

Effective 5/10/2016

61-1-6 Sanctions.

- (1) Subject to the other provisions of this section and by means of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act:
 - (a) the commission may issue an order:
 - (i) suspending or revoking a license;
 - (ii) barring or censuring a licensee or an officer, director, partner, or person occupying a similar status or performing similar functions for a licensee from employment with a licensed broker-dealer or investment adviser;
 - (iii) restricting or limiting a licensee as to a function or activity of the business for which a license is required in this state;
 - (iv) imposing a fine in an amount determined after considering the factors set forth in Section 61-1-31;
 - (v) requiring disgorgement;
 - (vi) requiring restitution;
 - (vii) requiring rescission; or
 - (viii) taking any combination of actions under this Subsection (1)(a); or
 - (b) the director may deny a license.
- (2)
 - (a) The commission may impose a sanction in accordance with Subsection (1)(a) or the director may impose a sanction in accordance with Subsection (1)(b) if the commission or director finds:
 - (i) that it is in the public interest; and
 - (ii) with respect to the applicant or licensee or, in the case of a broker-dealer or investment adviser, a partner, officer, or director, or a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer or investment adviser, that the person:
 - (A) has filed an application for a license that, as of the effective date of the application or as of any date after filing in the case of an order denying effectiveness:
 - (I) was incomplete in a material respect; or
 - (II) contained a statement that was, in light of the circumstances under which it was made, false or misleading with respect to a material fact;
 - (B) has willfully violated or willfully failed to comply with this chapter or a predecessor act or a rule or order under this chapter or a predecessor act;
 - (C) was convicted of, or entered a plea of guilty, a plea of no contest, a plea in abeyance, or a similar plea of guilty to:
 - (I) a misdemeanor involving:
 - (Aa) fraud or dishonesty; or
 - (Bb) a security or any aspect of the securities business; or
 - (II) a felony;
 - (D) is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing a conduct or practice involving any aspect of the securities business;
 - (E)
 - (I) is the subject of an order of the commission or a predecessor suspending or revoking a license as a broker-dealer, agent, investment adviser, or investment adviser representative; or
 - (II) is the subject of an order of the director or a predecessor denying a license as a broker-dealer, agent, investment adviser, or investment adviser representative;

(F) subject to Subsection (2)(b), is the subject of:

(I) an adjudication or determination, within the past five years by a securities or commodities agency or administrator of another state, Canadian province or territory, or a court of competent jurisdiction that the person has willfully violated:

(Aa) the Securities Act of 1933;

(Bb) the Securities Exchange Act of 1934;

(Cc) the Investment Advisers Act of 1940;

(Dd) the Investment Company Act of 1940;

(Ee) the Commodity Exchange Act; or

(Ff) the securities or commodities law of another state; or

(II) an order:

(Aa) entered within the past five years by the securities administrator of a state or Canadian province or territory or by the Securities and Exchange Commission denying or revoking a license as a broker-dealer, agent, investment adviser, or investment adviser representative, or the substantial equivalent of those terms;

(Bb) of the Securities and Exchange Commission suspending or expelling the person from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934; or

(Cc) that is a United States post office fraud order;

(G) has engaged in dishonest or unethical practices in the securities business;

(H) is insolvent, either in the sense that liabilities exceed assets or in the sense that obligations cannot be met as they mature, except that the director or commission may not enter an order against a broker-dealer or investment adviser under this Subsection (2)(a)(ii)(H) without a finding of insolvency as to the broker-dealer or investment adviser;

(I) is not qualified on the basis of the lack of training, experience, and knowledge of the securities business, except as otherwise provided in Subsection (5);

(J) has failed reasonably to supervise the person's:

(I) agents or employees, if the person is a broker-dealer; or

(II) investment adviser representatives or employees, if the person is an investment adviser;

(K) has failed to pay the proper filing fee within 30 days after being notified by the division of a deficiency;

(L) subject to Subsection (2)(c), is a licensee or applicant that is materially the same entity as an entity that is defunct, insolvent, statutorily disqualified, barred, or described in Subsection (2)(a)(ii)(D); or

(M) has had a final judgment entered against the person in a civil action on grounds of:

(I) fraud;

(II) embezzlement;

(III) misrepresentation; or

(IV) deceit.

(b)

(i) The division may not commence an agency action to revoke or suspend a license under Subsection (2)(a)(ii)(F) more than one year from the day on which the order on which the division relies is entered.

(ii) The commission or director may not enter an order under Subsection (2)(a)(ii)(F) on the basis of an order under another state's law unless that order is issued on the basis of facts that would constitute a ground for an agency action under this section on the day on which the notice of agency action is filed.

(c)

- (i) For purposes of Subsection (2)(a)(ii)(L), the director or commission may consider one or more factors in determining whether an entity is materially the same as another entity including the following:
 - (A) the entity has one or more of the same executive officers as the prior entity;
 - (B) the entity conducts operations in the same location as the prior entity;
 - (C) the entity employs two or more agents from the prior entity;
 - (D) the entity solicits or serves two or more customers of the prior entity;
 - (E) the entity has a name similar to the prior entity; or
 - (F) another factor showing a relationship between the entity and the prior entity.
- (ii) In addition to imposing a sanction in accordance with Subsection (1), for an entity that is materially the same as an entity described in Subsection (2)(a)(ii)(L), the director or the commission may:
 - (A) limit the license of the entity; or
 - (B) require additional disclosures to the customers or employees of the entity.
- (3) The director may enter a denial order under Subsection (2)(a)(ii)(K), but shall vacate the order when the deficiency is corrected.
- (4) The division may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to the division when the license became effective unless the proceeding is instituted within the 120 days after the day on which the license takes effect.
- (5) The following provisions govern the application of Subsection (2)(a)(ii)(I):
 - (a) The director or commission may not enter an order against a broker-dealer on the basis of the lack of qualification of a person other than:
 - (i) the broker-dealer if the broker-dealer is an individual; or
 - (ii) an agent of the broker-dealer.
 - (b) The director or commission may not enter an order against an investment adviser on the basis of the lack of qualification of a person other than:
 - (i) the investment adviser if the investment adviser is an individual; or
 - (ii) an investment adviser representative.
 - (c) The director or commission may not enter an order solely on the basis of lack of experience if the applicant or licensee is qualified by training or knowledge.
 - (d) The director or commission shall consider that:
 - (i) an agent who will work under the supervision of a licensed broker-dealer need not have the same qualifications as a broker-dealer; and
 - (ii) an investment adviser representative who will work under the supervision of a licensed investment adviser need not have the same qualifications as an investment adviser.
 - (e)
 - (i) The director or commission shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent.
 - (ii) When the director finds that an applicant for a license as a broker-dealer is not qualified as an investment adviser, the director may condition the applicant's license as a broker-dealer upon the applicant's not transacting business in this state as an investment adviser.
 - (f)
 - (i) The division may by rule provide for examinations, which may be written or oral or both, to be taken by any class of or all applicants.
 - (ii) The division may by rule or order waive the examination requirement as to a person or class of persons if the division determines that the examination is not necessary for the protection of investors.

(6) If the director finds that a licensee or applicant for a license is no longer in existence, has ceased to do business as a broker-dealer, agent, investment adviser, or investment adviser representative, 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 division may summarily cancel or deny the license or application according to the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(7)
(a) Withdrawal from license as a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective 30 days after receipt of an application to withdraw or within a shorter period of time as determined by the director, unless:

- (i) a revocation or suspension proceeding is pending when the application is filed;
- (ii) a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the application is filed; or
- (iii) additional information is requested by the division regarding the withdrawal application.

(b)
(i) If a proceeding described in Subsection (7)(a) is pending or instituted, the director shall designate by order when and under what conditions the withdrawal becomes effective.
(ii) If additional information is requested, withdrawal is effective 30 days after the additional information is filed.

(c)
(i) If no proceeding is pending or instituted, and withdrawal automatically becomes effective, the director may initiate a revocation or suspension proceeding under this section within one year after withdrawal becomes effective.
(ii) The commission shall enter an order under Subsection (2)(a)(ii)(B) as of the last date on which the license is effective.

Amended by Chapter 401, 2016 General Session