

**§16401. Broker-dealer licensing requirement and exemptions**

**1. Licensing requirement.** It is unlawful for a person to transact business in this State as a broker-dealer unless the person is licensed under this chapter as a broker-dealer or is exempt from licensing as a broker-dealer under subsection 2 or 4.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

**2. Exemptions from licensing.** The following persons are exempt from the licensing requirement of subsection 1:

A. A broker-dealer without a place of business in this State if its only transactions effected in this State are with:

- (1) The issuer of the securities involved in the transactions;
- (2) A broker-dealer licensed as a broker-dealer under this chapter or not required to be licensed as a broker-dealer under this chapter, except when the person is acting as a clearing broker-dealer;
- (3) An institutional investor;
- (4) A nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;
- (5) A bona fide preexisting customer whose principal place of residence is not in this State and the person is registered as a broker-dealer under the federal Securities Exchange Act of 1934 or not required to be registered under the federal Securities Exchange Act of 1934 and is registered or licensed under the securities act of the state in which the customer maintains a principal place of residence;
- (6) A bona fide preexisting customer whose principal place of residence is in this State but was not present in this State when the customer relationship was established, if:
  - (a) The broker-dealer is registered under the federal Securities Exchange Act of 1934 or not required to be registered under the federal Securities Exchange Act of 1934 and is registered or licensed under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and
  - (b) Within 45 days after the customer's first transaction in this State, the person files an application for licensing as a broker-dealer in this State and no further transactions are effected until the license is effective. Any broker-dealer may seek an order granting a temporary exemption under subparagraph (7) while the application is pending; and
- (7) Any other person exempted by rule adopted or order issued under this chapter; and [PL 2005, c. 65, Pt. A, §2 (NEW).]

B. A person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation or the United States Department of the Treasury, Office of Thrift Supervision or Comptroller of the Currency. [PL 2005, c. 65, Pt. A, §2 (NEW).]

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**3. Limits on employment or association.** It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing or selling securities in this State, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this State if the license of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser or a

federal covered investment adviser by an order of the administrator under this chapter, the Securities and Exchange Commission or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer sustains the burden of proof that the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known of the suspension, revocation or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this chapter may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

**4. Foreign transactions.** A rule adopted or order issued under this chapter may permit:

A. A broker-dealer that is registered or licensed in Canada or other foreign jurisdiction and that does not have a place of business in this State to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(1) An individual from Canada or other foreign jurisdiction who is temporarily present in this State and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States;

(2) An individual from Canada or other foreign jurisdiction who is present in this State and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or

(3) An individual who is present in this State with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction; and [PL 2005, c. 65, Pt. A, §2 (NEW).]

B. An agent who represents a broker-dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in this State as permitted for a broker-dealer described in paragraph A. [PL 2005, c. 65, Pt. A, §2 (NEW).]

[PL 2005, c. 65, Pt. A, §2 (NEW).]

**5. Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

## SECTION HISTORY

PL 2005, c. 65, §A2 (NEW).

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