



House of Representatives

General Assembly

File No. 212

January Session, 2013

House Bill No. 6340

House of Representatives, March 27, 2013

The Committee on Banks reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING THE CONNECTICUT UNIFORM SECURITIES ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 36b-21 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2013*):

3 (a) The following securities are exempted from sections 36b-16 and
4 36b-22: (1) Any security including a revenue obligation issued or
5 guaranteed by the United States, any state, any political subdivision of
6 a state, or any agency or corporate or other instrumentality of one or
7 more of the foregoing; or any certificate of deposit for any of the
8 foregoing; (2) any security issued or guaranteed by Canada, any
9 Canadian province, any political subdivision of any such province, any
10 agency or corporate or other instrumentality of one or more of the
11 foregoing, or any other foreign government with which the United
12 States currently maintains diplomatic relations, if the security is
13 recognized as a valid obligation by the issuer or guarantor; (3) any
14 security that is not a "covered security" under Sections 3(a)(2) and

15 18(b)(4)(C) of the Securities Act of 1933 and that is issued by and
16 represents or will represent an interest in or a debt of, or guaranteed
17 by, any international banking institution, any bank, savings bank or
18 savings and loan association organized under the laws of the United
19 States, or any bank, savings institution or trust company organized
20 and supervised under the laws of any state; (4) any security issued by
21 and representing or that will represent an interest in or a debt of, or
22 guaranteed by, any federal savings and loan association, or any
23 savings and loan or similar association organized under the laws of
24 any state; (5) any security issued by and representing an interest in or a
25 debt of, or guaranteed by, any insurance company organized under the
26 laws of any state and authorized to do business in this state; (6) any
27 security issued or guaranteed by any federal credit union or any credit
28 union, industrial loan association or similar association organized and
29 supervised under the laws of this state; (7) any security issued or
30 guaranteed by any railroad, other common carrier, public utility or
31 public utility holding company that is (A) regulated with respect to its
32 rates and charges by the United States or any state; (B) a public utility
33 holding company registered under the Public Utility Holding
34 Company Act of 1935 or a subsidiary of such a registered holding
35 company within the meaning of said act; or (C) regulated with respect
36 to the issuance or guarantee of the security by the United States, any
37 state, Canada or any Canadian province or territory; (8) (A) any
38 security [appearing on the list of over-the-counter and foreign
39 securities approved for margin by the Board of Governors of the
40 Federal Reserve System which is not otherwise] that is (i) a margin
41 security, as defined in regulations or rules adopted by the Board of
42 Governors of the Federal Reserve System; and (ii) an over-the-counter
43 security or a security issued by a foreign issuer, regardless of whether
44 such security is a covered security, (B) any warrant or right to
45 purchase or subscribe to any security described in subparagraph (A) of
46 this subdivision, and (C) any warrant or right to purchase or subscribe
47 to any security listed or approved for listing upon notice of issuance on
48 (i) the New York Stock Exchange, the American Stock Exchange, the
49 Chicago Board Options Exchange and such other securities exchanges,

50 including any successor to said exchanges, as may be designated by
51 the commissioner from time to time, or (ii) [the list of over-the-counter
52 securities approved for margin by the Board of Governors of the
53 Federal Reserve System where such security is a covered security, or
54 (iii)] the national market system of the National Association of
55 Securities Dealers Automated Quotation System established pursuant
56 to the Securities Exchange Act of 1934, or any successor to said system;
57 (9) any security issued by any person organized and operated not for
58 private profit but exclusively for religious, educational, benevolent,
59 charitable, fraternal, social, athletic or reformatory purposes, or as a
60 chamber of commerce or trade or professional association; (10) any
61 commercial paper which arises out of a current transaction or the
62 proceeds of which have been or are to be used for current transactions,
63 and which evidences an obligation to pay cash within nine months of
64 the date of issuance, exclusive of days of grace, or any renewal of such
65 paper which is likewise limited, or any guarantee of such paper or of
66 any such renewal; (11) any security issued in connection with an
67 employees' stock purchase, stock option, savings, pension,
68 profit-sharing or similar benefit plan; (12) any security issued by any
69 cooperative apartment corporation incorporated under the laws of this
70 state, located in and operating wholly within the borders of this state,
71 in conjunction with the execution of proprietary leases; (13) any
72 security issued by any person, organized and located in this state and
73 operating exclusively for the purpose of promoting the industrial or
74 commercial development of this state, or such development of any
75 political subdivision thereof or such development of any regional
76 planning area within this state, if such persons are approved by the
77 Commissioner of Economic and Community Development and such
78 approval has been certified, in writing, by said Commissioner of
79 Economic and Community Development to the commissioner; such
80 approval and certification shall be conclusive as to the nature and
81 purpose of such person; (14) any security issued by the Connecticut
82 Development Credit Corporation; (15) any security issued by any
83 nonstock corporation, which is incorporated under the laws of this
84 state as a cooperative marketing corporation and has its principal place

85 of business in this state, and which is a farmers' cooperative
86 organization, as defined in Section 521 of the Internal Revenue Code of
87 1986, or any subsequent corresponding internal revenue code of the
88 United States, as from time to time amended, if such corporation has
89 been certified, in writing, by the Connecticut Department of
90 Agriculture to the commissioner to be a bona fide cooperative
91 marketing corporation; such certification shall be conclusive as to the
92 nature and purpose of such corporation; (16) any security issued by all
93 cooperative associations organized or existing under chapter 595; (17)
94 any security issued by any person organized, located and operating
95 within or from the borders of this state, when selling or offering for
96 sale an interest in real estate limited partnerships or real estate
97 syndications exclusively, if such person has obtained a permit from the
98 Real Estate Commission; (18) any security which, prior to or within
99 sixty days after October 1, 1977, has been sold or disposed of by the
100 issuer or bona fide offered to the public, but this exemption shall not
101 apply to any new offer of any such security by an issuer or
102 underwriter subsequent to such sixty days; (19) any interest or
103 participation in any common trust fund or similar fund established
104 and maintained by a bank, or by one or more banks under common
105 control as otherwise authorized by general statute, exclusively for the
106 collective investment and reinvestment of assets contributed thereto by
107 such bank in its fiduciary capacity; (20) any security issued by a
108 worker cooperative corporation formed under the provisions of
109 sections 33-418f to 33-418o, inclusive; (21) an equipment trust
110 certificate with respect to equipment leased or conditionally sold to a
111 person, if any security issued by the person would be exempt under
112 this section or would be a "covered security" under Section 18(b)(1) of
113 the Securities Act of 1933; and (22) any other security that the
114 commissioner may exempt, conditionally or unconditionally, on a
115 finding that registration is not necessary or appropriate in the public
116 interest or for the protection of investors.

117 (b) The following transactions are exempted from sections 36b-16
118 and 36b-22: (1) Any isolated nonissuer transaction, whether effected
119 through a broker-dealer or not; (2) any nonissuer transaction by a

120 registered agent of a registered broker-dealer in a security of a class
121 that has been outstanding in the hands of the public for at least ninety
122 days provided, at the time of the transaction: (A) The security is sold at
123 a price reasonably related to the current market price of the security;
124 (B) the security does not constitute the whole or part of an unsold
125 allotment to, or a subscription or participation by, the broker-dealer as
126 an underwriter of the security; (C) a nationally recognized securities
127 manual contains (i) a description of the business and operations of the
128 issuer; (ii) the names of the issuer's officers and directors or, in the case
129 of a non-United States issuer, the corporate equivalents of such
130 persons in the issuer's country of domicile; (iii) an audited balance
131 sheet of the issuer as of a date within eighteen months, or in the case of
132 a reorganization or merger where the parties to the reorganization or
133 merger had such audited balance sheet, a pro forma balance sheet; and
134 (iv) an audited income statement for each of the issuer's immediately
135 preceding two fiscal years, or for the period of existence of the issuer, if
136 in existence for less than two years, or in the case of a reorganization or
137 merger where the parties to the reorganization or merger had such
138 audited income statement, a pro forma income statement; and (D) the
139 issuer of the security has a class of equity securities listed on a national
140 securities exchange registered under the Securities Exchange Act of
141 1934, or designated for trading on the National Association of
142 Securities Dealers Automated Quotation System, unless the issuer,
143 including any predecessors of the issuer (i) has been engaged in
144 continuous business for at least three years or (ii) has total assets of at
145 least two million dollars based on an audited balance sheet of the
146 issuer as of a date within eighteen months, or in the case of a
147 reorganization or merger where the parties to the reorganization or
148 merger had such audited balance sheet, a pro forma balance sheet. The
149 exemption in this subdivision shall not be available for any
150 distribution of securities issued by a blank check company, shell
151 company, dormant company or any issuer that has been merged or
152 consolidated with or has bought out a blank check company, shell
153 company or dormant company unless the issuer or any predecessor
154 has continuously operated its business for at least the preceding five

155 years and has had gross operating revenue in each of the preceding
156 five years, including gross operating revenue of at least five hundred
157 thousand dollars per year in three of the preceding five years; (3) any
158 nonissuer distribution of an outstanding security if the security has a
159 fixed maturity or a fixed interest or dividend provision and there has
160 been no default during the current fiscal year or within the three
161 preceding fiscal years, or during the existence of the issuer and any
162 predecessors if less than three years, in the payment of principal,
163 interest or dividends on the security; (4) any nonissuer transaction
164 effected by or through a registered broker-dealer pursuant to an
165 unsolicited order or offer to buy; but the commissioner may by
166 regulation require that the customer acknowledge upon a specified
167 form that the sale was unsolicited, and that a signed copy of each such
168 form be preserved by the broker-dealer for a specified period or that
169 the confirmation delivered to the purchaser or a memorandum
170 delivered in connection therewith shall confirm that such purchase
171 was unsolicited by the broker-dealer or any agent of the broker-dealer;
172 (5) any transaction between the issuer or other person on whose behalf
173 the offering is made and an underwriter, or among underwriters; (6)
174 any transaction in a bond or other evidence of indebtedness secured by
175 a real or chattel mortgage or deed of trust or by an agreement for the
176 sale of real estate or chattels, if the entire mortgage, deed of trust or
177 agreement, together with all the bonds or other evidences of
178 indebtedness secured thereby, is offered and sold as a unit; (7) any
179 transaction by an executor, administrator, state marshal, marshal,
180 receiver, trustee in bankruptcy, creditors' committee in a proceeding
181 under the Bankruptcy Act, guardian or conservator; (8) any transaction
182 executed by a bona fide pledgee without any purpose of evading
183 sections 36b-2 to 36b-34, inclusive; (9) any offer or sale to a bank and
184 trust company, a national banking association, a savings bank, a
185 savings and loan association, a federal savings and loan association, a
186 federal savings bank, a credit union, a federal credit union, trust
187 company, insurance company, investment company as defined in the
188 Investment Company Act of 1940, pension or profit-sharing trust, or
189 other financial institution or institutional buyer, or to a broker-dealer,

190 whether the purchaser is acting for itself or in some fiduciary capacity;
191 (10) (A) subject to the provisions of this subdivision, any transaction
192 not involving a public offering within the meaning of Section 4(2) of
193 the Securities Act of 1933, but not including any transaction specified
194 in the rules and regulations thereunder. (B) Subject to the provisions of
195 this subdivision, any transaction made in accordance with the uniform
196 exemption from registration for small issuers authorized in Section
197 19(d)(3)(C) of the Securities Act of 1933. (C) The exemptions set forth in
198 subparagraphs (A) and (B) of this subdivision shall not be available for
199 transactions in securities issued by any blank check company, shell
200 company or dormant company. (D) The exemptions set forth in
201 subparagraphs (A) and (B) of this subdivision may, with respect to any
202 security or transaction or any type of security or transaction, be
203 modified, withdrawn, further conditioned or waived as to conditions,
204 in whole or in part, conditionally or unconditionally, by the
205 commissioner, acting by regulation, rule or order, on a finding that
206 such regulation, rule or order is necessary or appropriate in the public
207 interest or for the protection of investors. (E) A nonrefundable fee of
208 one hundred fifty dollars shall accompany any filing made with the
209 commissioner pursuant to this subdivision; (11) any offer or sale of a
210 preorganization certificate or subscription if (A) no commission or
211 other remuneration is paid or given directly or indirectly for soliciting
212 any prospective subscriber, (B) the number of subscribers does not
213 exceed ten, and (C) no payment is made by any subscriber; (12) any
214 transaction pursuant to an offer to existing security holders of the
215 issuer, including persons who at the time of the transaction are holders
216 of convertible securities, nontransferable warrants or transferable
217 warrants exercisable within not more than ninety days of their
218 issuance, if (A) no commission or other remuneration other than a
219 standby commission is paid or given directly or indirectly for soliciting
220 any security holder in this state, or (B) the issuer first files a notice, in
221 such form and containing such information as the commissioner may
222 by regulation prescribe, specifying the terms of the offer and the
223 commissioner does not by order disallow the exemption within the
224 next ten full business days; (13) any offer, but not a sale, of a security

225 for which registration statements have been filed under both sections
226 36b-2 to 36b-34, inclusive, and the Securities Act of 1933, if no stop
227 order or refusal order is in effect and no public proceeding or
228 examination looking toward such an order is pending under either
229 said sections or the Securities Act of 1933; (14) any transaction exempt
230 under Section [4(6)] 4(a)(5) of the Securities Act of 1933, and the rules
231 and regulations thereunder. The issuer shall, prior to the first sale, file
232 with the commissioner a notice, in such form and containing such
233 information as the commissioner may by regulation, rule or order
234 prescribe. A nonrefundable fee of one hundred fifty dollars shall
235 accompany any such filing made pursuant to this subdivision; (15) any
236 transaction if all the following conditions are satisfied: (A) The offer
237 and sale is effectuated by the issuer of the security; (B) the total
238 number of purchasers of all securities of the issuer does not exceed ten.
239 A subsequent sale of securities that (i) is registered under sections
240 36b-2 to 36b-34, inclusive, (ii) is sold pursuant to an exemption under
241 said sections other than this subdivision, or (iii) involves covered
242 securities, shall not be integrated with a sale pursuant to this
243 exemption in computing the number of purchasers hereunder. For the
244 purpose of this subdivision, each of the following is deemed to be a
245 single purchaser of a security: A husband and wife, a child and the
246 parent or guardian of such child when the parent or guardian holds
247 the security for the benefit of the child, a corporation, a partnership, an
248 association or other unincorporated entity, a joint stock company or a
249 trust, but only if the corporation, partnership, association,
250 unincorporated entity, joint stock company or trust was not formed for
251 the purpose of purchasing the security; (C) no advertisement, article,
252 notice or other communication published in any newspaper, magazine
253 or similar medium, broadcast over television or radio or
254 communicated by other electronic means or any other general
255 solicitation is used in connection with the sale; and (D) no commission,
256 discount or other remuneration is paid or given directly or indirectly
257 in connection with the offer and sale, and the total expenses, excluding
258 legal and accounting fees, in connection with the offer and sale do not
259 exceed one per cent of the total sales price of the securities. For

260 purposes of this subdivision, a difference in the purchase price among
261 the purchasers shall not, in and of itself, be deemed to constitute
262 indirect remuneration; (16) any transaction exempt under Rule 701, 17
263 CFR Section 230.701 promulgated under Section 3(b) of the Securities
264 Act of 1933; and (17) any other transaction that the commissioner may
265 exempt, conditionally or unconditionally, on a finding that registration
266 is not necessary or appropriate in the public interest or for the
267 protection of investors.

268 (c) (1) Any person who offers or sells a security that is a covered
269 security under Section 18(b)(2) of the Securities Act of 1933 shall file
270 with the commissioner, or with any other depository that the
271 commissioner may designate by regulation or order, a notice for each
272 series or portfolio prior to the initial offer of such security in this state,
273 provided such notice requirement does not apply to any offer or sale
274 described in subdivision (9) or (12) of subsection (b) of this section. The
275 notice shall contain such information as the commissioner may require
276 and shall be accompanied by a consent to service of process as
277 required by subsection (g) of section 36b-33 and, except as provided in
278 subdivision (4) of this subsection, a nonrefundable fee of five hundred
279 dollars; (2) any notice filed pursuant to this subsection relating to a
280 security issued by a face-amount certificate company or unit
281 investment trust, as such terms are defined in the Investment
282 Company Act of 1940, shall be valid for a period of one year from the
283 date that such security is declared effective by the Securities and
284 Exchange Commission, without limitation as to the number of shares
285 or aggregate amount. Such notice may be renewed annually thereafter
286 upon submission of such information as the commissioner may
287 require, not earlier than thirty days nor later than five days prior to the
288 date upon which such previously filed notice is due to expire, together
289 with a nonrefundable fee of five hundred dollars; (3) any notice filed
290 pursuant to this subsection relating to a redeemable security issued by
291 an open-end management company, as defined in the Investment
292 Company Act of 1940, shall be valid until December thirty-first of the
293 calendar year in which it was first filed, without limitation as to the
294 number of shares or aggregate amount. Such notice may be renewed

295 annually thereafter upon submission of such information as the
296 commissioner may require together with a nonrefundable fee of five
297 hundred dollars; and (4) any notice filed pursuant to this subsection
298 relating to a security issued by a closed-end company shall be valid for
299 one year from the date of receipt by the commissioner or from the date
300 that such security is declared effective by the Securities and Exchange
301 Commission, whichever is later, and shall be accompanied by the
302 nonrefundable fee prescribed in section 36b-19. A closed-end
303 company, the securities of which will continue to be offered or
304 distributed beyond the anniversary date of the filing of such notice
305 with the commissioner or the declaration of such security's
306 effectiveness by the Securities and Exchange Commission, whichever
307 is later, shall file such information as the commissioner may require
308 and include the fee prescribed in section 36b-19.

309 (d) Any person who offers or sells a security that is a covered
310 security under Section 18(b)(3) of the Securities Act of 1933 shall file a
311 consent to service of process with the commissioner as required by
312 subsection (g) of section 36b-33 prior to the first offer or sale of such
313 security in this state.

314 (e) Any person who offers or sells a security that is a covered
315 security under Section 18(b)(4)(D) of the Securities Act of 1933 shall file
316 a notice with the commissioner within fifteen days after the first sale of
317 such a security in this state. Such notice shall contain such information
318 as the commissioner may require and shall be accompanied by a
319 consent to service of process as required by subsection (g) of section
320 36b-33 and a nonrefundable fee of one hundred fifty dollars.

321 (f) The commissioner may by order (1) deny or revoke any
322 exemption specified in subdivision (9) or (11) of subsection (a) of this
323 section or in subsection (b) of this section with respect to a specific
324 security or transaction, (2) suspend the offer or sale of a covered
325 security in this state if any person who offers a covered security fails to
326 comply with any of the requirements set forth in subsections (c), (d) or
327 (e) of this section, or (3) require any person who offers a covered

328 security in this state and refuses to pay any fee required by subsections
 329 (c) or (e) of this section to register such security pursuant to section
 330 36b-16. For purposes of this subsection, a delay in the payment of a fee
 331 or underpayment of a fee that is promptly remedied shall not
 332 constitute a refusal to pay such fee. No such order may be entered
 333 without appropriate prior notice to all interested parties, opportunity
 334 for hearing and written findings of fact and conclusions of law, except
 335 that the commissioner may by order summarily deny or revoke any of
 336 the specified exemptions or summarily suspend the offer or sale of any
 337 covered security subject to any of the requirements set forth in
 338 subsections (c), (d) or (e) of this section pending final determination of
 339 any proceeding under this subsection. Upon the entry of a summary
 340 order, the commissioner shall promptly notify all interested parties
 341 that it has been entered and of the reasons therefor and that within
 342 fifteen days of the receipt of a written request the matter will be set
 343 down for hearing. If no hearing is requested and none is ordered by
 344 the commissioner, the order will remain in effect until it is modified or
 345 vacated by the commissioner. If a hearing is requested or ordered, the
 346 commissioner after notice of, and opportunity for, hearing to all
 347 interested persons may modify or vacate the order or extend it until
 348 final determination. No order under this subsection may operate
 349 retroactively. No person may be considered to have violated sections
 350 36b-16 and 36b-22 by reason of any offer or sale effected after the entry
 351 of an order under this subsection if such person sustains the burden of
 352 proof that such person did not know, and in the exercise of reasonable
 353 care could not have known, of the order.

354 (g) In any proceeding under sections 36b-2 to 36b-34, inclusive, the
 355 burden of proving an exemption, preemption, exclusion or an
 356 exception from a definition is upon the person claiming it.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2013	36b-21

BA *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note**State Impact:** None**Municipal Impact:** None**Explanation**

The bill results in no fiscal impact to the Department of Banking as it is technical and codifies existing practice.

The Out Years**State Impact:** None**Municipal Impact:** None

OLR Bill Analysis**HB 6340****AN ACT CONCERNING THE CONNECTICUT UNIFORM SECURITIES ACT.****SUMMARY:**

This bill:

1. alters which securities are exempt from registration with the banking commissioner under the Uniform Securities Act,
2. specifies the notice and fee closed end companies must provide the commissioner when offering securities in the state, and
3. makes technical changes.

EFFECTIVE DATE: October 1, 2013

SECURITIES EXEMPT FROM REGISTRATION

The law, with exceptions, requires securities to be registered before they may be sold in Connecticut.

Current law exempts securities appearing on the list of over-the-counter and foreign securities approved for margin by the Federal Reserve System's Board of Governors that are not otherwise covered securities under federal law. The board no longer publishes this list and the bill instead exempts (1) margin securities defined by the board's regulations or rules and (2) over-the-counter securities and securities issued by a foreign issuer regardless of whether they are covered securities (see BACKGROUND).

The bill adds an exemption for a warrant or right to purchase or subscribe to a foreign security that is a covered security.

NOTICE FROM CLOSED END COMPANIES

The bill requires closed-end companies (see BACKGROUND) to file a notice with the banking commissioner when they offer a security in the state. It requires them to pay a nonrefundable fee of .1% of the maximum aggregate offering price of the securities to be offered in the state but the fee must be between \$300 and \$1,500. This conforms to current practice.

The bill specifies that the notice is valid for one year from its receipt by the commissioner or the date the federal Securities and Exchange Commission declares the security effective, whichever is later. The bill requires the company to file any information required by the commissioner and again pay the required fee if the securities will continue to be offered after the one-year period.

BACKGROUND***Margin Security***

Generally, a margin security is one that an investor buys or sells using an account where the brokerage lends the account holder money to buy securities.

Under Federal Reserve Regulation T, a margin security is a:

1. security registered or having unlisted trading privileges on a national securities exchange,
2. security listed on the Nasdaq Stock Market,
3. non-equity security,
4. security issued by an open-end investment company or unit investment trust registered under federal law (15 USC § 80a-8),
5. foreign margin stock, or
6. debt security convertible into a margin security (12 CFR § 220.2).

Closed End Management Company

A closed-end management company is a type of investment management company that sells a limited number of shares to investors on an exchange by way of an initial public offering. For investors to sell the shares, there must be buyers willing to buy the shares at a price determined by the market. The most common type of closed-end management company is a closed-end mutual fund.

COMMITTEE ACTION

Banks Committee

Joint Favorable

Yea 17 Nay 0 (03/14/2013)