

AN ACT concerning securities regulation.

Be it enacted by the People of the State of Illinois,
represented in the General Assembly:

Section 5. The Illinois Securities Law of 1953 is amended
by changing Sections 8, 11, 11b, 12, and 14 as follows:

(815 ILCS 5/8) (from Ch. 121 1/2, par. 137.8)

Sec. 8. Registration of dealers, limited Canadian
dealers, salespersons, investment advisers, and investment
adviser representatives.

A. Except as otherwise provided in this subsection A,
every dealer, limited Canadian dealer, salesperson,
investment adviser, and investment adviser representative
shall be registered as such with the Secretary of State. No
dealer or salesperson need be registered as such when
offering or selling securities in transactions exempted by
subsection A, B, C, D, E, G, H, I, J, K, M, O, P, Q, R or S
of Section 4 of this Act, provided that such dealer or
salesperson is not regularly engaged in the business of
offering or selling securities in reliance upon the exemption
set forth in subsection G or M of Section 4 of this Act. No
dealer, issuer or controlling person shall employ a
salesperson unless such salesperson is registered as such
with the Secretary of State or is employed for the purpose of
offering or selling securities solely in transactions
exempted by subsection A, B, C, D, E, G, H, I, J, K, L, M, O,
P, Q, R or S of Section 4 of this Act; provided that such
salesperson need not be registered when effecting
transactions in this State limited to those transactions
described in Section 15(h)(2) of the Federal 1934 Act or
engaging in the offer or sale of securities in respect of
which he or she has beneficial ownership and is a controlling

person. The Secretary of State may, by rule, regulation or order and subject to such terms, conditions, and fees as may be prescribed in such rule, regulation or order, exempt from the registration requirements of this Section 8 any investment adviser, if the Secretary of State shall find that such registration is not necessary in the public interest by reason of the small number of clients or otherwise limited character of operation of such investment adviser.

B. An application for registration as a dealer or limited Canadian dealer, executed, verified, or authenticated by or on behalf of the applicant, shall be filed with the Secretary of State, in such form as the Secretary of State may by rule, regulation or order prescribe, setting forth or accompanied by:

(1) The name and address of the applicant, the location of its principal business office and all branch offices, if any, and the date of its organization;

(2) A statement of any other Federal or state licenses or registrations which have been granted the applicant and whether any such licenses or registrations have ever been refused, cancelled, suspended, revoked or withdrawn;

(3) The assets and all liabilities, including contingent liabilities of the applicant, as of a date not more than 60 days prior to the filing of the application;

(4) (a) A brief description of any civil or criminal proceeding of which fraud is an essential element pending against the applicant and whether the applicant has ever been convicted of a felony, or of any misdemeanor of which fraud is an essential element;

(b) A list setting forth the name, residence and business address and a 10 year occupational statement of each principal of the applicant and a statement describing briefly any civil or criminal proceedings of

which fraud is an essential element pending against any such principal and the facts concerning any conviction of any such principal of a felony, or of any misdemeanor of which fraud is an essential element;

(5) If the applicant is a corporation: a list of its officers and directors setting forth the residence and business address of each; a 10-year occupational statement of each such officer or director; and a statement describing briefly any civil or criminal proceedings of which fraud is an essential element pending against each such officer or director and the facts concerning any conviction of any officer or director of a felony, or of any misdemeanor of which fraud is an essential element;

(6) If the applicant is a sole proprietorship, a partnership, limited liability company, an unincorporated association or any similar form of business organization: the name, residence and business address of the proprietor or of each partner, member, officer, director, trustee or manager; the limitations, if any, of the liability of each such individual; a 10-year occupational statement of each such individual; a statement describing briefly any civil or criminal proceedings of which fraud is an essential element pending against each such individual and the facts concerning any conviction of any such individual of a felony, or of any misdemeanor of which fraud is an essential element;

(7) Such additional information as the Secretary of State may by rule or regulation prescribe as necessary to determine the applicant's financial responsibility, business repute and qualification to act as a dealer.

(8) (a) No applicant shall be registered or re-registered as a dealer or limited Canadian dealer under this Section unless and until each principal of the

dealer has passed an examination conducted by the Secretary of State or a self-regulatory organization of securities dealers or similar person, which examination has been designated by the Secretary of State by rule, regulation or order to be satisfactory for purposes of determining whether the applicant has sufficient knowledge of the securities business and laws relating thereto to act as a registered dealer. Any dealer who was registered on September 30, 1963, and has continued to be so registered; and any principal of any registered dealer, who was acting in such capacity on and continuously since September 30, 1963; and any individual who has previously passed a securities dealer examination administered by the Secretary of State or any examination designated by the Secretary of State to be satisfactory for purposes of determining whether the applicant has sufficient knowledge of the securities business and laws relating thereto to act as a registered dealer by rule, regulation or order, shall not be required to pass an examination in order to continue to act in such capacity. The Secretary of State may by order waive the examination requirement for any principal of an applicant for registration under this subsection B who has had such experience or education relating to the securities business as may be determined by the Secretary of State to be the equivalent of such examination. Any request for such a waiver shall be filed with the Secretary of State in such form as may be prescribed by rule or regulation.

(b) Unless an applicant is a member of the body corporate known as the Securities Investor Protection Corporation established pursuant to the Act of Congress of the United States known as the Securities Investor Protection Act of 1970, as amended, a member of an

association of dealers registered as a national securities association pursuant to Section 15A of the Federal 1934 Act, or a member of a self-regulatory organization or stock exchange in Canada which the Secretary of State has designated by rule or order, an applicant shall not be registered or re-registered unless and until there is filed with the Secretary of State evidence that such applicant has in effect insurance or other equivalent protection for each client's cash or securities held by such applicant, and an undertaking that such applicant will continually maintain such insurance or other protection during the period of registration or re-registration. Such insurance or other protection shall be in a form and amount reasonably prescribed by the Secretary of State by rule or regulation.

(9) The application for the registration of a dealer or limited Canadian dealer shall be accompanied by a filing fee and a fee for each branch office in this State, in each case in the amount established pursuant to Section 11a of this Act, which fees shall not be returnable in any event.

(10) The Secretary of State shall notify the dealer or limited Canadian dealer by written notice (which may be by electronic or facsimile transmission) of the effectiveness of the registration as a dealer in this State.

(11) Any change which renders no longer accurate any information contained in any application for registration or re-registration of a dealer or limited Canadian dealer shall be reported to the Secretary of State within 10 business days after the occurrence of such change; but in respect to assets and liabilities only materially adverse changes need be reported.

C. Any registered dealer, limited Canadian dealer, issuer, or controlling person desiring to register a salesperson shall file an application with the Secretary of State, in such form as the Secretary of State may by rule or regulation prescribe, which the salesperson is required by this Section to provide to the dealer, issuer, or controlling person, executed, verified, or authenticated by the salesperson setting forth or accompanied by:

(1) the name, residence and business address of the salesperson;

(2) whether any federal or State license or registration as dealer, limited Canadian dealer, or salesperson has ever been refused the salesperson or cancelled, suspended, revoked, withdrawn, barred, limited, or otherwise adversely affected in a similar manner or whether the salesperson has ever been censured or expelled;

(3) the nature of employment with, and names and addresses of, employers of the salesperson for the 10 years immediately preceding the date of application;

(4) a brief description of any civil or criminal proceedings of which fraud is an essential element pending against the salesperson, and whether the salesperson has ever been convicted of a felony, or of any misdemeanor of which fraud is an essential element;

(5) such additional information as the Secretary of State may by rule, regulation or order prescribe as necessary to determine the salesperson's business repute and qualification to act as a salesperson; and

(6) no individual shall be registered or re-registered as a salesperson under this Section unless and until such individual has passed an examination conducted by the Secretary of State or a self-regulatory organization of securities dealers or similar person,

which examination has been designated by the Secretary of State by rule, regulation or order to be satisfactory for purposes of determining whether the applicant has sufficient knowledge of the securities business and laws relating thereto to act as a registered salesperson.

Any salesperson who was registered prior to September 30, 1963, and has continued to be so registered, and any individual who has passed a securities salesperson examination administered by the Secretary of State or an examination designated by the Secretary of State by rule, regulation or order to be satisfactory for purposes of determining whether the applicant has sufficient knowledge of the securities business and laws relating thereto to act as a registered salesperson, shall not be required to pass an examination in order to continue to act as a salesperson. The Secretary of State may by order waive the examination requirement for any applicant for registration under this subsection C who has had such experience or education relating to the securities business as may be determined by the Secretary of State to be the equivalent of such examination. Any request for such a waiver shall be filed with the Secretary of State in such form as may be prescribed by rule, regulation or order.

(7) The application for registration of a salesperson shall be accompanied by a filing fee and a Securities Audit and Enforcement Fund fee, each in the amount established pursuant to Section 11a of this Act, which shall not be returnable in any event.

(8) Any change which renders no longer accurate any information contained in any application for registration or re-registration as a salesperson shall be reported to the Secretary of State within 10 business days after the occurrence of such change. If the activities are

terminated which rendered an individual a salesperson for the dealer, issuer or controlling person, the dealer, issuer or controlling person, as the case may be, shall notify the Secretary of State, in writing, within 30 days of the salesperson's cessation of activities, using the appropriate termination notice form.

(9) A registered salesperson may transfer his or her registration under this Section 8 for the unexpired term thereof from one registered dealer or limited Canadian dealer to another by the giving of notice of the transfer by the new registered dealer or limited Canadian dealer to the Secretary of State in such form and subject to such conditions as the Secretary of State shall by rule or regulation prescribe. The new registered dealer or limited Canadian dealer shall promptly file an application for registration of such salesperson as provided in this subsection C, accompanied by the filing fee prescribed by paragraph (7) of this subsection C.

C-5. Except with respect to federal covered investment advisers whose only clients are investment companies as defined in the Federal 1940 Act, other investment advisers, federal covered investment advisers, or any similar person which the Secretary of State may prescribe by rule or order, a federal covered investment adviser shall file with the Secretary of State, prior to acting as a federal covered investment adviser in this State, such documents as have been filed with the Securities and Exchange Commission as the Secretary of State by rule or order may prescribe. The notification of a federal covered investment adviser shall be accompanied by a notification filing fee established pursuant to Section 11a of this Act, which shall not be returnable in any event. Every person acting as a federal covered investment adviser in this State shall file a notification filing and pay an annual notification filing fee established

pursuant to Section 11a of this Act, which is not returnable in any event. The failure to file any such notification shall constitute a violation of subsection D of Section 12 of this Act, subject to the penalties enumerated in Section 14 of this Act. Until October 10, 1999 or other date as may be legally permissible, a federal covered investment adviser who fails to file the notification or refuses to pay the fees as required by this subsection shall register as an investment adviser with the Secretary of State under Section 8 of this Act. The civil remedies provided for in subsection A of Section 13 of this Act and the civil remedies of rescission and appointment of receiver, conservator, ancillary receiver, or ancillary conservator provided for in subsection F of Section 13 of this Act shall not be available against any person by reason of the failure to file any such notification or to pay the notification fee or on account of the contents of any such notification.

D. An application for registration as an investment adviser, executed, verified, or authenticated by or on behalf of the applicant, shall be filed with the Secretary of State, in such form as the Secretary of State may by rule or regulation prescribe, setting forth or accompanied by:

(1) The name and form of organization under which the investment adviser engages or intends to engage in business; the state or country and date of its organization; the location of the adviser's principal business office and branch offices, if any; the names and addresses of the adviser's principal, partners, officers, directors, and persons performing similar functions or, if the investment adviser is an individual, of the individual; and the number of the adviser's employees who perform investment advisory functions;

(2) The education, the business affiliations for the past 10 years, and the present business affiliations

of the investment adviser and of the adviser's principal, partners, officers, directors, and persons performing similar functions and of any person controlling the investment adviser;

(3) The nature of the business of the investment adviser, including the manner of giving advice and rendering analyses or reports;

(4) The nature and scope of the authority of the investment adviser with respect to clients' funds and accounts;

(5) The basis or bases upon which the investment adviser is compensated;

(6) Whether the investment adviser or any principal, partner, officer, director, person performing similar functions or person controlling the investment adviser (i) within 10 years of the filing of the application has been convicted of a felony, or of any misdemeanor of which fraud is an essential element, or (ii) is permanently or temporarily enjoined by order or judgment from acting as an investment adviser, underwriter, dealer, principal or salesperson, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security, and in each case the facts relating to the conviction, order or judgment;

(7) (a) A statement as to whether the investment adviser is engaged or is to engage primarily in the business of rendering investment supervisory services; and

(b) A statement that the investment adviser will furnish his, her, or its clients with such information as the Secretary of State deems necessary in the form prescribed by the Secretary of State by rule or regulation;

(8) Such additional information as the Secretary of State may, by rule, regulation or order prescribe as necessary to determine the applicant's financial responsibility, business repute and qualification to act as an investment adviser.

(9) No applicant shall be registered or re-registered as an investment adviser under this Section unless and until each principal of the applicant who is actively engaged in the conduct and management of the applicant's advisory business in this State has passed an examination or completed an educational program conducted by the Secretary of State or an association of investment advisers or similar person, which examination or educational program has been designated by the Secretary of State by rule, regulation or order to be satisfactory for purposes of determining whether the applicant has sufficient knowledge of the securities business and laws relating thereto to conduct the business of a registered investment adviser.

Any person who was a registered investment adviser prior to September 30, 1963, and has continued to be so registered, and any individual who has passed an investment adviser examination administered by the Secretary of State, or passed an examination or completed an educational program designated by the Secretary of State by rule, regulation or order to be satisfactory for purposes of determining whether the applicant has sufficient knowledge of the securities business and laws relating thereto to conduct the business of a registered investment adviser, shall not be required to pass an examination or complete an educational program in order to continue to act as an investment adviser. The Secretary of State may by order waive the examination or educational program requirement for any applicant for

registration under this subsection D if the principal of the applicant who is actively engaged in the conduct and management of the applicant's advisory business in this State has had such experience or education relating to the securities business as may be determined by the Secretary of State to be the equivalent of the examination or educational program. Any request for a waiver shall be filed with the Secretary of State in such form as may be prescribed by rule or regulation.

(10) No applicant shall be registered or re-registered as an investment adviser under this Section 8 unless the application for registration or re-registration is accompanied by an application for registration or re-registration for each person acting as an investment adviser representative on behalf of the adviser and a Securities Audit and Enforcement Fund fee that shall not be returnable in any event is paid with respect to each investment adviser representative.

(11) The application for registration of an investment adviser shall be accompanied by a filing fee and a fee for each branch office in this State, in each case in the amount established pursuant to Section 11a of this Act, which fees shall not be returnable in any event.

(12) The Secretary of State shall notify the investment adviser by written notice (which may be by electronic or facsimile transmission) of the effectiveness of the registration as an investment adviser in this State.

(13) Any change which renders no longer accurate any information contained in any application for registration or re-registration of an investment adviser shall be reported to the Secretary of State within 10 business days after the occurrence of the change. In

respect to assets and liabilities of an investment adviser that retains custody of clients' cash or securities or accepts pre-payment of fees in excess of \$500 per client and 6 or more months in advance only materially adverse changes need be reported by written notice (which may be by electronic or facsimile transmission) no later than the close of business on the second business day following the discovery thereof.

(14) Each application for registration as an investment adviser shall become effective automatically on the 45th day following the filing of the application, required documents or information, and payment of the required fee unless (i) the Secretary of State has registered the investment adviser prior to that date or (ii) an action with respect to the applicant is pending under Section 11 of this Act.

D-5. A registered investment adviser or federal covered investment adviser desiring to register an investment adviser representative shall file an application with the Secretary of State, in the form as the Secretary of State may by rule or order prescribe, which the investment adviser representative is required by this Section to provide to the investment adviser, executed, verified, or authenticated by the investment adviser representative and setting forth or accompanied by:

(1) The name, residence, and business address of the investment adviser representative;

(2) A statement whether any federal or state license or registration as a dealer, salesperson, investment adviser, or investment adviser representative has ever been refused, canceled, suspended, revoked or withdrawn;

(3) The nature of employment with, and names and addresses of, employers of the investment adviser

representative for the 10 years immediately preceding the date of application;

(4) A brief description of any civil or criminal proceedings, of which fraud is an essential element, pending against the investment adviser representative and whether the investment adviser representative has ever been convicted of a felony or of any misdemeanor of which fraud is an essential element;

(5) Such additional information as the Secretary of State may by rule or order prescribe as necessary to determine the investment adviser representative's business repute or qualification to act as an investment adviser representative;

(6) Documentation that the individual has passed an examination conducted by the Secretary of State, an organization of investment advisers, or similar person, which examination has been designated by the Secretary of State by rule or order to be satisfactory for purposes of determining whether the applicant has sufficient knowledge of the investment advisory or securities business and laws relating to that business to act as a registered investment adviser representative; and

(7) A Securities Audit and Enforcement Fund fee established under Section 11a of this Act, which shall not be returnable in any event.

The Secretary of State may by order waive the examination requirement for an applicant for registration under this subsection D-5 who has had the experience or education relating to the investment advisory or securities business as may be determined by the Secretary of State to be the equivalent of the examination. A request for a waiver shall be filed with the Secretary of State in the form as may be prescribed by rule or order.

A change that renders no longer accurate any information

contained in any application for registration or re-registration as an investment adviser representative must be reported to the Secretary of State within 10 business days after the occurrence of the change. If the activities that rendered an individual an investment adviser representative for the investment adviser are terminated, the investment adviser shall notify the Secretary of State in writing (which may be by electronic or facsimile transmission), within 30 days of the investment adviser representative's termination, using the appropriate termination notice form as the Secretary of State may prescribe by rule or order.

A registered investment adviser representative may transfer his or her registration under this Section 8 for the unexpired term of the registration from one registered investment adviser to another by the giving of notice of the transfer by the new investment adviser to the Secretary of State in the form and subject to the conditions as the Secretary of State shall prescribe. The new registered investment adviser shall promptly file an application for registration of the investment adviser representative as provided in this subsection, accompanied by the Securities Audit and Enforcement Fund fee prescribed by paragraph (7) of this subsection D-5.

E. (1) Subject to the provisions of subsection F of Section 11 of this Act, the registration of a dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative may be denied, suspended or revoked if the Secretary of State finds that the dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative or any principal officer, director, partner, member, trustee, manager or any person who performs a similar function of the dealer, limited Canadian dealer, or investment adviser:

(a) has been convicted of any felony during the 10

year period preceding the date of filing of any application for registration or at any time thereafter, or of any misdemeanor of which fraud is an essential element;

(b) has engaged in any unethical practice in connection with any security, ~~the offer or sale of securities~~ or in any fraudulent business practice;

(c) has failed to account for any money or property, or has failed to deliver any security, to any person entitled thereto when due or within a reasonable time thereafter;

(d) in the case of a dealer, limited Canadian dealer, or investment adviser, is insolvent;

(e) in the case of a dealer, limited Canadian dealer, salesperson, or registered principal of a dealer or limited Canadian dealer (i) has failed reasonably to supervise the securities activities of any of its salespersons or other employees and the failure has permitted or facilitated a violation of Section 12 of this Act or (ii) is offering or selling or has offered or sold securities in this State through a salesperson other than a registered salesperson, or, in the case of a salesperson, is selling or has sold securities in this State for a dealer, limited Canadian dealer, issuer or controlling person with knowledge that the dealer, limited Canadian dealer, issuer or controlling person has not complied with the provisions of this Act or (iii) has failed reasonably to supervise the implementation of compliance measures following notice by the Secretary of State of noncompliance with the Act or with the regulations promulgated thereunder or both or (iv) has failed to maintain and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of its salespersons that are

reasonably designed to achieve compliance with applicable securities laws and regulations;

(f) in the case of an investment adviser, has failed reasonably to supervise the advisory activities of any of its investment adviser representatives or employees and the failure has permitted or facilitated a violation of Section 12 of this Act;

(g) has violated any of the provisions of this Act;

(h) has made any material misrepresentation to the Secretary of State in connection with any information deemed necessary by the Secretary of State to determine a dealer's, limited Canadian dealer's, or investment adviser's financial responsibility or a dealer's, limited Canadian dealer's, investment adviser's, salesperson's, or investment adviser representative's business repute or qualifications, or has refused to furnish any such information requested by the Secretary of State;

(i) has had a license or registration under any Federal or State law regulating ~~the offer or sale of securities,~~ or commodity futures contracts, or stock futures contracts refused, cancelled, suspended, withdrawn, revoked, or otherwise adversely affected in a similar manner;

(j) has had membership in or association with any self-regulatory organization registered under the Federal 1934 Act or the Federal 1974 Act suspended, revoked, refused, expelled, cancelled, barred, limited in any capacity, or otherwise adversely affected in a similar manner arising from any fraudulent or deceptive act or a practice in violation of any rule, regulation or standard duly promulgated by the self-regulatory organization;

(k) has had any order entered against it after notice and opportunity for hearing by a securities agency of any state, any foreign government or agency thereof,

the Securities and Exchange Commission, or the Federal Commodities Futures Trading Commission arising from any fraudulent or deceptive act or a practice in violation of any statute, rule or regulation administered or promulgated by the agency or commission;

(l) in the case of a dealer or limited Canadian dealer, fails to maintain a minimum net capital in an amount which the Secretary of State may by rule or regulation require;

(m) has conducted a continuing course of dealing of such nature as to demonstrate an inability to properly conduct the business of the dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative;

(n) has had, after notice and opportunity for hearing, any injunction or order entered against it or license or registration refused, cancelled, suspended, revoked, withdrawn, limited, or otherwise adversely affected in a similar manner by any state or federal body, agency or commission regulating banking, insurance, finance or small loan companies, real estate or mortgage brokers or companies, if the action resulted from any act found by the body, agency or commission to be a fraudulent or deceptive act or practice in violation of any statute, rule or regulation administered or promulgated by the body, agency or commission;

(o) has failed to file a return, or to pay the tax, penalty or interest shown in a filed return, or to pay any final assessment of tax, penalty or interest, as required by any tax Act administered by the Illinois Department of Revenue, until such time as the requirements of that tax Act are satisfied;

(p) in the case of a natural person who is a dealer, limited Canadian dealer, salesperson, investment

adviser, or investment adviser representative, has defaulted on an educational loan guaranteed by the Illinois Student Assistance Commission, until the natural person has established a satisfactory repayment record as determined by the Illinois Student Assistance Commission;

(q) has failed to maintain the books and records required under this Act or rules or regulations promulgated under this Act or under any requirements established by the Securities and Exchange Commission or a self-regulatory organization within a reasonable time after receiving notice of any deficiency;

(r) has refused to allow or otherwise impeded designees of the Secretary of State from conducting an audit, examination, inspection, or investigation provided for under Section 8 or 11 of this Act;

(s) has failed to maintain any minimum net capital or bond requirement set forth in this Act or any rule or regulation promulgated under this Act;

(t) has refused the Secretary of State or his or her designee access to any office or location within an office to conduct an investigation, audit, examination, or inspection;

(u) has advised or caused a public pension fund or retirement system established under the Illinois Pension Code to make an investment or engage in a transaction not authorized by that Code;

(v) if a corporation, limited liability company, or limited liability partnership has been suspended, canceled, revoked, or has failed to register as a foreign corporation, limited liability company, or limited liability partnership with the Secretary of State;

(w) is permanently or temporarily enjoined by any court of competent jurisdiction, including any state, federal, or foreign government, from engaging in or

continuing any conduct or practice involving any aspect of the securities or commodities business or in any other business where the conduct or practice enjoined involved investments, franchises, insurance, banking, or finance;

(2) If the Secretary of State finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative, or is subject to an adjudication as a person under legal disability or to the control of a guardian, or cannot be located after reasonable search, or has failed after written notice to pay to the Secretary of State any additional fee prescribed by this Section or specified by rule or regulation, or if a natural person, has defaulted on an educational loan guaranteed by the Illinois Student Assistance Commission, the Secretary of State may by order cancel the registration or application.

(3) Withdrawal of an application for registration or withdrawal from registration as a dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative becomes effective 30 days after receipt of an application to withdraw or within such shorter period of time as the Secretary of State may determine, unless any proceeding is pending under Section 11 of this Act when the application is filed or a proceeding is instituted within 30 days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Secretary of State by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Secretary of State may nevertheless institute a revocation or suspension proceeding within 2 years after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration

was effective.

F. The Secretary of State shall make available upon request the date that each dealer, investment adviser, salesperson, or investment adviser representative was granted registration, together with the name and address of the dealer, limited Canadian dealer, or issuer on whose behalf the salesperson is registered, and all orders of the Secretary of State denying or abandoning an application, or suspending or revoking registration, or censuring the persons. The Secretary of State may designate by rule, regulation or order the statements, information or reports submitted to or filed with him or her pursuant to this Section 8 which the Secretary of State determines are of a sensitive nature and therefore should be exempt from public disclosure. Any such statement, information or report shall be deemed confidential and shall not be disclosed to the public except upon the consent of the person filing or submitting the statement, information or report or by order of court or in court proceedings.

G. The registration or re-registration of a dealer or limited Canadian dealer and of all salespersons registered upon application of the dealer or limited Canadian dealer shall expire on the next succeeding anniversary date of the registration or re-registration of the dealer; and the registration or re-registration of an investment adviser and of all investment adviser representatives registered upon application of the investment adviser shall expire on the next succeeding anniversary date of the registration of the investment adviser; provided, that the Secretary of State may by rule or regulation prescribe an alternate date which any dealer registered under the Federal 1934 Act or a member of any self-regulatory association approved pursuant thereto, a member of a self-regulatory organization or stock exchange in

Canada, or any investment adviser may elect as the expiration date of its dealer or limited Canadian dealer and salesperson registrations, or the expiration date of its investment adviser registration, as the case may be. A registration of a salesperson registered upon application of an issuer or controlling person shall expire on the next succeeding anniversary date of the registration, or upon termination or expiration of the registration of the securities, if any, designated in the application for his or her registration or the alternative date as the Secretary may prescribe by rule or regulation. Subject to paragraph (9) of subsection C of this Section 8, a salesperson's registration also shall terminate upon cessation of his or her employment, or termination of his or her appointment or authorization, in each case by the person who applied for the salesperson's registration, provided that the Secretary of State may by rule or regulation prescribe an alternate date for the expiration of the registration.

H. Applications for re-registration of dealers, limited Canadian dealers, salespersons, investment advisers, and investment adviser representatives shall be filed with the Secretary of State prior to the expiration of the then current registration and shall contain such information as may be required by the Secretary of State upon initial application with such omission therefrom or addition thereto as the Secretary of State may authorize or prescribe. Each application for re-registration of a dealer, limited Canadian dealer, or investment adviser shall be accompanied by a filing fee, each application for re-registration as a salesperson shall be accompanied by a filing fee and a Securities Audit and Enforcement Fund fee established pursuant to Section 11a of this Act, and each application for re-registration as an investment adviser representative shall be accompanied by a Securities Audit and Enforcement Fund fee

established under Section 11a of this Act, which shall not be returnable in any event. Notwithstanding the foregoing, applications for re-registration of dealers, limited Canadian dealers, and investment advisers may be filed within 30 days following the expiration of the registration provided that the applicant pays the annual registration fee together with an additional amount equal to the annual registration fee and files any other information or documents that the Secretary of State may prescribe by rule or regulation or order. Any application filed within 30 days following the expiration of the registration shall be automatically effective as of the time of the earlier expiration provided that the proper fee has been paid to the Secretary of State.

Each registered dealer, limited Canadian dealer, or investment adviser shall continue to be registered if the registrant changes his, her, or its form of organization provided that the dealer or investment adviser files an amendment to his, her, or its application not later than 30 days following the occurrence of the change and pays the Secretary of State a fee in the amount established under Section 11a of this Act.

I. (1) Every registered dealer, limited Canadian dealer, and investment adviser shall make and keep for such periods, such accounts, correspondence, memoranda, papers, books and records as the Secretary of State may by rule or regulation prescribe. All records so required shall be preserved for 3 years unless the Secretary of State by rule, regulation or order prescribes otherwise for particular types of records.

(2) Every registered dealer, limited Canadian dealer, and investment adviser shall file such financial reports as the Secretary of State may by rule or regulation prescribe.

(3) All the books and records referred to in paragraph (1) of this subsection I are subject at any time or from time to time to such reasonable periodic, special or other audits,

examinations, or inspections by representatives of the Secretary of State, within or without this State, as the Secretary of State deems necessary or appropriate in the public interest or for the protection of investors.

(4) At the time of an audit, examination, or inspection, the Secretary of State, by his or her designees, may conduct an interview of any person employed or appointed by or affiliated with a registered dealer, limited Canadian dealer, or investment advisor, provided that the dealer, limited Canadian dealer, or investment advisor shall be given reasonable notice of the time and place for the interview. At the option of the dealer, limited Canadian dealer, or investment advisor, a representative of the dealer or investment advisor with supervisory responsibility over the individual being interviewed may be present at the interview.

J. The Secretary of State may require by rule or regulation the payment of an additional fee for the filing of information or documents required to be filed by this Section which have not been filed in a timely manner. The Secretary of State may also require by rule or regulation the payment of an examination fee for administering any examination which it may conduct pursuant to subsection B, C, D, or D-5 of this Section 8.

K. The Secretary of State may declare any application for registration or limited registration under this Section 8 abandoned by order if the applicant fails to pay any fee or file any information or document required under this Section 8 or by rule or regulation for more than 30 days after the required payment or filing date. The applicant may petition the Secretary of State for a hearing within 15 days after the applicant's receipt of the order of abandonment, provided that the petition sets forth the grounds upon which the applicant seeks a hearing.

L. Any document being filed pursuant to this Section 8 shall be deemed filed, and any fee being paid pursuant to this Section 8 shall be deemed paid, upon the date of actual receipt thereof by the Secretary of State or his or her designee.

M. The Secretary of State shall provide to the Illinois Student Assistance Commission annually or at mutually agreed periodic intervals the names and social security numbers of natural persons registered under subsections B, C, D, and D-5 of this Section. The Illinois Student Assistance Commission shall determine if any student loan defaulter is registered as a dealer, limited Canadian dealer, salesperson, or investment adviser under this Act and report its determination to the Secretary of State or his or her designee.

(Source: P.A. 91-809, eff. 1-1-01; 92-308, eff. 1-1-02.)

(815 ILCS 5/11) (from Ch. 121 1/2, par. 137.11)

Sec. 11. Duties and powers of the Secretary of State.

A. (1) The administration of this Act is vested in the Secretary of State, who may from time to time make, amend and rescind such rules and regulations as may be necessary to carry out this Act, including rules and regulations governing procedures of registration, statements, applications and reports for various classes of securities, persons and matters within his or her jurisdiction and defining any terms, whether or not used in this Act, insofar as the definitions are not inconsistent with this Act. The rules and regulations adopted by the Secretary of State under this Act shall be effective in the manner provided for in the Illinois Administrative Procedure Act.

(2) Among other things, the Secretary of State shall have authority, for the purposes of this Act, to prescribe the form or forms in which required information shall be set

forth, accounting practices, the items or details to be shown in balance sheets and earning statements, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and non-recurring income, in the differentiation of investment and operating income, and in the preparation of consolidated balance sheets or income accounts of any person, directly or indirectly, controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(3) No provision of this Act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the Secretary of State under this Act, notwithstanding that the rule or regulation may, after the act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(4) The Securities Department of the Office of the Secretary of State shall be deemed a criminal justice agency for purposes of all federal and state laws and regulations and, in that capacity, shall be entitled to access to any information available to criminal justice agencies and has the power to appoint special agents to conduct all investigations, searches, seizures, arrests, and other duties imposed under the provisions of any law administered by the Department. The special agents have and may exercise all the powers of peace officers solely for the purpose of enforcing provisions of this Act.

The Director must authorize to each special agent employed under this Section a distinct badge that, on its face, (i) clearly states that the badge is authorized by the Department and (ii) contains a unique and identifying number.

Special agents shall comply with all training

requirements established for law enforcement officers by provisions of the Illinois Police Training Act.

(5) The Secretary of State, by rule, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision of Section 5, 6, 7, 8, 8a, or 9 of this Act or of any rule promulgated under these Sections, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

B. The Secretary of State may, anything in this Act to the contrary notwithstanding, require financial statements and reports of the issuer, dealer, salesperson, ~~or~~ investment adviser, or investment adviser representative as often as circumstances may warrant. In addition, the Secretary of State may secure information or books and records from or through others and may make or cause to be made investigations respecting the business, affairs, and property of the issuer of securities, any person involved in the sale or offer for sale, purchase or offer to purchase of any mineral investment contract, mineral deferred delivery contract, or security and of dealers, salespersons, and investment advisers, and investment adviser representatives that are registered or are the subject of an application for registration under this Act. The costs of an investigation shall be borne by the registrant or the applicant, provided that the registrant or applicant shall not be obligated to pay the costs without his, her or its consent in advance.

C. Whenever it shall appear to the Secretary of State, either upon complaint or otherwise, that this Act, or any rule or regulation prescribed under authority thereof, has been or is about to be violated, he or she may, in his or her discretion, do one or more ~~both~~ of the following:

(1) require or permit the person to file with the

Secretary of State a statement in writing under oath, or otherwise, as to all the facts and circumstances concerning the subject matter which the Secretary of State believes to be in the public interest to investigate, audit, examine, or inspect; and

(2) conduct an investigation, audit, examination, or inspection as necessary or advisable for the protection of the interests of the public; and

(3) appoint investigators to conduct all investigations, searches, seizures, arrests, and other duties imposed under the provisions of any law administered by the Department. The Director must authorize to each investigator employed under this Section a distinct badge that, on its face, (i) clearly states that the badge is authorized by the Department and (ii) contains a unique and identifying number.

D. (1) For the purpose of all investigations, audits, examinations, or inspections which in the opinion of the Secretary of State are necessary and proper for the enforcement of this Act, the Secretary of State or a person designated by him or her is empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require, by subpoena or other lawful means provided by this Act or the rules adopted by the Secretary of State, the production of any books and records, papers, or other documents which the Secretary of State or a person designated by him or her deems relevant or material to the inquiry.

(2) The Secretary of State or a person designated by him or her is further empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books and records, papers, or other documents in this State at the request of a securities agency of another state, if the activities constituting the alleged violation for which the information is sought would be in

violation of Section 12 of this Act if the activities had occurred in this State.

(3) The Circuit Court of any County of this State, upon application of the Secretary of State or a person designated by him or her may order the attendance of witnesses, the production of books and records, papers, accounts and documents and the giving of testimony before the Secretary of State or a person designated by him or her; and any failure to obey the order may be punished by the Circuit Court as a contempt thereof.

(4) The fees of subpoenaed witnesses under this Act for attendance and travel shall be the same as fees of witnesses before the Circuit Courts of this State, to be paid when the witness is excused from further attendance, provided, the witness is subpoenaed at the instance of the Secretary of State; and payment of the fees shall be made and audited in the same manner as other expenses of the Secretary of State.

(5) Whenever a subpoena is issued at the request of a complainant or respondent as the case may be, the Secretary of State may require that the cost of service and the fee of the witness shall be borne by the party at whose instance the witness is summoned.

(6) The Secretary of State shall have power at his or her discretion, to require a deposit to cover the cost of the service and witness fees and the payment of the legal witness fee and mileage to the witness served with subpoena.

(7) A subpoena issued under this Act shall be served in the same manner as a subpoena issued out of a circuit court.

(8) The Secretary of State may in any investigation, audits, examinations, or inspections cause the taking of depositions of persons residing within or without this State in the manner provided in civil actions under the laws of this State.

E. Anything in this Act to the contrary notwithstanding:

(1) If the Secretary of State shall find that the offer or sale or proposed offer or sale or method of offer or sale of any securities by any person, whether exempt or not, in this State, is fraudulent, or would work or tend to work a fraud or deceit, or is being offered or sold in violation of Section 12, or there has been a failure or refusal to submit any notification filing or fee required under this Act, the Secretary of State may by written order prohibit or suspend the offer or sale of securities by that person or deny or revoke the registration of the securities or the exemption from registration for the securities.

(2) If the Secretary of State shall find that any person has violated subsection C, D, E, F, G, H, I, J, or K of Section 12 of this Act, the Secretary of State may by written order temporarily or permanently prohibit or suspend the person from offering or selling any securities, any mineral investment contract, or any mineral deferred delivery contract in this State, provided that any person who is the subject of an order of permanent prohibition may petition the Secretary of State for a hearing to present evidence of rehabilitation or change in circumstances justifying the amendment or termination of the order of permanent prohibition.

(3) If the Secretary of State shall find that any person is engaging or has engaged in the business of selling or offering for sale securities as a dealer or salesperson or is acting or has acted as an investment adviser, investment adviser representative, or federal covered investment adviser, without prior thereto and at the time thereof having complied with the registration or notice filing requirements of this Act, the Secretary of State may by written order prohibit or suspend the person from engaging in the business of selling or offering for

sale securities, or acting as an investment adviser, investment adviser representative, or federal covered investment adviser, in this State.

(4) In addition to any other sanction or remedy contained in this subsection E, the Secretary of State, after finding that any provision of this Act has been violated, may impose a fine as provided by rule, regulation or order not to exceed \$10,000 for each violation of this Act, may issue an order of public censure against the violator, and may charge as costs of investigation all reasonable expenses, including attorney's fees and witness fees.

F. (1) The Secretary of State shall not deny, suspend or revoke the registration of securities, suspend or revoke the registration of a dealer, salesperson, ~~or~~ investment adviser, or investment adviser representative, prohibit or suspend the offer or sale of any securities, prohibit or suspend any person from offering or selling any securities in this State, prohibit or suspend a dealer or salesperson from engaging in the business of selling or offering for sale securities, prohibit or suspend a person from acting as an investment adviser or federal covered investment adviser, or investment adviser representative, impose any fine for violation of this Act, issue an order of public censure, or enter into an agreed settlement except after an opportunity for hearing upon not less than 10 days notice given by personal service or registered mail or certified mail, return receipt requested, to the person or persons concerned. Such notice shall state the date and time and place of the hearing and shall contain a brief statement of the proposed action of the Secretary of State and the grounds for the proposed action. A failure to appear at the hearing or otherwise respond to the allegations set forth in the notice of hearing shall constitute an admission of any facts alleged therein and

shall constitute sufficient basis to enter an order.

(2) Anything herein contained to the contrary notwithstanding, the Secretary of State may temporarily prohibit or suspend, for a maximum period of 90 days, by an order effective immediately, the offer or sale or registration of securities, the registration of a dealer, salesperson, investment adviser, or investment adviser representative, or the offer or sale of securities by any person, or the business of rendering investment advice, without the notice and prior hearing in this subsection prescribed, if the Secretary of State shall in his or her opinion, based on credible evidence, deem it necessary to prevent an imminent violation of this Act or to prevent losses to investors which the Secretary of State reasonably believes will occur as a result of a prior violation of this Act. Immediately after taking action without such notice and hearing, the Secretary of State shall deliver a copy of the temporary order to the respondent named therein by personal service or registered mail or certified mail, return receipt requested. The temporary order shall set forth the grounds for the action and shall advise that the respondent may request a hearing, that the request for a hearing will not stop the effectiveness of the temporary order and that respondent's failure to request a hearing within 30 days after the date of the entry of the temporary order shall constitute an admission of any facts alleged therein and shall constitute sufficient basis to make the temporary order final. Any provision of this paragraph (2) to the contrary notwithstanding, the Secretary of State may not pursuant to the provisions of this paragraph (2) suspend the registration of a dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative based upon sub-paragraph (n) of paragraph (1) of subsection E of Section 8 of this Act or revoke the registration of securities or

revoke the registration of any dealer, salesperson, investment adviser representative, or investment adviser.

(3) The Secretary of State may issue a temporary order suspending or delaying the effectiveness of any registration of securities under subsection A or B of Section 5, 6 or 7 of this Act subsequent to and upon the basis of the issuance of any stop, suspension or similar order by the Securities and Exchange Commission with respect to the securities which are the subject of the registration under subsection A or B of Section 5, 6 or 7 of this Act, and the order shall become effective as of the date and time of effectiveness of the Securities and Exchange Commission order and shall be vacated automatically at such time as the order of the Securities and Exchange Commission is no longer in effect.

(4) When the Secretary of State finds that an application for registration as a dealer, salesperson, ~~or investment adviser,~~ or investment adviser representative should be denied, the Secretary of State may enter an order denying the registration. Immediately after taking such action, the Secretary of State shall deliver a copy of the order to the respondent named therein by personal service or registered mail or certified mail, return receipt requested. The order shall state the grounds for the action and that the matter will be set for hearing upon written request filed with the Secretary of State within 30 days after the receipt of the request by the respondent. The respondent's failure to request a hearing within 30 days after receipt of the order shall constitute an admission of any facts alleged therein and shall make the order final. If a hearing is held, the Secretary of State shall affirm, vacate, or modify the order.

(5) The findings and decision of the Secretary of State upon the conclusion of each final hearing held pursuant to this subsection shall be set forth in a written order signed

on behalf of the Secretary of State by his or her designee and shall be filed as a public record. All hearings shall be held before a person designated by the Secretary of State, and appropriate records thereof shall be kept.

(6) Notwithstanding the foregoing, the Secretary of State, after notice and opportunity for hearing, may at his or her discretion enter into an agreed settlement, stipulation or consent order with a respondent in accordance with the provisions of the Illinois Administrative Procedure Act. The provisions of the agreed settlement, stipulation or consent order shall have the full force and effect of an order issued by the Secretary of State.

(7) Anything in this Act to the contrary notwithstanding, whenever the Secretary of State finds that a person is currently expelled from, refused membership in or association with, or limited in any material capacity by a self-regulatory organization registered under the Federal 1934 Act or the Federal 1974 Act because of a fraudulent or deceptive act or a practice in violation of a rule, regulation, or standard duly promulgated by the self-regulatory organization, the Secretary of State may, at his or her discretion, enter a Summary Order of Prohibition, which shall prohibit the offer or sale of any securities, mineral investment contract, or mineral deferred delivery contract by the person in this State. The order shall take effect immediately upon its entry. Immediately after taking the action the Secretary of State shall deliver a copy of the order to the named Respondent by personal service or registered mail or certified mail, return receipt requested. A person who is the subject of an Order of Prohibition may petition the Secretary of State for a hearing to present evidence of rehabilitation or change in circumstances justifying the amendment or termination of the Order of Prohibition.

G. No administrative action shall be brought by the Secretary of State for relief under this Act or upon or because of any of the matters for which relief is granted by this Act after the earlier to occur of (i) 3 years from the date upon which the Secretary of State had notice of facts which in the exercise of reasonable diligence would lead to actual knowledge of the alleged violation of the Act, or (ii) 5 years from the date on which the alleged violation occurred.

H. The action of the Secretary of State in denying, suspending, or revoking the registration of a dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative, in prohibiting any person from engaging in the business of offering or selling securities as a dealer, limited Canadian dealer, or salesperson, in prohibiting or suspending the offer or sale of securities by any person, in prohibiting a person from acting as an investment adviser, federal covered investment adviser, or investment adviser representative, in denying, suspending, or revoking the registration of securities, in prohibiting or suspending the offer or sale or proposed offer or sale of securities, in imposing any fine for violation of this Act, or in issuing any order shall be subject to judicial review in the Circuit Courts of Cook or Sangamon Counties in this State. The Administrative Review Law shall apply to and govern every action for the judicial review of final actions or decisions of the Secretary of State under this Act.

I. Notwithstanding any other provisions of this Act to the contrary, whenever it shall appear to the Secretary of State that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of this Act or of any rule or regulation prescribed under authority of this Act, the Secretary of State may at

his or her discretion, through the Attorney General take any of the following actions:

(1) File a complaint and apply for a temporary restraining order without notice, and upon a proper showing the court may enter a temporary restraining order without bond, to enforce this Act. ~~and~~

(2) File a complaint and apply for a preliminary or permanent injunction, and, after notice and a hearing and upon a proper showing, the court may grant a preliminary or permanent injunction and may order the defendant to make an offer of rescission with respect to any sales or purchases of securities, mineral investment contracts, or mineral deferred delivery contracts determined by the court to be unlawful under this Act.

(3) Seek the seizure of assets when probable cause exists that the assets were obtained by a defendant through conduct in violation of Section 12, paragraph F, G, I, J, K, or L of this Act, and thereby subject to a judicial forfeiture hearing as required under this Act.

(a) In the event that such probable cause exists that the subject of an investigation who is alleged to have committed one of the relevant violations of this Act has in his possession assets obtained as a result of the conduct giving rise to the violation, the Secretary of State may seek a seizure warrant in any circuit court in Illinois.

(b) In seeking a seizure warrant, the Secretary of State, or his or her designee, shall submit to the court a sworn affidavit detailing the probable cause evidence for the seizure, the location of the assets to be seized, the relevant violation under Section 12 of this Act, and a statement detailing any known owners or interest holders in the assets.

(c) Seizure of the assets shall be made by any peace officer upon process of the seizure warrant issued by the court. Following the seizure of assets under this Act and pursuant to a seizure warrant, notice of seizure, including a description of the seized assets, shall immediately be returned to the issuing court. Seized assets shall be maintained pending a judicial forfeiture hearing in accordance with the instructions of the court.

(d) In the event that management of seized assets becomes necessary to prevent the devaluation, dissipation, or otherwise to preserve the property, the court shall have jurisdiction to appoint a receiver, conservator, ancillary receiver, or ancillary conservator for that purpose, as provided in item (2) of this subsection.

(4) Seek the forfeiture of assets obtained through conduct in violation of Section 12, paragraph F, G, H, I, J, K, or L when authorized by law. A forfeiture must be ordered by a circuit court or an action brought by the Secretary of State as provided for in this Act, under a verified complaint for forfeiture.

(a) In the event assets have been seized pursuant to this Act, forfeiture proceedings shall be instituted by the Attorney General within 45 days of seizure.

(b) Service of the complaint filed under the provisions of this Act shall be made in the manner as provided in civil actions in this State.

(c) Only an owner of or interest holder in the property may file an answer asserting a claim against the property. For purposes of this Section, the owner or interest holder shall be referred to as claimant.

(d) The answer must be signed by the owner or interest holder under penalty of perjury and must set forth:

(i) the caption of the proceedings as set forth on the notice of pending forfeiture and the name of the claimant;

(ii) the address at which the claimant will accept mail;

(iii) the nature and extent of the claimant's interest in the property;

(iv) the date, identity of the transferor, and circumstances of the claimant's acquisition of the interest in the property;

(v) the name and address of all other persons known to have an interest in the property;

(vi) the specific provisions of this Act relied on in asserting that the property is not subject to forfeiture;

(vii) all essential facts supporting each assertion; and

(viii) the precise relief sought.

(e) The answer must be filed with the court within 45 days after service of the complaint.

(f) A property interest is exempt from forfeiture under this Act if its owner or interest holder establishes by a preponderance of evidence that the owner or interest holder:

(i) is not legally accountable for the conduct giving rise to the forfeiture, did not acquiesce in it, and did not know and could not reasonably have known of the conduct or that the conduct was likely to occur;

(ii) with respect to conveyances, did not

hold the property jointly or in common with a person whose conduct gave rise to the forfeiture;

(iii) does not hold the property for the benefit of or as a nominee for any person whose conduct gave rise to its forfeiture and the owner or interest holder acquires it as a bona fide purchaser for value without knowingly taking part in the conduct giving rise to the forfeiture; or

(iv) acquired the interest after the commencement of the conduct giving rise to its forfeiture and the owner or interest holder acquired the interest as a mortgagee, secured creditor, lienholder, or bona fide purchaser for value without knowledge of the conduct that gave rise to the forfeiture.

(g) The hearing must be held within 60 days after the answer is filed unless continued for good cause.

(h) During the probable cause portion of the judicial in rem proceeding wherein the Secretary of State presents its case-in-chief, the court must receive and consider, among other things, any relevant hearsay evidence and information. The laws of evidence relating to civil actions shall apply to all other portions of the judicial in rem proceeding.

(i) The Secretary of State shall show the existence of probable cause for forfeiture of the property. If the Secretary of State shows probable cause, the claimant has the burden of showing by a preponderance of the evidence that the claimant's interest in the property is not subject to

forfeiture.

(j) If the Secretary of State does not show the existence of probable cause or a claimant has an interest that is exempt under subdivision I (4)(d) of this Section, the court shall order the interest in the property returned or conveyed to the claimant and shall order all other property forfeited to the Secretary of State pursuant to all provisions of this Act. If the Secretary of State does show the existence of probable cause and the claimant does not establish by a preponderance of the evidence that the claimant has an interest that is exempt under subsection D herein, the court shall order all the property forfeited to the Secretary of State pursuant to the provisions of the Section.

(k) A defendant convicted in any criminal proceeding is precluded from later denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding for violations of the Act giving rise to forfeiture of property herein regardless of the pendency of an appeal from that conviction. However, evidence of the pendency of an appeal is admissible.

(l) An acquittal or dismissal in a criminal proceeding for violations of the Act giving rise to the forfeiture of property herein shall not preclude civil proceedings under this provision; however, for good cause shown, on a motion by the Secretary of State, the court may stay civil forfeiture proceedings during the criminal trial for a related criminal indictment or information alleging violation of the provisions of Section 12 of the Illinois Securities Law of 1953. Property subject to forfeiture under this Section shall not be subject

to return or release by a court exercising jurisdiction over a criminal case involving the seizure of the property unless the return or release is consented to by the Secretary of State.

(m) All property declared forfeited under this Act vests in the State on the commission of the conduct giving rise to forfeiture together with the proceeds of the property after that time. Any such property or proceeds subsequently transferred to any person remain subject to forfeiture and thereafter shall be ordered forfeited unless the transferee claims and establishes in a hearing under the provisions of this Act that the transferee's interest is exempt under the Act. Any assets forfeited to the State shall be disposed of in following manner:

(i) all forfeited property and assets shall be liquidated by the Secretary of State in accordance with all laws and rules governing the disposition of such property;

(ii) the Secretary of State shall provide the court at the time the property and assets are declared forfeited a verified statement of investors subject to the conduct giving rise to the forfeiture;

(iii) after payment of any costs of sale, receivership, storage, or expenses for preservation of the property seized, other costs to the State, and payment to claimants for any amount deemed exempt from forfeiture, the proceeds from liquidation shall be distributed pro rata to investors subject to the conduct giving rise to the forfeiture; and

(iv) any proceeds remaining after all

verified investors have been made whole shall be distributed 25% to the Securities Investors Education Fund, 25% to the Securities Audit and Enforcement Fund, 25% to the Attorney General or any State's Attorney bringing criminal charges for the conduct giving rise to the forfeiture, and 25% to other law enforcement agencies participating in the investigation of the criminal charges for the conduct giving rise to the forfeiture. In the event that no other law enforcement agencies are involved in the investigation of the conduct giving rise to the forfeiture, then the portion to other law enforcement agencies shall be distributed to the Securities Investors Education Fund.

(n) The Secretary of State shall notify by certified mail, return receipt requested, all known investors in the matter giving rise to the forfeiture of the forfeiture proceeding and sale of assets forfeited arising from the violations of this Act, and shall further publish notice in a paper of general circulation in the district in which the violations were prosecuted. The notice to investors shall identify the name, address, and other identifying information about any defendant prosecuted for violations of this Act that resulted in forfeiture and sale of property, the offense for which the defendant was convicted, and that the court has ordered forfeiture and sale of property for claims of investors who incurred losses or damages as a result of the violations. Investors may then file a claim in a form prescribed by the Secretary of State in order to share in disbursement of the proceeds from sale of the forfeited property.

Investor claims must be filed with the Secretary of State within 30 days after receipt of the certified mail return receipt, or within 30 days after the last date of publication of the general notice in a paper of general circulation in the district in which the violations were prosecuted, whichever occurs last.

(o) A civil action under this subsection must be commenced within 5 years after the last conduct giving rise to the forfeiture became known or should have become known or 5 years after the forfeitable property is discovered, whichever is later, excluding time during which either the property or claimant is out of this State or in confinement or during which criminal proceedings relating to the same conduct are in progress.

(p) If property is seized for evidence and for forfeiture, the time periods for instituting judicial forfeiture proceedings shall not begin until the property is no longer necessary for evidence.

(q) Notwithstanding other provisions of this Act, the Secretary of State and a claimant of forfeitable property may enter into an agreed-upon settlement concerning the forfeitable property in such an amount and upon such terms as are set out in writing in a settlement agreement.

(r) Nothing in this Act shall apply to property that constitutes reasonable bona fide attorney's fees paid to an attorney for services rendered or to be rendered in the forfeiture proceeding or criminal proceeding relating directly thereto when the property was paid before its seizure and before the issuance of any seizure

warrant or court order prohibiting transfer of the property and when the attorney, at the time he or she received the property, did not know that it was property subject to forfeiture under this Act.

The court shall further have jurisdiction and authority, in addition to the penalties and other remedies in this Act provided, to enter an order for the appointment of the court or a person as a receiver, conservator, ancillary receiver or ancillary conservator for the defendant or the defendant's assets located in this State, or to require restitution, damages or disgorgement of profits on behalf of the person or persons injured by the act or practice constituting the subject matter of the action, and may assess costs against the defendant for the use of the State; provided, however, that the civil remedies of rescission and appointment of a receiver, conservator, ancillary receiver or ancillary conservator shall not be available against any person by reason of the failure to file with the Secretary of State, or on account of the contents of, any report of sale provided for in subsection G or P of Section 4, paragraph (2) of subsection D of Sections 5 and 6, or paragraph (2) of subsection F of Section 7 of this Act. Appeals may be taken as in other civil cases.

J. In no case shall the Secretary of State, or any of his or her employees or agents, in the administration of this Act, incur any official or personal liability by instituting an injunction or other proceeding or by denying, suspending or revoking the registration of a dealer or salesperson, or by denying, suspending or revoking the registration of securities or prohibiting the offer or sale of securities, or by suspending or prohibiting any person from acting as a dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative or from offering or selling securities.

K. No provision of this Act shall be construed to require or to authorize the Secretary of State to require any investment adviser or federal covered investment adviser engaged in rendering investment supervisory services to disclose the identity, investments, or affairs of any client of the investment adviser or federal covered investment adviser, except insofar as the disclosure may be necessary or appropriate in a particular proceeding or investigation having as its object the enforcement of this Act.

L. Whenever, after an examination, investigation or hearing, the Secretary of State deems it of public interest or advantage, he or she may certify a record to the State's Attorney of the county in which the act complained of, examined or investigated occurred. The State's Attorney of that county within 90 days after receipt of the record shall file a written statement at the Office of the Secretary of State, which statement shall set forth the action taken upon the record, or if no action has been taken upon the record that fact, together with the reasons therefor, shall be stated.

M. The Secretary of State may initiate, take, pursue, or prosecute any action authorized or permitted under Section 6d of the Federal 1974 Act.

N. (1) Notwithstanding any provision of this Act to the contrary, to encourage uniform interpretation, administration, and enforcement of the provisions of this Act, the Secretary of State may cooperate with the securities agencies or administrators of one or more states, Canadian provinces or territories, or another country, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Securities Investor Protection Corporation, any self-regulatory organization, and any governmental law enforcement or regulatory agency.

(2) The cooperation authorized by paragraph (1) of this

subsection includes, but is not limited to, the following:

(a) establishing or participating in a central depository or depositories for registration under this Act and for documents or records required under this Act;

(b) making a joint audit, inspection, examination, or investigation;

(c) holding a joint administrative hearing;

(d) filing and prosecuting a joint civil or criminal proceeding;

(e) sharing and exchanging personnel;

(f) sharing and exchanging information and documents; or

(g) issuing any joint statement or policy.

(Source: P.A. 91-809, eff. 1-1-01; 92-308, eff. 1-1-02.)

(815 ILCS 5/11b) (from Ch. 121 1/2, par. 137.11b)

Sec. 11b. Special funds. All moneys received by the State of Illinois in furtherance of activities, duties, and responsibilities under the Illinois Securities Law of 1953 from government or non-governmental sources, except funds received pursuant to Section 981, 982, or 1963 of Title 18 of the United States Code, which shall be deposited into the Securities Audit and Enforcement Fund, and funds payable as specific grants or the finances, payments, or fees required under Section 5, 6, 7, or 8, or in connection with violations of Section 12 of this Act, the Business Opportunity Sales Law of 1995, the Illinois Business Brokers Act of 1995, or the Illinois Loan Brokers Act of 1995 to be deposited into the Securities Investors Education Fund or the Securities Audit and Enforcement Fund, shall be placed in the General Revenue Fund of the State treasury.

(Source: P.A. 89-209, eff. 1-1-96.)

(815 ILCS 5/12) (from Ch. 121 1/2, par. 137.12)

Sec. 12. Violation. It shall be a violation of the provisions of this Act for any person:

A. To offer or sell any security except in accordance with the provisions of this Act.

B. To deliver to a purchaser any security required to be registered under Section 5, Section 6 or Section 7 hereof unless accompanied or preceded by a prospectus that meets the requirements of the pertinent subsection of Section 5 or of Section 6 or of Section 7.

C. To act as a dealer, salesperson, investment adviser, or investment adviser representative, unless registered as such, where such registration is required, under the provisions of this Act.

D. To fail to file with the Secretary of State any application, report or document required to be filed under the provisions of this Act or any rule or regulation made by the Secretary of State pursuant to this Act or to fail to comply with the terms of any order of the Secretary of State issued pursuant to Section 11 hereof.

E. To make, or cause to be made, (1) in any application, report or document filed under this Act or any rule or regulation made by the Secretary of State pursuant to this Act, any statement which was false or misleading with respect to any material fact or (2) any statement to the effect that a security (other than a security issued by the State of Illinois) has been in any way endorsed or approved by the Secretary of State or the State of Illinois.

F. To engage in any transaction, practice or course of business in connection with the sale or purchase of securities which works or tends to work a fraud or deceit upon the purchaser or seller thereof.

G. To obtain money or property through the sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in

order to make the statements made, in the light of the circumstances under which they were made, not misleading.

H. To sign or circulate any statement, prospectus, or other paper or document required by any provision of this Act or pertaining to any security knowing or having reasonable grounds to know any material representation therein contained to be false or untrue.

I. To employ any device, scheme or artifice to defraud in connection with the sale or purchase of any security, directly or indirectly.

J. When acting as an investment adviser, investment adviser representative, or federal covered investment adviser, by any means or instrumentality, directly or indirectly:

(1) To employ any device, scheme or artifice to defraud any client or prospective client;

(2) To engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; or

(3) To engage in any act, practice, or course of business which is fraudulent, deceptive or manipulative.

The Secretary of State shall for the purposes of this paragraph (3), by rules and regulations, define and prescribe means reasonably designed to prevent such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.

K. When offering or selling any mineral investment contract or mineral deferred delivery contract:

(1) To employ any device, scheme, or artifice to defraud any customer, prospective customer, or offeree;

(2) To engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any customer, prospective customer, or offeree; or

(3) To engage in any act, practice, or course of

business that is fraudulent, deceptive, or manipulative.

The Secretary of State shall for the purposes of this paragraph (3), by rules and regulations, define and prescribe means reasonably designed to prevent acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.

L. To knowingly influence, coerce, manipulate, or mislead any person engaged in the preparation or audit of financial statements or appraisals to be used in the offer or sale of securities for the purpose of rendering such financial statements or appraisals materially misleading.

(Source: P.A. 90-70, eff. 7-8-97; 91-809, eff. 1-1-01.)

(815 ILCS 5/14) (from Ch. 121 1/2, par. 137.14)

Sec. 14. Sentence.

A. Any person who violates any of the provisions of subsection A, B, C, or D of Section 12 or paragraph (3) of subsection K of Section 12 of this Act shall be guilty of a Class 4 felony.

B. Any person who violates any of the provisions of subsection E, F, G, H, I, or J, or paragraph (1) or (2) of subsection K, or subsection L of Section 12 of this Act shall be guilty of a Class 3 felony.

B-5. A person who violates a provision of subsection E, F, G, H, I, or J or paragraph (1) or (2) of subsection K of Section 12 of this Act by use of a plan, program, or campaign that is conducted using one or more telephones for the purpose of inducing the purchase or sale of securities is guilty of a Class 2 felony.

B-10. A person who in the course of violating a provision of subsection E, F, G, H, I, or J or paragraph (1) or (2) of subsection K of Section 12 of this Act induces a person 60 years of age or older to purchase or sell securities is guilty of a Class 2 felony.

C. No prosecution for violation of any provision of this Act shall bar or be barred by any prosecution for the violation of any other provision of this Act or of any other statute; but all prosecutions under this Act or based upon any provision of this Act must be commenced within 3 years after the violation upon which such prosecution is based; provided however, that if the accused has intentionally concealed evidence of a violation of subsection E, F, G, H, I, J, or K of Section 12 of this Act, the period of limitation prescribed herein shall be extended up to an additional 2 years after the proper prosecuting officer becomes aware of the offense but in no such event shall the period of limitation so extended be more than 2 years beyond the expiration of the period otherwise applicable.

D. For the purposes of this Act all persons who shall sell or offer for sale, or who shall purchase or offer to purchase, securities in violation of the provisions of this Act, or who shall in any manner knowingly authorize, aid or assist in any unlawful conduct under this Act shall be deemed ~~sale--or--offering--for-sale-or-unlawful-purchase-or-offer-to purchase-shall-be-deemed~~ equally guilty, and may be tried and punished in the county in which said unlawful sale or offering for sale or unlawful purchase or offer to purchase was made, or in the county in which the securities so sold or offered for sale or so purchased or offered to be purchased were delivered or proposed to be delivered to the purchaser thereof or by the seller thereof, as the case may be.

E. Any person who shall be convicted of a second or any subsequent offense specified in subsection A, B, C, D, or paragraph (3) of subsection K of Section 12 of this Act shall be guilty of a Class 3 felony, and any person who shall be convicted of a second or any subsequent offense specified in subsection E, F, G, H, I, J, or paragraph (1) or (2) of subsection K of Section 12 of this Act shall be guilty of a

Class 2 felony.

F. If any person referred to in this Section is not a natural person, it may upon conviction of a first offense be fined up to \$25,000, and if convicted of a second and subsequent offense, may be fined up to \$50,000, in addition to any other sentence authorized by law.

G. This Act shall not be construed to repeal or affect any law now in force relating to the organization of corporations in this State or the admission of any foreign corporation to do business in this State.

H. For the purposes of this Act, all persons who sell or offer for sale, or who purchase or offer to purchase any mineral investment contract or mineral deferred delivery contract in violation of the provisions of this Act or who, in any manner, knowingly authorize, aid, or assist in any unlawful sale or offer for sale or unlawful purchase or offer to purchase any mineral investment contract or mineral deferred delivery contract shall be deemed equally guilty and may be tried and punished in the county in which the unlawful sale or offer for sale or unlawful purchase or offer to purchase any mineral investment contract or mineral deferred delivery contract was made or in the county in which the mineral investment contract or mineral deferred delivery contract so sold or offered for sale or so purchased or offered to be purchased was delivered or proposed to be delivered to the purchaser thereof or by the seller thereof, as the case may be, or in Sangamon County.

(Source: P.A. 92-308, eff. 1-1-02.)

Section 99. Effective date. This Act takes effect upon becoming law.