

No. 1986-68

AN ACT

SB 1040

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," providing for cease and desist orders and summary cease and desist orders; increasing the statute of limitations for securities fraud; and further providing for the denial, suspension and revocation of registration of broker-dealers, agents and investment advisers.

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

Section 1. Section 305(a)(ii), (iii), (iv) and (v) 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 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:

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(ii) Has, within ten years of the date of the commission's action, been either (A) convicted of a felony or misdemeanor, or (B) held liable in a civil action by final judgment of a court based upon conduct showing moral turpitude, and the commission finds that any such felony, misdemeanor or civil action (I) involved the purchase or sale of any security *or commodity futures contract*, or any other aspect of the securities *or commodity futures contract* business, (II) arose out of the conduct of the business of a broker-dealer, investment adviser or issuer with respect to a security or transaction not exempt under section 202 or 203, (III) involved embezzlement, fraudulent conversion or misappropriation of property, funds or securities, or (IV) involved the violation of section 1341, 1342 or 1343 of Title 18 of the United States Code; or

(iii) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities *or commodities futures contract* business or involving fraudulent conduct in the banking or insurance business; or

(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 [or], investment adviser, *futures com-*

mission merchant, commodity pool operator or commodity trading advisor and their associated persons, or is subject to any currently effective order of any national securities association [or], 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 [or], 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* or this act, or any predecessor law, or of any rule or regulation under any of such statutes; or

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Section 2. Section 504(a) of the act is amended to read:

Section 504. Time Limitations on Rights of Action.—(a) No action shall be maintained to enforce any liability created under section 501 (or section 503 in so far as it relates to that section) unless brought before the expiration of **[three] four** years after the act or transaction constituting the violation or the expiration of one year after the plaintiff receives actual notice or upon the exercise of reasonable diligence should have known of the facts constituting the violation, whichever shall first expire.

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Section 3. Section 606(c) of the act is amended and the section is amended by adding a subsection to read:

Section 606. Miscellaneous Powers of Commission.—* * *

(c) No person shall publish in this State any advertisement concerning any security (other than tombstone advertisements permitted under the Securities Act of 1933 and the Investment Company Act of 1940 and the rules and regulations promulgated thereunder) except in accordance with such rules as the commission may promulgate from time to time. No person shall publish any advertisement concerning any security in this State after the commission finds that the advertisement contains any statement that is false or misleading or omits to make any statement necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading and so notifies the person in writing. Such notification may be given summarily without notice or hearing. **[At any time after the issuance]** *Within thirty days after the receipt* of a notification under this section, the person desiring to use the advertisement may request in writing that the order be rescinded. Upon the receipt of such a written request, the matter shall be set down for hearing to commence within thirty days after such receipt unless the person making the request consents to a later date. After such hearing,

the commission shall determine whether to affirm and continue or to rescind such order.

(c.1) Whenever the commission finds that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order thereunder, the commission may order such person to cease and desist from such act or practice and shall notify the person in writing. Notification may be given summarily without notice or hearing. Within thirty days after receipt of a notification under this section, the person desiring to engage in such act or practice may file a written request that the order be rescinded. Upon receipt of the written request, the matter will be set down for a hearing to commence within thirty days after such receipt unless the person making the request consents to a later date. After such hearing, the commission shall determine whether to affirm and continue, modify or rescind such order.

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Section 4. This act shall take effect in 60 days.

APPROVED—The 25th day of June, A. D. 1986.

DICK THORNBURGH