16 DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE STATE GENERAL FUND.

17 2. Apply to the superior court in Maricopa county or any federal court
18 for an injunction restraining the person from any violation, and on a showing
19 by the commission that the person has engaged in, is engaging in or is about
20 to engage in an act, practice or transaction in violation of this chapter or
21 any rule or order of the commission, a temporary restraining order,
22 preliminary injunction or permanent injunction shall be granted without bond.
23 Process in these actions may be served on the defendant in any county of this
24 state in which the defendant transacts business or is found.

25 3. Apply to the superior court in Maricopa county or any federal court
26 for an order restoring to any person in interest any monies or property, real
27 or personal, that may have been acquired or transferred in violation of this
28 chapter.

29 4. PETITION THE SUPERIOR COURT IN MARICOPA COUNTY OR transmit any
30 evidence available concerning the act, practice or transaction to the
31 attorney general. ~~On receipt of the evidence,~~ AND the attorney general may
32 petition the superior court in Maricopa county for the appointment of a
33 conservator to reorganize the affairs of, or a receiver to wind up the
34 affairs of, the violator. Process in these actions may be served on the
35 defendant in any county in this state in which the defendant transacts
36 business or is found.

37 5. Transmit any evidence available concerning such act, practice or
38 transaction to A COUNTY ATTORNEY, the attorney general OR THE UNITED STATES
39 ATTORNEY who, with or without such transmittal, may directly institute or
40 cause to be instituted such criminal proceedings as the evidence warrants.