

UNIFORM SECURITIES ACT (EXCERPT)
Act 265 of 1964

***** 451.604 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.604 Denial, suspension, or revocation of registration, or censure of registrant; grounds; postponement or suspension of registration pending final determination; order; notice; hearing; cancellation of registration or application; withdrawal from registration; conditions to entering of order; civil liability; violation.

Sec. 204. (a) The administrator may by order, if it finds the order in the public interest, deny, suspend, or revoke any registration, or censure a registrant, if it finds that 1 or more of the following apply:

(1) The applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(A) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

(B) Has violated or failed to comply with any provision of this act or a predecessor act or any rule or order under this act or a predecessor act.

(C) Has been convicted of any misdemeanor involving moral turpitude or any felony.

(D) 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 business.

(E) Is the subject of an order of the administrator denying, suspending, or revoking registration as a broker-dealer, agent, or investment adviser.

(F) Is the subject of an order entered by the securities administrator of any other state or by the securities and exchange commission denying, suspending, or revoking registration as a broker-dealer, floor broker, agent, or investment adviser, or the substantial equivalent of those terms as defined in this act, or is the subject of an order of the securities and exchange commission suspending or expelling him or her from a national securities exchange or national securities association registered under the securities exchange act of 1934 or in the case of an individual, is subject to an order by the securities and exchange commission barring the individual from association with a broker-dealer or investment adviser or is the subject of an order of a national securities exchange or a national securities association registered under the securities exchange act of 1934 suspending or expelling him or her from membership, or is the subject of a United States post office fraud order. The administrator may by order deny, suspend, or revoke any broker-dealer or investment adviser registration if the applicant or registrant has been associated with a broker-dealer which was liquidated pursuant to the securities investor protection act of 1970, or if 1 or more of the applicant's or registrant's partners, officers, or directors have been associated with a broker-dealer liquidated under that act, unless the association was terminated 12 months or more before the commencement of litigation under that act, or unless the associated person establishes that he or she did not engage in dishonest or unethical business practices or violate or fail to comply with any provisions of this act or a predecessor act, or any rule or order under this act or a predecessor act, during association with that broker-dealer.

(G) Has engaged in dishonest or unethical business practices.

(H) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature; but the administrator may not enter an order against a broker-dealer or investment adviser under this subdivision without a finding of insolvency as to the broker-dealer or investment adviser.

(I) Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (b).

(J) Has delayed unreasonably delivery of securities to the extent that the registrant is in a position to control or direct the delivery of the securities. The burden of proof of inability to control or direct delivery shall rest with the registrant.

(K) Has represented that securities will be listed or that application for listing will be made, without basis in fact for the representation.

(L) Has induced excessive trading in a customer's account, or induced trading beyond the customer's known financial resources, if done with the intent to produce profits and commissions for the registrant or an agent in disregard of the customer's best interests as they reasonably appeared at the time of the transaction,

and if improper under the then existing circumstances.

(M) Has recommended to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry as may be necessary under the circumstances concerning the customer's investment objectives, financial situation and needs, and other information known by the person making the recommendation.

(N) Has recommended speculative low priced securities to customers without knowledge of or an attempt to obtain information concerning the customer's other securities holdings, financial situation, investment objectives, and ability to bear the risks inherent in the purchase of those securities, or has recommended the securities in disregard of the information.

(O) Has executed a transaction on behalf of a customer without authority to do so.

(P) Has executed transactions pursuant to general discretionary authority for the account of a customer without first obtaining general discretionary authority in writing from the customer. However, written authority is not required if the discretionary authority relates solely to the execution of an order and is limited in scope.

(Q) Has acted on an agency basis for both the seller and the purchaser of a security without disclosing that fact to both on the confirmation.

(R) Has, while acting on an agency basis for a customer in any transaction, charged the customer more than a fair commission or service charge, taking into consideration all relevant circumstances including market conditions with respect to a security at the time of the transaction, the expense of executing the order and the value of any service rendered by reason of experience in and knowledge of the security, and the market for the security; or has sold at an excessive markup in relation to the market price of the security at the time of sale in light of the volume of securities traded at that time.

(S) Has entered into a transaction with a customer in a security at a price not reasonably related to the market price of the security.

(T) Has extended credit to a customer in violation of the securities exchange act of 1934 or the regulations of the federal reserve board.

(U) Has employed in connection with the purchase or sale of a security a manipulative or deceptive device or contrivance.

(V) Has sold a security to or purchased a security from a customer without disclosing that the broker-dealer is acting as a market maker in that security or has a substantial position in the market.

(W) Has, while registered as an agent or investment adviser, borrowed money from a customer.

(X) Has made unauthorized use of the funds of a customer; or has hypothecated a customer's securities contract without having a lien thereon unless written consent of the customer was first obtained.

(Y) Has, while registered as an agent, effected securities transactions when those transactions were not recorded on the records of the employer broker-dealer.

(Z) Has operated an account under a fictitious name.

(2) The applicant or registrant has failed reasonably to supervise its agents if it is a broker-dealer or its employees if an investment adviser.

(3) The applicant or registrant has failed to pay the proper filing fee. The administrator may enter only a denial order under this subdivision, and it shall vacate the denial order when the deficiency has been corrected.

(b) The following provisions govern the application of subsection (a)(1)(I):

(1) The administrator may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer if he or she is an individual or an agent of the broker-dealer.

(2) The administrator may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser if he or she is an individual or any other person who represents the investment adviser in doing any of the acts which make him or her an investment adviser.

(3) The administrator may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both.

(4) The administrator shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer.

(5) The administrator shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When it finds that an applicant for registration as a broker-dealer is not qualified as an investment adviser, it may by order condition the applicant's registration as a broker-dealer upon his or her not transacting business in this state as an investment adviser.

(6) The administrator may by rule provide for an examination, which may be written or oral or both, to be

taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make him or her an investment adviser.

(c) The administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that the order has been entered and of the reasons therefor and that within 15 days after the receipt of a written request the matter will be set down for hearing. If a hearing is not requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) If the administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the administrator may by order cancel the registration or application.

(e) The administrator may institute a revocation or suspension proceeding under subsection (a)(1)(B) within 1 year after withdrawal from registration of a broker-dealer, agent, or investment adviser became effective and enter a revocation or suspension order as of the last date on which registration was effective.

(f) An order may not be entered under any part of this section except the first sentence of subsection (c) without all of the following:

(1) Appropriate prior notice to the applicant or registrant, as well as to the employer or prospective employer if the applicant or registrant is an agent.

(2) Opportunity for hearing.

(3) Written findings of fact and conclusions of law.

(g) The administrator may by order, if it finds the order to be in the public interest, impose a civil fine of \$1,000.00 on any registrant if it finds that the registrant, or in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser, has engaged in conduct prohibited by subsection (a)(1)(B), (G), or (J) to (Z).

(h) A violation of a provision of this section or action of the administrator pursuant to this section shall not subject a registrant to civil liability to a customer of the registrant unless that violation or action is contrary to another provision of this act.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.