

No. 2004-125

AN ACT

HB 547

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 assessments.

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

Section 1. Section 602.1(c)(1) of the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972, amended July 4, 2002 (P.L.721, No.108), is amended to read:

Section 602.1. Assessments.—* * *

(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 the amounts provided in paragraph (1) against a broker-dealer, agent, investment adviser or investment adviser representative registered under section 301 or an affiliate of any broker-dealer or investment adviser where the commission determines that the person 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; has taken unfair advantage of a customer; or has failed reasonably to supervise its agents or employes or against any other person if the commission determines that the person wilfully violated section 301, 401, 404, 406 through 409 or 512(d) or a cease and desist order issued by the commission under section 606(c.1).

(1) The commission, in issuing an order under this subsection, may impose the administrative assessments set forth below. Each act or omission that provides a basis for issuing an order under this subsection shall constitute a separate violation.

(i) In issuing an order against any broker-dealer, agent, investment adviser or investment adviser representative registered under section 301 or an affiliate of any broker-dealer or investment adviser, the commission may impose **[an] a maximum** administrative assessment of up to **[fifty] one hundred** thousand dollars **[((\$50,000)] (\$100,000)** for **[a single violation or up to five hundred thousand dollars (\$500,000) for multiple violations in a single proceeding or a series of related proceedings.] each act or omission that constitutes a violation of the act or rule or order issued under this act.** If any of the victims of the person's violative conduct were individuals aged 60 or more, the commission also may impose a special administrative assessment in addition to the foregoing amounts of up to fifty thousand dollars (\$50,000).

(ii) In issuing an order against a person for wilful violation of section 401(a) or (c), 404, 406, 408, 409 or 512(d) or for wilful violation of a cease and desist order issued under section 606(c.1), the commission may impose **[an] a maximum** administrative assessment of up to **[fifty] one hundred** thousand dollars **[(~~\$50,000~~)] (~~\$100,000~~)** for **[a single violation or up to three hundred thousand dollars (~~\$300,000~~) for multiple violations in a single proceeding or a series of related proceedings.]** *each act or omission that constitutes a violation of any of those sections.* In addition to the foregoing assessment, the commission also may impose a special administrative assessment of up to fifty thousand dollars (~~\$50,000~~) for each of the provisions described as follows that the commission determines are applicable:

(A) The person, within seven years prior to the commission taking action under this subsection, was the subject of: a criminal felony conviction; an injunction issued by any court of competent jurisdiction; or an order of the Securities and Exchange Commission, the Commodity Futures Trading Commission, the securities, banking or insurance regulator of another state, a Federal banking regulator or the securities, banking or insurance regulatory authority of another country which found that the person wilfully had violated any provision of the Federal or state securities, banking, insurance, or commodities laws or the securities, commodities, insurance or banking laws of another country.

(B) The person's violative conduct involved individuals aged 60 or more.

(C) The person's violative conduct involved use of the Internet or boiler room tactics which included, without limitation, use of any high-pressure sales tactics designed to create an artificially short time period for which the person being solicited is pressured to make an investment decision or overcome the person's reluctance to commit to the investment being offered, use of scripts designed to allay any objections or concerns expressed by the person being solicited or making repeated telephone calls or sending multiple e-mail messages to the same person pressuring the person to make an immediate investment decision.

(iii) In issuing an order against a person for wilful violation of section 401(b) or 407, the commission may impose an administrative assessment of up to **[twenty-five thousand dollars (~~\$25,000~~)] fifty thousand dollars (~~\$50,000~~)** for each of the criteria described in subclause (ii)(A) and (C) that the commission determines are applicable. No assessment shall be imposed under this subclause if the person is subject to an administrative assessment imposed under any other provision of this subsection.

(iv) In issuing an order against a person, other than a federally covered adviser, for wilful violation of section 301, the commission may impose the following administrative assessments **[unless the person is subject to] which may be in addition to** an administrative assessment imposed under any other provision of this subsection **[or the public proceeding to which**

the assessment relates was instituted prior to the date of enactment of this subclause]:

(A) For a person who at the time of the wilful violation was not registered under section 301, was not registered as a broker or dealer with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.) and was not a member of a national securities association registered under that act, the commission may impose **[an] a maximum** administrative assessment of up to fifty thousand dollars (\$50,000) for **[a single violation or up to two hundred fifty thousand dollars (\$250,000) for multiple violations in a single proceeding or series of related proceedings] each act or omission which constitutes a violation of section 301.**

(B) For a person (not an individual) that at the time of the wilful violation was not registered under section 301 but was registered as a broker or dealer with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934 and was a member of a national securities association registered under that act, the commission may impose **[an] a maximum** administrative assessment of up to fifty thousand dollars (\$50,000) for **[a single violation or up to three hundred thousand dollars (\$300,000) for multiple violations in a single proceeding or series of related proceedings] each act or omission which constitutes a violation of section 301.** An assessment imposed under this subclause shall be in addition to any liability a person may have under an order issued under section 514.

(v) In issuing an order for wilful violation of section 301(c.1)(1)(ii) against a person that is a federally covered adviser, the commission may impose the following administrative assessments:

(A) Up to one hundred thousand dollars (\$100,000) if the number of investment adviser representatives involved in the violation was less than five.

(B) Up to two hundred thousand dollars (\$200,000) if the number of investment adviser representatives involved in the violation was five or more.

(vi) In issuing an order for a wilful violation of section 301(f) against a person that is a federally covered adviser, the commission may impose an administrative assessment of two thousand dollars (\$2,000).

* * *

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

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

EDWARD G. RENDELL