
By: **Delegates Barve and Kach**

Introduced and read first time: February 13, 2004

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Securities Act - Broker-Dealers and Agents - Fiduciary Duty**

3 FOR the purpose of providing that a broker-dealer is a fiduciary and has a duty to act
4 primarily for the benefit of the broker-dealer's clients; prohibiting a
5 broker-dealer from engaging in dishonest or unethical practices; providing that
6 an agent is a fiduciary and has a duty to act primarily for the benefit of the
7 agent's clients; prohibiting an agent from engaging in dishonest or unethical
8 practices; authorizing the Securities Commissioner of the Division of Securities
9 to deny, suspend, or revoke the registration of a broker-dealer or an agent under
10 certain circumstances; and generally relating to the fiduciary duty of
11 broker-dealers and agents.

12 BY adding to

13 Article - Corporations and Associations
14 Section 11-305 and 11-306
15 Annotated Code of Maryland
16 (1999 Replacement Volume and 2003 Supplement)

17 BY repealing and reenacting, with amendments,

18 Article - Corporations and Associations
19 Section 11-412
20 Annotated Code of Maryland
21 (1999 Replacement Volume and 2003 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article - Corporations and Associations**

25 11-305.

26 (A) A BROKER-DEALER IS A FIDUCIARY AND HAS A DUTY TO ACT PRIMARILY
27 FOR THE BENEFIT OF ITS CLIENTS.

1 (B) A BROKER-DEALER MAY NOT ENGAGE IN DISHONEST OR UNETHICAL
2 PRACTICES.

3 11-306.

4 (A) AN AGENT IS A FIDUCIARY AND HAS A DUTY TO ACT PRIMARILY FOR THE
5 BENEFIT OF ITS CLIENTS.

6 (B) AN AGENT MAY NOT ENGAGE IN DISHONEST OR UNETHICAL PRACTICES.

7 11-412.

8 (a) The Commissioner by order may deny, suspend, or revoke any registration
9 if the Commissioner finds that the order is in the public interest and that the
10 applicant or registrant or, in the case of a broker-dealer or investment adviser, any
11 partner, officer, or director, any person occupying a similar status or performing
12 similar functions, or any person directly or indirectly controlling the broker-dealer or
13 investment adviser:

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

19 (2) Has willfully violated or willfully failed to comply with any provisions
20 of this title, a predecessor act, or any rule or order under this title or a predecessor
21 act;

22 (3) Has been convicted, within the last 10 years, of a felony, or of an
23 offense that:

24 (i) Involves the taking of a false oath, the making of a false report,
25 bribery, perjury, burglary, or attempt or conspiracy to commit any of those offenses;

26 (ii) Arises out of the conduct of business as, or employment by or
27 association with, a broker-dealer, municipal or government securities broker or
28 dealer, investment adviser, bank, savings institution, trust company, credit union,
29 savings and loan association, insurance company or insurance producer, fiduciary,
30 investment company, accountant, or real estate agent or broker, or any entity or
31 person required to be registered under the Commodity Exchange Act; or

32 (iii) Involves the larceny, theft, robbery, extortion, forgery,
33 counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or
34 misappropriation of funds or securities, or an attempt or conspiracy to commit any of
35 those offenses;

36 (4) Is permanently or temporarily enjoined by any court of competent
37 jurisdiction from engaging in or continuing any conduct or practices involving any

1 aspect of the securities or investment advisory or any other financial services
2 business;

3 (5) Is the subject of an order of the Commissioner denying, suspending,
4 or revoking registration as a broker-dealer, agent, investment adviser, or investment
5 adviser representative;

6 (6) Is the subject of an order entered within the past five years by the
7 securities administrator or any other financial services regulator of any state or by
8 the Securities and Exchange Commission denying or revoking registration as a
9 broker-dealer, investment adviser, investment adviser representative, or agent or the
10 substantial equivalent of those terms as defined in this title, or any other financial
11 services license or registration, or is the subject of an order by the Commodity
12 Futures Trading Commission denying, suspending, or revoking registration under the
13 Commodity Exchange Act, or is suspended or expelled from a national securities
14 exchange or national securities association registered under the Securities Exchange
15 Act of 1934 either by action of a national securities exchange or national securities
16 association, the effect of which action has not been stayed by appeal or otherwise, or
17 by order of the Securities and Exchange Commission, or is the subject of a United
18 States post office fraud order, but:

19 (i) The Commissioner may not institute a revocation or suspension
20 proceeding under this item (6) more than one year from the date of the order or action
21 relied on; and

22 (ii) The Commissioner may not enter an order under this item (6)
23 on the basis of an order under another state act unless that order was based on facts
24 which would currently constitute a ground for an order under this section;

25 (7) Has engaged in dishonest or unethical practices in the securities or
26 investment advisory or any other financial services business;

27 (8) Is insolvent, either in the sense that the person's liabilities exceed
28 assets or in the sense that the person cannot meet obligations as they mature, but the
29 Commissioner may not enter an order against a broker-dealer or investment adviser
30 under this item (8) without a finding of insolvency as to the broker-dealer or
31 investment adviser;

32 (9) Is not qualified on the basis of factors such as training, experience,
33 and knowledge of the securities or investment advisory or any other financial services
34 business, except as otherwise provided in subsection (c) of this section;

35 (10) Has failed reasonably to supervise the broker-dealer's agents, if the
36 person is a broker-dealer, or the investment adviser's representatives, if the person is
37 an investment adviser; or

38 (11) Has failed to pay the proper fee, but the Commissioner may enter
39 only a denial order under this item (11), and the Commissioner shall vacate the order
40 when the deficiency is corrected.

1 (B) (1) THE COMMISSIONER BY ORDER MAY DENY, SUSPEND, OR REVOKE
2 ANY REGISTRATION IF THE COMMISSIONER FINDS THAT THE ORDER IS IN THE
3 PUBLIC INTEREST AND THAT A BROKER-DEALER OR ANY PARTNER, OFFICER, OR
4 DIRECTOR, ANY PERSON OCCUPYING A SIMILAR STATUS OR PERFORMING SIMILAR
5 FUNCTIONS, OR ANY PERSON DIRECTLY OR INDIRECTLY CONTROLLING THE
6 BROKER-DEALER HAS VIOLATED OR FAILED TO COMPLY WITH THE PROVISIONS OF §
7 11-305 OF THIS TITLE.

8 (2) THE COMMISSIONER BY ORDER MAY DENY, SUSPEND, OR REVOKE
9 ANY REGISTRATION IF THE COMMISSIONER FINDS THAT THE ORDER IS IN THE
10 PUBLIC INTEREST AND THAT AN AGENT HAS VIOLATED OR FAILED TO COMPLY WITH
11 THE PROVISIONS OF § 11-306 OF THIS TITLE.

12 [(b)] (C) (1) In this subsection, "final administrative order" does not include
13 an order that is stayed or subject to further review or appeal.

14 (2) If an applicant for initial registration discloses the existence of a final
15 judicial or administrative order to the Commissioner before the effective date of the
16 initial registration, the Commissioner may not institute a suspension or revocation
17 proceeding based solely on the judicial or administrative order unless the proceeding
18 is initiated within 90 days immediately following the effective date of the applicant's
19 initial registration.

20 [(c)] (D) The following provisions govern the application of subsection (a)(9) of
21 this section:

22 (1) The Commissioner may not enter an order against a broker-dealer
23 on the basis of the lack of qualification of any person other than that broker-dealer if
24 the broker-dealer is an individual, or an agent of the broker-dealer;

25 (2) The Commissioner may not enter an order against an investment
26 adviser on the basis of the lack of qualification of any person other than that
27 investment adviser if the investment adviser is an individual, or an investment
28 adviser representative of the investment adviser;

29 (3) The Commissioner may not enter an order solely on the basis of lack
30 of experience if the applicant or registrant is qualified by training or knowledge or
31 both;

32 (4) The Commissioner shall consider that an agent who will work under
33 the supervision of a registered broker-dealer need not have the same qualifications
34 as a broker-dealer and that an investment adviser representative who will work
35 under the supervision of a registered investment adviser need not have the same
36 qualifications as an investment adviser;

37 (5) The Commissioner shall consider that an investment adviser is not
38 necessarily qualified solely on the basis of experience as a broker-dealer or agent.
39 When the Commissioner finds that an applicant for initial or renewal registration as
40 a broker-dealer is not qualified as an investment adviser, the Commissioner by order

1 may condition the applicant's registration as a broker-dealer upon the broker-dealer
2 not transacting business in this State as an investment adviser; and

3 (6) The Commissioner by rule may provide for an examination, which
4 may be written, oral, or both, to be taken by any class of or all applicants. The
5 Commissioner by rule or order may waive the examination requirement as to a person
6 or class of persons if the Commissioner determines that the examination is not
7 necessary or appropriate in the public interest or for the protection of investors.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2004.