

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1415 Session of
1990

INTRODUCED BY HOLL, JANUARY 22, 1990

REFERRED TO BANKING AND INSURANCE, JANUARY 22, 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
21 similar functions), or other individuals employed by or

associated with, an investment adviser, except clerical or
administerial personnel, who:

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

(ii) Manages accounts or portfolios of clients;

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

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

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

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

* * *

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

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

* * *

(c.1) It is unlawful for any investment adviser to employ an
associated person to represent him in this Commonwealth unless
the associated person is registered under this act. The
registration of an associated person is not effective during any
period when he is not associated with a specified investment

1 adviser registered under this act. When an associated person
2 begins or terminates association with an investment adviser, or
3 begins or terminates those activities which make him an
4 associated person, the investment adviser shall promptly notify
5 the commission. The commission may adopt a temporary
6 registration procedure to permit associated persons to change
7 employers without suspension of their registrations under this
8 act.

9 * * *

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

1 which no renewal application has been filed is deemed an
2 application for withdrawal under section 305(f).

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

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

21 * * *

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

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

investment adviser, any affiliate thereof, whether prior or subsequent to becoming associated with such person:

* * *

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

* * *

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

* * *

(xiii) Has made any material misrepresentation to or withheld or concealed from or omitted to state to the commission or any of its representatives any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or has

1 refused to furnish information reasonably requested by the
2 commission[.]; or

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

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

16 * * *

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

23 * * *

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

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

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

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

22 Section 501. Civil Liabilities.--* * *

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

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

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

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

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

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

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

7 Section 602. Fees.--* * *

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

23 * * *

24 Section 8. This act shall take effect in 60 days.