SENATE BILL NO. 2423

AN ACT TO AMEND SECTION 75-71-412, MISSISSIPPI CODE OF 1972, TO REVISE THE GROUNDS FOR DISCIPLINE FOR VIOLATIONS OF THE MISSISSIPPI SECURITIES ACT; TO AMEND SECTION 75-71-701, MISSISSIPPI CODE OF 1972, TO CLARIFY THE APPLICABILITY OF THE PREDECESSOR ACT TO PENDING PROCEEDINGS AND EXISTING RIGHTS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 75-71-412, Mississippi Code of 1972, is amended as follows:

75-71-412. (a) Disciplinary conditions-applicants. If the administrator finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.
(b) **Disciplinary conditions-registrants.** If the administrator finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may revoke, suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser. However, the administrator may not:

1. Institute a revocation or suspension proceeding under this subsection (b) based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than one (1) year after the date of the order on which it is based; or

2. Under subsection (d)(5)(A) or (B), issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (d) would authorize the action had the conduct occurred in this state.

(c) **Disciplinary penalties-registrants.** If the administrator finds that the order is in the public interest and subsection (d)(1) through (6), (8), (9), (10), (12) or (13) authorizes the action, an order under this chapter may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of the amount specified in Section 75-71-613 for each
violation on a registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

(d) Grounds for discipline. A person may be disciplined under subsections (a) through (c) if the person:

(1) Has filed an application for registration in this state under this chapter or the predecessor act within the previous ten (10) years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) Willfully violated or willfully failed to comply with this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous fifteen (15) years; for purposes of an ongoing failure to supervise, each twelve-month period or less of the conduct is a separate violation of this subsection, and if the person has failed to supervise more than one (1) individual at a time during the twelve (12) consecutive months' time period, then it shall be a separate violation of this subsection for each
individual that the person failed to supervise during the applicable time period;

(3) Has been convicted of a felony or within the previous ten (10) years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(4) Is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this chapter or the predecessor act, a state, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(5) Is the subject of an order, issued after notice and opportunity for hearing by:

(A) The securities or other financial services regulator of a state or the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;

(B) The securities regulator of a state or the Securities and Exchange Commission against a broker-dealer, agent,
investment adviser, investment adviser representative, or federal
covered investment adviser;

(C) The Securities and Exchange Commission or a
self-regulatory organization suspending or expelling the
registrant from membership in the self-regulatory organization;

(D) A court adjudicating a United States Postal
Service fraud order;

(E) The insurance regulator of a state denying,
suspending, or revoking registration as an insurance agent; or

(F) A depository institution or financial services
regulator suspending or barring the person from the depository
institution or other financial services business;

(6) Is the subject of an adjudication or determination,
after notice and opportunity for hearing, by the Securities and
Exchange Commission, the Commodity Futures Trading Commission; the
Federal Trade Commission; a federal depository institution
regulator, or a depository institution, insurance, or other
financial services regulator of a state that the person willfully
violated the Securities Act of 1933, the Securities Exchange Act
of 1934, the Investment Advisers Act of 1940, the Investment
Company Act of 1940, or the Commodity Exchange Act, the securities
or commodities law of a state, or a federal or state law under
which a business involving investments, franchises, insurance,
banking, or finance is regulated;
(7) Is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the administrator may not enter an order against an applicant or registrant under this subsection (d) without a finding of insolvency as to the applicant or registrant;

(8) Refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under Section 75-71-411(d) or refuses access to a registrant's office to conduct an audit or inspection under Section 75-71-411(d);

(9) Has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous fifteen (15) years;

(10) Has not paid the proper filing fee within thirty days after having been notified by the administrator of a deficiency, but the administrator shall vacate an order under this subsection (d) when the deficiency is corrected;

(11) After notice and opportunity for a hearing, has been found within the previous ten (10) years:

(A) By a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which
the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(B) To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or

(C) To have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

(12) Is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state;

(13) Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten (10) years; or

(14) Is not qualified on the basis of factors such as training, experience, and knowledge of the securities business.

However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this subsection.
if the individual has successfully completed all examinations required by subsection (e). The administrator may require an applicant for registration under Section 75-71-402 or 75-71-404 who has not been registered in a state within the two (2) years preceding the filing of an application in this state to successfully complete an examination.

(e) Examinations. A rule adopted or order issued under this chapter may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, an examination as to an individual and a rule adopted under this chapter may waive, in whole or in part, an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) Summary process. The administrator may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a
The hearing is not requested and none is ordered by the administrator within thirty (30) days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) **Procedural requirements.** An order issued may not be issued under this section, except under subsection (f), without:

1. Appropriate notice to the applicant or registrant;
2. Opportunity for hearing; and
3. Findings of fact and conclusions of law in a record in accordance with the administrative hearing procedures set forth in the rules.

(h) **Control person liability.** A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections (a) through (c) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

(i) **Limit on investigation or proceeding.** The administrator may not institute a proceeding under subsection (a), (b), or (c) based solely on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one
(1) year after the administrator actually acquires knowledge of the material facts.

SECTION 2. Section 75-71-701, Mississippi Code of 1972, is amended as follows:

75-71-701. (a) Applicability of predecessor chapter to pending proceedings and existing rights. The predecessor chapter exclusively governs all actions or proceedings that are pending on January 1, 2010, or may be instituted on the basis of conduct occurring before January 1, 2010, but a private civil action may not be maintained to enforce any liability under the predecessor chapter unless instituted within any period of limitation that applied when the cause of action accrued or within five (5) years after January 1, 2010, whichever is earlier. This time limitation shall not apply to a civil enforcement action or an administrative enforcement action instituted by the administrator under Section 75-71-603 or Section 75-71-604.

(b) Continued effectiveness under predecessor chapter. All effective registrations under the predecessor chapter, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no-action determinations, and conditions imposed on the registrations under the predecessor chapter remain in effect while they would have remained in effect if this chapter had not been enacted. They are considered to have been filed, issued, or
imposed under this chapter, but are exclusively governed by the predecessor chapter.

(c) **Applicability of predecessor chapter to offers or sales.**

The predecessor chapter exclusively applies to an offer or sale made within one (1) year after January 1, 2010, pursuant to an offering made in good faith before January 1, 2010, on the basis of an exemption available under the predecessor chapter.

(d) For the purposes of this chapter, "predecessor chapter" means Chapter 71 of Title 75, Mississippi Code of 1972, as it existed on December 31, 2009.

SECTION 3. This act shall take effect and be in force from and after July 1, 2017.