

§16412. Denial, revocation, suspension, withdrawal, restriction, condition or limitation of licensing

1. Disciplinary conditions, applicants. If the administrator finds that the order is in the public interest and subsection 4 authorizes the action, an order issued under this chapter may deny an application, or may condition or limit licensing, of an applicant to be a broker-dealer, agent, investment adviser or investment adviser representative.

[PL 2007, c. 14, §5 (AMD).]

2. Disciplinary conditions, licensees. If the administrator finds that the order is in the public interest and subsection 4 authorizes the action, an order issued under this chapter may revoke, suspend, condition or limit the license of a licensee. Notwithstanding this subsection, the administrator may not:

A. Institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than one year after that state's order is reported; or [PL 2005, c. 65, Pt. A, §2 (NEW).]

B. Under subsection 4, paragraph E, subparagraph (1) or (2), issue an order on the basis of an order issued under the securities act of another state unless the other state's order was based on conduct for which subsection 4 would authorize the action had the conduct occurred in this State. [PL 2005, c. 65, Pt. A, §2 (NEW).]

[PL 2007, c. 14, §6 (AMD).]

3. Disciplinary penalties, licensees. If the administrator finds that the order is in the public interest and subsection 4, paragraph A, B, C, D, E, F, H, I, J, L or M authorizes the action, an order under this chapter may censure, impose a bar on or impose a civil fine in an amount not to exceed a maximum of \$5,000 per violation on a licensee. For a violation involving an investor 65 years of age or older, the amount of the civil fine may be doubled to an amount not to exceed a maximum of \$10,000 per violation.

[PL 2011, c. 37, §1 (AMD).]

4. Grounds for discipline. A person may be disciplined under subsections 1 to 3 if the person or, in the case of a broker-dealer or investment adviser, the broker-dealer or investment adviser, a partner, officer or director of the broker-dealer or investment adviser, a person occupying a similar status or performing similar functions or a person directly or indirectly controlling the broker-dealer or investment adviser:

A. Has filed an application for licensing in this State under this chapter or the predecessor act within the previous 10 years that, as of the effective date of licensing or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact; [PL 2005, c. 65, Pt. A, §2 (NEW).]

B. Intentionally or knowingly violated or intentionally or knowingly failed to comply with this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous 10 years; [PL 2005, c. 65, Pt. A, §2 (NEW).]

C. Has pleaded guilty or nolo contendere to or been convicted of murder or a Class A, B or C crime or a felony or within the previous 10 years has pleaded guilty or nolo contendere to or been convicted of a Class D or E crime or a misdemeanor involving a security, a commodity future or option contract or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance or any crime indicating a lack of fitness to engage in the securities business; [PL 2005, c. 65, Pt. A, §2 (NEW).]

D. Is enjoined or restrained by a court of competent jurisdiction in any action from engaging in or continuing an act, practice or course of business involving an aspect of a business involving

securities, commodities, investments, franchises, insurance, banking or finance; [PL 2005, c. 65, Pt. A, §2 (NEW).]

E. Is the subject of an order, issued after notice and opportunity for hearing by:

- (1) The securities or other financial services regulator of a state or by the Securities and Exchange Commission, a self-regulatory organization or other federal agency denying, revoking, barring or suspending registration or licensing as a broker-dealer, agent, investment adviser, investment adviser representative or federal covered investment adviser;
- (2) The securities regulator of a state or the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative or federal covered investment adviser;
- (3) The Securities and Exchange Commission or a self-regulatory organization suspending or expelling the registrant or licensee from membership in the self-regulatory organization;
- (4) A court adjudicating a United States Postal Service fraud order;
- (5) The insurance regulator of a state denying, suspending or revoking registration or licensing as an insurance producer or its equivalent;
- (6) A depository institution or financial services regulator suspending or barring the person from the depository institution or other financial services business; or
- (7) The United States Commodity Futures Trading Commission denying, suspending or revoking registration under the federal Commodity Exchange Act; [PL 2005, c. 65, Pt. A, §2 (NEW).]

F. Is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the United States Commodity Futures Trading Commission, the Federal Trade Commission, a federal depository institution regulator or a depository institution, insurance or other financial services regulator of a state that the person intentionally or knowingly violated the federal Securities Act of 1933, the federal Securities Exchange Act of 1934, the federal Investment Advisers Act of 1940, the federal Investment Company Act of 1940, the federal Commodity Exchange Act, the securities or commodities law of a state or a federal or state law under which a business involving investments, franchises, insurance, banking or finance is regulated; [PL 2005, c. 65, Pt. A, §2 (NEW).]

G. Is insolvent, either because the person's liabilities exceed the person's assets or because the person can not meet the person's obligations as they mature. The administrator may not enter an order against an applicant or licensee under this paragraph without a finding of insolvency as to the applicant or licensee; [PL 2005, c. 65, Pt. A, §2 (NEW).]

H. Refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under section 16411, subsection 4 or refuses access to a licensee's office to conduct an audit or inspection under section 16411, subsection 4; [PL 2005, c. 65, Pt. A, §2 (NEW).]

I. Has failed to reasonably supervise an agent, investment adviser representative or other individual if the agent, investment adviser representative or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act or engaged in conduct that would be grounds for discipline under this subsection within the previous 10 years; [PL 2005, c. 65, Pt. A, §2 (NEW).]

J. Is subject to an order entered by a court of competent jurisdiction or entered after notice and opportunity for hearing by a federal or state licensing agency denying, suspending, revoking or restricting the person's license to sell real estate, insurance or any investment other than securities, provided that the order resulted from allegations of misconduct. This paragraph also applies when

the denial, suspension, revocation or restriction of the license is pursuant to a consent agreement between the person and the licensing agency, whether or not the agency also issues an order; [PL 2005, c. 65, Pt. A, §2 (NEW).]

K. After notice and opportunity for a hearing, has been found within the previous 10 years:

(1) By a court of competent jurisdiction to have intentionally and knowingly violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking or finance is regulated;

(2) To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative or similar person; or

(3) To have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction; [PL 2005, c. 65, Pt. A, §2 (NEW).]

L. Is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance or insurance laws of a state; [PL 2005, c. 65, Pt. A, §2 (NEW).]

M. Has engaged in unlawful, dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance or insurance business within the previous 10 years; or [PL 2005, c. 65, Pt. A, §2 (NEW).]

N. Is not qualified on the basis of factors such as training, experience and knowledge of the securities business; except that, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for licensing as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by subsection 5. The administrator may require an applicant for licensing under section 16402 or 16404 who has not been registered or licensed in a state within the 2 years preceding the filing of an application in this State to successfully complete an examination. [PL 2005, c. 65, Pt. A, §2 (NEW).]

[PL 2007, c. 14, §8 (AMD).]

5. Examinations. A rule adopted or order issued under this chapter may require that training or an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, training or an examination as to an individual or training or an examination as to a class of individuals if the administrator determines that the training or examination is not necessary or appropriate in the public interest and for the protection of investors.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

6. Summary process. Notwithstanding Title 5, sections 10003 and 10004, if the public interest or the protection of investors so requires, the administrator may suspend or deny an application summarily; restrict, condition, limit or suspend a license; or censure, bar or impose a civil penalty on a licensee before final determination of an administrative proceeding. Upon the issuance of an order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator within 30 days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

7. Procedural requirements. An order may not be issued under this section, except under subsection 6, without:

A. Appropriate notice to the applicant or licensee; [PL 2005, c. 65, Pt. A, §2 (NEW).]

B. Opportunity for hearing; and [PL 2005, c. 65, Pt. A, §2 (NEW).]

C. Findings of fact and conclusions of law in a record in accordance with Title 5, chapter 375. [PL 2005, c. 65, Pt. A, §2 (NEW).]

[PL 2007, c. 14, §9 (AMD).]

8. Control person liability. A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections 1 to 3 to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

9. Limit on investigation or proceeding. The administrator may not institute a proceeding under subsection 1, 2 or 3 based solely on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one year after the administrator actually acquires knowledge of the material facts.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

10. Appointment of presiding officer. For purposes of a hearing conducted pursuant to this section, the administrator may appoint a qualified person to preside at the hearing and to make proposed findings of fact and conclusions of law. The responsibility for the entry of the final findings of fact and conclusions of law and for the issuance of any final order remains with the administrator.

[PL 2007, c. 14, §10 (NEW).]

SECTION HISTORY

PL 2005, c. 65, §A2 (NEW). PL 2007, c. 14, §§5-10 (AMD). PL 2011, c. 37, §1 (AMD).

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