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SECTION 1. Section 10 of chapter 220 of the acts of 1912 is hereby amended by striking out, in line 7, the word "meeting" and inserting in place thereof the following word:- election.

SECTION 2. The board of water commissioners of the town of Mattapoissett, established by section 10 of chapter 220 of the acts of 1912, shall act as the sewer commissioners of the town and shall have all the powers and duties of sewer commissioners under the General Laws.

SECTION 3. Notwithstanding any general or special law to the contrary including other sections of this act, the sewer commissioners of the town of Mattapoissett shall not grant an application to connect land to the town's municipal sewerage system unless there is at the time of the application available unused sewerage capacity in the municipal sewer system. For purposes of this section, "available unused sewerage capacity", shall mean the daily capacity available to the town under permit or municipal agreement, less: (1) the sum of existing daily usage by the town; and (2) the projected daily usage, calculated by the commissioners, that will result from completion of all pending municipal sewer projects, as to which funds have been appropriated at a special or annual town meeting for design or construction. In determining the daily usage expected to result from pending projects, the sewer commissioners may employ reasonable assumptions about the rate at which existing or potential users will connect to the municipal system after completion of those projects, and shall take into account only demand that is foreseeable within 20 years of the date of the calculation.

The sewer commissioners of the town shall determine and report publicly each year the available unused capacity for the system, not less than 30 days before the beginning of each fiscal year. In addition, the sewer commissioners shall make a determination of effective capacity within 30 days of the effective date of this act, and shall not approve any connections to the municipal sewerage system until a determination is made under this section.

SECTION 4. All votes and actions taken by the board of water commissioners acting as the board of sewer commissioners before the effective date of this act are hereby ratified, validated and confirmed in all respect as though this act had been in full force and effect at the time of taking the votes and actions.

SECTION 5. This act shall take effect upon its passage.

Approved March 30, 2002.

Chapter 74. AN ACT FURTHER REGULATING SECURITIES.

Be it enacted, etc., as follows:

SECTION 1. Section 102 of chapter 110A of the General Laws, as appearing in the

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2000 Official Edition, is hereby amended by striking out, in line 1, the word "any" and inserting in place thereof the following words:- , directly or indirectly, any.

SECTION 2. Said chapter 110A is hereby further amended by striking out the title and section 201, as so appearing, and inserting in place thereof the following title and section:-

**PART II. REGISTRATION AND NOTICE FILING PROCEDURES OF
BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, FEDERAL COVERED
ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES.**

Section 201. (a) It is unlawful for any person to transact business in this commonwealth as a broker-dealer or agent unless he is registered under this chapter.

(b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered under this chapter 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 secretary.

(c) It is unlawful for any person to transact business in this commonwealth as an investment adviser or as an investment adviser representative unless he is so registered under this chapter.

(d) It is unlawful for:

(i) any investment adviser required to be registered to employ an investment adviser representative unless the investment adviser representative is registered under this chapter, but the registration of an investment adviser representative shall not be effective during any period when he is not employed by an investment adviser registered under this chapter; or

(ii) any investment adviser representative, as defined in Rule 203A-3(a) under the Investment Adviser Act of 1940, with a place of business, as defined in Rule 203A-3(b) under the Investment Adviser Act of 1940, in the commonwealth, who is employed by a federal covered adviser to conduct business in the commonwealth, unless registered under this chapter.

When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser in the case of clause (i) of subsection (d), or the investment adviser representative in the case of clause (ii) of said subsection (d), shall promptly notify the secretary.

(e) Every annual registration under this section shall expire on December 31.

(f) It is unlawful for any federal covered adviser to conduct advisory business in the commonwealth unless the adviser complies with the provisions of paragraph (b) of section 202.

SECTION 3. Said chapter 110A is hereby further amended by striking out section 202, as so appearing, and inserting in place thereof the following section:-

Section 202. (a) A broker-dealer, agent, investment adviser or investment adviser

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representative may obtain an initial or renewal registration by filing with the secretary or his designee an application together with a consent to service of process pursuant to paragraph (g) of section 414, and paying any reasonable costs charged for processing such filings. The application shall contain whatever information the secretary by rule requires concerning such matters as:

- (1) the applicant's form and place of organization;
- (2) the applicant's proposed method of doing business;
- (3) the qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or the investment adviser;
- (4) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;
- (5) the applicant's financial condition and history; and
- (6) any information to be furnished or disseminated to any client or prospective client, if the applicant is an investment adviser.

The secretary may by rule or order require an applicant for initial registration to publish an announcement of the application in 1 or more specified newspapers published in the commonwealth. If no denial order is in effect and no proceeding is pending under section 204, registration shall become effective at noon of the thirtieth day after an application is filed. The secretary may by rule or order specify an earlier effective date, and may by order defer the effective date until noon of the thirtieth day after the filing of any amendment. Registration of a broker-dealer or an investment adviser automatically constitutes registration of any agent or investment adviser representative, whichever is applicable, who is a partner, officer, or director, or a person occupying a similar status or performing similar functions. No person shall be designated as a partner, officer or director or a person occupying a similar status or performing similar functions, for the purpose of the automatic registration if the designation is solely for the purpose of avoiding registration as an agent or investment adviser representative.

(b) It is unlawful for a person to transact business in the commonwealth as a federal covered adviser unless the person has made a notice filing with the secretary or his designee consisting of (1) a copy of those documents that have been filed by the federal covered adviser with the Securities and Exchange Commission, (2) a consent to service of process, and (3) a filing fee, as the secretary prescribes by rule or order, not to exceed \$300.

A notice filing shall be effective upon the receipt of a complete filing by the secretary or his designee. The notice filing shall expire annually on December 31 and may be renewed by filing those documents that have been filed with the SEC that the secretary prescribes by rule together with a filing fee of \$300.

(c) (1) Broker-dealers and broker-dealer agents.

Every applicant for initial or renewal registration shall pay a registration fee, as the

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secretary prescribes by rule or order, not to exceed \$300 in the case of a broker-dealer and not to exceed \$50 in the case of an agent, including an agent automatically registered pursuant to paragraph (a). When an agent transfers an affiliation, the agent shall pay a fee, as the secretary prescribes by rule or order, not to exceed \$50. Any person required to pay a fee under this section may transmit through any designee any fee required by this section or the rules promulgated under this section.

(2) Investment advisers and investment adviser representatives.

Every applicant for initial or renewal registration shall pay a registration fee, as the secretary prescribes by rule or order, not to exceed \$300 in the case of an investment adviser and of \$50 in the case of an investment adviser representative, including an investment adviser representative automatically registered pursuant to paragraph (a). When an investment adviser representative transfers an affiliation, the investment adviser representative shall pay a fee, as the secretary prescribes by rule or order, not to exceed \$50.

(3) Federal covered advisers.

Every person acting as a federal covered adviser in the commonwealth shall pay an initial or renewal notice filing fee, as the secretary prescribes by rule or order, not to exceed \$300.

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

(e) The secretary may, by rule or order, establish minimum financial requirements, including minimum capital and bonding requirements, for registered broker-dealers, subject to the limitations of section 15 of the Securities Exchange Act of 1934; and for investment advisers, subject to the limitations of section 222 of the Investment Advisers Act of 1940, which may include different requirements for those registered investment advisers who maintain custody of clients' funds or securities, who have discretionary authority over same or who require payment of more than \$500 in fees and more than 6 months in advance and those registered investment advisers who do not.

(f) The secretary may by rule provide that an applicant may submit 1 application for registration as both a broker-dealer agent and an investment adviser representative. Each applicant shall pay a registration fee, as the secretary prescribes by rule or order, not to exceed \$50.

(4) Any fee that is required to be paid pursuant to this section or the accompanying regulations may be transmitted through a designee.

SECTION 4. Said chapter 110A is hereby further amended by striking out section 203, as so appearing, and inserting in place thereof the following section:-

Section 203. (a) Every registered broker-dealer and investment adviser shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the secretary prescribes by rule or order, except as limited by section 15 of the Securities Exchange Act of 1934, in the case of a broker-dealer, and by section 222 of the Investment

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Advisers Act of 1940, in the case of an investment adviser. All records so required, with respect to an investment adviser, shall be preserved for such period as the secretary prescribes by rule or order.

(b) With respect to investment advisers, the secretary may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the secretary in his discretion, information furnished to clients or prospective clients of an investment adviser that would be in compliance with the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement. The secretary may by rule or order require that such material be filed.

(c) Every registered broker-dealer and investment adviser shall file such financial reports as the secretary may prescribe by rule or order, except as provided by section 15 of the Securities Exchange Act of 1934, in the case of a broker-dealer, and section 222 of the Investment Advisers Act of 1940, in the case of an investment adviser.

(d) If the information contained in any document filed with the secretary is or becomes inaccurate or incomplete in any material respect, the registrant or federal covered adviser shall file a correcting amendment promptly if the document is filed with respect to a registrant, or when the amendment is required to be filed with the Securities and Exchange Commission if the document is filed with respect to a federal covered adviser, unless notification of the correction has been given under subsection (b) of section 201.

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

SECTION 5. Said chapter 110A is hereby further amended by striking out section 203A, as so appearing, and inserting in place thereof the following section:-

Section 203A. (a) Each investment adviser registered under this chapter shall disseminate to each client or prospective client a document disclosing material facts. The document shall include information concerning:

- (1) compensation arrangements between the client and the investment adviser;
- (2) the nature of services offered;
- (3) business practices; and
- (4) methods for obtaining information on disciplinary history and registration of the investment adviser and persons associated with the investment adviser.

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(b) Each investment adviser and each of its representatives registered under this chapter shall disclose to each client before a purchase or sale is effected on behalf of the client:

(1) the total amount of sales commissions or other fees that may reasonably be expected to be charged or deducted in connection with the purchase or sale;

(2) that the adviser will receive the amount or a portion of the amount, or, in the case of a transaction to be effected through a broker-dealer that is a person associated or under common control with the adviser, that the broker-dealer is affiliated with the adviser and will receive the amount or portion of the amount; and

(3) the existence of any compensation arrangement with an issuer or other third party with respect to the recommended transaction.

The disclosure shall be in writing if the purchase or sale was recommended in writing. The secretary may, by rule, permit a client to waive in writing, the right to a disclosure.

SECTION 6. Section 204 of said chapter 110A, as so appearing, is hereby amended by inserting after the word "employer", in line 127, the following word:- or.

SECTION 7. Said chapter 110A is hereby further amended by striking out the title and section 301, as so appearing, and inserting in place thereof the following title and section:-

PART III. REGISTRATION AND NOTICE FILING PROCEDURES FOR SECURITIES.

Section 301. It is unlawful for any person to offer or sell any security in the commonwealth unless:-

(1) the security is registered under this chapter;

(2) the security or transaction is exempted under section 402; or

(3) the security is a federal covered security.

SECTION 8. Said chapter 110A is hereby further amended by adding the following section:-

Section 306. (a) Covered securities under section 18(b)(2) of the Securities Act of 1933.

(1) Any security that is a federal covered security under section 18(b)(2) of the Securities Act of 1933 may be offered for sale and sold into, from, or within the commonwealth upon the secretary's receipt of: a copy of the registration statement filed with the Securities and Exchange Commission or, in lieu of filing such registration statement, a notice as prescribed by the secretary by rule or order; a consent to service of process; and a fee of \$750 for a unit investment trust or \$2,000 for all other investment companies.

(2) Except as otherwise provided herein for unit investment trusts, unless otherwise extended by the secretary by rule or order, an initial notice filing under this section shall be effective commencing upon the later of the date the notice or registration statement, as applicable, is received by the secretary or the date the offering is effective with the Securities

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and Exchange Commission, until 2 months following the end of the issuer's fiscal year. A notice filing may be renewed by filing, prior to the expiration of an effective notice filing, a renewal notice as prescribed by the secretary together with a renewal fee of \$1,000. A renewal notice filing shall be effective until 2 months following the end of the issuer's next fiscal year. A notice filing by a unit investment trust shall be effective for a period determined by the secretary by rule or order.

(3) A notice filing may be amended as provided by the secretary by rule or order.

(4) A notice filing may be terminated by an issuer upon providing the secretary a notice as the secretary may require by rule or order.

(b) Covered Securities under section 18(b)(4)(D) of the Securities Act of 1933.

The secretary may, by rule or order, require the issuer of any security that is a federal covered security under section 18(b)(4)(D) of the Securities Act of 1933 to file, no later than 15 days after the first sale in this commonwealth of such federal covered security, the following:

(1) a notice on Securities and Exchange Commission Form D;

(2) a consent to service of process signed by the issuer; and

(3) any fees required by the secretary.

(c) Covered Securities under sections 18(b)(3) and 18(b)(4)(A)-(C) of the Securities Act of 1933.

The secretary, by rule or order, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933 together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in this commonwealth for any security that is a federal covered security under section 18(b)(3) or (4)(A)-(C) of the Securities Act of 1933, together with a consent to service of process and any fees required by the secretary.

(d) Suspension Order.

The secretary may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the Securities Act of 1933, if he finds that:-

(1) the order is in the public interest and

(2) there is a failure to comply with any condition established under this section or any rule or order adopted hereunder.

(e) Preservation of Fraud Authority.

Consistent with section 18(c)(1) of the Securities Act of 1933, the secretary retains jurisdiction under the laws of the commonwealth, including this chapter, to investigate and bring enforcement actions with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with covered securities or transactions in covered securities.

(f) Waiver.

The secretary, by rule or order, may waive any or all of the provisions of this section.

SECTION 9. Section 401 of said chapter 110A, as appearing in the 2000 Official

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Edition, is hereby amended by striking out subsections (a), (b) and (c) and inserting in place thereof the following 3 subsections:-

(a) "Secretary" means the state secretary or the secretary of the commonwealth.

(b) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" shall not include an individual who represents:

(1) an issuer in:

(A) effecting transactions in a security exempted by clause (1), (2), (3), (10) or (11) of subsection (a) of section 402;

(B) effecting transactions exempted by subsection (b) of said section 402;

(C) effecting transactions in a federal covered security as described in section 18(b)(3) and 18(b)(4)(D) of the Securities Act of 1933;

(D) effecting transactions with existing employees, partners or director of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in the commonwealth; or

(2) a broker-dealer in effecting transactions in the commonwealth limited to those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.

A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition.

(c) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" shall not include:

(1) an agent;

(2) an issuer;

(3) a bank, savings institution, trust company, or the Central Credit Union Fund, Inc., established by chapter 21 6 of the acts of 1932; or

(4) a person who has no place of business in the commonwealth if:

(A) he effects transactions in the commonwealth 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 12 consecutive months he does not direct more than 15 offers to sell or buy into the commonwealth 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 commonwealth.

SECTION 10. Said section 401 of said chapter 110A, as so appearing, is hereby further amended by inserting after the word "the", in line 52, the following words:- , limited

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liability company, limited liability partnership.

SECTION 11. Said section 401 of said chapter 110A, as so appearing, is hereby further amended by striking out subsection (j) and inserting in place thereof the following subsection:-

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

SECTION 12. Said section 401 of said chapter 110A, as so appearing, is hereby further amended by striking out subsection (m) and inserting in place thereof the following subsection:-

(m) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" shall not include:

(1) (A) an investment adviser representative;

(B) a bank, savings institution, or trust company;

(C) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession, or who does not exercise investment discretion with respect to the assets of clients or maintain custody of the assets of clients for the purpose of investing such assets, except when the person is acting as a bona fide fiduciary in a capacity, such as an executor, trustee, personal representative, estate or trust agent, guardian, conservator, or person serving in a similar fiduciary capacity; and who does not accept or receive, directly or indirectly, any commission, fee or other remuneration contingent upon the purchase or sale of any specific security by a client of such persons;

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

(E) a person whose only clients in this state are federal covered advisers, other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, employee benefit plans with assets of not less than \$5,000,000, governmental agencies or instrumentalities, or other financial institutions or institutional buyers, whether acting for themselves or as trustees with investment control;

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(F) a registered broker-dealer or broker-dealer agent;

(G) a person who has no place of business in the commonwealth and who during the preceding 12 month period has had fewer than 6 clients, other than those listed in clause (E), who are residents of the commonwealth; and

(H) other persons not within the intent of this subsection as the secretary may by rule or order designate; or

(2) a federal covered adviser.

SECTION 13. Said section 401 of said chapter 110A, as so appearing, is hereby further amended by striking out subsection (n) and inserting in place thereof the following subsection:-

(n) "Investment adviser representative" means any partner, officer, director, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, who is employed by or associated with:

(A) an investment adviser that is registered or required to be registered under this act, and who does any of the following:

(i) makes any recommendations or otherwise renders advice regarding securities;

(ii) manages accounts or portfolios of clients;

(iii) determines which recommendation or advice regarding securities should be given;

(iv) solicits, offers or negotiates for the sale of or sells investment advisory services;

(v) supervises employees who perform any of the foregoing; or

(B) a federal covered adviser, subject to the limitations of section 203A of the Investment Advisers Act of 1940.

"Investment adviser representative" does not include such other persons employed by or associated with either an investment adviser or a federal covered adviser not within the intent of this subsection as the secretary may designate by rule or order.

SECTION 14. Said section 401 of said chapter 110A, as so appearing, is hereby further amended by adding the following 2 subsections:-

(o) "Federal covered adviser" means a person who is registered with the Securities and Exchange Commission under section 203 of the Investment Advisers Act of 1940. "Federal covered adviser" shall not include any person who is excluded from the definition of "investment adviser" pursuant to clauses (A) to (G), inclusive, of paragraph (1) of subsection (m).

(p) "Federal covered security" means any security that is a covered security under section 18(b) of the Securities Act of 1933 or the regulations promulgated thereunder.

SECTION 15. Paragraph (a) of section 402 of said chapter 110A, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

The following securities are exempted from sections 301, 306 and 403:.

SECTION 16. The second paragraph of said paragraph (a) of said section 402 of

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said chapter 110A, as so appearing, is hereby further amended by striking out, in line 6, the words "The following securities are exempted from sections 301 and 403:"; - and by striking out clause (1) and inserting in place thereof the following clause:-

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

SECTION 17. Said section 402 of said chapter 110A, as so appearing, is hereby further amended by striking out, in lines 24, 29 and 32, the word "the" and inserting in place thereof, in each instance, the following word:- this.

SECTION 18. Paragraph (a) of said section 402 of said chapter 110A, as so appearing, is hereby amended by striking out clause (8) and inserting in place thereof the following clause:-

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

SECTION 19. Paragraph (b) of said section 402 of said chapter 110A, as so appearing, is hereby amended by striking out the introductory paragraph and inserting in place thereof the following paragraph:-

The following transactions are exempted from sections 301, 306 and 403:.

SECTION 20. Said paragraph (b) of said section 402 of said chapter 110A, as so appearing, is hereby further amended by striking out clause (2) and inserting in place thereof the following clause:-

(2) any non-issuer transaction;

(A) by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days provided, at the time of the transaction:

(i) the issuer of the security is actually engaged in business and not in the organizational stage or in bankruptcy or receivership and is not a blank check, blind pool or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

(ii) the security is sold at a price reasonably related to the current market price of the security;

(iii) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

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(iv) a nationally recognized securities manual designated by rule or order of the secretary or a document filed with the U.S. Securities & Exchange Commission hereinafter referred to as SEC which is publicly available through the SEC's Electronic Data Gathering and Retrieval System and contains:

(a) a description of the business and operations of the issuer;

(b) the names of the issuer's officers and the names of the issuer's directors, if any, or, in the case of a non-U.S. issuer, the corporate equivalents of such persons in the issuer's country of domicile;

(c) an audited balance sheet of the issuer as of a date within 18 months, or in the case of a reorganization or merger where parties to the reorganization or merger had such audited balance sheets, a pro forma balance sheet; and

(d) an audited income statement for each of the issuer's immediately preceding 2 fiscal years, or for the period of existence of the issuer, if in existence for less than 2 years or, in the case of a reorganization or merger where the parties to the reorganization or merger had such audited income statements, a pro forma income statement; and

(v) the issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless:

(a) the issuer of the security is a unit investment trust registered under the Investment Company Act of 1940; or

(b) the issuer of the security has been engaged in continuous business, including predecessors, for at least 3 years; or

(c) the issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18 months or, in the case of a reorganization or merger where parties to the reorganization or merger had such audited balance sheets, a pro forma balance sheet; or

(B) in a security by a registered agent of a registered broker-dealer if:

(i) the issuer of the security is actually engaged in business and not in the organizational stage or in bankruptcy or receivership and is not a blank check, blind pool or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons; and

(ii) the security is senior in rank to the common stock of the issuer both as to payment of dividends or interest and upon dissolution or liquidation of the issuer and such security has been outstanding at least 3 years and the issuer or any predecessors has not defaulted within the current fiscal year or the 3 immediately preceding fiscal years in the payment of any dividend, interest, principal, or sinking fund installment on the security when due and payable; or

(C) in an outstanding security if the issuer of the security has a class of securities subject to registration under section 12 of the Securities Exchange Act of 1934 and has been

subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 for not less than 180 days before the transaction; or has a class of securities registered under the Investment Company Act of 1940; or has filed and maintained with the secretary for not less than 180 days before the transaction information substantially comparable to the information which the issuer would be required to file under section 12(b) or section 12(g) of the Securities Exchange Act of 1934 were the issuer to have a class of its securities registered under section 12 of the Securities Exchange Act of 1934, in such form as the secretary by rule provides; or

(D) in a federal covered security pursuant to section 18(b)(4)(a) of the Securities Act of 1933 or the regulations promulgated thereunder.

SECTION 21. Said paragraph (b) of said section 402 of said chapter 110A, as so appearing, is hereby further amended by striking out clause (9) and inserting in place thereof the following clause:-

(9) any transaction pursuant to an offer directed by the offeror to not more than 25 persons other than those designated in clause (8) in the commonwealth during any period of 12 consecutive months, whether or not the offeror or any of the offerees is then present in the commonwealth, if: (A) the seller reasonably believes that all the buyers in the commonwealth, other than those designated in said clause (8), are purchasing for investment, and (B) insofar as an offer involves the payment directly or indirectly of any commission or other remuneration for soliciting any prospective buyer in the commonwealth, other than those designated in said clause (8), a notice is filed with the secretary at least 5 full business days before the offer, and the secretary does not by order disallow the exemption within the next 5 full business days; but, in any event, the secretary may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in subclauses (A) and (B) with or without the substitution of a limitation on remuneration.

SECTION 22. Said section 402 of said chapter 110A, as so appearing, is hereby further amended by striking out, in line 137, the word "the" and inserting in place thereof the following word:- this.

SECTION 23. Section 403 of said chapter 110A, as so appearing, is hereby amended by inserting after the figure "402", in line 5, the following words:- or is a federal covered security.

SECTION 24. Section 406 of said chapter 110A, as so appearing, is hereby amended by striking out, in line 12, the word "section 204(b)(4)" and inserting in place thereof the following words:- paragraph (6) of subsection (b) of section 204.

SECTION 25. Section 412 of said chapter 110A, as so appearing, is hereby amended by adding the following paragraph:-

(g) Assessments collected by the secretary pursuant to administrative actions may

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be used to assist investors. The assistance may include, but is not limited to, restitution for victims of financial fraud or other violations of this chapter.

SECTION 26. Section 413 of said chapter 110A, as so appearing, is hereby amended by inserting after the word "of", in line 2, the following words:- all notice filings made under subsection (b) of section 202 and section 306 and.

Approved March 30, 2002.

Chapter 75. AN ACT AUTHORIZING LEAVES OF ABSENCE FOR CERTAIN EMPLOYEES PARTICIPATING IN RED CROSS EMERGENCIES.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to allow forthwith for the provision of volunteer disaster relief services by employees of the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Chapter 30 of the General Laws is hereby amended by inserting after section 9H the following section:-

Section 9I. (a) Any employee of the commonwealth may be granted a leave of absence with pay for the purpose of serving as an American Red Cross volunteer in specialized disaster relief services in connection with any disaster at the request of the American Red Cross for such an employee's services. The leave shall be approved at the sole discretion of the employee's supervisor and shall be limited to a total of 15 calendar days, consecutively or nonconsecutively, per calendar year. In determining whether to grant such a leave to an employee, the employing agency may consider the needs of the American Red Cross for expertise in a particular certified area as well as the work needs of the agency. Authorized leaves of absence shall be limited to only those employees of the commonwealth who are registered as certified disaster service volunteers of the American Red Cross disaster services human resources network. Within 30 days after a request by the American Red Cross for an employee's services, the American Red Cross shall submit written proof of that employee's certification as a disaster service volunteer to the employing agency involved.

(b) An employee who is granted a leave of absence pursuant to this section shall be compensated by the employee's employing agency at the employee's regular rate of pay for those regular work hours during which the employee is absent from work, but in no event shall the employee receive overtime pay, shift differential pay, hazardous duty pay or any other form of compensation in addition to the employee's regular pay. An employee who is granted leave pursuant to this section shall not lose any already existing insurance and health care coverage, seniority or any previously accrued vacation time, sick time, personal days, compensation time or earned overtime due to the employee's granted leave of absence. Leave