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LC03390/SUB A
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2003

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A N A C T

RELATING TO SECURITIES

Introduced By: Senator Walter S. Felag

Date Introduced: June 04, 2003

Referred To: Senate Financial, Technology, Regulatory

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 7-11-101 of the General Laws in Chapter 7-11 entitled "Rhode
2 Island Uniform Securities Act" is hereby amended to read as follows:

3 **7-11-101. Definitions.** -- In this chapter:

4 (1) "Broker dealer" means a person engaged in the business of effecting transactions in
5 securities for the account of others or for the person's own account. "Broker dealer" does not
6 include:

7 (i) A sales representative;

8 (ii) An issuer, except when effecting transactions other than as to its own securities; ~~and~~

9 (iii) Any other person that the director, by rule or order, designates; or

10 (iv) A depository institution if said depository institution is not considered to be a

11 "broker" or "dealer" within the meaning of the Securities Exchange Act of 1934 (15 U.S.C. Secs.

12 78C(a)(4) and (5)) or any regulation or rule adopted by the Securities and Exchange Commission

13 under the Act (the "Act") because the depository institution engages in any one or more of the

14 activities described in the following provisions of the Act, under the conditions set forth in:

15 (a) Sections 3(a)(4)(B)(i) through (vi);

16 (b) Section 3(a)(4)(B)(vii), so long as the depository institution is a regulated financial

17 institution as defined in section 19-1-1(11) and the offer and sale is made to a sophisticated or

18 institutional investor;

19 (c) Sections 3(a)(4)(B)(viii) through (x);

1 (d) Section 3(a)(4)(B)(xi), if limited to unsolicited transactions; or

2 (e) Section 3(a)(5)(C).

3 (2) "Depository institution" means:

4 (i) A person which is organized, chartered, or holding an authorization certificate under
5 the laws of a state or of the United States which authorizes the person to receive deposits,
6 including a savings, share, certificate, or deposit account, and which is supervised and examined
7 for the protection of depositors by an official or agency of a state or the United States;

8 (ii) A trust company or other institution that is authorized by federal or state law to
9 exercise fiduciary powers of the type a national bank is permitted to exercise under the authority
10 of the comptroller of the currency and is supervised and examined by an official or agency of a
11 state or the United States; and

12 (iii) "Depository institution" does not include an insurance company or other
13 organization primarily engaged in the insurance business, or a Morris plan bank, industrial loan
14 company, or a similar bank or company unless its deposits are insured by a federal agency.

15 (3) "Director" means the director of the department of business regulation.

16 (4) "Federal covered adviser" means a person who is:

17 (i) Registered under section 203 of the Investment Advisers Act of 1940, 15 U.S.C.
18 section 80b-3; or

19 (ii) Is excluded from the definition of "investment adviser" under section 202(a)(11) of
20 the Investment Advisers Act of 1940, 15 U.S.C. section 80b-1(a)(11).

21 (5) "Federal covered security" means any security that is a covered security under
22 section 18(b) of the Securities Act of 1933, 15 U.S.C. section 77r(b), or rules or regulations
23 promulgated under that section.

24 (6) "Filed" means the actual delivery of a document or application to the director or
25 designee of the director or to the principal office of the director.

26 (7) "Financial or institutional investor" means any of the following, whether acting for
27 itself or another in a fiduciary capacity:

28 (i) A depository institution;

29 (ii) An insurance company;

30 (iii) A separate account of an insurance company;

31 (iv) An investment company as defined in the Investment Company Act of 1940, 15
32 U.S.C. section 80a-1 et seq.;

33 (v) An employee pension, profit sharing or benefit plan if the plan has total assets in
34 excess of five million dollars (\$5,000,000), or if investment decisions are made by a plan

1 fiduciary, as defined in the Employee Retirement Income Security Act of 1974, 29 U.S.C. section
2 1001 et seq., which is either a broker dealer registered under the Securities Exchange Act of
3 1934, 15 U.S.C. section 78a et seq., an investment adviser registered or exempt from registration
4 under the Investment Advisers Act of 1940, 15 U.S.C. section 80b-1 et seq., a depository
5 institution, or an insurance company; and

6 (vi) Any other institutional buyer.

7 (8) "Fraud", "deceit", and "defraud" are not limited to common law fraud or deceit.

8 (9) For purposes of section 7-11-401, "guaranteed" means guaranteed as to payment of
9 all or substantially all of principal and interest or dividends.

10 (10) For purposes of section 7-11-401, "insured" means insured as to payment of all or
11 substantially all of principal and interest or dividends.

12 (11) "Investment adviser" means a person who, for compensation, engages in the
13 business of advising others, either directly or through publications or writings, as to the value of
14 securities or as to the advisability of investing in, purchasing, or selling securities, or who, for
15 compensation and as part of a regular business, issues or promulgates analyses or reports
16 concerning securities. "Investment adviser" does not include:

17 (i) An investment adviser representative;

18 (ii) A trust company or other institution described in subdivision (2)(ii) of this section;

19 (iii) A lawyer, accountant, engineer, or teacher whose performance of investment
20 advisory services is solely incidental to the practice of the person's profession;

21 (iv) A broker dealer or its agent whose performance of investment advisory services is
22 solely incidental to the conduct of business as a broker dealer and who receives no special
23 compensation for the investment advisory services;

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

28 (vi) A person whose advice, analyses, or reports relate only to securities exempt under
29 section 7-11-401(1);

30 (vii) Any person as the director, by rule or order, designates; and

31 (viii) A person who is a federal covered adviser.

32 (12) (i) "Investment adviser representative" means any partner, officer, director of (or a
33 person occupying a similar status or performing similar functions) or other individual, except
34 clerical or ministerial personnel, who is employed by or associated with;

1 (A) An investment adviser that is registered or required to be registered under this
2 chapter and who does any of the following:

3 (I) Makes any recommendations or otherwise renders advice regarding securities to
4 clients;

5 (II) Manages accounts or portfolios of clients;

6 (III) Determines which recommendation or advice regarding securities should be given;

7 (IV) Solicits, offers, or negotiates for the sale of or sells investment advisory services;

8 (V) Supervises employees who perform any of the preceding; or

9 (B) A federal covered adviser, subject to the limitations of sections 203(A) of the
10 Investment Advisors Act of 1940, 15 U.S.C. section 80b-3(A), as the director may designate by
11 rule or order.

12 (ii) Notwithstanding subdivisions (12)(i)(A) and (12)(i)(B), an investment adviser
13 representative shall not include any other persons employed by or associated with either an
14 investment adviser or a federal covered adviser not within the intent of subdivision (12) that the
15 director may designate by rule or order or as otherwise specifically excluded by rule of the U.S.
16 Securities and Exchange Commission.

17 (13) (i) Except as provided in subdivisions (13)(ii) through (13)(iv), "issuer" means a
18 person who issues or proposes to issue a security.

19 (ii) The "issuer" of a collateral trust certificate, voting trust certificate, certificate of
20 deposit for a security, or share in an investment company without a board of directors or persons
21 performing similar functions, is a person performing the acts and assuming the duties of depositor
22 or manager pursuant to the trust or other agreement or instrument under which the security is
23 issued.

24 (iii) The "issuer" of an equipment trust certificate, including a conditional sales contract
25 or similar security serving the same purpose, is the person to whom the equipment or property is
26 or is to be leased or conditionally sold.

27 (iv) The "issuer" of a fractional undivided interest to an oil, gas, or other mineral lease or
28 in payments out of production under a lease, right, or royalty, is the owner of an interest in the
29 lease or in payments out of production under a lease, right, or royalty, whether whole or
30 fractional, who creates fractional interest for the purpose of sale.

31 (14) "Nonissuer transaction" means a transaction not directly or indirectly for the benefit
32 of the issuer.

33 (15) "Person" means a natural person, corporation, business trust, estate, trust,
34 partnership, association, joint venture, government in its private or public capacity, governmental

1 subdivision or agency, or any other legal or commercial entity.

2 (16) "Person associated with" a named party or parties or "associated person of" a named
3 party or parties means any partner, officer, director, or branch manager of the named party or
4 parties (or any person occupying a similar status or performing similar functions), any person
5 directly or indirectly controlling, controlled by, or under common control with the named party or
6 parties or any employee of the named party or parties, except that any associated person whose
7 functions are solely clerical or ministerial are not included in the meaning of the term for
8 purposes of this chapter.

9 (17) "Price amendment" means the amendment to a registration statement filed under the
10 Securities Act of 1933, 15 U.S.C. section 77a et seq., or, if no amendment is filed, the prospectus
11 or prospectus supplement filed under the Securities Act of 1933, which includes a statement of
12 the offering price, underwriting and selling discounts or commissions, amounts of proceeds,
13 conversion rates, call prices, and other matters dependent on the offering price.

14 (18) "Promoter" includes:

15 (i) A person who, acting alone or in concert with one or more other persons, takes the
16 entrepreneurial initiative in founding or organizing the business or enterprise of an issuer;

17 (ii) An officer or director owning securities of an issuer or a person who owns,
18 beneficially or of record, ten percent (10%) or more of a class of securities of the issuer if the
19 officer, director, or person acquires any of those securities in a transaction within three (3) years
20 before the filing by the issuer of a registration statement under this chapter and the transaction
21 does not possess the indicia of arms length bargaining; and

22 (iii) A member of the immediate family of a person within subparagraph (i) or (ii) if the
23 family member receives securities of the issuer from that person in a transaction within three (3)
24 years before the filing by the issuer of a registration statement under this chapter and the
25 transaction does not possess the indicia of arms length bargaining.

26 (19) (i) "Sale" or "sell" includes every contract of sale, contract to sell, or other
27 disposition, of a security or interest in a security for value.

28 (ii) "Offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer
29 to purchase, a security or interest in a security for value.

30 (iii) "Offer to purchase" includes every attempt or offer to obtain, or solicitation of an
31 offer to sell, a security or interest in a security for value, but the term does not include a
32 transaction that is subject to section 14(d) of the Securities Exchange Act of 1934, 15 U.S.C.
33 section 78n(d).

34 (iv) A security given or delivered with or as a bonus on account of a purchase of

1 securities or other item is considered to constitute part of the subject of the purchase and to have
2 been offered and sold for value.

3 (v) A gift of assessable stock is deemed to involve an offer and sale.

4 (vi) A sale or offer of a warrant or right to purchase or subscribe to another security of
5 the same or another issuer, or a sale or offer of a security that gives the holder a present or future
6 right or privilege to convert into another security of the same or another issuer, is deemed to
7 include an offer of the other security.

8 (vii) The terms defined in this paragraph do not include:

9 (A) the creation of a security interest or a loan;

10 (B) a stock dividend, whether or not the corporation distributing the dividend is the
11 issuer of the stock, if nothing of value is given by stockholders for the dividend other than the
12 surrender of a right to a cash or property dividend and each stockholder may elect to take the
13 dividend in cash, property, or stock; or

14 (C) an act incident to a judicially approved reorganization in which a security is issued in
15 exchange for one or more outstanding securities, claims, or property interests, or partly in
16 exchange and partly for cash.

17 (20) "Sales representative" means a person, other than a broker dealer, associated with a
18 broker dealer or issuer in effecting or attempting to effect purchases or sales of securities.

19 (21) "Securities Act of 1933", 15 U.S.C. section 77a et seq., "Securities Exchange Act of
20 1934", 15 U.S.C. section 78a et seq., "Public Utility Holding Company Act of 1935", 15 U.S.C.
21 section 79 et seq., "Investment Company Act of 1940", 15 U.S.C. section 80a-1 et seq.,
22 "Investment Advisers Act of 1940", 15 U.S.C. section 80b-1 et seq., "Employee Retirement
23 Income Security Act of 1974", 29 U.S.C. section 1001 et seq., "National Housing Act", 12 U.S.C.
24 section 1701 et seq., and "Commodity Exchange Act", 7 U.S.C. section 2 et seq., mean the
25 federal statutes of those names as amended before or after July 6, 1990.

26 (22) Unless the context requires otherwise, "security" means a note; stock; treasury
27 stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit
28 sharing agreement; a limited partnership interest; collateral trust certificate; variable annuity;
29 preorganization certificate or subscription; transferable share; investment contract; voting trust
30 certificate; certificate of deposit for a security; fractional undivided interest in an oil, gas, or other
31 mineral lease or in payments out of production under a lease, right, or royalty; a put, call,
32 straddle, or option entered into on a national securities exchange relating to foreign currency; a
33 put, call, straddle, or option on a security, certificate of deposit, or group or index of securities,
34 including an interest in or based on the value of any of the preceding; or, in general, an interest or

1 instrument commonly known as a "security", or a certificate of interest or participation in,
2 temporary or interim certificate for, receipt for, whole or partial guarantee of, or warrant or right
3 to subscribe to or purchase, any of the preceding. The term does not include:

4 (i) An insurance or endowment policy or annuity contract under which an insurance
5 company promises to pay a fixed sum of money either in a lump sum or periodically for life or
6 some other specified period; or

7 (ii) An interest in a contributory or noncontributory pension or welfare plan subject to
8 the Employee Retirement Income Security Act of 1974, 29 U.S.C. section 1001 et seq.

9 (23) "Self regulatory organization" means a national securities exchange registered under
10 section 7 of the Securities Exchange Act of 1934, 15 U.S.C. section 78g, a national securities
11 association of brokers and dealers registered under section 15A of the Securities Exchange Act of
12 1934, 15 U.S.C. section 78o-3, a clearing agency registered under section 17A of the Securities
13 Exchange Act of 1934, 15 U.S.C. section 78k-1, or the municipal securities rule making board
14 established under section 15B(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. section
15 78o-4(b)(1).

16 (24) "State" means a state, commonwealth, territory, or possession of the United States,
17 including both the District of Columbia and the Commonwealth of Puerto Rico.

18 (25) "Willfully" means intentionally committing the act which constitutes a violation;
19 there being no requirement that the actor also be aware that he or she is violating any provision of
20 this chapter or any rule or order under this chapter.

21 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO SECURITIES

1 This act would conform the Rhode Island Uniform Securities Act to model the Uniform
2 Securities Act of 2002, and bring Rhode Island law substantial conformity with the original
3 Uniform Securities Act of 1934.

4 This act would take effect upon passage.

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RELATING TO SECURITIES

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