

The State Securities Administrator and the Uniform Securities Act

INTRODUCTION

The state securities administrator has the authority to enforce all of the provisions of the Uniform Securities Act (USA) within the administrator's state. The state securities administrator may deny, revoke, or suspend the registration of a security, an agent, or a firm. The administrator may also revoke an exemption from registration, subpoena and investigate any registrant, and amend rules as required. The administrator's rules and orders have the same authority as any part of the USA, but the administrator's rules and orders do not become part of the USA. The USA requires the administrator to publish all rules and orders.

ACTIONS BY THE STATE SECURITIES ADMINISTRATOR

A state securities administrator may take action to bar, suspend, censure, or restrict the activities of a registrant if the administrator finds it to be in the public interest and the applicant or registrant does one or more of the following:

- Fails to pay filing fees.
- Is insolvent.

- Fails to supervise employees.
- Willfully violates the securities or banking laws of another country or has had a foreign regulator deny, revoke, or suspend its registration within the last five years.
- Violates federal securities or commodities laws.
- Has been convicted of any felony within the last 10 years.
- Has been convicted of a securities-related misdemeanor.
- Willfully violates any provision of the USA.
- Files an incomplete, false, or misleading application for registration.
- Has been temporarily or permanently enjoined from the securities business by a court of law.
- Has been subject to an order by a state securities administrator denying, revoking, or suspending its registration.
- Is deemed unqualified due to a lack of experience, training, or knowledge.
- Engages in unethical or dishonest business practices.

The administrator deeming it is in the public interest is not enough to take action. The applicant must have been involved in one or more of the activities listed above. If the administrator is going to take action against the applicant, the applicant must be promptly notified in writing of the administrator's intention. The administrator must also provide a hearing for the applicant within 15 days of receiving the request for a hearing. Although an administrator may deny an applicant's registration based on the applicant's lack of knowledge, training, or experience, a lack of experience may not be the sole basis for the denial of a registration.

CANCELLATION OF A REGISTRATION

The administrator may cancel the registration of a broker dealer, investment adviser, or an agent if the registrant or applicant no longer exists, has ceased doing business, or cannot be located. If, for example, the administrator sends a notice to a registrant and the notice is returned to the administrator as undeliverable with no known forwarding address, the administrator would have reasonable grounds for canceling the registrations. Additionally, an individual's registration may be cancelled if the person has been deemed mentally incompetent by a court of law. The cancellation of a registration by the administrator is not a disciplinary or punitive action; it is more clerical in nature.

WITHDRAWAL OF A REGISTRATION

A broker dealer, investment adviser, or an agent may request that his or her registration with the state be withdrawn. The withdrawal will become effective 30 days after the administrator receives the request if no revocation or suspension proceedings are in process. The administrator has up to one year after the withdrawal of an applicant's registration to take action against the applicant to suspend or revoke the registration.

ACTIONS AGAINST AN ISSUER OF SECURITIES

The administrator may deny, revoke, or suspend the registration of a security if it deems it is in the public interest and:

- Any officer or director has been convicted of a securities crime.
- The registration statement is false, misleading, or incomplete.
- The security is subject to a court injunction.
- The promoter's fees or offering expenses are excessive or unreasonable.
- The offering is fraudulent.

The administrator may also revoke a security's exemption from registration if it is in the public interest and the exemption was based on a false, misleading, fraudulent, or unethical practice or statement. An administrator may, without prior notice, revoke the exempt status of a securities transaction.

RULE CHANGES

An administrator may change or amend rules as he or she deems necessary. All rules enacted by the administrator will have the same force and effect as rules enacted under the USA. An administrator's order may be appealed to the court system within 60 days. A rule enacted by the administrator applies to all registrants in the administrator's state.

ADMINISTRATIVE ORDERS

If the state securities administrator issues an order, that order will be enforced against a specific registrant or activity. For example, if a broker

dealer was engaging in sales practices that violated the USA, the administrator could issue an order suspending that broker dealer's registration with the state for 60 days. Any affected party may challenge an administrator's order within 60 days of issuance by filing a written petition. During the time that the challenge is pending the order will remain in effect. If the administrator determines that the order is no longer required or a court determines that the order is no longer required the administrator's order will be vacated.

INTERPRETIVE OPINIONS

A person who is actively engaged in the securities business may from time to time seek the opinion of the state securities administrator to ensure that the business being conducted is in line with the rules of the USA as amended within the state. In response to the request, the administrator may issue an opinion regarding the activity, issue a no action letter, or elect not to issue an opinion. If the administrator issues an interpretive opinion, the administrator may charge a fee for the interpretation of the state's rules.

ADMINISTRATIVE RECORDS

The state securities administrator will maintain all records relating to the business of the state securities administrator and will make the records available upon request. The administrator will provide certified copies if specifically requested. The administrator may charge a reasonable fee for the production and delivery of the records. The records to be maintained include:

- All applications for broker dealer registration.
- All applications for investment adviser registration.
- All applications for agent registration for broker dealers and investment advisers.
- All applications for registrations of securities and registration statements.
- All orders, actions, and interpretive opinions entered.
- All written claims for exemptions from registration.

The records may be maintained electronically, on microfilm, or on any other device the administrator may elect.

INVESTIGATIONS

A state securities administrator may investigate a broker dealer, a state investment adviser, or an agent in any state if the administrator believes that a violation has taken or may take place. The administrator may also subpoena people, books, and records in any state and may administer oaths to compel people to testify. Anyone who displays contempt for the administrator's order is guilty of contumacy and may be found in contempt of court if the administrator asks the court to enforce its orders.

CIVIL AND CRIMINAL PENALTIES

A state securities administrator may issue a cease and desist order without a prior hearing or notice. The administrator may appoint a receiver to oversee the assets of violators and may require them to make restitution. The administrator does not have the power to arrest anyone and must refer the case to the attorney general or other office empowered to make arrests. Anyone who is found to have knowingly and willfully criminally violated the laws of the USA is subject to a \$5,000 fine and/or three years in prison. People who criminally violate the Investment Advisers Act of 1940 are subject to a \$10,000 fine and/or five years in prison. The statute of limitations for an administrator taking action is five years.

An investor who sues for a violation of the Uniform Securities Act is entitled to receive:

- The value that they paid for the securities minus any income received during the holding period (e.g., dividends).
- Interest on their money for the holding period.
- Court costs.

Civil actions may be taken against:

- An agent
- A firm
- The agent's supervisor

If an investment adviser violates the provisions of the USA, clients may sue to recover:

- Advisory fees.
- Losses.
- Interest on the money.
- Attorney fees and court costs, minus any income received as a result of the advice.

JURISDICTION OF THE STATE SECURITIES ADMINISTRATOR

Whereas the USA sets forth model legislation for state securities laws, it is the responsibility of the state securities administrator to administer the laws within a particular state.

ADMINISTRATOR'S JURISDICTION OVER SECURITIES TRANSACTIONS

The state securities administrator has jurisdiction over securities transactions that:

- Originated within the state.
- Are directed into the state.
- Are accepted in the state.

If a client draws a check on an out-of-state bank or has the securities sent to another state, this does not give the securities administrator in those states jurisdiction.

The offer and acceptance of a security constitutes a transaction or the sale of a security. It is the actual conveyance of the ownership of the security for value.

TESTFOCUS!

Mr. Jones, a resident of Texas, receives a call from his investment representative, Bob, in New York. Bob recommends that Mr. Jones purchase 500 shares of XYZ based on his company's research and in line with Mr. Jones's investment objectives. Mr. Jones accepts the recommendation and purchases the 500 shares at the market.

In this case, the securities administrators in both Texas and New York have jurisdiction over the transaction. The state securities administrator from Texas can review the transaction because the sale was directed and accepted in Texas. Additionally, the state securities administrator from New York may review the transaction because the transaction originated from the representative's office within the state.

If in the above case Mr. Jones tells his representative that he'll think about it and then calls his representative in New York the next day from his summer home in California and purchases XYZ, the transaction would be subject to the jurisdiction of three state securities administrators:

1. The administrator from New York—because that is where the sale originated.
2. The administrator from Texas—because that is where the sale was directed.
3. The administrator from California—because that is where the sale was accepted.

The state securities administrator also has jurisdiction over offers of securities that:

- Originated within the administrator's state.
- Are directed into the administrator's state.

An offer is considered to have been made in the state in which it originated as well as the state to which it is directed.

If, in our example, Bob, the representative in New York, directs the offer of XYZ to Mr. Jones in Texas, and Mr. Jones elects not to purchase the stock, the offer would be subject to the jurisdiction of the securities administrators in both New York and Texas. The state securities administrator in New York would have jurisdiction because that is where the representative was sitting when he made the offer. The administrator in Texas would have jurisdiction because that is where the offer was directed.

An offer or sale of a security that may be converted or exchanged into another security also constitutes an offer or sale of the security into which the original security may be converted.

The state securities administrator may:

- Investigate securities-related business within state borders.
- Issue subpoenas for people, books, and records from any state.

- Compel witnesses to testify.
- Issue cease and desist orders and seek injunctions.
- Deny, suspend, or revoke registrations, licenses, and exemptions.
- Adopt and amend rules.

The administrator may investigate complaints and alleged violations both in and out of the administrator's home state. The investigation may be conducted publicly or in private. During the course of an investigation, the administrator may subpoena people, books, and records from any state and may compel witnesses to testify under oath or to give a written sworn statement.

An individual brought before the administrator may not invoke his or her Fifth Amendment right against self-incrimination. The administrator may force the person to testify about the matter being investigated. However, a person who is forced to testify may not be prosecuted based on the testimony that he or she was compelled to offer. So a witness in this situation is given partial immunity.

If the administrator finds that a person has engaged in or is about to engage in any activity that would violate the USA, the administrator may issue a cease and desist order. A cease and desist order may be issued without a hearing. The administrator has the power to prevent violations before they take place. However, only a court of law has the authority to force compliance with the order and to prescribe penalties for violating the order.

RIGHT OF RESCISSION

If the seller of a security determines that the sale has violated a provision of the USA, the seller may offer the affected parties rescission. All offers of rescission must be in writing and include an agreement to repurchase the securities at the original purchase price and must include interest for the time period that the money was invested.

If the buyer does not accept the offer of rescission within 30 days, the seller has no further liability with regard to the sale of those securities, and the buyer forfeits the right to sue.

An investor's acknowledgement that a sale is in violation of the USA is never valid.

EXAMPLE

A customer with an investment objective of speculation convinces their Representative to sell them an interest in a private placement that will pay the Representative a commission and is in violation of the USA. The investor is a non-accredited investor and signs a letter stating that they recognize that the investment is in violation of the USA and will not sue or otherwise hold the Representative or their firm responsible for any losses.

This acknowledgment by the client is neither valid nor enforceable and in no way protects the representative or the firm.

STATUTE OF LIMITATIONS

If a buyer of a security finds that the sale of the security violates any of the provisions of the USA, the purchaser has two years from the discovery of the violation or three years from the purchase date, whichever comes first, to take action.