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# STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2002

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A N A C T

RELATING TO CORPORATIONS, ASSOCIATIONS AND PARTNERSHIPS -- RHODE  
ISLAND UNIFORM SECURITIES ACT

Introduced By: Senator Leo R. Blais

Date Introduced: January 30, 2002

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 7-11-101 and 7-11-202 of the General Laws in Chapter 7-11  
2 entitled "Rhode Island Uniform Securities Act" are 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.

10          (2) "Depository institution" means:

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

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

19          (iii) "Depository institution" does not include an insurance company or other

1 organization primarily engaged in the insurance business, or a Morris plan bank, industrial loan  
2 company, or a similar bank or company unless its deposits are insured by a federal agency.

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

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

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

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

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

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

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

16 (i) A depository institution;

17 (ii) An insurance company;

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

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

21 (v) An employee pension, profit sharing or benefit plan if the plan has total assets in  
22 excess of five million dollars (\$5,000,000), or if investment decisions are made by a plan  
23 fiduciary, as defined in the Employee Retirement Income Security Act of 1974, 29 U.S.C. section  
24 1001 et seq., which is either a broker dealer registered under the Securities Exchange Act of  
25 1934, 15 U.S.C. section 78a et seq., an investment adviser registered or exempt from registration  
26 under the Investment Advisers Act of 1940, 15 U.S.C. section 80b-1 et seq., a depository  
27 institution, or an insurance company; and

28 (vi) Any other institutional buyer.

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

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

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

34 (11) "Investment adviser" means a person who, for compensation, engages in the

1 business of advising others, either directly or through publications or writings, as to the value of  
2 securities or as to the advisability of investing in, purchasing, or selling securities, or who, for  
3 compensation and as part of a regular business, issues or promulgates analyses or reports  
4 concerning securities. "Investment adviser" does not include:

5 (i) An investment adviser representative;

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

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

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

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

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

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

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

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

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

25 (I) Makes any recommendations or otherwise renders advice regarding securities to  
26 clients;

27 (II) Manages accounts or portfolios of clients;

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

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

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

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

34 (ii) Notwithstanding subdivisions (12)(i)(A) and (12)(i)(B), an investment adviser

1 representative shall not include any other persons employed by or associated with either an  
2 investment adviser or a federal covered adviser not within the intent of subdivision (12) that the  
3 director may designate by rule or order or as otherwise specifically excluded by rule of the U.S.  
4 Securities and Exchange Commission.

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

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

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

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

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

21 (15) "Person" means a natural person, corporation, business trust, estate, trust,  
22 partnership, association, joint venture, government in its private or public capacity, governmental  
23 subdivision or agency, or any other legal or commercial entity.

24 (16) "Person associated with" a named party or parties or "associated person of" a named  
25 party or parties means any partner, officer, director, or branch manager of the named party or  
26 parties (or any person occupying a similar status or performing similar functions), any person  
27 directly or indirectly controlling, controlled by, or under common control with the named party or  
28 parties or any employee of the named party or parties, except that any associated person whose  
29 functions are solely clerical or ministerial are not included in the meaning of the term for  
30 purposes of this chapter.

31 (17) "Price amendment" means the amendment to a registration statement filed under the  
32 Securities Act of 1933, 15 U.S.C. section 77a et seq., or, if no amendment is filed, the prospectus  
33 or prospectus supplement filed under the Securities Act of 1933, which includes a statement of  
34 the offering price, underwriting and selling discounts or commissions, amounts of proceeds,

1 conversion rates, call prices, and other matters dependent on the offering price.

2 (18) "Promoter" includes:

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

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

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

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

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

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

22 (iv) A security given or delivered with or as a bonus on account of a purchase of  
23 securities or other item is considered to constitute part of the subject of the purchase and to have  
24 been offered and sold for value.

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

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

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

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

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

1 dividend in cash, property, or stock; or

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

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

7 (21) "Securities Act of 1933", 15 U.S.C. section 77a et seq., "Securities Exchange Act of  
8 1934", 15 U.S.C. section 78a et seq., "Public Utility Holding Company Act of 1935", 15 U.S.C.  
9 section 79 et seq., "Investment Company Act of 1940", 15 U.S.C. section 80a-1 et seq.,  
10 "Investment Advisers Act of 1940", 15 U.S.C. section 80b-1 et seq., "Employee Retirement  
11 Income Security Act of 1974", 29 U.S.C. section 1001 et seq., "National Housing Act", 12 U.S.C.  
12 section 1701 et seq., and "Commodity Exchange Act", 7 U.S.C. section 2 et seq., mean the  
13 federal statutes of those names as amended before or after July 6, 1990.

14 (22) Unless the context requires otherwise, "security" means a note; stock; treasury  
15 stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit  
16 sharing agreement; a limited partnership interest; collateral trust certificate; variable annuity;  
17 preorganization certificate or subscription; transferable share; investment contract; voting trust  
18 certificate; certificate of deposit for a security; fractional undivided interest in an oil, gas, or other  
19 mineral lease or in payments out of production under a lease, right, or royalty; a put, call,  
20 straddle, or option entered into on a national securities exchange relating to foreign currency; a  
21 put, call, straddle, or option on a security, certificate of deposit, or group or index of securities,  
22 including an interest in or based on the value of any of the preceding; or, in general, an interest or  
23 instrument commonly known as a "security", or a certificate of interest or participation in,  
24 temporary or interim certificate for, receipt for, whole or partial guarantee of, or warrant or right  
25 to subscribe to or purchase, any of the preceding. The term does not include:

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

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

31 (23) "Self regulatory organization" means a national securities exchange registered under  
32 section 7 of the Securities Exchange Act of 1934, 15 U.S.C. section 78g, a national securities  
33 association of brokers and dealers registered under section 15A of the Securities Exchange Act of  
34 1934, 15 U.S.C. section 78o-3, a clearing agency registered under section 17A of the Securities

1 Exchange Act of 1934, 15 U.S.C. section 78k-1, or the municipal securities rule making board  
2 established under section 15B(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. section  
3 78o-4(b)(1).

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

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

9 **7-11-202. Exempt broker dealers and sales representatives.** -- (a) The following  
10 broker dealers are exempt from the licensing requirements of section 7-11-201:

11 (1) A broker dealer who either is registered or, except as provided in subsection (b), is  
12 not required to be registered under the Securities Exchange Act of 1934, 15 U.S.C. section 78a et  
13 seq., and who has no place of business in this state if:

14 (i) The transactions effected by the broker dealer in this state are exclusively with the  
15 issuer of the securities involved in the transactions, other broker dealers licensed or exempt under  
16 this chapter, and financial or institutional investors;

17 (ii) The broker dealer is licensed under the securities act of a state in which the broker  
18 dealer maintains a place of business and the broker dealer offers and sells in this state to a person  
19 who is an existing customer of the broker dealer and whose principal place of residence is not in  
20 this state; and

21 (2) Other broker dealers the director, by rule or order, exempts.

22 (b) The exemption provided in subsection (a)(1)(i) is not available to a broker dealer  
23 who deals solely in governmental securities and is not registered under the Securities Exchange  
24 Act of 1934, 15 U.S.C. section 78a et seq., unless the broker dealer is subject to supervision as a  
25 dealer in government securities by the federal reserve board.

26 (c) The following sales representatives are exempt from the licensing requirements of  
27 section 7-11-201:

28 (1) A sales representative acting for a broker dealer exempt under subsection (a);

29 (2) A sales representative acting exclusively for an issuer in effecting transactions in a  
30 security exempted by section 7-11-401(1) -- (4) and (10) -- (12);

31 (3) A sales representative acting for an issuer effecting offers or sales of securities in  
32 transactions exempted by section 7-11-402;

33 (4) A sales representative acting for an issuer effecting transactions with employees,  
34 partners, officers, or directors of the issuer, a parent or a wholly owned subsidiary of the issuer, if

1 no commission or other similar compensation is paid or given directly or indirectly to the sales  
2 representative for soliciting an employee, partner, officer, or director in this state;

3 (5) A sales representative acting for an issuer effecting offers or sales of securities that  
4 are covered securities under section 18(b)(3) or section 18(b)(4)(D) of the securities act of 1933,  
5 15 U.S.C. section 77r(b)(3) or 77r(b)(4)(D), provided that no commission or other remuneration  
6 is paid or given directly or indirectly for soliciting any person in this state;

7 (6) A sales representative whose transactions in this state are limited to only those  
8 transactions set forth in section 15(h)(2) of the Securities Exchange Act of 1934, 15 U.S.C.  
9 section 78o(h)(2); and

10 (7) Other sales representatives that the director exempts by rule or order.

11 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 CORPORATIONS, ASSOCIATIONS AND PARTNERSHIPS -- RHODE  
ISLAND UNIFORM SECURITIES ACT

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- 1 This act would add variable annuities to the definition of securities.
- 2 This act would take effect upon passage.

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