

**CHAPTER 403. PROHIBITED TRANSACTIONS;
BROKER-DEALERS AND AGENTS**

Sec.
403.010. Prohibited transactions and practices.

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(a) Each broker-dealer or agent shall not enter into any transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security, if such market exists.

(b) Each broker-dealer or agent who recommends to a customer the purchase, sale or exchange of any security shall have reasonable grounds to believe that the recommendation is not unsuitable for such customer on the basis of information furnished by such customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by or made available to such broker-dealer or agent.

(c) Each broker-dealer or agent shall not exercise any discretionary power or authority for any customer who is not an institutional investor as defined in these regulations unless such customer has given prior written authorization to exercise such power or authority to a stated individual or entity who is a broker-dealer or agent. This subsection shall not be applicable to customer limit orders for the purchase or sale of securities.

(d) With respect to the activities of each broker-dealer or agent, the phrase "manipulative, deceptive or other fraudulent scheme, device or contrivance," as used in section 403 of the act (70 P. S. § 1-403) is hereby defined to include, without limitation, the following:

(1) Any act of a broker-dealer or agent designed to effect with or for the account of any customer who is not an institutional investor as defined in these regulations with respect to which such broker-dealer or agent is vested with any discretionary power or authority or with respect to which such broker-dealer or agent is able by reason of the trust and confidence of the customer and confidence to influence the volume and frequency of the trades, any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources and character of such account. This subsection shall not be applicable to customer limit orders for the purchase or sale of securities.

(2) Any representation made to a customer by a broker-dealer or agent that any security is being offered to such customer "at the market" or at a price reasonably related to the market price shall not be made unless such broker-dealer or agent knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by the broker-dealer, or by any person for whom the broker-dealer is acting or with whom the broker-dealer is associated, or by any person controlled by, controlling, or under common control with the broker-dealer.

(3) Any acceptance by a broker-dealer or agent participating in any primary or secondary distribution of securities, other than a firm commitment underwriting of any part of the sale price of any security being distributed unless:

(i) The money or other consideration received is promptly transmitted to the persons entitled thereto; or

(ii) The money or other consideration received is promptly transmitted to a bank or other financial institution which has agreed in writing to hold such funds in escrow for the persons who have the beneficial interest therein and to transmit or return such funds directly to the persons entitled thereto upon the occurrence of a specified event or contingency.

(4) Any act of a broker-dealer or agent designed to effect with or for the account of any customer any transaction in, or to induce the purchase or sale by such customer of any security in the primary or secondary distribution of which such broker-dealer or agent is participating or is otherwise financially interested unless such broker-dealer or agent, at or before the settlement date, notifies such customer of the existence of such participation or interest.

(5) Any act of a broker-dealer or its agent controlled by, controlling or under common control with, the issuer of any security, designed to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of such security unless such broker-dealer or its agent, before entering into any contract with or for such customer for the purchase or sale of such security, discloses to such customer the existence of such control, and unless such disclosure, if not made in writing, is supplemented by the giving or sending of written disclosure at or before the settlement date.

Source

The provisions of this § 403.010 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 582; amended April 4, 1975, effective April 5, 1975, 5 Pa.B. 722; transferred and renumbered from 64 Pa. Code § 403.010, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (317635) to (317636).

Notes of Decisions

Cause of Action

There is no cause of action of negligence for an alleged violation of § 403.010 (relating to prohibited transactions and practices); rather, the only relevant remedy is that provided in section 501 of the Pennsylvania Securities Act of 1972 (70 P. S. § 1-501). *Daniel Boone Area School District v. Lehman Bros., Inc.*, 187 F. Supp. 2d 400 (W. D. Pa. 2002).

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