



House of Representatives

File No. 785

General Assembly

January Session, 2013

(Reprint of File No. 212)

House Bill No. 6340
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 9, 2013

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 Section 36b-21 of the general statutes is repealed and the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 both (i) a
41 margin security, as defined in regulations or rules adopted by the
42 Board of Governors of the Federal Reserve System, or an American
43 depository receipt, as defined in such regulations or rules, that
44 represents such margin security, and (ii) an over-the-counter security
45 or a security issued by a foreign issuer, regardless of whether such
46 security is a covered security, (B) any warrant or right to purchase or
47 subscribe to any security described in subparagraph (A) of this
48 subdivision, and (C) any warrant or right to purchase or subscribe to
49 any security listed or approved for listing upon notice of issuance on

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

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

119 (b) The following transactions are exempted from sections 36b-16
120 and 36b-22: (1) Any isolated nonissuer transaction, whether effected
121 through a broker-dealer or not; (2) any nonissuer transaction by a
122 registered agent of a registered broker-dealer in a security of a class
123 that has been outstanding in the hands of the public for at least ninety
124 days provided, at the time of the transaction: (A) The security is sold at
125 a price reasonably related to the current market price of the security;
126 (B) the security does not constitute the whole or part of an unsold
127 allotment to, or a subscription or participation by, the broker-dealer as
128 an underwriter of the security; (C) a nationally recognized securities
129 manual contains (i) a description of the business and operations of the
130 issuer; (ii) the names of the issuer's officers and directors or, in the case
131 of a non-United States issuer, the corporate equivalents of such
132 persons in the issuer's country of domicile; (iii) an audited balance
133 sheet of the issuer as of a date within eighteen months, or in the case of
134 a reorganization or merger where the parties to the reorganization or
135 merger had such audited balance sheet, a pro forma balance sheet; and
136 (iv) an audited income statement for each of the issuer's immediately
137 preceding two fiscal years, or for the period of existence of the issuer, if
138 in existence for less than two years, or in the case of a reorganization or
139 merger where the parties to the reorganization or merger had such
140 audited income statement, a pro forma income statement; and (D) the
141 issuer of the security has a class of equity securities listed on a national
142 securities exchange registered under the Securities Exchange Act of
143 1934, or designated for trading on the National Association of
144 Securities Dealers Automated Quotation System, unless the issuer,
145 including any predecessors of the issuer (i) has been engaged in
146 continuous business for at least three years or (ii) has total assets of at
147 least two million dollars based on an audited balance sheet of the
148 issuer as of a date within eighteen months, or in the case of a
149 reorganization or merger where the parties to the reorganization or
150 merger had such audited balance sheet, a pro forma balance sheet. The
151 exemption in this subdivision shall not be available for any
152 distribution of securities issued by a blank check company, shell
153 company, dormant company or any issuer that has been merged or

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

189 company, insurance company, investment company as defined in the
190 Investment Company Act of 1940, pension or profit-sharing trust, or
191 other financial institution or institutional buyer, or to a broker-dealer,
192 whether the purchaser is acting for itself or in some fiduciary capacity;
193 (10) (A) subject to the provisions of this subdivision, any transaction
194 not involving a public offering within the meaning of Section 4(2) of
195 the Securities Act of 1933, but not including any transaction specified
196 in the rules and regulations thereunder. (B) Subject to the provisions of
197 this subdivision, any transaction made in accordance with the uniform
198 exemption from registration for small issuers authorized in Section
199 19(d)(3)(C) of the Securities Act of 1933. (C) The exemptions set forth in
200 subparagraphs (A) and (B) of this subdivision shall not be available for
201 transactions in securities issued by any blank check company, shell
202 company or dormant company. (D) The exemptions set forth in
203 subparagraphs (A) and (B) of this subdivision may, with respect to any
204 security or transaction or any type of security or transaction, be
205 modified, withdrawn, further conditioned or waived as to conditions,
206 in whole or in part, conditionally or unconditionally, by the
207 commissioner, acting by regulation, rule or order, on a finding that
208 such regulation, rule or order is necessary or appropriate in the public
209 interest or for the protection of investors. (E) A nonrefundable fee of
210 one hundred fifty dollars shall accompany any filing made with the
211 commissioner pursuant to this subdivision; (11) any offer or sale of a
212 preorganization certificate or subscription if (A) no commission or
213 other remuneration is paid or given directly or indirectly for soliciting
214 any prospective subscriber, (B) the number of subscribers does not
215 exceed ten, and (C) no payment is made by any subscriber; (12) any
216 transaction pursuant to an offer to existing security holders of the
217 issuer, including persons who at the time of the transaction are holders
218 of convertible securities, nontransferable warrants or transferable
219 warrants exercisable within not more than ninety days of their
220 issuance, if (A) no commission or other remuneration other than a
221 standby commission is paid or given directly or indirectly for soliciting
222 any security holder in this state, or (B) the issuer first files a notice, in
223 such form and containing such information as the commissioner may

224 by regulation prescribe, specifying the terms of the offer and the
225 commissioner does not by order disallow the exemption within the
226 next ten full business days; (13) any offer, but not a sale, of a security
227 for which registration statements have been filed under both sections
228 36b-2 to 36b-34, inclusive, and the Securities Act of 1933, if no stop
229 order or refusal order is in effect and no public proceeding or
230 examination looking toward such an order is pending under either
231 said sections or the Securities Act of 1933; (14) any transaction exempt
232 under Section [4(6)] 4(a)(5) of the Securities Act of 1933, and the rules
233 and regulations thereunder. The issuer shall, prior to the first sale, file
234 with the commissioner a notice, in such form and containing such
235 information as the commissioner may by regulation, rule or order
236 prescribe. A nonrefundable fee of one hundred fifty dollars shall
237 accompany any such filing made pursuant to this subdivision; (15) any
238 transaction if all the following conditions are satisfied: (A) The offer
239 and sale is effectuated by the issuer of the security; (B) the total
240 number of purchasers of all securities of the issuer does not exceed ten.
241 A subsequent sale of securities that (i) is registered under sections
242 36b-2 to 36b-34, inclusive, (ii) is sold pursuant to an exemption under
243 said sections other than this subdivision, or (iii) involves covered
244 securities, shall not be integrated with a sale pursuant to this
245 exemption in computing the number of purchasers hereunder. For the
246 purpose of this subdivision, each of the following is deemed to be a
247 single purchaser of a security: A husband and wife, a child and the
248 parent or guardian of such child when the parent or guardian holds
249 the security for the benefit of the child, a corporation, a partnership, an
250 association or other unincorporated entity, a joint stock company or a
251 trust, but only if the corporation, partnership, association,
252 unincorporated entity, joint stock company or trust was not formed for
253 the purpose of purchasing the security; (C) no advertisement, article,
254 notice or other communication published in any newspaper, magazine
255 or similar medium, broadcast over television or radio or
256 communicated by other electronic means or any other general
257 solicitation is used in connection with the sale; and (D) no commission,
258 discount or other remuneration is paid or given directly or indirectly

259 in connection with the offer and sale, and the total expenses, excluding
260 legal and accounting fees, in connection with the offer and sale do not
261 exceed one per cent of the total sales price of the securities. For
262 purposes of this subdivision, a difference in the purchase price among
263 the purchasers shall not, in and of itself, be deemed to constitute
264 indirect remuneration; (16) any transaction exempt under Rule 701, 17
265 CFR Section 230.701 promulgated under Section 3(b) of the Securities
266 Act of 1933; and (17) any other transaction that the commissioner may
267 exempt, conditionally or unconditionally, on a finding that registration
268 is not necessary or appropriate in the public interest or for the
269 protection of investors.

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

293 an open-end management company, as defined in the Investment
294 Company Act of 1940, shall be valid until December thirty-first of the
295 calendar year in which it was first filed, without limitation as to the
296 number of shares or aggregate amount. Such notice may be renewed
297 annually thereafter upon submission of such information as the
298 commissioner may require together with a nonrefundable fee of five
299 hundred dollars; and (4) any notice filed pursuant to this subsection
300 relating to a security issued by a closed-end company shall be valid for
301 one year from the date of receipt by the commissioner or from the date
302 that such security is declared effective by the Securities and Exchange
303 Commission, whichever is later, and shall be accompanied by the
304 nonrefundable fee prescribed in section 36b-19. A closed-end
305 company, the securities of which will continue to be offered or
306 distributed beyond the anniversary date of the filing of such notice
307 with the commissioner or the declaration of such security's
308 effectiveness by the Securities and Exchange Commission, whichever
309 is later, shall file such information as the commissioner may require
310 and include the fee prescribed in section 36b-19.

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

316 (e) Any person who offers or sells a security that is a covered
317 security under Section 18(b)(4)(D) of the Securities Act of 1933 shall file
318 a notice with the commissioner within fifteen days after the first sale of
319 such a security in this state. Such notice shall contain such information
320 as the commissioner may require and shall be accompanied by a
321 consent to service of process as required by subsection (g) of section
322 36b-33 and a nonrefundable fee of one hundred fifty dollars.

323 (f) The commissioner may by order (1) deny or revoke any
324 exemption specified in subdivision (9) or (11) of subsection (a) of this
325 section or in subsection (b) of this section with respect to a specific

326 security or transaction, (2) suspend the offer or sale of a covered
327 security in this state if any person who offers a covered security fails to
328 comply with any of the requirements set forth in subsections (c), (d) or
329 (e) of this section, or (3) require any person who offers a covered
330 security in this state and refuses to pay any fee required by subsections
331 (c) or (e) of this section to register such security pursuant to section
332 36b-16. For purposes of this subsection, a delay in the payment of a fee
333 or underpayment of a fee that is promptly remedied shall not
334 constitute a refusal to pay such fee. No such order may be entered
335 without appropriate prior notice to all interested parties, opportunity
336 for hearing and written findings of fact and conclusions of law, except
337 that the commissioner may by order summarily deny or revoke any of
338 the specified exemptions or summarily suspend the offer or sale of any
339 covered security subject to any of the requirements set forth in
340 subsections (c), (d) or (e) of this section pending final determination of
341 any proceeding under this subsection. Upon the entry of a summary
342 order, the commissioner shall promptly notify all interested parties
343 that it has been entered and of the reasons therefor and that within
344 fifteen days of the receipt of a written request the matter will be set
345 down for hearing. If no hearing is requested and none is ordered by
346 the commissioner, the order will remain in effect until it is modified or
347 vacated by the commissioner. If a hearing is requested or ordered, the
348 commissioner after notice of, and opportunity for, hearing to all
349 interested persons may modify or vacate the order or extend it until
350 final determination. No order under this subsection may operate
351 retroactively. No person may be considered to have violated sections
352 36b-16 and 36b-22 by reason of any offer or sale effected after the entry
353 of an order under this subsection if such person sustains the burden of
354 proof that such person did not know, and in the exercise of reasonable
355 care could not have known, of the order.

356 (g) In any proceeding under sections 36b-2 to 36b-34, inclusive, the
357 burden of proving an exemption, preemption, exclusion or an
358 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	<i>October 1, 2013</i>	36b-21

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.

House "A" (LCO 6426) is technical/procedural and results in no fiscal impact.

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

OLR Bill Analysis**HB 6340 (as amended by House "A")*****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.

*House Amendment "A" (1) adds the provision on American depositary receipts (ADR) and (2) specifies that the bill exempts from registration margin securities and ADRs that are over-the-counter securities or securities issued by foreign issuers, rather than securities that are margin securities, over-the-counter securities, or securities issued by foreign issuers.

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 a security if it is:

1. an over-the-counter security or security issued by a foreign issuer regardless of whether they are covered securities and
2. either (a) a margin security, as defined by the board's regulations or rules, or (b) ADR, as defined in the regulations or rules, that represents such a margin security (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

ADR

An ADR is a security representing the security of a non-U.S. company that trades in the U.S. financial markets. The stocks of most foreign companies that trade in the U.S. markets are traded as ADRs. U.S. depository banks issue these stocks.

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.

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).

COMMITTEE ACTION

Banks Committee

Joint Favorable
Yea 17 Nay 0 (03/14/2013)