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## **S.B. 310**

124th General Assembly  
(As Introduced)

**Sens. Coughlin, Harris, Goodman, Hottinger, Jacobson**

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### **BILL SUMMARY**

- Modifies the requirements for registration of securities by requiring an individual who executes the application for registration by description or registration by qualification on behalf of the applicant to state the individual's relationship to the applicant and to certify certain specified information.
- Requires the Division of Securities to refuse any registration by description, by qualification, or by coordination if certain specified conditions exist.
- Allows the Director of the Department of Commerce, after consultation with the Attorney General, to apply to a court of common pleas for an order granting restitution to any purchaser or holder of securities or any recipient of advice regarding securities, that has suffered damages as a result of a violation of the Securities Law.
- Provides that a person who has a controlling interest in a person who is liable under the Securities Law generally is jointly and severally liable and to the same extent as the controlled person.
- Increases from four to five years after the purchase of securities, the rendering of investment advice, or the date of the sale or contract for the sale of securities the statute of limitations governing an action to recover loss or damage sustained by reason of a falsity in or omission of material facts in an offer to sell securities, to recover any loss that results from any advice to purchase securities that is given without disclosing an interest in the sale, or to void a sale or contract made in violation of the Securities Law.

- Prohibits a person from knowingly influencing, coercing, manipulating, or misleading any person engaged in the preparation, compilation, review, or audit of financial statements to be used in the purchase or sale of securities for the purpose of rendering the financial statements materially misleading.
- Prohibits a person, upon receiving notice of the Division of Securities' exercise of authority, from knowingly altering, destroying, mutilating, concealing, covering up, falsifying, or making a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the Division's exercise of authority.
- Increases the penalty for theft involving property or services of \$100,000 or more or involving property or services of \$1,000,000 or more and for theft from an elderly person or disabled adult involving property or services of \$25,000 or more.

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## CONTENT AND OPERATION

### Registration by description

Under existing law, transactions requiring the registration of a security may be consummated on compliance with R.C. 1707.08 and 1707.11. A description of the security, verified either by the oath of the person filing it or of any person having knowledge of the facts, must be filed with the Division of Securities by the issuer of the security, or by a majority of incorporators of the issuer prior to the election of officers if it is an incorporated issuer, or by licensed dealer, which

description must be on forms prescribed by the Division and must set forth the following information (R.C. 1707.08(B)):

- (1) The name of the issuer;
- (2) A brief description of the securities;
- (3) The amount of the securities to be offered after the filing of the description for sale in this state and, if all of the securities are not to be offered by the person filing the description, then the respective amounts to be offered by others, so far as those amounts are known, and the names and addresses of the other offerors;
- (4) A brief statement of the facts which show that the securities are the subject matter of a transaction enumerated in R.C. 1707.06;
- (5) The price at which the securities are to be offered for sale.

The bill modifies this provision by providing that the description of the securities be verified either by the oath of the *individual* filing it or of any *individual* having knowledge of the facts.

Under existing law, registration by description is completed when the description, together with a filing fee of \$50.00, in the form of cash, check, or United States postal money order, is delivered, or mailed by certified mail with postage prepaid, to the Division of Securities. The bill eliminates this provision. (R.C. 1707.08(B).)

The bill requires that the individual who executes the application for registration by description on behalf of the applicant must state the individual's relationship to the applicant and certify all of the following (R.C. 1707.08(C)):

- (1) The individual has executed the application on behalf of the applicant.
- (2) The individual is fully authorized to execute and file the application on behalf of the applicant.
- (3) The individual is familiar with the applicant's application.
- (4) To the best of the individual's knowledge, information and belief, the statements made in the application are true, and the documents submitted with the application are true copies of the original documents.

The bill also provides that a registration by description is effective seven business days after the Division of Securities receives the description on



applicable forms, together with a filing fee of \$50.00, if no proceeding is pending under R.C. 1707.13 (suspension and revocation of registration) or 1707.131 (refusal of registrations by description). However, the Division of Securities may permit an earlier effective date by rule or by issuing a certificate of acknowledgment for the registration by description. (R.C. 1707.08(D).)

### **Qualification of securities**

Under existing law, generally all securities must be qualified in the manner provided by law before being sold in this state. Applications for qualification, on forms prescribed by the Division of Securities, must be made in writing either by the issuer of the securities or by any licensed dealer desiring to sell them within this state and must be signed by the applicant, sworn to by any person having knowledge of the facts stated in the application, and filed in the office of the Division of Securities. The bill modifies this provision by replacing the word *person* with the word *individual*. Existing law also provides that the Division of Securities must require the applicant for qualification to submit certain specified information (see **COMMENT 1**).

The bill also requires that the individual who executes the application for qualification of securities on behalf of the applicant must state the individual's relationship to the applicant and certify that: (1) the individual has executed the application on behalf of the applicant, (2) the individual is fully authorized to execute and file the application on behalf of the applicant, (3) the individual is familiar with the applicant's application, and (4) to the best of the individual's knowledge, information, and belief, the statements made in the application are true, and the documents submitted with the application are true copies of the original documents. (R.C. 1707.09.)

### **Refusal of registration by description, by qualification, or by coordination by the Division of Securities**

Under the bill, the Division of Securities must refuse any registration by description, by qualification, or by coordination (see **COMMENT 2**) if any of the following applies (R.C. 1707.091(B)):

(1) The issuer is in the development stage and either has no specific business plan or purpose or has indicated that its business is to engage in a merger or acquisition with an unidentified company or companies, or other entities or persons.

(2) The issuer does not disclose in the final offering circular, prospectus, or form U-7 of the North American Securities Administrators Association that any future transaction with an officer, director, 5% shareholder, manager, trustee, or

general partner will be on terms no less favorable to the issuer than could be obtained from an independent third party.

(3) The issuer does not disclose both of the following in the final offering circular, prospectus, or form U-7 of the North American Securities Administrative Association:

(a) Any outstanding loan from the issuer to an officer, director, 5% shareholder, manager, trustee, or general partner is required to be repaid within six months of the offering, except for a loan or extension of credit made by a bank.

(b) Any future loan from the issuer to an officer, director, 5% shareholder, manager, trustee, or general partner will be for a bona fide business purpose and approved by a majority of the disinterested directors, 5% shareholders, managers, trustees, or general partners, or will be a type of transaction involving a director or executive officer of the issuer that is permitted by section 13(k) of the "Securities Exchange Act of 1934."

For purposes of the above provisions, "5% shareholder" means a beneficial owner of five per cent or more of the issuer's outstanding securities (R.C. 1707.131(A)).

### **Restitution**

The bill provides that, after consultation with the Attorney General, the Director of Commerce may apply to a court of common pleas of any county for an order granting restitution to any purchaser or holder of securities or any recipient of advice regarding securities, that has suffered damages as a result of a violation of the Securities Law. Upon a showing by the Director that a person has violated the Securities Law, but subject to the provision described below, the court, in addition to other legal or equitable remedies allowed by law, may order that restitution be made. (R.C. 1707.231(A) and (B).)

In any determination of the appropriate relief, both of the following apply (R.C. 1707.231(C)):

(1) The court must consider any other sanctions or remedies imposed by any other authority in connection with transactions constituting violations of the Securities Law.

(2) No purchaser or holder of securities or any recipient of advice, that is entitled to restitution, can recover a total amount in excess of the person's actual damages resulting from the violation of the Securities Law.

### Civil liability

Existing law specifies that the Securities Law creates no new civil liabilities and does not limit or restrict common law liabilities for deception or fraud other than as specified in R.C. 1707.042 (prohibitions relating to control bids), 1707.043 (manipulative practices; when profits of disposition of equity securities belong to corporation), 1707.41 (civil liability of seller for fraud), 1707.42 (civil liability of advisor), and 1707.43 (remedies of purchaser in unlawful sale). There is no civil liability for noncompliance with orders, requirements, rules, or regulations made by the Division of Securities under R.C. 1707.19 (refusal, suspension, and revocation of license), 1707.20 (rules, forms, orders of Division; immunity for good faith compliance), 1707.201 (rule adopting federal provision), and 1707.23 (enforcement powers of the Division of Securities). (R.C. 1707.40.)

The bill provides that the bill's new restitution provisions (see "Restitution," above) are an exception to the provisions of the prior paragraph. The bill also provides that every person, who, by or through stock ownership, agency, or otherwise, or who, pursuant to or in connection with an agreement or understanding with one or more other persons by or through stock ownership, agency, or otherwise, controls any person liable under the Securities Law, also is liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person had no knowledge of or reasonable grounds to believe in the existence of the facts by reason of which the liability of the controlled person is alleged to exist. (R.C. 1707.40(B).)

### Civil liability of seller for fraud

Under existing law, in addition to the other liabilities imposed by law, any person who, by a written or printed circular, prospectus, or advertisement, offers any security for sale, or receives the profits accruing from such sale, is liable to any person who purchased the security relying on such circular, prospectus, or advertisement, for the loss or damage sustained by such relying person by reason of the falsity of any material statement contained therein or for the omission therefrom of material facts, unless such offeror or person who receives the profits establishes that he had no knowledge of the publication thereof prior to the transaction complained of, or had just and reasonable grounds to believe such statement to be true or the omitted facts to be not material.

Whenever a corporation is so liable, each director of the corporation is likewise liable unless he shows that he had no knowledge of the publication complained of, or had just and reasonable grounds to believe the statement therein to be true or the omission of facts to be not material. Any director, upon the payment by him of a judgment so obtained against him, must be subrogated to the

rights of the plaintiff against such corporation, and must have the right of contribution for the payment of such judgment against such of his fellow directors as would be individually liable.

No action brought against any director, based upon the above-described liability may be brought unless it is brought within two years after the plaintiff knew, or had reason to know, of the facts by reason of which the actions of the person or the director were unlawful, or within *four* years after the purchase of the securities, whichever is the shorter period or, in the case of an action to enforce a right of contribution, it is brought within two years after the payment of the judgment for which contribution is sought. The bill increases the statute of limitations from *four* years to *five* years after the purchase of the securities. (R.C. 1707.41(D).)

### **Civil liability of advisor**

Existing law states that whoever, with intent to secure financial gain to self, advises and procures any person to purchase any security, and receives any commission or reward for the advice or services without disclosing to the purchaser the fact of the person's agency or interest in such sales, is liable to the purchaser for the amount of the purchaser's damage, upon tender of the security to, and suit brought against, the advisor, by the purchaser. No suit may be brought more than one year subsequent to the purchase. (R.C. 1707.42(A).) Whoever acts as an investment advisor or investment advisor representative in violation of the Securities Law is liable for damages resulting from the violation in an action at law in a court of competent jurisdiction. No person may bring an action more than *four* years after the rendering of the investment advice or two years after discovery of facts constituting the violation, whichever is the shorter period. The bill increases the statute of limitations from *four* years to *five* years after the rendering of investment advice. (R.C. 1707.42(B).)

### **Remedies of purchaser in unlawful sale**

Under existing law, every sale or contract for sale made in violation of the Securities Law is voidable at the election of the purchaser. The person making such sale or contract for sale, and every person who has participated in or aided the seller in any way in making such sale or contract for sale, are jointly and severally liable to such purchaser, in an action at law in any court of competent jurisdiction, upon tender to the seller in person or in open court of the securities sold or of the contract made, for the full amount paid by such purchaser and for all taxable court costs, unless the court determines that the violation did not materially affect the protection contemplated by the violated provision. No action for the recovery of the purchase price, and no other action for any recovery based upon or arising out of a sale or contract for sale made in violation of the Securities

Law may be brought more than two years after the plaintiff knew, or had reason to know, of the facts by reason of which the actions of the person or director were unlawful, or more than *four* years from the date of such sale or contract for sale, whichever is the shorter period. The bill increases the statute of limitations from *four* years to *five* years from the date of the sale or contract for sale. (R.C. 1707.43(B).)

### **Prohibitions**

R.C. 1707.44 prohibits various practices related to the Securities Law (see **COMMENT 3** for these prohibitions). The bill includes two new prohibitions. The bill prohibits a person from knowingly influencing, coercing, manipulating, or misleading any person engaged in the preparation, compilation, review, or audit of financial statements to be used in the purchase or sale of securities for the purpose of rendering the financial statements materially misleading (R.C. 1707.44(N)). The bill also prohibits a person, upon receiving notice of the Division of Securities' exercise of authority, from knowingly altering, destroying, mutilating, concealing, covering up, falsifying, or making a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the Division's exercise of authority.

The penalty for a violation of either of the above prohibitions is as follows (R.C. 1707.99--not in the bill):

(1) If the value of the funds or securities involved in the offense or the loss to the victim is less than \$500, the offender is guilty of a felony of the fifth degree, and the court may impose upon the offender an additional fine of not more than \$2,500.

(2) If the value of the funds or securities involved in the offense or the loss to the victim is \$500 or more but less than \$5,000, the offender is guilty of a felony of the fourth degree, and the court may impose upon the offender an additional fine of not more than \$5,000.

(3) If the value of the funds or securities involved in the offense or the loss to the victim is \$5,000 or more but less than \$25,000, the offender is guilty of a felony of the third degree, and the court may impose upon the offender an additional fine of not more than \$10,000.

(4) If the value of the funds or securities involved in the offense or the loss to the victim is \$25,000 or more but less than \$100,000, the offender is guilty of a felony of the second degree, and the court may impose upon the offender an additional fine of not more than \$15,000.

(5) If the value of the funds or securities involved in the offense or the loss to the victim is \$100,000 or more, the offender is guilty of a felony of the first degree, and the court may impose upon the offender an additional fine of not more than \$20,000.

### **Theft**

R.C. 2913.02 prohibits a person, with purpose to deprive the owner of property or services, from knowingly obtaining or exerting control over either the property or services in any of the following ways:

- (1) Without the consent of the owner or person authorized to give consent;
- (2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;
- (3) By deception;
- (4) By threat;
- (5) By intimidation.

Whoever violates this prohibition is guilty of theft. Generally, the penalty for theft is a misdemeanor of the first degree. There are also penalties based on the value of the property or services stolen. Under existing law, if the value of the property or services stolen is \$100,000 or more, a violation of this prohibition is aggravated theft, a felony of the third degree. The bill increases the penalty for aggravated theft to a felony of the second degree. The bill also states that if the value of the property or services stolen is \$1,000,000 or more, a violation of this prohibition is aggravated theft of one million dollars or more, a felony of the first degree. (R.C. 2913.02(B)(2).)

Existing law also provides that if the victim of theft is an elderly person or disabled adult, a violation is theft from an elderly person or disabled adult. Generally, a violation of this prohibition is a felony of the fifth degree. Under existing law, if the value of the property or services is \$25,000 or more, theft from an elderly person or disabled adult is a felony of the second degree. The bill increases to a felony of the first degree the penalty for theft from an elderly person or disabled adult involving property or services of \$25,000 or more. (R.C. 2913.02(B)(3).)

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## COMMENT

1. The Division of Securities must require the applicant for qualification of securities to submit the following information (R.C. 1707.09):

(a) The names and addresses of the directors or trustees and of the officers of the issuer, if the issuer is a corporation or an unincorporated association; of all the members of the issuer, if the issuer is a limited liability company in which management is reserved to its members; of all the managers of the issuer, if the issuer is a limited liability company in which management is not reserved to its members; of all partners, if the issuer is a general or limited partnership or a partnership association; and the name and address of the issuer, if the issuer is an individual;

(b) The address of the issuer's principal place of business and principal office in this state, if any;

(c) The purpose and general character of the business actually being transacted, or to be transacted, by the issuer, and the purpose of issuing the securities named in the application;

(d) A statement of the capitalization of the issuer; a balance sheet made up as of the most recent practicable date, showing the amount and general character of its assets and liabilities; a description of the security for the qualification of which application is being made; and copies of all circulars, prospectuses, advertisements, or other descriptions of the securities, that are then prepared by or for the issuer, or by or for the applicant if the applicant is not the issuer, or by or for both, to be used for distribution or publication in this state;

(e) A statement of the amount of the issuer's income, expenses, and fixed charges during the last fiscal year or, if the issuer has been in actual business less than one year, for the time that the issuer has been in actual business;

(f) A statement showing the price at which the security is to be offered for sale;

(g) A statement showing the considerations received or to be received by the issuer of the securities purchased or to be purchased from the issuer and an itemized statement of all expenses of financing to be paid from those considerations so as to show the aggregate net amount actually received or to be received by the issuer;

(h) All other information, including an opinion of counsel as to the validity of the securities that are the subject matter of the application, that the Division considers necessary to enable it to ascertain whether the securities are entitled to qualification;

(i) If the issuer is a corporation, there must be filed with the application a certified copy of its articles of incorporation with all amendments to the articles, if the articles or amendments are not already on file in the office of the Secretary of State; if the issuer is a limited liability company, there must be filed with the application a certified copy of its articles of organization with all amendments to the articles, if the articles or amendments are not already on file in the office of the Secretary of State; if the issuer is a trust or trustee, there must be filed with the application a copy of all instruments by which the trust was created; and if the issuer is a partnership or an unincorporated association, there must be filed with the application a copy of its articles of partnership or association and of all other papers pertaining to its organization, if the articles or other papers are not already on file in the office of the Secretary of State.

(j) If the application is made with respect to securities to be sold or distributed by or on behalf of the issuer, or by or on behalf of an underwriter, a statement showing that the issuer has received, or will receive at or prior to the delivery of those securities, not less than 85% of the aggregate price at which all those securities are sold by or on behalf of the issuer, without deduction for any additional commission, directly or indirectly, and without liability to pay any additional sum as commission;

(k) If the Division of Securities so permits with respect to a security, an applicant may file with the Division, in lieu of the Division's prescribed forms, a copy of the registration statement relating to the security, with all amendments to that statement, previously filed with the Securities and Exchange Commission under the "Securities Act of 1933," together with all additional data, information, and documents that the Division requires.

2. (a) Any security for which a registration statement has been filed pursuant to Section 6 of the Securities Act of 1933 or for which a notification form and offering circular has been filed pursuant to regulation A of the general rules and regulations of the Securities and Exchange Commission, in connection with the same offering may be registered by coordination.

(b) A registration statement filed by or on behalf of the issuer under this paragraph with the Division of Securities must contain the following information and be accompanied by the following items in addition to the consent to service of process required by R.C. 1707.11:

(1) One copy of the latest form of prospectus or offering circular and notification filed with the Securities and Exchange Commission;

(2) If the Division of Securities by rule or otherwise requires, a copy of the articles of incorporation and code of regulations or bylaws, or their substantial equivalents, as currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) If the Division of Securities requests, any other information, or copies of any other documents, filed with the Securities and Exchange Commission;

(4) An undertaking by the issuer to forward to the Division, promptly and in any event not later than the first business day after the day they are forwarded to or thereafter are filed with the Securities and Exchange Commission, whichever occurs first, all amendments to the federal prospectus, offering circular, notification form, or other documents filed with the Securities and Exchange Commission, other than an amendment that merely delays the effective date;

(5) A filing fee of \$100.

(c) A registration statement filed under this paragraph becomes effective either at the moment the federal registration statement becomes effective or at the time the offering may otherwise be commenced in accordance with the rules, regulations, or orders of the Securities and Exchange Commission, if all of the following conditions are satisfied:

(1) No stop order is in effect, no proceeding is pending under R.C. 1707.13, and no cease and desist order has been issued pursuant to R.C. 1707.23.

(2) The registration statement has been on file with the Division for at least 15 days or for such shorter period as the Division by rule or otherwise permits; provided, that if the registration statement is not filed with the Division within five days of the initial filing with the Securities and Exchange Commission, the registration statement must be on file with the Division for 30 days or for such shorter period as the Division by rule or otherwise permits.

(3) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file with the Division for two full business days or for such shorter period as the Division by rule or otherwise permits and the offering is made within those limitations.

(4) The Division has received a registration fee of one-tenth of one per cent of the aggregate price at which the securities are to be sold to the public in this state, which fee, however, shall in no case be less than \$100 or more than \$1,000.



(d) The issuer must promptly notify the Division by telephone or telegram of the date and time when the federal registration statement became effective, or when the offering may otherwise be commenced in accordance with the rules, regulations, or orders of the Securities and Exchange Commission, and of the contents of the price amendment, if any, and must promptly file the price amendment.

"Price amendment" for the purpose of these provisions, means the final federal registration statement amendment that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

If the Division fails to receive the required notice and required copies of the price amendment, the Division may enter a provisional stop order retroactively denying effectiveness to the registration statement or suspending its effectiveness until there is compliance with these provisions, provided the Division promptly notifies the issuer or its representative by telephone or telegram, and promptly confirms by letter or telegram when it notifies by telephone, of the entry of the order. If the issuer or its representative proves compliance with the requirements of this paragraph as to notice and price amendment filing, the stop order is void as of the time of its entry. The Division may by rule or otherwise waive either or both of the conditions specified in (c)(2) and (3) above. If the federal registration statement becomes effective, or if the offering may otherwise be commenced in accordance with the rules, regulations, or orders of the Securities and Exchange Commission, before all of the conditions specified in (c) and (d) above are satisfied and they are not waived by the Division the registration statement becomes effective as soon as all of the conditions are satisfied.

If the issuer advises the Division of the date when the federal registration statement is expected to become effective, or when the offering may otherwise be commenced in accordance with the rules, regulations, or orders of the Securities and Exchange Commission, the Division must promptly advise the issuer or its representative by telephone or telegram, at the issuer's expense, whether all of the conditions have been satisfied or whether the Division then contemplates the institution of a proceeding under R.C. 1707.13 or 1707.23, but such advice does not preclude the institution of such a proceeding at any time. (R.C. 1707.091.)

3. (a)(1) No person may engage in any act or practice that violates R.C. 1707.14(A), (B), or (C), and no salesperson may sell securities in this state without being licensed pursuant to R.C. 1707.16.

(2) No person may engage in any act or practice that violates R.C. 1707.141(A) or R.C. 1707.161.



(b) No person may knowingly make or cause to be made any false representation concerning a material and relevant fact, in any oral statement or in any prospectus, circular, description, application, or written statement, for any of the following purposes:

(1) Registering securities or transactions, or exempting securities or transactions from registration, under the Securities Law;

(2) Securing the qualification of any securities under the Securities Law;

(3) Procuring the licensing of any dealer, salesperson, investment adviser, or investment adviser representative under the Securities Law;

(4) Selling any securities in this state;

(5) Advising for compensation, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities;

(6) Submitting a notice filing to the Division under R.C. 1707.092 or 1707.141.

(c) No person may knowingly sell, cause to be sold, offer for sale, or cause to be offered for sale, any security that comes under any of the following descriptions:

(1) Is not exempt under R.C. 1707.02, nor the subject matter of one of the transactions exempted in R.C. 1707.03, 1707.04, or 1707.34, has not been registered by coordination or qualification, and is not the subject matter of a transaction that has been registered by description;

(2) The prescribed fees for registering by description, by coordination, or by qualification have not been paid in respect to such security;

(3) Such person has been notified by the Division, or has knowledge of the notice, that the right to buy, sell, or deal in such security has been suspended or revoked, or that the registration by description, by coordination, or by qualification under which it may be sold has been suspended or revoked;

(4) The offer or sale is accompanied by a statement that the security offered or sold has been or is to be in any manner indorsed by the Division.

(d) No person who is an officer, director, or trustee of, or a dealer for, any issuer, and who knows such issuer to be insolvent in that the liabilities of the issuer exceed its assets, may sell any securities of or for any such issuer, without disclosing the fact of the insolvency to the purchaser.

(e) No person with intent to aid in the sale of any securities on behalf of the issuer may knowingly make any representation not authorized by such issuer or at material variance with statements and documents filed with the Division by such issuer.

(f) No person, with intent to deceive, may sell, cause to be sold, offer for sale, or cause to be offered for sale, any securities of an insolvent issuer, with knowledge that such issuer is insolvent in that the liabilities of the issuer exceed its assets, taken at their fair market value.

(g) No person in purchasing or selling securities may knowingly engage in any act or practice that is, in the Securities Law, declared illegal, defined as fraudulent, or prohibited.

(h) No licensed dealer may refuse to buy from, sell to, or trade with any person because the person appears on a blacklist issued by, or is being boycotted by, any foreign corporate or governmental entity, nor sell any securities of or for any issuer who is known in relation to the issuance or sale of such securities to have engaged in such practices.

(i) No dealer in securities, knowing that the dealer's liabilities exceed the reasonable value of the dealer's assets, may accept money or securities, except in payment of or as security for an existing debt, from a customer who is ignorant of the dealer's insolvency, and thereby cause the customer to lose any part of the customer's securities or the value of those securities, by doing either of the following without the customer's consent:

(1) Pledging, selling, or otherwise disposing of such securities, when the dealer has no lien on or any special property in such securities;

(2) Pledging such securities for more than the amount due, or otherwise disposing of such securities for the dealer's own benefit, when the dealer has a lien or indebtedness on such securities.

(j) No person, with purpose to deceive, may make, issue, publish, or cause to be made, issued, or published any statement or advertisement as to the value of securities, or as to alleged facts affecting the value of securities, or as to the financial condition of any issuer of securities, when the person knows that such statement or advertisement is false in any material respect.

(k) No person, with purpose to deceive, may make, record, or publish or cause to be made, recorded, or published, a report of any transaction in securities which is false in any material respect.

(l) No dealer may engage in any act that violates the provisions of section 15(c) or 15(g) of the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C.A. 78o(c) or (g), or any rule or regulation promulgated by the Securities and Exchange Commission thereunder.

(m)(1) No investment adviser or investment adviser representative may do any of the following:

(A) Employ any device, scheme, or artifice to defraud any person;

(B) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;

(C) In acting as principal for the investment adviser's or investment adviser representative's own account, knowingly sell any security to or purchase any security from a client, or in acting as salesperson for a person other than such client, knowingly effect any sale or purchase of any security for the account of such client, without disclosing to the client in writing before the completion of the transaction the capacity in which the investment adviser or investment adviser representative is acting and obtaining the consent of the client to the transaction. This provision does not apply to any investment adviser registered with the Securities and Exchange Commission under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-3, or to any transaction with a customer of a licensed dealer or salesperson if the licensed dealer or salesperson is not acting as an investment adviser or investment adviser representative in relation to the transaction.

(D) Engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.

(2) No investment adviser or investment adviser representative licensed or required to be licensed under the Securities Law may take or have custody of any securities or funds of any person, except as provided in rules adopted by the Division.

(3) In the solicitation of clients or prospective clients, no person may make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made not misleading in light of the circumstances under which the statements were made.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-14-02	p. 2132

S0310-I/nlr

