

Federal Securities Laws

Selected Statutes, Rules and Forms
2000 Edition

Richard W. Jennings
Harold Marsh, Jr.
John C. Coffee, Jr.
Joel Seligman

FOUNDATION PRESS

FEDERAL SECURITIES LAWS

SELECTED STATUTES, RULES AND FORMS

Compiled

By

RICHARD W. JENNINGS

Late James W. and Isabel Coffroth Professor of Law
University of California, Berkeley

HAROLD MARSH, JR.

Los Angeles, California

JOHN C. COFFEE, JR.

Adolf A. Berle Professor of Law
Columbia University School of Law

and

JOEL SELIGMAN

Dean and Ethan A.H. Shepley University Professor
Washington University School of Law

2000 EDITION

New York, New York

FOUNDATION PRESS

2000

Foundation Press, a division of West Group, has created this publication to provide you with accurate and authoritative information concerning the subject matter covered. However, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. Foundation Press is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

COPYRIGHT © 1972–1975, 1977–1999 FOUNDATION PRESS

COPYRIGHT © 2000

By

FOUNDATION PRESS
All rights reserved

ISBN 1-56662-901-2

ISSN 1061-7078

[No claim of copyright is made for official U.S. government statutes, rules or regulations.]



TEXT IS PRINTED ON 10% POST
CONSUMER RECYCLED PAPER



PREFACE

The 2000 Edition of the Federal Securities Statutes, Rules and Forms follows the format of the 1999 Edition. In 1999 Congress enacted the Gramm-Leach-Bliley Act, which effectively rescinded the Glass-Steagall Act, that since 1933 had required a “complete divorcement of commercial and investment banking.” In its place, the Gramm-Leach-Bliley Act made significant amendments to several Securities Acts including the definitions of broker and dealer in the Securities Exchange Act and rearticulated the powers of bank holding companies. These changes are reflected in this edition of Federal Securities Statutes, Rules and Forms.

SEC rulemaking was also particularly active last year. In particular, the Commission made significant changes in rules dealing with mergers and acquisitions and tender offers. A new Regulation M-A on mergers and acquisitions was adopted. Similarly, a new Exemptions for Cross-Border Rights Offerings, Exchange Offers and Business Combinations (Rules 800-802), as well as a new Schedule TO to replace several earlier tender offer schedules (Schedules 13E-4 and 14D-1) also were adopted by the Commission.

Under the Securities Act of 1933, Rule 135, now called the Notice of Proposed Registered Offering, was significantly amended; a new Rule 154 on Delivery of Prospectuses to Investors at the Same Address; and new Rules 162, 165, 166, and 425 dealing with the interplay of the Securities Act and tender offers were adopted.

Regulation S-B and Regulation S-K were amended to add a new Item 306 dealing with Audit Committee Reports. Under the Securities Exchange Act, Rule 10b-13 was rescinded in favor of a new Rule 14e-5, prohibiting purchases outside of the tender offer.

The earlier Rule 14a-11 providing special provisions applicable to election contests was rescinded, and amendments were made to Rule 14a-12, solicitation before furnishing a proxy statement.

A new Rule 14d-11 concerning subsequent offering periods, and Rule 14e-8 concerning prohibited conduct in connection with pre-commencement communications were adopted. Rule 15c2-11 was significantly amended.

Under the Investment Company Act, Rule 17j-1 on personal investment activities of investment company personnel was significantly amended.

A new Section 210A was adopted under the Investment Advisers Act, as well as a new Rule 203A-6, providing a Transition Period for Ohio Investment Advisers.

This edition has a cutoff date of March 15, 2000.

We wish to express our gratitude to Luke Glass, Class of 2001, The Washington University School of Law, and Kyle Williams, Class of 2001, also The Washington University School of Law, for their research assis-

PREFACE

tance and unfailing patience. We are particularly grateful to Becky Wohldmann for her painstaking help with this project.

For those of us who continue the task of updating Federal Securities Statutes, Rules and Forms, this was a sad year. Our beloved colleague, Richard Jennings, died. Throughout the entire life of the many editions of our Securities Regulations Casebook, Richard Jennings was a guiding light and a leading scholar. His presence is deeply missed.

HAROLD MARSH, JR.
Los Angeles, California

JOHN C. COFFEE, JR.
New York, New York

JOEL SELIGMAN
St. Louis, Missouri

FEDERAL SECURITIES LAWS

SELECTED STATUTES, RULES
AND FORMS

*

TABLE OF CONTENTS

	Page
PREFACE.....	iii
I. FEDERAL SECURITIES LAWS AND REGULATIONS	1
A. Securities Act of 1933.....	1
Rules and Regulations Under the Securities Act of 1933	41
General Rules and Regulations	48
Regulation A—Conditional Small Issues Exemptions	94
Regulation C—Registration	103
Regulation D—Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933.....	168
Regulation E—Exemptions for Securities of Small Business Investment Companies [Omitted]	179
NASAA, Uniform Limited Offering Exemption.....	179
Regulation S—Rules Governing Offers and Sales Made Outside the United States Without Registration Under the Securities Act of 1933	191
Regulation S-B—Part 228—Integrated Disclosure System for Small Issuers	203
Regulation S-K—Standard Instructions for Filing Forms Under Securities Act of 1933, Securities Exchange Act of 1934 and Energy Policy and Conservation Act of 1975	252
Regulation M-A—Mergers and Requisitions	359
Regulation S-T—General Rules and Regulations for Electronic Filings	372
Forms Under the Securities Act of 1933	390
1. Forms Pursuant to Regulation A.....	390
Form 1-A	390
Form 2-A	423
2. Registration and Other Forms Under the 1933 Act	425
Form S-1.....	425
Form S-2.....	430
Form S-3.....	438
Form S-4.....	446
Form S-8.....	463
Form SB-1.....	473
Form SB-2.....	478
Form 144.....	483
Form D	485
B. Securities Exchange Act of 1934	493
Rules and Regulations Under the Securities Exchange Act of 1934.....	663
Regulations M and ATS.....	1173
Forms Under the Securities Exchange Act of 1934.....	1193
Form 3	1193
Form 4	1199

TABLE OF CONTENTS

	Page
B. Securities Exchange Act of 1934—Continued	
Form 5	1206
Form 8-A	1214
Form 10	1218
Form 10-SB	1222
Form 10-Q	1225
Form 10-QSB	1232
Form 10-K	1238
Form 10-KSB	1248
Form 6-K	1255
Form 8-K	1258
C. Investment Company Act of 1940	1265
Rules and Regulations	1354
D. Investment Advisers Act of 1940	1514
Rules and Regulations	1536
E. SEC Rules of Practice	1566
 II. RELATED FEDERAL LAWS	 1623
Commodity Exchange Act (Selected Provisions)	1623
General Regulations Under the Commodity Exchange Act (Excerpt)	1653
Bankruptcy Reform Act of 1978 (Excerpts)	1655
Foreign Corrupt Practices Act of 1977 (Excerpt)	1659
Racketeer Influenced and Corrupt Organizations Act	1667
Mail and Wire Fraud Statutes	1678
Bank Holding Company Act of 1956 (Excerpts)	1679
Hart-Scott-Rodino Antitrust Improvements Act of 1976 (Excerpts)	1687
[Note: A more detailed table of contents precedes each of the statutes and regulations at the pages indicated above.]	
 III. STATE SECURITIES LAWS	 1691
Uniform Securities Act (1956)	1691
Uniform Securities Act (1985) With 1988 Amendments	1715

I. FEDERAL SECURITIES LAWS AND REGULATIONS

A. SECURITIES ACT OF 1933

15 U.S.C. § 77a et seq.

Section	
Act	15 U.S.C.
1	77a Short Title
2	77b Definitions
3	77c Exempted Securities
4	77d Exempted Transactions
5	77e Prohibitions Relating to Interstate Commerce and the Mails
6	77f Registration of Securities and Signing of Registration Statement
7	77g Information Required in Registration Statement
8	77h Taking Effect of Registration Statements and Amendments Thereto
8A	77h-1 Cease-and-Desist Proceedings
9	77i Court Review of Orders
10	77j Information Required in Prospectus
11	77k Civil Liabilities on Account of False Registration Statement
12	77l Civil Liabilities Arising in Connection With Prospectuses and Communications
13	77m Limitation of Actions
14	77n Contrary Stipulations Void
15	77o Liability of Controlling Persons
16	77p Additional Remedies
17	77q Fraudulent, Interstate Transactions
18	77r Exemption from State Regulation of Securities Offerings
19	77s Special Powers of Commission
20	77t Injunctions and Prosecution of Offenses
21	77u Hearings by Commission
22	77v Jurisdiction of Offenses and Suits
23	77w Unlawful Representations
24	77x Penalties
25	77y Jurisdiction of Other Government Agencies Over Securities
26	77z Separability of Provisions
27	77z-1 Private Securities Litigation
27A	77z-2 Application of Safe Harbor for Forward-Looking Statements
28	77z-3 General Exemptive Authority

SCHEDULE OF INFORMATION REQUIRED IN REGISTRATION STATEMENT

Schedule A
Schedule B

SECURITIES ACT OF 1933

TITLE I

Short Title

Section 1. This subchapter may be cited as the Securities Act of 1933.

Definitions

Sec. 2(a) Definitions. When used in this subchapter, unless the context otherwise requires—

(1) The term “security” means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(2) The term “person” means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof. As used in this paragraph the term “trust” shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

(3) The term “sale” or “sell” shall include every contract of sale or disposition of a security or interest in a security, for value. The term “offer to sell”, “offer for sale”, or “offer” shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. The terms defined in this paragraph and the term “offer to buy” as used in subsection (c) of section 5 shall not include preliminary negotiations or agreements between an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer) and any underwriter or among underwriters who are or are to be in privity of contract with an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer). Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person, or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security.

(4) The term "issuer" means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; except that in the case of an unincorporated association which provides by its articles for limited liability of any or all of its members, or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity; except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be used; and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of any interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of public offering.

(5) The term "Commission" means the Securities and Exchange Commission.

(6) The term "Territory" means Puerto Rico, the Virgin Islands, and the insular possessions of the United States.

(7) The term "interstate commerce" means trade or commerce in securities or any transportation or communication relating thereto among the several States or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the

District of Columbia, or within the District of Columbia.

(8) The term "registration statement" means the statement provided for in section 6, and includes any amendment thereto and any report, document, or memorandum filed as part of such statement or incorporated therein by reference.

(9) The term "write" or "written" shall include printed, lithographed, or any means of graphic communication.

(10) The term "prospectus" means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security; except that (a) a communication sent or given after the effective date of the registration statement (other than a prospectus permitted under subsection (b) of section 10) shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of subsection (a) of section 10 at the time of such communication was sent or given to the person to whom the communication was made, and (b) a notice, circular, advertisement, letter, or communication in respect of a security shall not be deemed to be a prospectus if it states from whom a written prospectus meeting the requirements of section 10 may be obtained and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed, and contain such other information as the Commission, by rules or regulations deemed necessary or appropriate in the public interest and for the protection of investors, and subject to such terms and conditions as may be prescribed therein, may permit.

(11) The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertak-

ing, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this paragraph the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(12) The term "dealer" means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(13) The term "insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the re-insuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner, or a similar official or agency of a State or territory or the District of Columbia; or any receiver or similar official or any liquidating agent for such company, in his capacity as such.

(14) The term "separate account" means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, the District of Columbia, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains or losses of the insurance company.

(15) The term "accredited investor" shall mean—

(i) a bank as defined in section 3(a)(2) whether acting in its individual or fiducia-

ry capacity; an insurance company as defined in paragraph (13) of this subsection; an investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; a Small Business Investment Company licensed by the Small Business Administration; or an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, insurance company, or registered investment adviser; or

(ii) any person who, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management qualifies as an accredited investor under rules and regulations which the Commission shall prescribe.

(b) *Consideration of promotion of efficiency, competition, and capital formation.*—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

Exempted Securities

Sec. 3. (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:

(1) Reserved.

(2) Any security issued or guaranteed by the United States or any Territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or Territory or by any public instrumentality of one or more

States or Territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing; or any security issued or guaranteed by any bank; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank; or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term "investment company" under section 3(c)(3) of the Investment Company Act of 1940; or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security; or any interest or participation in a single trust fund, or in a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (B) an annuity plan which meets the requirements for the deduction of the employer's contributions under section 404(a)(2) of such Code, or (C) a governmental plan as defined in section 414(d) of such Code which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the

corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, other than any plan described in clause (A), (B), or (C) of this paragraph (i) the contributions under which are held in a single trust fund or in a separate account maintained by an insurance company for a single employer and under which an amount in excess of the employer's contribution is allocated to the purchase of securities (other than interests or participations in the trust or separate account itself) issued by the employer or any company directly or indirectly controlling, controlled by, or under common control with the employer, (ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of such Code, or (iii) which is a plan funded by an annuity contract described in section 403(b) of such Code. The Commission, by rules and regulations or order, shall exempt from the provisions of section 5 of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title. For purposes of this paragraph, a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; and the term "bank" means any national bank, or any banking institution organized under the laws of any State, Territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; except that in the case of a common trust fund or similar fund, or a collective trust fund,

the term "bank" has the same meaning as in the Investment Company Act of 1940.

(3) Any note, draft, bill of exchange, or bankers' acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(4) Any security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, individual, or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940;

(5) Any security issued (A) by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution; or (B) by (i) a farmer's cooperative organization exempt from tax under section 521 of the Internal Revenue Code of 1954, (ii) a corporation described in section 501(c)(16) of such Code and exempt from tax under section 501(a) of such Code, or (iii) a corporation described in section 501(c)(2) of such Code which is exempt from tax under section 501(a) of such Code and is organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization or corporation described in clause (i) or (ii);

(6) Any interest in a railroad equipment trust. For purposes of this paragraph "interest in a railroad equipment trust" means any interest in an equipment trust, lease,

conditional sales contract or other similar arrangement entered into, issued, assumed, guaranteed by, or for the benefit of a common carrier to finance the acquisition of rolling stock including motive power.

(7) Certificates issued by a receiver or by a trustee or debtor in possession in a case under Title 11 of the United States Code, with the approval of the court;

(8) Any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia;

(9) Except with respect to a security exchanged in a case under Title 11 of the United States Code, any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange;

(10) Except with respect to a security exchanged in a case under Title 11 of the United States Code, any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval;

(11) Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within, or, if a

corporation, incorporated by and doing business within, such State or Territory.

(12) Any equity security issued in connection with the acquisition by a holding company of a bank under section 3(a) of the Bank Holding Company Act of 1956 or a savings association under section 10(e) of the Home Owners' Loan Act, if—

(A) the acquisition occurs solely as part of a reorganization in which security holders exchange their shares of a bank or savings association for shares of a newly formed holding company with no significant assets other than securities of the bank or savings association and the existing subsidiaries of the bank or savings association;

(B) the security holders receive, after that reorganization, substantially the same proportional share interests in the holding company as they held in the bank or savings association, except for nominal changes in shareholders' interests resulting from lawful elimination of fractional interests and the exercise of dissenting shareholders' rights under State or Federal law;

(C) the rights and interests of security holders in the holding company are substantially the same as those in the bank or savings association prior to the transaction, other than as may be required by law; and

(D) the holding company has substantially the same assets and liabilities, on a consolidated basis, as the bank or savings association had prior to the transaction.

For purposes of this paragraph, the term "savings association" means a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation.

(13) Any security issued by or any interest or participation in any church plan, company or account that is excluded from the

definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940.

(b) The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed therein, add any class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this title with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds \$5,000,000.

(c) The Commission may from time to time by its rules and regulations and subject to such terms and conditions as may be prescribed therein, add to the securities exempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 if it finds, having regard to the purposes of that Act, that the enforcement of this Act with respect to such securities is not necessary in the public interest and for the protection of investors.

Exempted Transactions

Sec. 4. The provisions of section 5 shall not apply to—

(1) transactions by any person other than an issuer, underwriter, or dealer.

(2) transactions by an issuer not involving any public offering.

(3) transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except—

(A) transactions taking place prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter,

(B) transactions in a security as to which a registration statement has been filed taking place prior to the expiration of forty days after the effective date of such registration statement or prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter after such effective date, whichever is later (excluding in the computation of such forty days any time during which a stop order issued under section 8 is in effect as to the security), or such shorter period as the Commission may specify by rules and regulations or order, and

(C) transactions as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.

With respect to transactions referred to in clause (B), if securities of the issuer have not previously been sold pursuant to an earlier effective registration statement the applicable period, instead of forty days, shall be ninety days, or such shorter period as the Commission may specify by rules and regulations or order.

(4) brokers' transactions executed upon customers' orders on any exchange or in the over-the-counter market but not the solicitation of such orders.

(5)(A) Transactions involving offers or sales of one or more promissory notes directly secured by a first lien on a single parcel of real estate upon which is located a dwelling or other residential or commercial structure, and participation interests in such notes—

(i) where such securities are originated by a savings and loan association, savings bank, commercial bank, or similar banking institution which is supervised and examined by a Federal or State authority, and are offered and sold subject to the following conditions:

(a) the minimum aggregate sales price per purchaser shall not be less than \$250,000;

(b) the purchaser shall pay cash either at the time of the sale or within sixty days thereof; and

(c) each purchaser shall buy for his own account only; or

(ii) where such securities are originated by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to sections 203 and 211 of the National Housing Act, and are offered or sold subject to the three conditions specified in subparagraph (A)(i) to any institution described in such subparagraph or to any insurance company subject to the supervision of the insurance commissioner, or any agency or officer performing like function, of any State or territory of the United States or the District of Columbia, or the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association.

(B) Transactions between any of the entities described in subparagraph (A)(i) or (A)(ii) hereof involving non-assignable contracts to buy or sell the foregoing securities which are to be completed within two years, where the seller of the foregoing securities pursuant to any such contract is one of the parties described in subparagraph (A)(i) or (A)(ii) who may originate such securities and the purchaser of such securities pursuant to any such contract is any institution described in subparagraph (A)(i) or any insurance company described in subparagraph (A)(ii), the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or the Government National Mortgage Association and where the foregoing securities are subject to the three conditions for sale set forth in subparagraphs (A)(i)(a) through (c).

(C) The exemption provided by subparagraphs (A) and (B) hereof shall not apply to resales of the securities acquired pursuant thereto, unless each of the conditions for sale contained in subparagraphs (A)(i)(a) through (c) are satisfied.

(6) transactions involving offers or sales by an issuer solely to one or more accredited investors, if the aggregate offering price of an issue of securities offered in reliance on this paragraph does not exceed the amount allowed under section 3(b) of this title, if there is no advertising or public solicitation in connection with the transaction by the issuer or anyone acting on the issuer's behalf, and if the issuer files such notice with the Commission as the Commission shall prescribe.

Prohibitions Relating to Interstate Commerce and the Mails

Sec. 5. (a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

(b) It shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any security with respect to which a registration statement has been filed under this title, unless such prospectus meets the requirements of section 10; or

(2) to carry or cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of subsection (a) of section 10.

(c) It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under section 8.

Registration of Securities and Signing of Registration Statement

Sec. 6. (a) Any security may be registered with the Commission under the terms and conditions hereinafter provided, by filing a registration statement in triplicate, at least one of which shall be signed by each issuer, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, and the majority of its board of directors or persons performing similar functions (or, if there is no board of directors or persons performing similar functions, by the majority of the persons or board having the power of management of the issuer), and in case the issuer is a foreign or Territorial person by its duly authorized representative in the United States; except that when such registration statement relates to a security issued by a foreign government, or political subdivision thereof, it need be signed only by the underwriter of such security. Signatures of all such persons when written on the said registration statements shall be presumed to have been so written by authority of the person whose signature is so affixed and the burden of proof, in the event such authority shall be denied, shall be upon the party denying the same. The affixing of any signa-