

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 473 Session of
1993

INTRODUCED BY LESCOVITZ, EVANS AND FLICK, MARCH 15, 1993

REFERRED TO COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT,
MARCH 15, 1993

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," making it unlawful to act as an associated person
7 unless registered; establishing an exemption from
8 registration for associated persons; revising certain
9 exemptions for transactions in securities; and authorizing
10 imposition of monetary assessments.

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

13 Section 1. Sections 203(1) and 301(c) of the act of December
14 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities
15 Act of 1972, are amended to read:

16 Section 203. Exempt Transactions.--The following
17 transactions are exempted from section 201:

18 * * *

19 (1) Any transaction now or hereafter exempted from section 5
20 of the Securities Act of 1933 by virtue of sections 3(a)(9) or
21 3(a)(10) thereof[; provided, however, that the commission be
22 given notice of any hearing referred to in section 3(a)(10)].

1 * * *

2 Section 301. Registration Requirement.--Unless exempted
3 under section 302 hereof:

4 * * *

5 (c) It is unlawful for any person to transact business in
6 this State as an investment adviser unless he is so registered
7 or registered as a broker-dealer under this act or unless he is
8 exempted under section 302(d). It is unlawful for any person to
9 transact business in this State as an associated person unless
10 he is so registered or exempted from registration under section
11 302(d.1).

12 * * *

13 Section 2. Section 302 of the act is amended by adding a
14 subsection to read:

15 Section 302. Exemptions.--The following persons shall be
16 exempted from the registration provisions of section 301:

17 * * *

18 (d.1) An associated person insofar as he transacts business
19 in this State on behalf of an investment adviser who is exempted
20 by the provisions of subsection (d).

21 * * *

22 Section 3. Section 602(c) and (d) of the act, amended May 9,
23 1984 (P.L.235, No.52), are amended to read:

24 Section 602. Fees.--* * *

25 [(c) A registrant, applicant for registration, issuer or
26 other person upon whom the commission has conducted an
27 examination, audit, investigation or prosecution and who has
28 been found guilty of a violation of the provisions of this act
29 shall pay for all the costs incurred in the conduct of such
30 examination, audit, investigation or prosecution. These costs

1 shall include, but are not limited to, the salaries and other
2 compensation paid to clerical, administrative, investigative and
3 legal personnel, plus the actual amount of expenses reasonably
4 incurred by such personnel or the commission in the conduct of
5 such examination, audit, investigation or prosecution.

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

18 * * *

19 Section 4. The act is amended by adding a section to read:

20 Section 602.1. Assessments.--(a) Each agent and associated
21 person, when applying for an initial license under section 301
22 or changing employers, shall pay a compliance assessment in
23 accordance with the following schedule: twenty-five dollars
24 (\$25) for the period beginning with the date of enactment of
25 this section through June 30, 1995; twenty-seven dollars (\$27)
26 for the period July 1, 1995 through June 30, 1998 and thirty
27 dollars (\$30) thereafter. Each agent and associated person, when
28 applying for a renewal license under section 301, shall pay a
29 compliance assessment in accordance with the following schedule:
30 ten dollars (\$10) for the period beginning with the date of

enactment of this section through June 30, 1995; twelve dollars (\$12) for the period July 1, 1995 through June 30, 1998 and fifteen dollars (\$15) thereafter.

(b) A registrant, applicant for registration, issuer or other person upon whom the commission has conducted an examination, audit, investigation or prosecution and who has been determined by the commission to have violated the act or rule or order of the commission under the act shall pay for all the costs incurred in the conduct of such examination, audit, investigation or prosecution. These costs shall include, but not be limited to, the salaries and other compensation paid to clerical, accounting, administrative, investigative, examiner and legal personnel, the actual amount of expenses reasonably incurred by such personnel and the commission in the conduct of such examination, audit, investigation or prosecution, including a pro rata portion of the commission's administrative expenses.

(c) After giving notice and opportunity for a hearing, the commission may issue an order accompanied by written findings of fact and conclusions of law which imposes an administrative assessment in an amount provided in paragraph (1) against a broker-dealer, agent, investment advisor or associated person registered under section 301 or an affiliate of the broker-dealer or investment advisor where the commission finds that the person either willfully has violated the act or a rule or order of the commission under the act or has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer.

(1) The commission, in issuing an order under this subsection, may impose an administrative assessment of up to ten thousand dollars (\$10,000) for a single violation or of up to

fifty thousand dollars (\$50,000) for multiple violations in a single proceeding or a series of related proceedings. Each act or omission that provides a basis for issuing an order under this subsection shall constitute a separate violation.

(2) For purposes of determining the amount of administrative assessment to be imposed in an order issued under this subsection, the commission shall consider:

(i) The circumstances, nature, frequency, seriousness, magnitude, persistence and willfulness of the conduct constituting the violation.

(ii) The scope of the violation, including the number of persons in and out of this Commonwealth affected by the conduct constituting the violation.

(iii) The amount of restitution or compensation that the violator has made and the number of persons in this Commonwealth to whom the restitution or compensation has been made.

(iv) Past and concurrent conduct of the violator that has given rise to any sanctions or judgment imposed by, or pleas of guilty or nolo contendere or settlement with, the commission or any securities administrator of any other state or other country, any court of competent jurisdiction, the Securities and Exchange Commission, the Commodity Futures Trading Commission, any other Federal or State agency or any national securities association or national securities exchange as defined in the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.).

(v) Any other factor that the commission finds appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this act.

1 (3) An administrative assessment imposed by an order issued
2 under this subsection is not mutually exclusive of any other
3 remedy available under this act.

4 (4) The commission shall not impose an administrative
5 assessment with respect to any public proceeding which was
6 instituted prior to the date of enactment of this section.

7 (d) Moneys payable for assessments established by this
8 section shall be collected by the commission and deposited into
9 the General Fund and shall be credited to the appropriation of
10 the commission for the fiscal year received. These moneys are
11 intended to meet the expenses of any or all of the following
12 activities:

13 (1) expenses, including personnel, operating and fixed
14 assets costs, relating to the registration of broker-dealers,
15 agents, investment advisers and associated persons under section
16 301 of the act and the conduct of examinations of broken-dealers
17 and investment advisors registered under section 301 of the act
18 and other compliance-related activities of the commission;

19 (2) non-personnel expenses related to establishing and
20 maintaining an entrepreneur education program to educate small
21 business persons in this Commonwealth as to the issuance of
22 securities as a means of raising capital;

23 (3) non-personnel expenses related to establishing and
24 maintaining a securities fraud awareness program to educate
25 public investors in this Commonwealth about fraudulent and
26 manipulative securities practices; and

27 (4) non-personnel expenses related to conducting
28 enforcement-related activities of the commission.

29 Section 5. This act shall take effect immediately.