§ 23.03. Definitions. 1. The following terms, whenever used or referred to in this article, shall have the following meanings, unless the context clearly requires otherwise:

(a) A "theatrical production" shall mean those live-staged dramatic productions, dramatic-musical productions and concerts, as defined in this subdivision, which hereafter are shown to the public for profit and which are financed wholly or in part by the offering or sale in or from this state, directly, or through agents or distributors, of investment agreements, evidences of interest, limited partnerships, producer shares, equity or debt securities, pre-organization subscriptions or any other syndication participation, when any persons are offered, solicited to purchase or sell, directly or indirectly, such syndication interests for moneys or services within or from the state of New York; provided, however, that for purposes of paragraphs (h) and (i) of this subdivision a "theatrical production" shall mean any live-staged dramatic production, dramatic-musical production or concert which is presented to the public in a place of entertainment as defined in this subdivision.

(b) "Fraud", "deceit", and "defraud", as such terms are used in this article, are not limited to common-law deceit.

(c) "Syndication" shall mean all forms, methods and devices for pooling of investment funds for the chief purpose of participating in a theatrical production company, as defined herein.

(d) A "principal" shall mean and include every person or firm directly or indirectly controlling the business affairs or operations of a theatrical production company or of a ticket distributor, as defined herein.

(e) A "person" shall mean an individual, firm, company, partnership, corporation, trust or association.

(f) A "concert" shall mean any live performance whether musical or spoken, dramatic or nondramatic, by one or more performers, which is presented to the public in a place of entertainment, as defined in this subdivision.

(g) A "sporting event" shall have the same meaning as set forth in subdivision three of section 23.23 of this article.

(h) The term "event" shall mean a theatrical production or sporting event, as those terms are defined in this subdivision, or any other public exhibition, game, show, contest or performance which is presented

to the public in a place of entertainment as defined in this subdivision.

(i) A "place of entertainment" shall mean a theatre, dinner theatre, hall, coliseum, convention center, arena, auditorium, stadium, concert hall, garden, outdoor space or other place of amusement operated as a for profit entity and located in this state in which theatrical productions, sporting events or other events are presented.

(j) A "theatrical production company" shall mean any entity formed to (i) develop, produce, invest in or otherwise exploit, or any combination thereof, one or more specified or nonspecified theatrical productions, and (ii) conduct all activities related thereto.

(k) The term "advance ticket" shall mean a ticket of admission sold more than twelve hours in advance of the time of performance of the event for which the ticket is purchased.

(l) The term "ticket distributor" shall have the same meaning as set forth in subdivision one of section 23.23 of this article.

(m) The term "accredited investor" shall mean (i) a natural person whose individual net worth (or joint net worth with his or her spouse) will exceed one million dollars at the time of purchase, or (ii) a natural person who has an individual income (exclusive of any income attributable to a spouse) of more than two hundred thousand dollars for the past two years or joint income with a spouse of more than three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year, or (iii) an entity in which each equity owner is an accredited investor under subparagraph (i) or (ii) of this paragraph, or (iv) either an organization described in section 501 (C)(3) of the Internal Revenue Code of 1986, as amended, a corporation, a Massachusetts or similar business trust, or a partnership, in each case not formed for the specific purpose of acquiring the securities being offered, and with total assets in excess of five million dollars, or (v) a trust, with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities, whose purchase of the securities is directed by a person who has such knowledge and experience in business and financial matters that he or she is capable, as defined by the Securities Act of 1933, as amended, of evaluating the merits and risks of the prospective investment, or a bank, as defined in section

3(a)(2) of the Securities Act of 1933, as amended, (A) acting in its fiduciary capacity as trustee, or (B) subscribing for the purchase of securities being offered on its own behalf.

2. Accurate books and records of account shall be maintained by each theatrical production company. Every producer of a theatrical production shall at least once for each twelve month fiscal period beginning with the initial expenditure of investors' funds (other than those of any principal), within four months after the end of such period or the last public performance of the original production in New York state, whichever is sooner, furnish to all investors and to the department of law a written balance sheet and statement of profit and loss which shall be prepared by an independent public accountant and contain an express opinion by such accountant that such statements fairly present the financial position and results of operations of the theatrical production company, hereinafter referred to as "certified statement". Notwithstanding the aforesaid, in no event shall a producer be required by this subdivision to submit certified statements to investors for any period less than twelve months following the period covered by a prior certified statement. Irrespective of the aforesaid, and in addition thereto, every such producer shall also furnish each investor and the department of law with an accurate and truthful itemized statement of income and expenditure for every six month period not covered by a previously issued certified statement or a certified statement required to be issued hereunder for a period ending at such time, which additional statement shall be subscribed to by the producer as accurate, and may be submitted within three months after the close of such six month period. Following the last public performance in New York state of the original production, the producer shall accurately report to the investors and the department of law, at least once within four months after the end of each year thereafter, with respect to any subsequent earnings or expenditures by the theatrical production, which shall be truthful and accurate and which shall be subscribed to by the producer as accurate. The attorney general may adopt, promulgate, amend and rescind rules and regulations setting forth other accounting requirements than set forth above, which may be selected by a producer in lieu of the accounting requirements set forth above. Upon conditions

set forth by the attorney general, such rules and regulations may further provide for the issuance of an exemption from the requirements herein (i) for offerings of less than two hundred fifty thousand dollars, (ii) for offerings made to less than thirty-six persons in or from this state, or (iii) for such other offerings and upon such other grounds as may be determined by the attorney general.

This subdivision shall not apply to any production whose first performance in New York state preceded June first, nineteen hundred sixty-four.

3. (a) Except as otherwise provided herein, no offering of syndication interests in a theatrical production company, as defined herein, shall be made within or from this state without the use of a prospectus or offering circular making full and fair disclosure of material facts pertaining to the particular venture. The attorney general may also issue rules and regulations requiring the submission to prospective investors in such offerings an offering circular and amendments thereto containing a concise and accurate description of the nature of the offering, profits to promoters and others, the background of the producers, a description of subsidiary rights and other pertinent information as will afford potential investors or purchasers and participants an adequate basis upon which to found their judgment, but the attorney general shall accept offering literature filed with the Securities and Exchange Commission and authorized for use by such agency as complying therewith as of the date of receipt of a true copy by the department of law of such literature and proof of authorization by the Securities and Exchange Commission by affidavit or otherwise. The attorney general may also provide for the method of filing of offering literature other than that filed with the Securities and Exchange Commission, as well as underlying documents, with the department of law at its office in the city of New York, prior to the offering of the syndication interest involved; however, any such regulation also shall provide that all funds derived from the sale of such theatrical syndication interests shall be held in trust in a special bank account until the attorney general has issued to the issuer or other offeror a letter stating that the offering has been permitted to be filed; but in

that event such regulation promulgated by the attorney general shall also provide that the attorney general, not later than fifteen days after such submission, shall issue such a letter or, in the alternative, a notification in writing indicating deficiencies therein.

(b) Where not more than one million dollars is the total amount of the theatrical offering, including the right to an involuntary overcall, the provisions of this subdivision shall be deemed to be satisfied by the use of an investment agreement clearly setting forth in easily readable print all of the terms of the offering. A copy of such document may be filed with the department of law in lieu of a prospectus or offering circular in the manner set forth in this article and shall be deemed to be offering literature.

(c) The provisions of this subdivision shall not apply to offerings to fewer than thirty-six persons (plus an unlimited number of accredited investors) where express waivers in writing to the filing and offering circular requirements of this subdivision are filed with the department of law by or on behalf of all investors.

4. A limited partnership that is a theatrical production company is exempt from the requirement for publishing its certificate or notice under sections ninety-one, 121-201 and 121-902 of the partnership law so long as the words "limited partnership" appear in its name. A limited liability company that is a theatrical production company is exempt from the requirement for publishing its articles of organization, application for authority or a notice containing the substance thereof under sections two hundred six and eight hundred two of the limited liability company law so long as the words "limited liability company" appear in its name.

5. It shall be unlawful for any person, in connection with the offer, sale, or purchase of any syndication interest in any theatrical production company, as defined herein, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To willfully make any untrue statement of a material fact or to omit to state a material fact necessary in order to make such statement made, not misleading; or

(c) To engage in any act, practice, or course of business which he

knows or reasonably should have known operates or would operate as a fraud or deceit upon any person.

6. Any person, partnership, corporation, company, trust or association or any agent or employee thereof, who (or which), having engaged in any act or practice constituting a violation of subdivision five of this section, commits additional acts under such circumstances as to constitute a felony, the crime of conspiracy, petit larceny, or more than one of the aforesaid, shall be punishable therefor, as well as for the violation of subdivision five of this section, and may be prosecuted for each crime, separately or in the same information or indictment, notwithstanding any other provision of law.