

No. 1993-4

AN ACT

HB 473

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

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

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

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

* * *

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

* * *

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

* * *

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

* * *

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

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

* * *

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

* * *

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

Section 602. Fees.—* * *

[(c) 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 found guilty of a violation of the provisions of this act shall pay for all the costs incurred in the conduct of such examination, audit, investigation or prosecution. These costs shall include, but are not limited to, the salaries and other compensation paid to clerical, administrative, investigative and legal personnel, plus the actual amount of expenses reasonably incurred by such personnel or the commission in the conduct of such examination, audit, investigation or prosecution.]

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

* * *

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

Section 602.1. Assessments.—(a) Each agent and associated person, when applying for an initial license under section 301 or changing employers, shall pay a compliance assessment in accordance with the following schedule: twenty-five dollars (\$25) for the period beginning with the date of enactment of this section through June 30, 1995, twenty-seven dollars (\$27) for the period July 1, 1995, through June 30, 1998, and thirty dollars (\$30) thereafter. Each agent and associated person, when applying for a renewal license under section 301, shall pay a compliance assessment in accordance with the following schedule: 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 this act or rule or order of the commission under this 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 this act or a rule or order of the commission under this 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.

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

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

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

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

(2) nonpersonnel expenses related to establishing and maintaining an entrepreneur education program to educate small business persons in this Commonwealth as to the issuance of securities as a means of raising capital;

(3) nonpersonnel expenses related to establishing and maintaining a securities fraud awareness program to educate public investors in this Commonwealth about fraudulent and manipulative securities practices; and

(4) nonpersonnel expenses related to conducting enforcement-related activities of the commission.

Section 5. This act shall take effect immediately.

APPROVED—The 4th day of May, A.D. 1993.

ROBERT P. CASEY