~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 30, 2012

**S. 1354**

Introduced by Senators Bryant, Thomas, Ford and L. Martin

S. Printed 5/30/12--H.

Read the first time April 17, 2012.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 1354) to amend Section 35-1-604 of the 1976 Code, relating to securities violations, to require all cease and desist orders issued by the Securities Commissioner to be public, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting all after the enacting words and inserting:

/ SECTION 1. Section 35‑1‑604 of the 1976 Code is amended to read:

“Section 35‑1‑604. (a) If the Securities Commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the Securities Commissioner may:

(1) issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter;

(2) issue an order denying, suspending, revoking, or conditioning the exemptions for a broker‑dealer under Section 35‑1‑401(b)(1)(D) or (F) or an investment adviser under Section 35‑1‑403(b)(1)(C); or

(3) issue an order under Section 35‑1‑204.

(b) An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the Securities Commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil penalty or costs of investigation the Securities Commissioner will seek, a statement of the reasons for the order, and notice that, within 15 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the Securities Commissioner within 30 days after the date of service of the order, the order, which may include a civil penalty or costs of the investigation if a civil penalty or costs were sought becomes final as to that person by operation of law. If a hearing is requested or ordered, the Securities Commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) If a hearing is requested or ordered pursuant to subsection (b), a hearing must be held. A final order may not be issued unless the Securities Commissioner makes findings of fact and conclusions of law in a record. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) In a final order under subsection (c), the Securities Commissioner may impose a civil penalty in an amount not to exceed $10,000 for each violation.

(e) In a final order, the Securities Commissioner may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.

(f) If a petition for judicial review of a final order is not filed in accordance with Section 35‑1‑609, the Securities Commissioner may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court. A copy of a final order must be forwarded to the South Carolina Department of Revenue and the South Carolina Secretary of State’s Office.

(g) If a person does not comply with an order under this section, the Securities Commissioner may petition a court of competent jurisdiction to enforce the order. The court may not require the Securities Commissioner to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than $500 but not greater than $5,000 for each violation and may grant any other relief the court determines is just and proper in the circumstances.

(h) All orders issued under this section are public documents subject to the Freedom of Information Act and must be published on the Attorney General’s website searchable by the name of the parties involved.”

SECTION 2. This act takes effect upon approval by the Governor and applies only to orders issued after the effective date of this act.

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND SECTION 35-1-604 OF THE 1976 CODE, RELATING TO SECURITIES VIOLATIONS, TO REQUIRE ALL CEASE AND DESIST ORDERS ISSUED BY THE SECURITIES COMMISSIONER TO BE PUBLIC DOCUMENTS AND TO REQUIRE PUBLICATION ON THE ATTORNEY GENERAL’S WEBSITE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 35-1-604 of the 1976 Code is amended to read:

“Section 35‑1‑604.(a) If the Securities Commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the Securities Commissioner may:

(1) issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter;

(2) issue an order denying, suspending, revoking, or conditioning the exemptions for a broker‑dealer under Section 35‑1‑401(b)(1)(D) or (F) or an investment adviser under Section 35‑1‑403(b)(1)(C); or

(3) issue an order under Section 35‑1‑204.

(b) An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the Securities Commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil penalty or costs of investigation the Securities Commissioner will seek, a statement of the reasons for the order, and notice that, within 15 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the Securities Commissioner within 30 days after the date of service of the order, the order, which may include a civil penalty or costs of the investigation if a civil penalty or costs were sought becomes final as to that person by operation of law. If a hearing is requested or ordered, the Securities Commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) If a hearing is requested or ordered pursuant to subsection (b), a hearing must be held. A final order may not be issued unless the Securities Commissioner makes findings of fact and conclusions of law in a record. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) In a final order under subsection (c), the Securities Commissioner may impose a civil penalty in an amount not to exceed $10,000 for each violation.

(e) In a final order, the Securities Commissioner may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.

(f) If a petition for judicial review of a final order is not filed in accordance with Section 35‑1‑609, the Securities Commissioner may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court. A copy of a final order must be forwarded to the South Carolina Department of Revenue and the South Carolina Secretary of State’s Office.

(g) If a person does not comply with an order under this section, the Securities Commissioner may petition a court of competent jurisdiction to enforce the order. The court may not require the Securities Commissioner to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than $500 but not greater than $5,000 for each violation and may grant any other relief the court determines is just and proper in the circumstances.

(h) All orders issued under this section are public documents subject to the Freedom of Information Act and must be published on the Attorney General’s website searchable by the name of the parties involved.

(i) If the Attorney General has reason to believe that a matter subject to an order issued pursuant to this section would constitute a violation of federal law, he may notify the appropriate federal agency with jurisdiction over the matter.”

SECTION 2. This act takes effect upon approval by the Governor.

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