

UNIFORM SECURITIES ACT (2002) (EXCERPT)
Act 551 of 2008

***** 451.2412.new THIS NEW SECTION IS EFFECTIVE OCTOBER 1, 2009 *****

451.2412.new Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration; discipline; examination; summary actions; liability of control person; limitation on proceeding.

Sec. 412. (1) If the administrator finds that the order is in the public interest and subsection (4) authorizes the action, an order under this act may deny an application or condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, or director, or a person having a similar status or performing similar functions, or any person directly or indirectly in control of the broker-dealer or investment adviser.

(2) If the administrator finds that the order is in the public interest and subsection (4) authorizes the action, an order under this act may revoke, suspend, condition, or limit the registration of a registrant and if the registrant is a broker-dealer or investment adviser, of a partner, officer, or director, or a person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser. However, the administrator may not do any of the following:

(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 1 year after the date of the order on which it is based.

(b) Under subsection (4)(e)(i) or (ii), issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (4) would authorize the action had the conduct occurred in this state.

(3) If the administrator finds that the order is in the public interest and subsection (4)(a) to (f), (i) to (j), or (l) to (n) authorizes the action, an order under this act may censure, impose a bar, or impose a civil fine in an amount not to exceed a maximum of \$10,000.00 for a single violation or \$500,000.00 for more than 1 violation on a registrant and, if the registrant is a broker-dealer or investment adviser, on a partner, officer, or director, a person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

(4) A person may be disciplined under subsections (1) to (3) if any of the following apply to the person:

(a) The person filed an application for registration in this state under this act or the predecessor act within the previous 10 years, which, as of the effective date of registration 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.

(b) The person willfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous 10 years.

(c) The person was convicted of any felony or within the previous 10 years was convicted of a misdemeanor involving a security, a commodity futures or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

(d) The person is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this act or the predecessor act, a state, the securities and exchange commission, or the United States 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.

(e) The person is the subject of an order, issued after notice and opportunity for hearing by any of the following:

(i) The securities or other financial services regulator of a state, or the securities and exchange commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative.

(ii) 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.

(iii) The securities and exchange commission or a self-regulatory organization suspending or expelling the registrant from membership in a self-regulatory organization.

(iv) A court adjudicating a United States postal service fraud.

(v) The insurance regulator of a state denying, suspending, or revoking the license or registration of an insurance agent.

(vi) A depository institution or financial services regulator suspending or barring the person from the

depository institution or other financial services business.

(f) The person is the subject of an adjudication or determination, after notice and opportunity for hearing, by the securities and exchange commission, the 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 willfully violated the securities act of 1933, the securities exchange act of 1934, the investment advisers act of 1940, the investment company act of 1940, or the 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.

(g) The person is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature. The administrator shall not enter an order against an applicant or registrant under this subdivision without a finding of insolvency as to the applicant or registrant.

(h) The person refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under section 411(4) or refuses access to a registrant's office to conduct an audit or inspection under section 411(4).

(i) The person 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 act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous 10 years.

(j) The person has not paid the proper filing fee within 30 days after having been notified by the administrator of a deficiency. The administrator shall vacate an order under this paragraph when the deficiency is corrected.

(k) After notice and opportunity for a hearing, 1 or more of the following have occurred within the previous 10 years:

(i) A court of competent jurisdiction has found the person to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated.

(ii) The person was found 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.

(iii) The person was found 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.

(l) The person 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.

(m) The person has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years.

(n) The person is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. If an application is made by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order shall not be based on this subdivision if the individual has successfully completed all examinations required by subsection (5). The administrator may require an applicant for registration under section 402 or 404 who has not been registered in a state within the 2 years preceding the filing of an application in this state to successfully complete an examination.

(5) A rule or order under this act may require that 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 under this act may waive an examination as to an individual and a rule under this act may waive an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(6) The administrator may suspend or deny an application summarily, restrict, condition, limit, or suspend a registration, or censure, bar, or impose a civil fine on a registrant pending final determination of an administrative proceeding. On the issuance of the 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 by a person subject to the order or is not ordered by the administrator within 30 days after the date of service of the order, the order is final. 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.

(7) Except under subsection (6), an order shall not be issued under this section unless all of the following have occurred:

(a) Appropriate notice has been given to the applicant or registrant.

(b) Opportunity for hearing has been given to the applicant or registrant.

(c) Findings of fact and conclusions of law have been made on the record pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(8) A person who 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 basis for discipline under this section.

(9) The administrator shall not institute a proceeding under subsection (1), (2), or (3) solely based on material facts actually known by the administrator unless an investigation or the proceeding is instituted within 1 year after the administrator actually knew the material facts.

History: 2008, Act 551, Eff. Oct. 1, 2009.