

## No. 1990-190

## AN ACT

## SB 1415

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," adding a definition of "associated person"; and further providing for registration requirements and procedure, for suspension and revocation of registration, for civil liability, for criminal penalties and for fees.

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

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

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

\* \* \*

*(c.1) "Associated person" means any partner, officer or director of (or person occupying a similar status or performing similar functions), or other individuals employed by or associated with, an investment adviser, except clerical or administrative 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: (A) if that person 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 associated persons solely by virtue of this paragraph; or*

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

\* \* \*

Section 2. Sections 202(g), 203(d), (i), (n) and (o), 205(c) and 207(l), amended May 9, 1984 (P.L.235, No.52), are amended to read:

Section 202. Exempt Securities.—The following securities are exempted from section 201:

\* \* \*

*(g) Any investment contract issued in connection with an employe's stock option, purchase, savings, pension, profit-sharing or similar benefit plan, provided, in the case of plans adopted after the effective date hereof*

which are not qualified under section 401 of the Internal Revenue Code of 1954 and which provide for contribution by employes, the commission (i) is notified in writing fifteen days before the commencement of the offering in this State; and (ii) the filing fee specified in section [602(b)(vii)] 602(b.1) is paid.

\* \* \*

Section 203. Exempt Transactions.—The following transactions are exempted from section 201:

\* \* \*

(d) Any sales by an issuer to not more than twenty-five persons in this State during a period of twelve consecutive months if (i) the issuer shall obtain the written agreement of each such person not to sell the security within twelve months after the date of purchase; (ii) no public media advertisement is used or mass mailing made in connection with soliciting such sales; (iii) no cash or securities is given or paid, directly or indirectly, to any promoter as compensation in connection therewith unless such compensation is given or paid in connection with a sale made by a broker-dealer registered pursuant to section 301 and any person receiving such compensation is either such broker-dealer or an agent registered pursuant to section 301 of such broker-dealer; and (iv) the filing fee specified in section [602(b)(viii)] 602(b.1) is paid. Purchasers of securities registered under this act or sold in reliance upon an exemption under this act other than this subsection (d) or subsection (f) shall not be included in computing the twenty-five persons for purposes of this exemption. A notice in the form prescribed by the commission, signed by the officers or directors of the issuer under oath and stating the name, principal business address of the issuer, proposed use of the proceeds from the sale and such facts as are necessary to establish this exemption shall be filed, together with a copy of any offering literature used in connection with such offer or sale, with the commission not later than the day on which the securities are first issued or the issuer first receives consideration from any person therefor, whichever is earlier.

\* \* \*

(i) Any sale of a security registered under section 5 of the Securities Act of 1933 or exempt from registration pursuant to Regulation A promulgated under section 3(b) of such act if: (i) a copy of any final prospectus or final offering circular (whether in connection with the original registration or exemption under the Securities Act of 1933 or a post-effective amendment thereto) utilized or proposed to be utilized in connection therewith is mailed to the commission within two business days after such prospectus or offering circular is filed with the Securities and Exchange Commission; (ii) the applicable filing fee specified in section [602(b)(i)] 602(b.1) is paid with respect to such offering; (iii) the issuer of the security is a reporting company; and (iv) no stop order or refusal order is in effect and no public proceeding or investigation looking toward such an order is pending under the Securities Act of 1933 or this act. As a condition of the continuing effectiveness of this exemption, copies of any post-effective amendment or sticker to such prospectus or offering circular must be mailed to the commission within two business days

after the same is filed with the Securities and Exchange Commission. An exemption under this section shall terminate upon the termination of the registration statement under section 5 or the exemption from registration pursuant to Regulation A promulgated under section 3(b) of the Securities Act of 1933, except that an exemption under this section for the sale of securities of an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940, shall also terminate twelve months from the date the prospectus described in (i) above is filed with the commission, unless renewed for another twelve-month period by the payment of the fee specified in section [602(b)(iv)] 602(b.1). Any exemption in effect under this section for the sale of securities of an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940, as of the effective date of this amendatory act, shall also terminate twelve months from the effective date of this amendatory act, unless renewed for another twelve-month period by the payment of the fee specified in section [602(b)(iv)] 602(b.1). The effectiveness of an exemption or renewal of an exemption under this section for the sale of securities of an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940, shall not be terminated as a result of a post-effective amendment seeking to register an additional amount of securities which becomes effective under the Securities Act of 1933.

\* \* \*

(n) Any transaction pursuant to an offer of securities to existing equity security holders of (i) the issuer; (ii) a corporation which prior to the commencement of the offer owned substantially all of the voting stock of the issuer; or (iii) a corporation which organized the issuer for the purpose of the offer, if no commission or other remuneration other than a standby commission is paid or given directly or indirectly for soliciting any equity security holder in this State, if the issuer first files a notice specifying the terms of the offer and all other information which the commission by regulation requires, and if the filing fee specified in section [602(b)(ix)] 602(b.1) is paid and the commission does not by order disallow the exemption within five days. "Equity security holders" include persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance.

(o) Any transaction incident to a vote by security holders (or written consent of some or all security holders in lieu of such vote) pursuant to the articles of incorporation or the applicable corporation statute or other statute governing such person, or pursuant to a partnership agreement, a declaration of trust, trust indenture or any agreement among security holders on a merger, consolidation, sale of assets in consideration, in whole or part, of the issuance of securities of another person, reclassification of securities, or reorganization involving the exchange of securities, in whole or in part, for the securities of any other person if, but only if: (i) one party to such

transaction is required or permitted to file proxy materials pursuant to section 14(a) of the Securities Exchange Act of 1934 or section 20 of the Investment Company Act of 1940 and does file such materials with the commission at least ten days prior to a meeting of security holders called for the purpose of approving such transaction; and such proxy materials are distributed to the security holders of each party to such transaction; or (ii) such materials as may be specified by regulation of the commission are prepared in connection with the proposed transaction and, after review by the commission, distributed to the security holders of each party to the transaction; provided, however, that clause (i) and (ii) of this subsection and section [602(b)(v)] 602(b.1) shall not be applicable to any party to a transaction where not more than twenty-five per cent of the security holders of such party are residents of this State.

\* \* \*

**Section 205. Registration by Coordination.—\* \* \***

(c) (1) A registration statement filed under this section for the offering of securities by an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940, automatically becomes effective if (i) the Federal registration statement or notification is effective with the Securities and Exchange Commission; (ii) no stop order is in effect in this State and no proceeding is pending under section 208; (iii) the registration statement or a predecessor registration statement has been on file with the commission for at least five days; and (iv) the fee specified in section [602(b)(iv)] 602(b.1) has been paid.

(2) All other registration statements filed under this section automatically become effective at the moment the Federal registration statement or notification becomes effective if (i) no stop order is in effect in this State and no proceeding is pending under section 208; (ii) and the registration statement has been on file with the commission for at least ten days; (iii) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days, or such shorter period as the commission permits; and (iv) the offering is made within these limitations.

\* \* \*

**Section 207. General Registration Provisions.—\* \* \***

(l) (1) Except as provided in paragraph (2), a registration statement relating to any offering of securities may be amended after its effective date so as to increase the specified amount of securities proposed to be offered in this State. The amendment becomes effective upon the payment of the required filing fee and when the commission so orders.

(2) Amendments to a registration statement of an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940, so as to increase the specified amount of securities proposed to be offered in this State are effective upon filing with the commission provided that the aggregate fee specified in section [602(b)(iv)] 602(b.1) has been paid.

\* \* \*

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

\* \* \*

(e) Every registration expires on December 31 of each year unless renewed [except (i) the registrations of broker-dealers, investment advisers, and agents registered under this act as of the effective date of this amending act and (ii) those agents which become registered for such broker-dealers subsequent to the effective date of this amendatory act shall expire on the date such registration expires under the statute and regulations in effect at the time of such registration. In order to facilitate cooperation with other securities administrators and regulatory authorities in the simplification and coordination of registration, application and renewal procedures, the commission may by regulation provide for the renewal of any registration included in clauses (i) and (ii) above until December 31 of the year in which such registration expires upon payment of the registration fee. For this purpose, the commission may adjust the registration fee proportionately. Nothing in this section shall prohibit any person included in ~~clause (i) or (ii)~~ above from voluntarily electing to renew a registration prior to the date such registration would otherwise expire]. No registration is effective after its expiration, unless a renewal application has been timely filed, and expiration of a registration for which no renewal application has been filed is deemed an application for withdrawal under section 305(f).

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

Section 303. Registration Procedure.—(a) (i) A broker-dealer, agent, [or] investment adviser *or associated person* may obtain an initial or renewal license by filing an application with the commission. The application shall contain such information, and in such detail, as the commission by rule requires concerning the applicant's form and place of organization, proposed method of doing business, and financial condition, the qualifications and experience of the applicant, including, in the case of a broker-dealer or investment adviser, the qualifications and experience of any partner, officer, director, or affiliate, or a person occupying a similar status or performing

similar functions any injunction or administrative order or conviction referred to in section 305(a)(ii), information about affiliates or predecessors of the applicant, and any other matters which the commission determines are relevant to the application.

\* \* \*

Section 5. Section 305(a)(iv), (v), (vii) and (xiii), (b)(ii), (f) and (g) of the act, amended June 25, 1986 (P.L.256, No.68), are amended and subsection (a) is amended by adding a clause to read:

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

\* \* \*

(iv) Is subject to any currently effective order or order entered within the past five years of the Securities and Exchange Commission, the Commodity Futures Trading Commission or the securities administrator of any other state denying registration to or revoking or suspending the registration of such person as a broker-dealer, agent, investment adviser, *associated person*, futures commission merchant, commodity pool operator [or], commodity trading advisor [and their associated persons] or a person associated with a *futures commission merchant, commodity pool operator or commodity trading advisor*, or is subject to any currently effective order of any national securities association, national securities exchange (as defined in the Securities Exchange Act of 1934) or self-regulatory organization operating under the authority of the Commodity Futures Trading Commission suspending or expelling such person from membership in such association, exchange or self-regulatory organization, or is the subject of a currently effective United States Postal Service fraud order; but the commission may not institute a revocation or suspension proceeding under this subsection on the basis of an order under another state law more than one year after termination of the effectiveness of the order relied on and unless the order was based on facts which would currently constitute grounds for an order under this section; or

(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 any aspect of the business of securities, 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 refused to furnish information reasonably requested by the commission[.];  
or

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

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

\* \* \*

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

\* \* \*

(f) Withdrawal from the status of a registered broker-dealer, agent [or], investment adviser *or associated person* becomes effective on the thirtieth day after receipt of an application to withdraw, or within such shorter period as the commission determines, unless a revocation or suspension proceeding is pending before the commission when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted before the commission within thirty days after the application is filed. If a proceeding is so pending or instituted, withdrawal becomes effective at such time and upon such conditions as the commission by order determines. If no proceeding is so pending or instituted and withdrawal automatically becomes effective, the commission may institute a revocation or suspension proceeding under subsection (a)(ii) within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which the registration was in effect.

(g) No order may be entered under this section except under subsection (d) without appropriate prior notice to the applicant or registrant as well as

the employer or prospective employer if the applicant or registrant is an agent or associated person, opportunity for hearing and written findings of fact and conclusions of law. In cases of denial orders, such findings and conclusions shall be provided only if requested by the applicant.

Section 6. Section 501 of the act is amended by adding subsections to read:

Section 501. Civil Liabilities.—\* \* \*

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

*(g) Any investment adviser who violates section 404(a) through (d) or any material provision of section 404(f), or otherwise makes any untrue statement of a material fact or omits stating a material fact necessary in order to make statements made, in the light of the circumstances under which they are made, not misleading (the client not knowing of the untruth or omission) and who does not sustain the burden of proof that he did not know and, in the exercise of reasonable care, could not have known of the untruth or omission, shall be liable to the client purchasing the security. The client purchasing the security may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, less the amount of income or distribution, in cash or in kind, received on the security, upon the tender of the security or for damages if the client no longer owns the security. Damages are the amount that would be recoverable upon a tender, less the value of the security when the client disposed of it, plus interest at the legal rate from the date of disposition. Tender shall require only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions specified in the Pennsylvania Rules of Civil Procedure. An investment adviser who is liable under this section and any offeror or seller of the security liable under subsection (a) are jointly and severally liable to the client of the investment adviser.*

Section 7. Section 511 of the act is reenacted to read:

Section 511. Criminal Penalties.—Any person who wilfully violates any material provision of this act, except section 407(a), or any rule under this act, or any order of which he has notice, or who violates section 407(a) knowing that the statement made was false or misleading in any material respect, may be fined not more than five thousand dollars (\$5,000) or imprisoned not more than five years, or both. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense. No indictment or information may be returned under this act more than five years after the alleged violation.

Section 8. Section 602 of the act is amended by adding subsections to read:

Section 602. Fees.—\* \* \*

*(b.1) Filing fees for sales of securities:*



*(i) Exemption filings under section 203(i), except as provided for in subclause (iv)..... \$100*

*(ii) Registration statement filings under section 205, except as provided in subclause (iv), based upon the maximum aggregate offering price at which such securities are to be offered in this State during the effective period of the registration statement:*

*(A) less than \$10,000,000..... 500*

*(B) \$10,000,000 or more..... 750*

*(iii) Registration statement filings under section 206, except as provided in subclause (iv)..... 350*

*Plus 1/20 of 1% of the maximum aggregate offering price at which such securities are to be offered in this State, during the effective period of the registration up to a maximum filing fee of \$2,150.*

*(iv) In the case of registration statement filings under section 205 or 206 or exemption filings under section 203(i) by an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940.*

*Based upon the maximum aggregate offering price at which such securities are to be offered in this State during the effective period of the registration, exemption or renewal of the exemption, the fee for (A) \$4,000,000 or less, 1/20 of 1% with a minimum fee of \$350; (B) more than \$4,000,000 but less than \$100,000,000, \$3,000; (C) \$100,000,000 or more, \$3,500; except that, in the case of a registration statement in which the issuer, pursuant to its articles of incorporation or other governing instruments, is restricted to holding exclusively debt securities of other persons having fixed final maturity dates occurring within 200 days from the initial effective date of the registration statement for the issuer's securities filed under the Securities Act of 1933, the maximum fee payable under the above schedule shall not exceed \$1,500.*

*If an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940, which has an effective registration under section 205 or 206 elects to convert to an exemption under section 203(i) without extending the effective period of the exemption under section 203(i) beyond the date upon which the registration under section 205 or 206 would have otherwise terminated, there shall be no additional filing fee required.*

(v) Exemption filings under section 203(o)(ii) shall be:..	250
(vi) When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under section 208, the amount that the commission shall retain from the filing fee shall be:	
(A) Under section 205.....	300
(B) Under section 206.....	175
(vii) Filing an application for exemption from registration under section 202(g).....	50
(viii) Filing an application for exemption from registration for an offering of securities to be sold under section 203(d):	
(A) Where the maximum aggregate offering price at which such securities are offered in this State is less than \$100,000.....	50
(B) Where the maximum aggregate offering price at which such securities are offered in this State is \$100,000 or more but less than \$1,000,000.....	150
(C) Where the maximum aggregate offering price at which such securities are being offered in this State is \$1,000,000 or more.....	400
(ix) Filing an application for exemption from registration under section 203(n).....	50
(x) Filing an application for exemption from registration under section 203(p).....	100

\* \* \*

*(d.1) Every applicant for an initial or renewal license under section 301 shall pay a filing fee of two hundred fifty dollars (\$250) in the case of a broker-dealer, fifty dollars (\$50) in the case of an agent, two hundred dollars (\$200) in the case of an investment adviser and fifty dollars (\$50) in the case of an associated person. The term of an agent's or associated person's registration hereunder shall be concurrent with that of his employer, if a broker-dealer or an investment adviser. When an agent changes employers, a fifty-dollar (\$50) fee shall be paid. When an associated person changes employers, a fifty-dollar (\$50) fee shall be paid. When an application is denied or withdrawn or a registration revoked, the filing fee shall be retained.*

\* \* \*

Section 9. In addition to the authority contained in section 609 of the act, the commission shall have the power and authority to promulgate, adopt, publish and use guidelines, including forms, for the implementation

of this amendatory act for a period of one year immediately following the effective date of this amendatory act pending adoption of final rules and regulations. Guidelines proposed under the authority of this section shall be subject to the review of the Attorney General in the manner provided for the review of proposed rules and regulations pursuant to the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, but shall not be subject to review pursuant to the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

Section 10. The reenactment of section 511 is intended to reestablish five years as the time for the commencement of prosecution for an offense under the act, the provision of 42 Pa.C.S. § 5552 (relating to other offenses) notwithstanding.

Section 11. Sections 615-A(4) through (11) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, are repealed.

Section 12. This act shall take effect as follows:

- (1) Sections 7 through 11 shall take effect immediately.
- (2) The remainder of the act shall take effect in 60 days.

APPROVED—The 18th day of December, A. D. 1990.

ROBERT P. CASEY