

No. 2004-131

AN ACT

HB 600

Amending the act of December 5, 1972 (P.L.1280, No.284), entitled "An act relating to securities; prohibiting fraudulent practices in relation thereto; requiring the registration of broker-dealers, agents, investment advisers, and securities; and making uniform the law with reference thereto," further providing for denial, suspension and revocation of registration.

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

Section 1. Section 208(a) of the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972, amended November 24, 1998 (P.L.829, No.109), is amended to read:

Section 208. Denial, Suspension, and Revocation of Registrations.—(a) The commission may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if it finds that the order is in the public interest and that:

(i) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment filed under section 207(l) as of its effective date, or any report under section 207(k) is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(ii) Any provision of this act or any regulation, order or condition lawfully imposed under this act has been wilfully violated, in connection with the offering by: (A) the person filing the registration statement, (B) the issuer, (C) any partner, officer or director of the issuer, (D) any person occupying a similar status or performing similar functions, (E) any affiliate of the issuer, but only if the person filing the registration statement is an affiliate of the issuer, or (F) any broker-dealer;

(iii) The securities are the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other Federal or State act applicable to the offering, but the commission may not institute a proceeding against an effective registration statement under this section more than one year from the date of the order or injunction relied on, and it may not enter an order under this section on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this act;

(iv) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(v) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options, or has worked or tended to work a fraud upon purchasers or would so operate, provided that any underwriting compensation approved by a national securities association registered under the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.) with respect to the underwriting activities of its members shall not be deemed unreasonable under this section;

(vi) The applicant or registrant has failed to pay the proper filing fee but the commission shall vacate any such order when the deficiency has been corrected;

(vii) Advertising prohibited by section 606 has been used in connection with the sale or offering of the securities;

(viii) In the case of an offering of debt securities, the offering involves an excessive debt-to-equity ratio or the issuer, at the time it filed an application under section 205 or 206, had received an auditor's report for the immediately preceding fiscal year expressing substantial doubt about the issuer's ability to continue as a going concern; [or]

(ix) The offering is being made by a development stage company which has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies or other entity or person[.]; or

(x) The issuer has loaned money to an officer, director or general partner of the issuer or a person who legally or beneficially owns five per cent or more of a class of equity securities of the issuer or any affiliate of such person which moneys have not been repaid to the issuer prior to effectiveness of the registration statement under this act, except that this provision shall not apply to loans described in section 13(k)(2) or (3) of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78(m)(2) or(3).

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Section 2. This act shall take effect in 60 days.

APPROVED—The 23rd day of November, A.D. 2004.

EDWARD G. RENDELL