

Effective 5/10/2016

61-1-20 Enforcement.

- (1) Whenever it appears to the director that a person has engaged, is engaging, or is about to engage in an act or practice constituting a violation of this chapter or a rule or order under this chapter, in addition to specific powers granted in this chapter:
 - (a) the director may issue an order directing the person to appear before the commission and show cause why an order should not be issued directing the person to cease and desist from engaging in the act or practice, or doing an act in furtherance of the activity;
 - (b) the order to show cause shall state the reasons for the order and the date of the hearing;
 - (c) the director shall promptly serve a copy of the order to show cause upon a person named in the order;
 - (d) the commission shall hold a hearing on the order to show cause no sooner than 10 business days after the order is issued;
 - (e) after a hearing, the commission may:
 - (i) issue an order to cease and desist from engaging in an act or practice constituting a violation of this chapter or a rule or order under this chapter;
 - (ii) impose a fine in an amount determined after considering the factors set forth in Section 61-1-31;
 - (iii) order disgorgement;
 - (iv) order restitution;
 - (v) order rescission;
 - (vi) bar or suspend that person from associating with a licensed broker-dealer or investment adviser in this state; and
 - (vii) impose a combination of sanctions in this Subsection (1)(e).
- (2)
 - (a) The director may bring an action in the appropriate district court of this state or the appropriate court of another state to enjoin an act or practice and to enforce compliance with this chapter or a rule or order under this chapter.
 - (b) Upon a proper showing in an action brought under this section, the court may:
 - (i) issue a permanent or temporary, prohibitory or mandatory injunction;
 - (ii) issue a restraining order or writ of mandamus;
 - (iii) enter a declaratory judgment;
 - (iv) appoint a receiver or conservator for the defendant or the defendant's assets;
 - (v) order disgorgement;
 - (vi) order rescission;
 - (vii) order restitution;
 - (viii) impose a fine in an amount determined after considering the factors set forth in Section 61-1-31; and
 - (ix) enter any other relief the court considers just.
 - (c) The court may not require the division to post a bond in an action brought under this Subsection (2).
- (3) An order issued under Subsection (1) shall be accompanied by written findings of fact and conclusions of law.
- (4) When determining the severity of a sanction to be imposed under this section, the commission or court shall consider whether:
 - (a) the person against whom the sanction is to be imposed exercised undue influence; or
 - (b) the person against whom the sanction is imposed under this section knows or should know that an investor in the investment that is the grounds for the sanction is a vulnerable adult.

Amended by Chapter 401, 2016 General Session