

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

**SENATE BILL****No. 1415** Session of  
1990

INTRODUCED BY HOLL, JANUARY 22, 1990

SENATOR HOLL, BANKING AND INSURANCE, AS AMENDED,  
FEBRUARY 7, 1990

## AN ACT

1 Amending the act of December 5, 1972 (P.L.1280, No.284),  
2 entitled "An act relating to securities; prohibiting  
3 fraudulent practices in relation thereto; requiring the  
4 registration of broker-dealers, agents, investment advisers,  
5 and securities; and making uniform the law with reference  
6 thereto," adding a definition of "associated person"; and  
7 further providing for registration requirements and  
8 procedure, for suspension and revocation of registration, for  
9 civil liability, for criminal penalties and for fees.

10 The General Assembly of the Commonwealth of Pennsylvania  
11 hereby enacts as follows:

12 Section 1. Section 102 of the act of December 5, 1972  
13 (P.L.1280, No.284), known as the Pennsylvania Securities Act of  
14 1972, is amended by adding a definition to read:

15 Section 102. Definitions.--When used in this act, the  
16 following definitions shall be applicable, unless the context  
17 otherwise requires:

18 \* \* \*

19 (c.1) "Associated person" means any partner, officer or  
20 director of (or person occupying a similar status or performing

1 similar functions), or other individuals employed by or  
2 associated with, an investment adviser, except clerical or  
3 administrative personnel, who:

4 (i) Makes any recommendations or otherwise renders advice  
5 regarding securities directly to advisory clients;

6 (ii) Manages accounts or portfolios of clients;

7 (iii) Determines which recommendation or advice regarding  
8 securities should be given, including:

9 (A) a person who is a member of the investment adviser's  
10 investment committee that determines general investment advice  
11 to be given to clients or,

12 (B) if the investment adviser has no investment committee,  
13 the person or persons who determine general client investment  
14 advice providing that, if there are more than five such persons  
15 who determine general investment advice, only the supervisors of  
16 such persons are deemed to be investment adviser representatives  
17 solely by virtue of this paragraph; or

18 (iv) Immediately supervises employes in the performance of  
19 any of the foregoing.

20 \* \* \*

21 Section 2. Section 301(e) of the act, amended March 25, 1981  
22 (P.L.1, No.1), is amended and the section is amended by adding a  
23 subsection to read:

24 Section 301. Registration Requirement.--Unless exempted  
25 under section 302 hereof:

26 \* \* \*

27 (c.1) It is unlawful for any investment adviser to employ an  
28 associated person to represent him in this Commonwealth unless  
29 the associated person is registered under this act. The  
30 registration of an associated person is not effective during any

1 period when he is not associated with a specified investment  
2 adviser registered under this act. When an associated person  
3 begins or terminates association with an investment adviser, or  
4 begins or terminates those activities which make him an  
5 associated person, the investment adviser shall promptly notify  
6 the commission. The commission may adopt a temporary  
7 registration procedure to permit associated persons to change  
8 employers without suspension of their registrations under this  
9 act.

10 \* \* \*

11 (e) Every registration expires on December 31 of each year  
12 unless renewed [except (i) the registrations of broker-dealers,  
13 investment advisers, and agents registered under this act as of  
14 the effective date of this amending act and (ii) those agents  
15 which become registered for such broker-dealers subsequent to  
16 the effective date of this amendatory act shall expire on the  
17 date such registration expires under the statute and regulations  
18 in effect at the time of such registration. In order to  
19 facilitate cooperation with other securities administrators and  
20 regulatory authorities in the simplification and coordination of  
21 registration, application and renewal procedures, the commission  
22 may by regulation provide for the renewal of any registration  
23 included in clauses (i) and (ii) above until December 31 of the  
24 year in which such registration expires upon payment of the  
25 registration fee. For this purpose, the commission may adjust  
26 the registration fee proportionately. Nothing in this section  
27 shall prohibit any person included in clause (i) or (ii) above  
28 from voluntarily electing to renew a registration prior to the  
29 date such registration would otherwise expire]. No registration  
30 is effective after its expiration, unless a renewal application

1 has been timely filed, and expiration of a registration for  
2 which no renewal application has been filed is deemed an  
3 application for withdrawal under section 305(f).

4 Section 3. Section 303(a)(i) of the act, amended March 25,  
5 1981 (P.L.1, No.1), is amended to read:

6 Section 303. Registration Procedure.--(a) (i) A broker-  
7 dealer, agent, [or] investment adviser or associated person may  
8 obtain an initial or renewal license by filing an application  
9 with the commission. The application shall contain such  
10 information, and in such detail, as the commission by rule  
11 requires concerning the applicant's form and place of  
12 organization, proposed method of doing business, and financial  
13 condition, the qualifications and experience of the applicant,  
14 including, in the case of a broker-dealer or investment adviser,  
15 the qualifications and experience of any partner, officer,  
16 director, or affiliate, or a person occupying a similar status  
17 or performing similar functions any injunction or administrative  
18 order or conviction referred to in section 305(a)(ii),  
19 information about affiliates or predecessors of the applicant,  
20 and any other matters which the commission determines are  
21 relevant to the application.

22 \* \* \*

23 Section 4. Section 305(a)(v), (vii) and (xiii), (b)(ii), (f)  
24 and (g) of the act, amended June 25, 1986 (P.L.256, No.68), are  
25 amended and subsection (a) is amended by adding a clause to  
26 read:

27 Section 305. Denial, Suspension and Revocation of  
28 Registration.--(a) The commission may, by order, deny, suspend,  
29 or revoke any registration or may censure any registrant if it  
30 finds that such order is in the public interest and that such

1 registrant or applicant, or in the case of any broker-dealer or  
2 investment adviser, any affiliate thereof, whether prior or  
3 subsequent to becoming associated with such person:

4 \* \* \*

5 (v) Has wilfully violated any provision of the Securities  
6 Act of 1933, the Securities Exchange Act of 1934, the Trust  
7 Indenture Act of 1939, the Investment Advisers Act of 1940, the  
8 Investment Company Act of 1940, the Commodity Exchange Act of  
9 1974, any law of a foreign country governing or regulating the  
10 business of broker-dealers, agents, investment advisers,  
11 commodities futures or banking or this act, or any predecessor  
12 law, or of any rule or regulation under any of such statutes; or

13 \* \* \*

14 (vii) Has failed reasonably to supervise his agents or  
15 employees, if he is a broker-dealer, or his associated persons or  
16 employees, if he is an investment adviser, but no person shall be  
17 deemed to have failed in such supervision if there have been  
18 established procedures, and a system for applying such  
19 procedures, which would reasonably be expected to prevent and  
20 detect, in so far as practicable, any violation of statutes,  
21 rules or orders described in subsection (v) and if such person  
22 has reasonably discharged the duties and obligations incumbent  
23 upon him by reason of such procedures and system without  
24 reasonable cause to believe that such procedures and system were  
25 not being complied with; or

26 \* \* \*

27 (xiii) Has made any material misrepresentation to or  
28 withheld or concealed from or omitted to state to the commission  
29 or any of its representatives any material fact necessary in  
30 order to make the statements made, in the light of the

1 circumstances under which they are made, not misleading, or has  
2 refused to furnish information reasonably requested by the  
3 commission[.]; or

4 (xiv) Is subject to any currently effective order or orders  
5 entered within the past five years of any securities regulator  
6 of another country denying registration to, or revoking or  
7 suspending the registration of, such person, or the associate of  
8 such person, as a broker-dealer, agent, investment adviser,  
9 futures commission merchant, commodity pool operator or  
10 commodity trading adviser; or is subject to any currently  
11 effective order of any securities exchange or self-regulatory  
12 organization operating under the authority of the securities  
13 regulator of another country suspending or expelling such person  
14 from membership in such exchange or self-regulatory association.

15 (b) The following provisions govern the application of  
16 section 305(a)(xi):

17 \* \* \*

18 (ii) The commission may not enter an order against an  
19 investment adviser on the basis of the lack of qualification of  
20 any person other than (A) the investment adviser himself if he  
21 is an individual, [or] (B) any other person who represents the  
22 investment adviser in doing any of the acts which make him an  
23 investment adviser[.] or (C) an associated person.

24 \* \* \*

25 (f) Withdrawal from the status of a registered broker-  
26 dealer, agent [or], investment adviser or associated person  
27 becomes effective on the thirtieth day after receipt of an  
28 application to withdraw, or within such shorter period as the  
29 commission determines, unless a revocation or suspension  
30 proceeding is pending before the commission when the application

1 is filed or a proceeding to revoke or suspend or to impose  
2 conditions upon the withdrawal is instituted before the  
3 commission within thirty days after the application is filed. If  
4 a proceeding is so pending or instituted, withdrawal becomes  
5 effective at such time and upon such conditions as the  
6 commission by order determines. If no proceeding is so pending  
7 or instituted and withdrawal automatically becomes effective,  
8 the commission may institute a revocation or suspension  
9 proceeding under subsection (a)(ii) within one year after  
10 withdrawal became effective and enter a revocation or suspension  
11 order as of the last date on which the registration was in  
12 effect.

13 (g) No order may be entered under this section except under  
14 subsection (d) without appropriate prior notice to the applicant  
15 or registrant as well as the employer or prospective employer if  
16 the applicant or registrant is an agent or associated person,  
17 opportunity for hearing and written findings of fact and  
18 conclusions of law. In cases of denial orders, such findings and  
19 conclusions shall be provided only if requested by the  
20 applicant.

21 Section 5. Section 501 of the act is amended by adding  
22 subsections to read:

23 Section 501. Civil Liabilities.--\* \* \*

24 (f) Any investment adviser who violates section 301 shall be  
25 liable to the client for all fees paid, directly or indirectly,  
26 to the investment adviser for investment advisory services.

27 (g) Any investment adviser who violates section 404(a)  
28 through (d) or any material provision of section 404(f), or  
29 otherwise makes any untrue statement of a material fact or omits  
30 stating a material fact necessary in order to make statements

1 made, in the light of the circumstances under which they are  
2 made, not misleading (the client not knowing of the untruth or  
3 omission) and who does not sustain the burden of proof that he  
4 did not know and, in the exercise of reasonable care could not  
5 have known of the untruth or omission, shall be liable to the  
6 client purchasing the security. The client purchasing the  
7 security may sue either at law or in equity to recover the  
8 consideration paid for the security, together with interest at  
9 the legal rate from the date of payment, less the amount of  
10 income or distribution, in cash or in kind, received on the  
11 security, upon the tender of the security or for damages if the  
12 client no longer owns the security. Damages are the amount that  
13 would be recoverable upon a tender, less the value of the  
14 security when the client disposed of it, plus interest at the  
15 legal rate from the date of disposition. Tender shall require  
16 only notice of willingness to exchange the security for the  
17 amount specified. Any notice may be given by service as in civil  
18 actions specified in the Pennsylvania Rules of Civil Procedure.  
19 An investment adviser who is liable under this section and any  
20 offeror or seller of the security liable under subsection (a)  
21 are jointly and severally liable to the client of the investment  
22 adviser.

23 Section 6. Section 511 of the act is reenacted to read:

24 Section 511. Criminal Penalties.--Any person who wilfully  
25 violates any material provision of this act, except section  
26 407(a), or any rule under this act, or any order of which he has  
27 notice, or who violates section 407(a) knowing that the  
28 statement made was false or misleading in any material respect,  
29 may be fined not more than five thousand dollars (\$5,000) or  
30 imprisoned not more than five years, or both. Each of the acts

1 specified shall constitute a separate offense and a prosecution  
2 or conviction for any one of such offenses shall not bar  
3 prosecution or conviction for any other offense. No indictment  
4 or information may be returned under this act more than five  
5 years after the alleged violation.

6 Section 7. Section 602(d) of the act, amended May 9, 1984  
7 (P.L.235, No.52), is amended to read:

8 Section 602. Fees.--\* \* \*

9 (d) Every applicant for an initial or renewal license under  
10 section 301 shall pay a filing fee of one hundred twenty-five  
11 dollars (\$125) in the case of a broker-dealer, twenty-five  
12 dollars (\$25) in the case of an agent [and], one hundred dollars  
13 (\$100) in the case of an investment adviser and fifty dollars  
14 (\$50) in the case of an associated person. The term of an  
15 agent's or associated person's registration hereunder shall be  
16 concurrent with that of his employer, if a broker-dealer or an  
17 investment advisor. When an agent changes employers, a twenty-  
18 five dollar (\$25) fee shall be paid. [A broker-dealer  
19 maintaining any office within this State shall pay an additional  
20 filing fee of forty dollars (\$40) for each office.] When an  
21 associated person changes employers, a fifty dollar (\$50) fee  
22 shall be paid. When an application is denied or withdrawn or a  
23 registration revoked, the filing fee shall be retained.

24 \* \* \*

25 ~~Section 8. This act shall take effect in 60 days.~~ <—

26 SECTION 8. SECTION 609 OF THE ACT IS AMENDED BY ADDING A <—  
27 SUBSECTION TO READ:

28 SECTION 609. REGULATIONS, FORMS AND ORDERS.--\* \* \*

29 (F) IN ADDITION TO THE AUTHORITY CONTAINED IN THIS SECTION,  
30 THE COMMISSION SHALL HAVE THE POWER AND AUTHORITY TO PROMULGATE,

1 ADOPT, PUBLISH AND USE GUIDELINES, INCLUDING FORMS, FOR THE  
2 IMPLEMENTATION OF THIS ACT FOR A PERIOD OF ONE YEAR IMMEDIATELY  
3 FOLLOWING THE EFFECTIVE DATE OF THIS ACT PENDING ADOPTION OF  
4 FINAL RULES AND REGULATIONS. GUIDELINES PROPOSED UNDER THE  
5 AUTHORITY OF THIS SUBSECTION SHALL BE SUBJECT TO THE REVIEW OF  
6 THE ATTORNEY GENERAL IN THE MANNER PROVIDED FOR THE REVIEW OF  
7 PROPOSED RULES AND REGULATIONS PURSUANT TO THE ACT OF OCTOBER  
8 15, 1980 (P.L.950, NO.164), KNOWN AS THE "COMMONWEALTH ATTORNEYS  
9 ACT," BUT SHALL NOT BE SUBJECT TO REVIEW PURSUANT TO THE ACT OF  
10 JUNE 30, 1989 (P.L.73, NO.19), KNOWN AS THE "REGULATORY REVIEW  
11 ACT."

12 SECTION 9. THE REENACTMENT OF SECTION 511 IS INTENDED TO  
13 REESTABLISH FIVE YEARS AS THE TIME FOR THE COMMENCEMENT OF  
14 PROSECUTION FOR AN OFFENSE UNDER THE ACT.

15 SECTION 10. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.