

CHAPTER 182
FORMERLY
SENATE BILL NO. 91

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE DELAWARE SECURITIES ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 6, Chapter 73, §§ 73-101 through 73-704 of the Delaware Code by deleting all occurrences of the phrase "Division of Securities" and replacing it with the phrase "Investor Protection Unit".

Section 2. Amend Title 6, Chapter 73, §§ 73-101 through 73-704 of the Delaware Code by deleting all occurrences of the phrase "Securities Commissioner" and replacing it with the phrase "Investor Protection Director".

Section 3. Amend Title 6, Chapter 73, §§ 73-101 through 73-704 of the Delaware Code by deleting all occurrences of the phrase "Commissioner" and replacing it with the phrase "Director".

Section 4. Amend Title 6, Chapter 73, at the end of § 73-201 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underlining as follows:

§ 73-201. Fraud.

It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly:

- (1) To employ any device, scheme or artifice to defraud;
- (2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (3) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

In interpreting this Section, courts will be guided by the interpretations given by Federal Courts to similar language set forth in Section 17(a) of the Securities Act of 1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, to include, without limitation, any difference in pleading requirements governing actions brought by securities regulators as opposed to private litigants.

Section 5. Amend Title 6, Chapter 73, § 73-103(a)(2) of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(1) "Agent" means any individual, other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities." Agent" does not include an individual who represents (A) an issuer in (i) effecting transactions in a security exempted by § 7309(a)(1), (2), (3), (10), or (11) of this title, (ii) effecting transactions exempted by § 7309(b) of this title, (iii) effecting transactions in a covered security as described in § 18(b)(3) and ~~§ 18(b)(4)(D)~~ § 18(b)(4)(E) (or as the same may be renumbered by a future act of the United States Congress) of the Securities Act of 1933 [15 U.S.C. § 77r], or (iv) effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this State; (B) a broker-dealer in effecting transactions in this State limited to those transactions described in § 15(h)(2) of the Securities Exchange Act of 1934 [15 U.S.C. § 78o]; or (C) an issuer or a member of a bona fide agricultural cooperative whose securities are exempt from registration under § 7309(a)(12) of this title. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition.

Section 6. Amend Title 6, Chapter 73, § 73-208(b) of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(b) With respect to any security that is a covered security under ~~§ 18(b)(4)(D)~~ § 18(b)(4)(E) (or as the same may be renumbered by a future act of the United States Congress) of the Securities Act of 1933 [~~15 U.S.C. § 77r(b)(4)(D)~~ 15 U.S.C. § 77r(b)(4)(E)] (or as the same may be renumbered by a future act of the United States Congress), the ~~Commissioner~~ Director, by rule or order, may require the issuer to file a notice on SEC Form D and a consent to service of process signed by the issuer no later than 15 days after the first sale of such covered security in

this State, together with a filing fee as provided by rule or regulation, but in no case shall the fee be less than \$200 or more than \$1,000.

Section 7. Amend Title 6, Chapter 73, § 73-102 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(c) The Director may, by rule, regulation or order, delegate the Director's powers, duties and authority to issue orders, pursuant to § 73-501 through 73-601 or otherwise in this Chapter, to an administrative hearing officer appointed by the Attorney General (or his or her designee).

Section 8. Amend Title 6, Chapter 73, § 73-103(a)(1) of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(1) "Agent" means any individual, other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents (A) an issuer in (i) effecting transactions in a security exempted by ~~§ 7309(a)(1)~~ § 73-207(a)(1), (2), (3), (10), or (11) of this title, (ii) effecting transactions exempted by § 7309(b) of this title, (iii) effecting transactions in a covered security as described in § 18(b)(3) and § 18(b)(4)(D) of the Securities Act of 1933 [15 U.S.C. § 77r], or (iv) effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this State; (B) a broker-dealer in effecting transactions in this State limited to those transactions described in § 15(h)(2) of the Securities Exchange Act of 1934 [15 U.S.C. § 78o]; or (C) an issuer or a member of a bona fide agricultural cooperative whose securities are exempt from registration under ~~§ 7309(a)(12)~~ § 73-207(a)(12) of this title. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition."

Section 9. Amend Title 6, Chapter 73, § 73-103(a)(3)(e) of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

e. An issuer or an individual who represents an issuer or a member of such issuer provided said issuer is exempt from registration under ~~§ 7309(a)(12)~~ 73-207(a)(12) of this title.

Section 10. Amend Title 6, Chapter 73, § 73-207(a)(7) of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is subject to the jurisdiction of the United States Department of Transportation Interstate Commerce Commission; a registered holding company under the Public Utility Holding Company Act of 2005 [42 U.S.C. § 16451 et seq.] or a subsidiary of such a company within the meaning of that Act; regulated in respect of its rates and charges by a governmental authority of the United States or any state; or regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

Section 11. Amend Title 6, Chapter 73, § 73-207(a)(8) of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the ~~American Stock Exchange~~ NYSE Amex Equities, the ~~Pacific Coast Stock Exchange~~ Pacific Exchange, Inc. the ~~Midwest Stock Exchange~~ Chicago Stock Exchange, or the ~~Philadelphia Baltimore Washington Stock Exchange~~ NASDAQ OMX PHLX or any other exchange which the Director ~~Commissioner~~ deems to have substantially the same standards for listing as required by the above mentioned exchanges; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;

Section 12. This Act shall take effect immediately upon its enactment into law.

Approved September 10, 2013