

ENGROSSED HOUSE AMENDMENT

TO

ENGROSSED SENATE BILL NO. 865

BY: BROWN of the SENATE

and

BENSON of the HOUSE

(SECURITIES - AMENDING NINETEEN SECTIONS IN
TITLE 71 - SECURITIES REGULATION -
CODIFICATION -

EMERGENCY)

AMENDMENT NO. 1. Strike the stricken title, enacting clause and entire bill and insert

AN ACT RELATING TO SECURITIES; AMENDING 71 O.S. 1991,
SECTIONS 1, 2, 4, 6, 9, 12, 102, 202, 204, 302,
303, 304.1, 306, 401, 408, 409, 410, 411 AND 412,
WHICH RELATE TO SECURITIES REGULATION; MODIFYING
STATUTORY SECTIONS COMPRISING THE OKLAHOMA
SECURITIES ACT; MODIFYING AND ADDING DEFINITIONS;
CLARIFYING REFERENCES TO THE OKLAHOMA SECURITIES
COMMISSION; MODIFYING QUORUM REQUIREMENTS;
MODIFYING QUALIFICATIONS OF THE SECURITIES
ADMINISTRATOR; DELETING CONFLICT OF INTEREST
PROVISION RELATED TO THE ADMINISTRATOR; EXPANDING
DUTIES OF DIVISIONS OF THE DEPARTMENT OF
SECURITIES; PROHIBITING CERTAIN ACTIVITIES OF THE
ADMINISTRATOR AND EMPLOYEES OF THE DEPARTMENT OF
SECURITIES AND CLARIFYING APPLICATION OF SUCH

PROHIBITIONS; UPDATING PARAGRAPH REFERENCES;
MODIFYING INFORMATION REQUIRED OF APPLICANTS FOR
CERTAIN REGISTRATIONS; MODIFYING CONDITION FOR
CERTAIN SUMMARY ORDERS AND NOTIFICATION AND
MODIFYING HEARING PROVISIONS RELATED THERETO;
STATING CONDITION FOR SUMMARY ORDERS BECOMING
PERMANENT OR DISSOLVING; MODIFYING CONDITIONS FOR
REGISTRATION BY NOTIFICATION; MODIFYING MANNER FOR
NOTIFICATION RELATED TO A FEDERAL REGISTRATION
STATEMENT; MODIFYING CONDITIONS OF REGISTRATION FOR
OKLAHOMA ISSUERS; MODIFYING CONTENTS OF
REGISTRATION STATEMENT; MODIFYING CONDITION FOR
CERTAIN SUMMARY ORDERS AND PROVIDING HEARING
PROCEDURES RELATED THERETO; MODIFYING BASIS FOR
CERTAIN EXEMPTION FROM REGISTRATION OF SECURITIES;
SPECIFYING TIME PERIOD FOR FILING INFORMATION
RELATED TO EXEMPTION FROM REGISTRATION OF CERTAIN
BENEFIT PLANS; MODIFYING TRANSACTIONS EXEMPTED FROM
REGISTRATION REQUIREMENTS; MODIFYING PROCEDURES
RELATED TO THE DENIAL OR REVOCATION OF ANY
EXEMPTION FROM REGISTRATION; MODIFYING LIMITATIONS
PERIODS; REQUIRING COSTS OF PREPARING CERTAIN
RECORD BE BORNE BY APPEALING PARTIES; MODIFYING
RECORDS REQUIRED TO BE KEPT BY THE ADMINISTRATOR;
MAKING CERTAIN RECORDS CONFIDENTIAL AND PROVIDING
FOR DISCLOSURE UNDER LIMITED CONDITIONS;
AUTHORIZING THE ADMINISTRATOR TO DESIGNATE FILING
DEPOSITORIES FOR RECORDS AND TO STORE RECORDS IN
CERTAIN FORMS; REDESIGNATING CERTAIN REVOLVING FUND
FOR USE BY THE DEPARTMENT OF SECURITIES; PROVIDING
FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE; AND
DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 71 O.S. 1991, Section 1, is amended to read as follows:

Section 1. Sections 1 through 16 of this title, Section 8 of this act and Sections 101 through 103, 201 through 204, 301 through 307, 401 through 413, 501, ~~502~~, and 701 through 703 of this title shall be known and may be cited as the Oklahoma Securities Act.

SECTION 2. AMENDATORY 71 O.S. 1991, Section 2, is amended to read as follows:

Section 2. ~~When~~ As used in this act, unless the context otherwise requires:

(a) "Commission" means the Oklahoma Securities Commission.

(b) "Department" means the Department of Securities.

(c) "Administrator" means the Securities Administrator appointed by the Oklahoma Securities Commission.

(d) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in:

(1) effecting transactions in a security exempted by paragraph (1), (2), (3), (4), (5), (6), (7), (9), or (10) of Section 401(a) of this title,

(2) effecting transactions exempted by Section 401(b) of this title, except Section 401(b)(9)(B) when:

(A) a commission is to be paid to such individual, or

(B) such individual is or has been within the past five

(5) years subject to the following in connection with

a violation of a state or federal securities law or

regulation:

- (i) an order denying, suspending or revoking registration or a cease and desist order of the Administrator, or
- (ii) any similar order, judgment, or decree by another state securities agency, the United States Securities and Exchange Commission, or any self-regulatory securities organization, or
- (iii) an order of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person, or

(3) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition.

(e) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

- (1) an agent,
- (2) an issuer,
- (3) a bank, savings institution, or trust company, or
- (4) a person who has no place of business in this state if:
 - (A) he effects transactions in this state exclusively with or through:
 - (i) the issuers of the securities involved in the transactions,
 - (ii) other broker-dealers, or
 - (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940,

pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of twelve (12) consecutive months he does not direct more than fifteen offers to sell or buy into this state in any manner to persons other than those specified in subparagraph (A) of this paragraph, whether or not the offeror or any of the offerees is then present in this state.

(f) "Commodity" means, except as otherwise specified by the Administrator by rule, regulation or order, any agricultural, grain or livestock product or by-product, any metal or mineral, any gem or gemstone (whether characterized as precious, semi-precious or otherwise), any fuel (whether liquid, gaseous or otherwise), any foreign currency, and all other goods, articles, products or items of any kind; provided that the term commodity shall not include:

(1) a numismatic coin whose fair market value is at least fifteen percent (15%) higher than the value of the metal it contains;

(2) real property or any timber, agricultural or livestock product grown or raised on real property and offered or sold by the owner or lessee of such real property; or

(3) any work of art offered or sold by art dealers, at public auction or offered or sold through a private sale by the owner thereof.

(g) "Fraud", "deceit", and "defraud" are not limited to common-law deceit.

(h) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(i) "Investment adviser" means ~~(1)~~ any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of

securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities; ~~or (2) any person using the designation "financial planner" or who otherwise holds himself out as providing investment advisory services for compensation whether or not as a part of other financially related services.~~ "Investment adviser" does not include:

(1) a bank, savings institution, or trust company;

(2) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession; a professional geologist, professional engineer or professional geophysicist and professional petroleum landman who is engaged in the business of exploring for and/or producing oil and gas or other valuable minerals as an ongoing business when giving advice, analyses, interpretations or reports that relate to securities covered by Section ~~2(r)(18)~~ 2(s)(18) of this title;

(3) a broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them;

(4) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication of general, regular, and paid circulation;

(5) an investment adviser representative; or

(6) such other persons not within the intent of this paragraph as the Administrator may by rule or order designate.

(j) "Investment adviser representative" means any partner, officer, director of, or a person occupying a similar status or performing similar functions for, an investment adviser, or other person employed by, representing, or associated with an investment adviser who:

(1) makes any recommendation or otherwise renders advice regarding securities;

(2) manages accounts or portfolios of clients;

(3) determines or has final authority as to which recommendations or advice regarding securities should be given;

(4) issues or promulgates analyses or reports concerning securities; or

(5) ~~solicits, offers or negotiates for the sale of or sells investment advisory services; or~~

~~(6)~~ supervises employees who perform any of the acts described in this subsection.

(k) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(l) "Multilevel distribution company" means any person, firm, corporation or other business entity which sells, distributes or supplies for a valuable consideration, goods or services through independent agents, contractors or distributors, at different levels wherein such participants may recruit other participants, and wherein commissions, cross-commissions, bonuses, refunds, discounts, dividends or other considerations in the program are, or may be, paid at two or more levels as a result of the sale of such goods or services or the recruitment, actions or performances of additional participants.

(m) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(n) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(o) "Principal" means any person associated with an applicant for registration as a broker-dealer who is actively engaged in the management of the applicant's securities business, including supervision, solicitation, conduct of business or training of persons associated with an applicant for any of these functions. Such persons shall include, but are not limited to the following:

- (1) Sole proprietors;
- (2) Officers;
- (3) Partners;
- (4) Managers of offices of supervisory jurisdiction;
- (5) Directors of corporations; or

(6) Any person occupying a similar status, position, or performing similar functions, or any person directly or indirectly controlling the registrant.

(p) "Registration statements" means the documentation provided to the United States Securities and Exchange Commission or the Department in connection with the registration of securities under the Securities Act of 1933 or this title and includes any amendment thereto and any report, document, exhibit or memorandum filed as part of such statement or incorporated therein by reference.

~~(p)~~ (q) (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value;

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value;

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value;

(4) A purported gift of assessable stock is considered to involve an offer and sale;

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(6) The terms defined in this subsection do not include:

(A) any bona fide pledge or loan;

(B) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; or

(C) any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.

~~(q)~~ (r) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", ~~and~~ "Investment

Company Act of 1940" and "Investment Advisers Act of 1940" mean the federal statutes of those names as amended heretofore or hereafter.

~~(r)~~ (s) "Security" means any:

- (1) note;
- (2) stock;
- (3) treasury stock;
- (4) bond;
- (5) debenture;
- (6) evidence of indebtedness;
- (7) certificate of interest or participation in any

profit-sharing agreement;

- (8) collateral-trust certificate;
- (9) preorganization certificate or subscription;
- (10) transferable share;
- (11) investment contract;
- (12) voting-trust certificate;
- (13) certificate of deposit for a security;

(14) contract offered or sold to the public by a multilevel distribution company wherein the initial consideration or subsequent consideration shall substantially exceed the fair retail value of the goods or services received by the purchaser under the contract. Provided, however, the Administrator may by rule or order exclude any contract from the above definition if such contract is not within the comprehensive purposes of this title and its regulation is not necessary or appropriate in the public interest or for the protection of investors;

(15) contract or option on a contract for the future delivery of any commodity offered or sold to the public and not regulated by the Commodity Futures Trading Commission, provided that such contract or option shall not be subject to the provisions of Section 301 of this title, if sold or purchased on the floor of a bona fide

exchange or board of trade and offered and sold to the public by a broker-dealer or agent registered pursuant to this title;

(16) investment of money or money's worth including goods furnished and/or services performed in the risk capital of a venture with the expectation of some benefit to the investor where the investor has no direct control over the investment or policy decision of the venture;

(17) in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing; or

(18) interest in oil, gas, or mineral leases, except that transactions involving leases or interest therein, between parties, each of whom is engaged in the business of exploring for or producing oil and gas or other valuable minerals as an ongoing business, and the execution of oil and gas leases by land, mineral, and royalty owners in favor of a party or parties engaged in the business of exploring for or producing oil and gas or other valuable minerals shall be deemed not to involve a security.

~~(s)~~ (t) "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

~~(t)~~ (u) "State" means any state, territory, or possession of the United States, the District of Columbia and Puerto Rico.

~~(u)~~ (v) "Underwriter" means any person who has purchased from an issuer or from any other person with a view to, or offers or sells for an issuer or for any other person in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any

such undertaking. "Underwriter" does not include a person whose interest is limited to a commission from an underwriter or broker-dealer not in excess of the usual and customary distributor's or seller's commission.

SECTION 3. AMENDATORY 71 O.S. 1991, Section 4, is amended to read as follows:

Section 4. (a) The Oklahoma Securities Commission shall consist of three (3) members to be appointed by the Governor by and with the advice and consent of the Senate. One member shall be a member of the Oklahoma Bar Association appointed from a list of five nominees submitted by the Oklahoma Bar Association; one member shall be an active officer of a bank or trust company operating in the State of Oklahoma appointed from a list of five nominees submitted by the Oklahoma Bankers Association; and one member shall be a certified public accountant appointed from a list of five nominees submitted by the Oklahoma Society of Certified Public Accountants; provided, that the State Bank Commissioner of Oklahoma shall be and he is hereby made an ex officio member of said Commission.

(b) No person may be appointed to or by the Commission while he is registered as a broker-dealer, agent, investment adviser, or investment adviser representative under this act, or while he is an officer, director, or partner of any person so registered, or while he is an officer, director, or partner of an issuer which has a registration statement effective under this act, or while he is occupying a similar status or performing similar functions.

(c) It is unlawful for any member of the Commission, the Administrator, or any other officer or employee of the Department to use for personal benefit any information which is filed with or obtained by the Administrator and which is not made public. No provision of this act authorizes any member of the Commission, the Administrator or any other officer or employee of the Department to disclose any such information except among themselves or when

necessary or appropriate in a proceeding or investigation under this act or in connection with a proceeding or investigation conducted by any state, federal or foreign law enforcement agency, securities agency or self-regulatory organization. No provision of this act either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to any member of the Commission, the Administrator or any other officer or employee of the Department.

(d) Except ~~upon~~ on proof of corruption, no Commissioner shall for his acts or his failure to act be civilly liable to any investor, applicant for registration, or any other person.

SECTION 4. AMENDATORY 71 O.S. 1991, Section 6, is amended to read as follows:

Section 6. The Oklahoma Securities Commission shall select a chairman and is hereby authorized to adopt rules for conducting its proceedings. Any ~~two~~ three members shall constitute a quorum for transacting Commission business. The Commission shall meet monthly on such date as it may designate and may meet at such other times as it may deem necessary, or when called by the chairman or by any two members. Complete minutes of each meeting shall be kept and filed in the Department of Securities and shall be available for public inspection during reasonable office hours. The Commission shall report annually to the Governor, to the Speaker of the House of Representatives and to the President Pro Tempore of the Senate. The report shall contain the minutes of each meeting held during the year, legislative recommendations, a summary of violations of the Oklahoma Securities Act and action taken thereon, a list of securities registered with the Commission and such other data and information as may be deemed necessary or appropriate. Said report as to the listing of securities shall be supplemented monthly so as to keep reasonably current such list of registered securities. The Commission is hereby authorized to publish such report, and the

Administrator may sell copies of such report at such price as is reasonably sufficient to defray the expenses of the Department in preparing, publishing and disseminating the same. Each member of the Commission shall have unrestricted access to all offices and records under the jurisdiction of the Department. The Commission, or a majority thereof, may exercise any power or perform any act authorized for the Administrator under the provisions of the Oklahoma Securities Act.

SECTION 5. AMENDATORY 71 O.S. 1991, Section 9, is amended to read as follows:

Section 9. ~~(a)~~ The Administrator shall be a person of good moral character, at least thirty (30) years of age, a resident taxpayer of Oklahoma, and thoroughly familiar with corporate organization, investment banking, investment trusts, the sale of securities, and the statistical details of the manufacturing industries and commerce of this state. In addition, the Administrator shall ~~be~~:

(1) be a graduate of an accredited law school and a member of the Oklahoma Bar Association ~~or shall become a member within one (1) year of appointment~~, or shall have had ten (10) years' experience as a certified public accountant; and

(2) ~~shall~~ have at least three (3) years' work experience involving some aspect of the securities industry. The Commission may also require additional qualifications.

~~(b) The Administrator, while serving as Administrator, shall not serve as an officer or director, own stock of or be financially interested in any person subject to the jurisdiction of the Commission or the Administrator.~~ The salary of the Administrator shall be fixed by the Commission from appropriations made by the Legislature.

SECTION 6. AMENDATORY 71 O.S. 1991, Section 12, is amended to read as follows:

Section 12. The internal administrative organization of the Department of Securities shall be determined by the Commission in such manner as to promote the efficient and effective enforcement of this act, ~~but the~~. The Department shall include, but not be limited to, divisions of relating to:

(a) registration of broker-dealers, agents, ~~and~~ investment advisers, and investment adviser representatives;

(b) registration of securities, i and

(c) investigation and enforcement.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 17 of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) Neither the Administrator nor any employee of the Department of Securities, during their respective terms of employment, shall serve as a director, officer, shareholder, member, partner, agent or employee of any person who, during the period of such Administrator's or employee's employment with the Department:

(1) was licensed or applied for registration as a broker-dealer, agent, investment adviser or investment adviser representative under this title; or

(2) applied for or secured the registration of securities under said title.

(b) Nothing in subsection (a) of this section shall prohibit the holding, purchasing or selling of any securities by the Administrator or any employee of the Department in accordance with regulations adopted by the Oklahoma Securities Commission for the purpose of protecting the public interest and avoiding conflicts of interest.

(c) Nothing contained in subsection (a) of this section shall prohibit the holding, purchasing or selling of any securities of any issuer described in paragraph (2) of subsection (a) of this section by the Administrator if either:

(1) the Administrator together with his or her spouse, or minor children, owns less than one percent (1%) of any class of outstanding securities of any such issuer so long as such securities are not purchased in an initial public offering; or

(2) such securities are held or purchased through a management account or trust administered by a bank or trust company authorized to do business in this state that has sole investment discretion regarding the holding, purchasing or selling of such securities and the Administrator or employee did not, directly or indirectly, advise, counsel or command the holding, purchasing or selling of any securities or furnish any information relating to any such securities to such bank or trust company and further, such account or trust does not at any time have more than ten percent (10%) of its total assets invested in the securities of any one issuer or hold more than five percent (5%) of the outstanding securities of any class of securities of any one issuer.

SECTION 8. AMENDATORY 71 O.S. 1991, Section 102, is amended to read as follows:

Section 102. (a) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise τ:

(1) to employ any device, scheme, or artifice to defraud the other person τi or

(2) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

(b) It is unlawful for any investment advisor to enter into, extend, or renew any investment advisory contract unless it provides in writing :

(1) that the investment advisor shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(2) that no assignment of the contract may be made by the investment advisor without the consent of the other party to the contract; and

(3) that the investment advisor, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

~~Clause Paragraph~~ (1) of this subsection does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. For persons responsible for management of funds or assets pursuant to the Oklahoma Capital Formation Act, ~~elause paragraph~~ (1) of this subsection does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date, or in any other manner permitted by the Investment Adviser's Act of 1940, as amended, and the rules and regulations promulgated thereunder. Any ~~such~~ investment advisory contract providing for compensation based upon a manner permitted by the Investment Adviser's Act of 1940, as amended, and the rules and regulations promulgated thereunder shall be subject to review and approval of the Oklahoma Department of Securities ~~Commission~~.

"Assignment", as used in ~~elause paragraph~~ (2) of this subsection, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment advisor is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of

the members of the investment advisor having only a minority interest in the business of the investment advisor, or from the admission to the investment advisor of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(c) It is unlawful for any investment advisor to take or have custody of any securities or funds of any client if:

(1) the Administrator by rule prohibits custody; or

(2) in the absence of rule, the investment advisor fails to notify the Administrator that he has or may have custody.

SECTION 9. AMENDATORY 71 O.S. 1991, Section 202, is amended to read as follows:

Section 202. (a) (1) A broker-dealer, agent, investment adviser or investment adviser representative may obtain an initial or renewal registration by filing with the Administrator an application and a consent to service of process pursuant to the provisions of Section 413 of this title. The application shall include:

~~(1)~~ (A) the applicant's type and place of organization; ~~and~~

~~(2)~~ (B) the applicant's proposed method of doing business; and

~~(3)~~ (C) the qualifications and business history of the applicant.

(2) ~~Applicants~~ Applications for a broker-dealer or investment adviser registration shall include:

(A) the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; ~~and~~

~~(4)~~ (B) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of

the securities business and any conviction of a felony; and

~~(5)~~ (C) a financial ~~report of broker-dealers and investment advisers consisting of a balance sheet and statements~~ or such other information regarding applicant's financial condition and history as may be required by rule or order of the Administrator; and

~~(6)~~ (D) any other information determined to be necessary by the Administrator.

(3) If financial reports required do not coincide with registration dates, such reports for the registrant's preceding fiscal year shall be acceptable unless the Administrator by rule or order otherwise prescribes. The Administrator may by rule or order require an applicant for initial registration to publish an announcement of the application in one or more specified newspapers published in this state. If no denial order is in effect and no proceeding is pending pursuant to the provisions of Section 204 of this title, registration becomes effective at noon of the thirtieth day after an application is filed. The Administrator may specify, by rule or order, an earlier effective date, and may defer, by order, the effective date until noon of the thirtieth day after the filing of any amendment.

(b) Every applicant for initial or renewal registration as broker-dealer, agent, investment adviser or investment adviser representative shall pay a filing fee as required by this act. When application is denied or withdrawn, the Administrator shall retain the fee.

(c) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

(d) The Administrator, by rule, may require a minimum capital for registered broker-dealers and investment advisers or prescribe a ratio between net capital and aggregate indebtedness by type or classification.

(e) The Administrator, by rule, may require registered broker-dealers, agents, investment advisers and investment adviser representatives to post and continue in effect during each period of registration surety bonds in an amount not more than Twenty-five Thousand Dollars (\$25,000.00) for broker-dealers and investment advisers, and not more than Ten Thousand Dollars (\$10,000.00) for agents and investment adviser representatives. The Administrator, by rule, may classify persons required to post bonds and may prescribe different amounts of bonds for different classes. Each such bond shall be conditioned on the fact that the registrant will comply with the provisions of the Oklahoma Securities Act. Such bonds may be so drawn as to cover the original registration and any renewal thereof, but for purposes of determining liability of the surety under any such bond, the date of each renewal of registration shall be deemed to begin a new bond period. Any appropriate deposit of cash or securities shall be accepted in lieu of any such bond.

Every bond shall provide that no suit may be maintained to enforce any liability thereon unless brought within two (2) years after the sale or other act upon which such suit is based and shall also provide that the liability of the surety on each such bond to all persons aggrieved shall in no event exceed in the aggregate the penal sum thereof. The Administrator shall provide, by rule, for the registration of agents on an inactive basis without bond but with an annual renewal registration fee as provided for in the Oklahoma Securities Act.

SECTION 10. AMENDATORY 71 O.S. 1991, Section 204, is amended to read as follows:

Section 204. (a) The Administrator may by order deny, suspend, or revoke any registration or impose any sanction authorized by Section 406 of this title if he finds:

(1) that the order is in the public interest; and

(2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(A) has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) has willfully violated or willfully failed to comply with any provision of this act or a predecessor act or any rule or order under this act or a predecessor act;

(C) has been convicted, within the past ten (10) years, of any misdemeanor involving a security or any aspect of the securities business, or any felony;

(D) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(E) is the subject of an order of the Administrator denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative or is the subject of an order of the Administrator issued pursuant to Section 406 of this title;

- (F) is the subject of an order entered within the past five (5) years by the securities administrator of any other state or by the United States Securities and Exchange Commission denying or revoking registration as a broker-dealer, agent, investment adviser or investment adviser representative or the substantial equivalent of those terms as defined in this act, or is the subject of an order suspending or expelling him from a national or international securities exchange or national or international securities association, or is the subject of an order of the National Association of Securities Dealers, Inc., suspending, canceling or barring him from membership in said organization or barring him from association with any other member of said organization, or is the subject of a United States Post Office fraud order; but (i) the Administrator may not institute a revocation or suspension proceeding under this subsection more than one (1) year from the date of the order relied on, and (ii) he may not enter an order under this subsection on the basis of an order under another state act unless that order was based on facts which, but for the situs would currently constitute a ground for an order under this section;
- (G) has engaged in dishonest or unethical practices in the securities business;
- (H) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the Administrator may not enter an order against a broker-dealer or investment adviser under this ~~clause~~ subparagraph

without a finding of insolvency as to the
broker-dealer or investment adviser;

(I) is not qualified on the basis of such factors as
training, experience and knowledge of the securities
business, except as otherwise provided in subsection
(d) of this section; or

(J) has willfully violated any rule of a national or
international securities exchange or a national or
international securities association with respect to
any customer or transaction in this state.

(b) The Administrator may by order deny, suspend, or revoke any
registration if he finds:

(1) that the order is in the public interest; and

(2) that the applicant or registrant:

(A) has failed to exercise reasonable supervision of his
agents if he is a broker-dealer or a designated
principal, or of his investment adviser
representatives if he is an investment adviser; or

(B) has failed to pay the proper filing fee; but the
Administrator may enter only a denial order under this
subparagraph, and he shall vacate any such order when
the deficiency has been corrected.

(c) The Administrator may not institute a suspension or
revocation proceeding on the basis of a fact or transaction known to
him when the initial registration became effective unless the
proceeding is instituted within thirty (30) days following the
effective date of registration.

(d) The following provisions govern the application of Section
204(a)(2)(I) of this title:

(1) The Administrator may not enter an order against a
broker-dealer on the basis of the lack of qualification of any
person other than:

- (A) the broker-dealer himself if he is an individual; or
- (B) an agent of the broker-dealer.

(2) The Administrator may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than (A) the investment adviser himself if he is an individual; or (B) an investment adviser representative of the investment adviser.

(3) The Administrator may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both.

(4) The Administrator shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer.

(5) The Administrator shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent.

(6) The Administrator may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants.

(e) The (1) If the Administrator makes written findings of fact to support the conclusion that the public interest will be harmed by delay in issuing an order pursuant to subsection (a) of this section, the Administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(2) Upon the entry of the summary order, the Administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that ~~it~~:

- (A) the summary order has been entered and ~~of~~ the reasons therefor, ~~that~~;

(B) the person subject to the order, if desiring a hearing, must make written request for a such hearing to the Administrator within fifteen (15) days after receipt of the notice, ~~that;~~ and

(C) within fifteen (15) days after ~~the~~ receipt of a written request for a hearing from said person or at such sooner time during regular business hours of the Department as mutually agreed upon by the Department and said person, a hearing on the matter shall commence. ~~If no hearing is requested and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice and opportunity for hearing, may modify or vacate the order or extend it until final determination be commenced to determine whether the summary order should be modified, vacated or become a permanent order as provided in subsection (a) of this section.~~

(3) The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or his designated hearing officer extends the summary order pending a final determination. The summary order shall become a permanent order if the person to whom notice is addressed does not request a hearing within fifteen (15) days after the receipt of notice. If a request for hearing on the summary order is timely made and if said hearing is not commenced by the Administrator within the time limit set forth herein, the summary order shall dissolve and a permanent order shall not be issued pursuant to subsection (a) of this section except upon reasonable notice and opportunity for a hearing.

(f) If the Administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the Administrator may by order cancel the registration or application.

(g) Withdrawal from registration as a broker-dealer, agent, investment adviser or investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the Administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty (30) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Administrator may nevertheless institute a revocation or suspension proceeding under Section 204(a)(2)(B) within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

(h) No order may be entered under any part of this section except ~~the first sentence~~ under paragraph 1 of subsection (e) of this section without:

- (1) appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative);
- (2) opportunity for hearing; and
- (3) written findings of fact and conclusions of law.

SECTION 11. AMENDATORY 71 O.S. 1991, Section 302, is amended to read as follows:

Section 302. (a) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under Section 303 of this title:

(1) any security whose issuer and any predecessors have been in continuous operation for at least five (5) years if:

(A) there has been no default during the current fiscal year or within the three (3) preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision; and

(B) the issuer and any predecessors during the past three (3) fiscal years have had average net earnings, determined in accordance with generally accepted accounting ~~practices~~ principles:

(i) which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed and equal at least five percent (5%) of the amount of such outstanding securities (as measured by the maximum offering price or the market price on a day, selected by the registrant, within thirty (30) days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant, within ninety (90) days of the date of filing the registration statement to the extent that there is neither a readily determinable market price nor a cash offering price); or

(ii) which, if the issuer and any predecessors have not had any security of the type specified in division (i) of this subparagraph outstanding for three full fiscal years, equal at least five percent (5%) of the amount (as measured in division (i) of this subparagraph) of all securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued;

(2) any security (other than a certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease) registered for nonissuer distribution if:

- (A) any security of the same class has ever been registered under this act or a predecessor act or;
- (B) the security being registered was originally issued pursuant to an exemption under this act or a predecessor act.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Section 305(b) of this title and the consent to service of process required by Section 413(g) of this title:

(1) a statement demonstrating eligibility for registration by notification;

(2) with respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state (or foreign jurisdiction) and the date of its organization; and the general character and location of its business;

(3) with respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: his name and

address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; and a statement of his reasons for making the offering;

(4) a description of the security being registered;

(5) the information and documents specified in paragraphs (8), (10), and (12) of Section 304(b) of this title; and

(6) in the case of any registration under Section 302(a)(2) of this title which does not also satisfy the conditions of Section 302(a)(1) of this title, a balance sheet of the issuer as of a date within four (4) months prior to the filing of the registration statement, and a summary of earnings for each of the two (2) fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than two (2) years.

(c) If no stop order is in effect and no proceeding is pending under Section 306 of this title, a registration statement under this section automatically becomes effective at two o'clock Central Standard Time in the afternoon of the second full business day after the filing of the registration statement or the last amendment, or at such earlier time as the Administrator determines.

SECTION 12. AMENDATORY 71 O.S. 1991, Section 303, is amended to read as follows:

Section 303. (a) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Section 305(b) of this title and the consent to service of process required by Section 413(g) of this title:

(1) one copy of the registration statement filed with the United States Securities and Exchange Commission and all amendments thereto and two copies of the latest form of prospectus filed under the Securities Act of 1933 as of the date of filing hereunder;

(2) if the Administrator by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) if the Administrator requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and

(4) an undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

(1) no stop order is in effect and no proceeding is pending under Section 306 of this ~~section~~ title;

(2) the registration statement has been on file with the Administrator for at least ten (10) days; and

(3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two (2) full business days or such shorter period as the Administrator permits by rule or otherwise and the offering is made within those limitations.

(d) The registrant shall promptly notify the Administrator ~~by telephone or telegram~~ in writing, which may be by a facsimile transmission, of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the Administrator may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if he promptly notifies the registrant ~~by telephone or telegram~~ (and promptly confirms by letter ~~or,~~ telegram or facsimile transmission when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order is void as of the time of its entry. The Administrator may by rule or otherwise waive either or both of the conditions specified in paragraphs (2) and (3) of ~~this~~ subsection (c) of this section. If the federal registration statement becomes effective before all the conditions in this subsection and subsection (c) of this section are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the Administrator of the date when the federal registration statement is expected to become effective, the Administrator shall promptly advise the registrant ~~by telegram,~~ at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a

proceeding under Section 306 of this title; but this advice by the Administrator does not preclude the institution of such a proceeding at any time.

SECTION 13. AMENDATORY 71 O.S. 1991, Section 304.1, is amended to read as follows:

Section 304.1 (a) In order to encourage capital formation by Oklahoma issuers, and since the Department has the ability to closely monitor issuers maintaining operations solely or primarily in this state, any security may be registered under the provisions of this section if the following conditions are met:

~~(1) The security to be issued shall consist of common stock of the issuer with rights at least equal to the greatest rights of any currently outstanding class of common stock of the issuer.~~

~~(2)~~ The issuer is ~~incorporated~~ formed under the laws of this state.

~~(3)~~ (2) (A) Both at the time of registration under this section and immediately following termination of an offering made pursuant to this section, the issuer:

- (i) maintains its principal office and a majority of its full-time employees in this state; and
- (ii) undertakes to continue to maintain its principal offices and a majority of its full-time employees in this state for at least three (3) years from the date of registration hereunder.

(B) Failure to maintain the principal offices and a majority of full-time employees in this state for three (3) years from the date of registration shall not void the registration, but shall subject the issuer to a penalty equal to two hundred percent (200%) of the fee the issuer would have paid to register under Section 302, 303 or 304 of this title.

~~(4)~~ (3) At least eighty percent (80%) of the net proceeds of the sale of the securities registered hereunder shall be used in this state. As used herein net proceeds shall mean the gross proceeds of the offering less sales commissions and offering expenses.

~~(5)~~ (4) A prospectus as filed with the Administrator as part of the registration statement shall be delivered to each offeree prior to the purchase or the commitment, written or oral, to purchase the securities. ~~Such prospectus shall describe all material information concerning the securities being registered. As used herein, material information is that information necessary for an offeree to make an informed investment decision. The prospectus shall be in such form as designated by rule of the Administrator, provided, with respect to the financial statements required under Section 410 of this title, only the balance sheet shall be audited; all other financial statements shall be verified as to their accuracy by the chief executive officer and the principal financial officer of the registrant.~~

(b) To register securities under this section, a registration statement including the following shall be filed with the Department:

(1) One copy of ~~any~~ the registration statement filed with the United States Securities and Exchange Commission, if any, including all amendments thereto and one copy of the prospectus ~~required under paragraph (5) of subsection (a) of this section~~ and all amendments thereto.

(2) One copy of the prospectus which shall be in such form as designated by rule or order of the Administrator.

~~(2)~~ (3) A copy of the ~~articles or~~ certificate of incorporation and bylaws or partnership or trust agreement or other controlling agreement among securities holders of the issuer currently in

effect, certified by the ~~secretary of the corporation~~ proper official of the issuer.

~~(3)~~ (4) A copy of any agreements with any underwriter, broker-dealer, or agent concerning the offer or sale of the securities.

~~(4)~~ (5) The fees set forth in Section 412 of this title.

~~(5)~~ (6) The consent to service of process required by Section 413(g) of this title.

~~(6)~~ (7) Any other documents requested by the Administrator.

SECTION 14. AMENDATORY 71 O.S. 1991, Section 306, is amended to read as follows:

Section 306. (a) The Administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds that:

(1) ~~that~~ the order is in the public interest; and

(2) ~~that~~ (A) the registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, ~~or any amendment under Section 305(k) as of its effective date,~~ or any report under Section ~~305(j)~~ 305(i) of this title is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) any provision of ~~this act~~ the Oklahoma Securities Act or any rule, order, or condition lawfully imposed under ~~this~~ said act has been willfully violated, in connection with the offering, by:

(i) the person filing the registration statement,

(ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person

directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or

(iii) any underwriter;

(C) the security registered or sought to be registered is the subject of any administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; ~~but~~ provided, however:

(i) the Administrator may not institute a proceeding against an effective registration statement under ~~clause (C)~~ this subparagraph more than one (1) year from the date of the order or injunction relied on, and

(ii) he may not enter an order under ~~clause (C)~~ this subparagraph on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

(D) the issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(E) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(F) the offering has been or would be made or is being made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options, profits,

compensation, or remuneration paid directly or indirectly to any officer, director, employee, contractor or agent;

- (G) when a security is sought to be registered by notification, it is not eligible for such registration;
- (H) when a security is sought to be registered by coordination there has been a failure to comply with the undertaking required by Section 303(b) (4) of this title;
- (I) the applicant or registrant has failed to pay the proper filing fee; but the Administrator may enter only a denial order under this clause and he shall vacate any such order when the deficiency has been corrected; or
- (J) an order has been issued by a court of competent jurisdiction under ~~Section 306(e)~~ subsection (e) of this section or Section 406 of this ~~act~~ title against the issuer of any security registered or sought to be registered under ~~this act~~ the Oklahoma Securities Act.

The Administrator may not institute a stop order proceeding against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective unless the proceeding is instituted within the next thirty (30) days.

(b) ~~The~~ (1) If the Administrator makes written findings of fact to support the conclusion that the public interest will be harmed by delay in issuing an order pursuant to subsection (a) of this section, the Administrator may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section.

(2) Upon the entry of the summary order, the Administrator shall promptly notify each person specified in subsection (c) of this section that it:

(A) the summary order has been entered and of the reasons therefor and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing to each person specified in subsection (c), may modify or vacate the order or extend it until final determination.;

(B) the person subject to the order, if desiring a hearing, must make written request for such hearing to the Administrator within fifteen (15) days after receipt of the notice; and

(C) within fifteen (15) days after receipt of a written request for a hearing from said person or at such earlier time during regular business hours of the Department as mutually agreed upon by the Department and said person, a hearing on the matter shall be commenced to determine whether the summary order should be modified, vacated or become a permanent order as provided in subsection (a) of this section.

(3) The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or his designated hearing officer extends the summary order pending a final determination. The summary order shall become a permanent order if the person to whom notice is addressed does not request a hearing within fifteen (15) days after the receipt of notice. If a request for hearing on the summary order is timely made and if said hearing is not commenced by the Administrator within the time limit set forth herein, the summary order shall dissolve and a permanent order shall not be issued pursuant to

subsection (a) of this section except upon reasonable notice and opportunity for a hearing.

(c) No stop order may be entered under any part of this section except ~~the first sentence~~ under paragraph 1 of subsection (b) of this section without:

~~(i)~~ (1) appropriate prior notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered,

(2) opportunity for hearing, and

(3) written findings of fact and conclusions of law.

(d) The Administrator may vacate or modify a stop order if he finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

(e) The Administrator may apply to the district court of Oklahoma County for an order appointing a conservator of, and directing him to rehabilitate, any issuer upon one or more of the following grounds. That the issuer:

(1) is impaired or insolvent, or is in imminent danger of becoming impaired or insolvent;

(2) has ceased transacting business for a period of one (1) year;

(3) is insolvent and has commenced voluntary liquidation or dissolution, or is attempting to commence or prosecute any action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian, or sequestrator;

(4) has refused to comply with any lawful order of the Administrator;

(5) has refused to submit its books, records and accounts relating to its financial affairs to reasonable examination by the Administrator;

(6) has transferred or attempted to transfer substantially its entire property or business, to the detriment of its stockholders; or

(7) has willfully violated its charter or any law of this state.

The conservator may, if all reasonable efforts to rehabilitate the issuer fail, apply to the court for any order directing liquidation and dissolution of any such insurer.

SECTION 15. AMENDATORY 71 O.S. 1991, Section 401, is amended to read as follows:

Section 401. (a) The following securities are exempt from Sections 301 and 402 of this title:

(1) Subject to the provisions of the Oklahoma Bond Oversight and Reform Act, any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of said entities, or any certificate of deposit for any of said entities; however, notwithstanding the provisions of Section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, Public Law 98-440, any security that is offered and sold pursuant to Section 4(5) of the Securities Act of 1933 or that is a mortgage related security as that term is defined in Section 3(a)(41) of the Securities Exchange Act of 1934 shall not be exempt from Sections 301 and 402 of this title by virtue of such Secondary Mortgage Market Enhancement Act but ~~only pursuant to the provisions of this act~~ may be exempt based upon the availability of the exemptions from registration provided for in this section; and

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the entities named in this paragraph, or any other foreign government with which the United States currently maintains diplomatic relations if the

security is recognized as a valid obligation by the issuer or guarantor; and

(3) Any security issued by and representing an interest in or a debt of or guaranteed by any bank organized pursuant to the laws of the United States, or any bank, savings institution, or trust company organized and supervised pursuant to the laws of any state; and

(4) Any security issued by and representing an interest in or a debt of or guaranteed by any federal savings and loan association, or any building and loan or similar association organized pursuant to the laws of any state and authorized to do business in this state; and

(5) Any security issued by any cooperative, nonprofit, membership corporation or association organized in compliance with the laws of this state; and

(6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised pursuant to the laws of this state; and

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is:

(A) subject to the jurisdiction of the Interstate Commerce Commission; or

(B) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of the Public Utility Holding Company Act of 1935; or

(C) regulated with respect to its rates and charges by a governmental authority of the United States or any state; or

(D) regulated with respect to the issuance or guarantee of the security by a governmental authority of the United

States, any state, Canada or any Canadian province;
and

(8) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association provided the Administrator is provided with a notice at such time and in such form as provided by rule or order; and

(9) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine (9) months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal; and

(10) Any ~~investment contract or other~~ security offered, sold, issued, distributed or transferred in connection with an employee stock purchase, stock option, savings, pension, thrift, profit-sharing or similar benefit plan or trust (including a self-employed person's retirement plan or trust); provided, that in the case of plans or trusts which are not qualified under Section 401 of the Internal Revenue Code and which provide for contributions by employees, there is filed with the Administrator, at least ten (10) full business days prior to any offer or sale in this state, a notice specifying the terms of the plan, current financial statements of the issuer and disclosure documents prepared for employees under the plan, and the Administrator does not commence a proceeding to deny the exemption pursuant to subsection (d) of this section within ten (10) full business days; and provided, further, that the Administrator may by rule or order make this exemption available for other similar plans or trusts, including plans or trusts which allow participation by persons other than employees.

(b) The following transactions are exempted from Sections 301 and 402 of this title:

(1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not; and

(2) Any nonissuer transaction in an outstanding security if:

(A) the security is of a class that has been outstanding in the hands of the public for not less than one hundred eighty (180) days before the transaction and a nationally recognized securities manual designated by the Administrator contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen (18) months prior to the transaction and a profit-and-loss statement for either the fiscal year preceding that date or the most recent year of operations; or

(B) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three (3) preceding fiscal years, or during the existence of the issuer and any predecessors if less than three (3) years, in the payment of the principal, interest, or dividends on the security.

The Administrator may impose additional requirements as a condition of the exemption established in this paragraph as necessary for the protection of investors and shall promulgate rules specifying application of this exemption; and

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the Administrator, by rule, may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each such form be preserved by the broker-dealer for a specified period; and

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters; and

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit; and

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator; and

(7) Any transaction executed by a bona fide pledgee without any purpose of evading the provisions of the Oklahoma Securities Act; and

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity; and

(9) (A) Any sale by an issuer to not more than ~~fifteen (15) nonaccredited investors wherever located, and to not more than fifty (50) accredited investors wherever located,~~ twenty-five purchasers, other than those designated in paragraph (8) of this subsection, wherever located during any period of twelve (12) consecutive months whether or not the offeror or any of the offerees are then present in this state, if:

(i) the issuer reasonably believes that all purchasers, other than those designated in

paragraph (8) of this subsection, are purchasing for investment;

(ii) no commission is paid or given, directly or indirectly, as consideration for any such solicitation or sale, other than for those transactions involving those purchasers designated in paragraph (8) of this subsection;
and

(iii) no public advertising or solicitation is used in any such solicitation or sale; ~~and.~~

~~(iv) in the event a notification or other form is required to be filed with the Securities and Exchange Commission pursuant to Regulation D under the Securities Act of 1933 in connection with such sale, the notification described in any rule adopted pursuant to division (iii) of subparagraph (B) of this paragraph is filed with the Administrator in connection with such sale.~~

The Administrator may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of purchasers permitted, or waive the conditions in clauses (i), (ii) and/or (iii) of this subparagraph with or without the substitution of a limitation on commissions.

(B) Any sale by an issuer in this state exempted from Section 5 of the Securities Act of 1933 pursuant to Section 4(6) thereof; or by virtue of a rule or regulation adopted by the United States Securities and Exchange Commission pursuant to Section 4(2) of such act; or pursuant to Rules 501 through ~~506~~ 508 of Regulation D adopted by the United States Securities

and Exchange Commission (17 C.F.R. 230.501 through ~~230.506~~ 230.508), provided that:

- ~~(i) commissions paid or given, directly or indirectly, as consideration for such solicitation or sale be paid or given only to broker-dealers registered pursuant to Section 202 of this title or through said broker-dealers to their agents registered pursuant to Section 202 of this title; provided, persons engaged in such solicitation or sale who are not required by this act to register in this state may be paid or given commissions if such persons are registered with an association of brokers and dealers registered with the United States Securities and Exchange Commission pursuant to Section 15A of the Securities Exchange Act of 1934, as amended; and~~
 - ~~(ii) commissions paid or given, directly or indirectly, as consideration for such solicitation or sale~~ offering expenses do not exceed those allowed for securities registered pursuant to the provisions of this act the Oklahoma Securities Act; and
 - ~~(iii)~~ (ii) the issuer files with the Administrator a notice at such time and in such form as is designated by the Administrator by rule.
- (C) Any offer made pursuant to subparagraph (A) or (B) of this paragraph in which no sale results from such offer.
- (D) The Administrator may make, amend or rescind rules defining terms used in this section insofar as the

definitions are not inconsistent with the provisions of this act; and

(10) Any offer or sale of a preorganization certificate or subscription if:

(A) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber; and

(B) the number of subscribers does not exceed ten; and

(C) no payment is made by any subscriber; and

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including but not limited to, persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance, if:

(A) no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state; or

(B) the issuer first files a notice specifying the terms of the offer and the Administrator, by order, does not disallow the exemption within the next five (5) full business days; and

(12) Any offer, but not a sale, of a security for which registration statements have been filed pursuant to the provisions of the Oklahoma Securities Act and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending pursuant to either the Securities Act of 1933 or the Oklahoma Securities Act; and

(13) Any offer to sell or sale of securities by an industrial foundation organized pursuant to the laws of Oklahoma, provided that the issuer has first been approved by the Oklahoma Industrial

Finance Authority as and has been certified by such Authority to the Oklahoma Securities Commission to be an industrial foundation, which approval and certification shall be conclusive as to the nature and purpose of such industrial foundation; and

(14) Any offer to sell or sale of securities issued by any person who is organized and operating not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes or as a chamber of commerce or trade or professional association, if ~~all~~ such transactions are made by members of the issuer who receives no commission or other remuneration paid or given directly or indirectly for any solicitation or sale and provided the Administrator is provided with a notice at such time and in such form as provided by rule or order; and

(15) (A) Any sale from or in this state to not more than thirty-two persons of a unit consisting of interests in oil, gas or mining titles or leases or any certificate of interest or participation, or conveyance in any form of an interest therein, or in payments out of production pursuant to such titles or leases, whether or not offered in conjunction with, or as an incident to, an operating agreement or other contract to drill oil or gas wells or otherwise exploit the minerals on the particular leases, whether or not the seller or any ~~purchasers~~ buyers are then present in the state, if:

- (i) the seller reasonably believes that all buyers are purchasing for investment;
- (ii) no commission is paid or given directly or indirectly for the solicitation of any such sale excluding any commission paid or given by and between parties each of whom is engaged in the

business of exploring for or producing oil and gas or other valuable minerals;

(iii) no public advertising or public solicitation is used in any such solicitation or sale; and

(iv) sales are effected only to persons the seller has reasonable cause to believe are capable of evaluating the risk of the prospective investment and able to bear the economic risk of the investment; but the Administrator, by rule or order, as to any specific transaction, may withdraw or further condition this exemption or decrease the number of sales permitted or waive the conditions in divisions (i), (ii) and (iii), with or without substitution of a limitation on remuneration.

(B) For the purpose of the foregoing transactional exemption, no units by the issuer or associates shall be integrated, however this exemption cannot be combined or used in conjunction with any other transactional exemption; and

(16) Any transaction or series of transactions incident to a ~~class~~ vote by ~~stockholders~~, security holders pursuant to law or the articles or certificate of incorporation, or the statute applicable to the corporation, partnership agreement or the controlling agreement among security holders on a merger, consolidation, ~~stock-for-stock~~ reorganization, reclassification of securities, or sale of ~~corporate~~ assets in consideration of the issuance of securities of another ~~corporation~~ person if:

(A) written notice of the transaction, the fee set forth in Section 412 of this title and a copy of the materials by which approval of the transaction will be solicited are filed with the Administrator at least

ten (10) full business days prior to any offer in this state; and

(B) the Administrator does not commence a proceeding to deny the exemption pursuant to subsection (d) of this section within ten (10) full business days; and

(17) Any transaction pursuant to an offer to existing security holders of a bank:

(A) which bank, prior to the offer:

(i) owned a majority of the outstanding voting stock of the issuer; or

(ii) was majority-owned by the issuer; or

(B) which offer has the objective of causing, subsequent to the consummation of the transactions contemplated by the offer:

(i) some or all of the outstanding voting stock of the bank to be owned by the issuer; and

(ii) the issuer to be majority-owned by former security holders of the bank;

if no commission is paid or given for soliciting any security holder in this state, and if the issuer files, at least ten (10) full business days prior to the offer, a notice accompanied by any disclosure document to be utilized in connection with such offer, and if the Administrator, by order, does not disallow the exemption within the next ten (10) full business days. The Administrator, by rule or order, as to any security or transaction or any type of security or transaction, may further condition the availability of this exemption; and

(18) A nonissuer transaction in a security by a broker-dealer or agent registered under the provisions of Section 202 of this title if:

(A) (i) the issuer of the security has a class of securities ~~required to be~~ registered pursuant to

Section 12 of the Securities Exchange Act of 1934;

- (ii) the issuer has filed reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 during the ninety (90) day period immediately preceding the date of the offer or sale, or is an issuer of a security subject to Section 12(g)(2)(B) or (G) of the Securities Exchange Act of 1934;
- (iii) the broker-dealer has a reasonable basis for believing that the issuer is current in filing the regular reports required pursuant to the provisions of either Section 13 or Section 15(d) of the Securities Exchange Act of 1934, or in the case of insurance companies exempted from Section 12(g) of the Securities Exchange Act of 1934 by subparagraph 12(g)(2)(G) thereof, the annual statement referred to in Section 12(g)(2)(G)(i) of the Securities Exchange Act of 1934; and
- (iv) the broker-dealer has in its records, and makes reasonably available upon request, the issuer's most recent annual report filed pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, or the annual statement in the case of an insurance company exempted from Section 12(g) of the Securities Exchange Act of 1934 by subparagraph 12(g)(2)(G) thereof, together with any other reports which the issuer is required to file at regular intervals pursuant to the Securities Exchange Act of 1934 after such annual report or annual statement; provided that the making available of such reports pursuant to this

division, unless otherwise represented, shall not constitute a representation by the broker-dealer that the information is true and correct but shall constitute a representation by the broker-dealer that the information is reasonably current; or

- (B) the issuer has, for not less than ninety (90) days before the transaction, filed and maintained with the Administrator information in such form as the Administrator by rule specifies, substantially comparable to the information which the issuer would be required to file pursuant to Section 12(b) or Section 12(g) of the Securities Exchange Act of 1934 if the issuer were to have a class of its securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, and the issuer has paid a fee as designated by the Administrator by rule; and

(19) A transaction by an issuer in a security effected by or through a broker-dealer or agent registered pursuant to the provisions of Section 202 of this title:

- (A) involving a security of the same class as a security of the issuer which is listed or approved for listing upon notice of issuance on a national securities exchange either registered pursuant to Section 6 of the Securities Exchange Act of 1934 or designated or approved for designation upon notice of issuance as a national market system security by the National Association of Securities Dealers, Inc., provided that such exchange or national market system shall be approved by rule or order of the Administrator; or
- (B) involving any security of the same issuer which is of senior or substantially equal rank, or which differs

only in terms of voting rights, from the security listed on such exchange or national market system;

(C) any warrant, option or right to purchase or subscribe to any security described in subparagraphs (A) or (B) of this paragraph.

The Administrator may impose by rule or order additional requirements or conditions on the exemptions provided by this paragraph; and

(20) A nonissuer transaction involving a security issued and outstanding and listed or approved for listing upon notice of issuance on a national securities exchange registered pursuant to Section 6 of the Securities Exchange Act of 1934, or designated or approved for designation upon notice of issuance as a national market system security by the National Association of Securities Dealers, Inc., or any warrant, option or right to purchase or subscribe to any such security provided that such exchange or national market system shall be approved by rule or order of the Administrator, subject to any additional requirements or conditions imposed by the Administrator; and

(21) A transaction or type of transaction as to which the Administrator, by rule or order, finds that registration is not necessary or appropriate for the protection of investors.

(c) The Oklahoma Securities Act, except Section 101 and paragraph (2) of subsection (a) of Section 408 of this title, shall not apply to any company defined in or coming within the provisions of Sections 181 through 188, inclusive, of Title 17 of the Oklahoma Statutes, nor to the issuance of any security as defined herein of any such company. The Oklahoma Securities Act shall not repeal or modify the provisions of Section 188 of Title 17 of the Oklahoma Statutes.

(d) (1) The Administrator, by order, may deny or revoke any exemption specified in paragraph (8) or (10) of subsection (a) of

this section or in subsection (b) of this section with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, ~~except that~~. If the Administrator makes written findings of fact to support the conclusion that the public interest will be harmed by delay in issuing such an order, the Administrator, by order, may summarily deny or revoke any of the specified exemptions pending final determination of any proceeding pursuant to this subsection.

(2) Upon the entry of a the summary order, the Administrator shall promptly notify all interested parties that ~~it~~:

(A) the summary order has been entered and ~~of~~ the reasons therefor, ~~and that~~

(B) the person subject to the order, if desiring a hearing, must make written request for such hearing to the Administrator within fifteen (15) days after receipt of the notice, and

(C) within fifteen (15) days ~~of the~~ after receipt of a written request, the matter will be set down for hearing. If no hearing is requested and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination for a hearing or at such earlier time during regular business hours of the Department as mutually agreed upon by the Department and said person, a hearing on the matter shall be commenced to determine whether the summary order should be

modified, vacated or become a permanent order as provided in this section.

(3) The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or his designated hearing officer extends the summary order pending a final determination. The summary order shall become a permanent order if the person to whom notice is addressed does not request a hearing within fifteen (15) days after the receipt of notice. If a request for hearing on the summary order is timely made and if said hearing is not commenced by the Administrator within the time limit set forth herein, the summary order shall dissolve and a permanent order shall not be issued pursuant to this section except upon reasonable notice and opportunity for a hearing. No order pursuant to this subsection may operate retroactively. No person may be considered to have violated Section 301 or 402 of this title by reason of any offer or sale effected after the entry of an order pursuant to this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

(e) In any proceeding pursuant to the provisions of the Oklahoma Securities Act, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

SECTION 16. AMENDATORY 71 O.S. 1991, Section 408, is amended to read as follows:

Section 408. (a) Any person who:

(1) offers or sells a security in violation of Sections 201(a), 301, or 404(b) of this title, or of any rule or order under Section 402 of this title which requires the affirmative approval of sales literature before it is used, or of any condition imposed under Sections 304(d), 305(f), or 305(g) of this title, or

(2) offers or sells or purchases a security by means of any untrue statement of a material fact or any omission to state a

material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the other party not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, is liable:

- (A) in the case of an offer or sale of a security by such means, to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at ten percent (10%) per year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender, less the value of the security when the buyer disposed of it, and interest at ten percent (10%) per year from the date of disposition, or
- (B) in the case of a purchase of a security by such means, to the person selling the security to him, who may sue at law or equity, for a return of the security, together with any income received by the purchaser on the security, costs and reasonable attorneys' fees, upon a tender of the full amount of the consideration received for the security, or, if the purchaser no longer owns the security, for the difference between the fair value of the security at the date of the transaction and the consideration received for the security, together with interest on such difference at the rate of ten percent (10%) per year from the date

of the transaction, costs and reasonable attorneys' fees.

(b) Every person who materially participates or aids in a sale or purchase made by any person liable under paragraph (1) or (2) of subsection (a) of this section, or who directly or indirectly controls any person so liable, shall also be liable jointly and severally with and to the same extent as the person so liable, unless the person who so participates, aids or controls, sustains the burden of proof that he did not know, and could not have known, of the existence of the facts by reason of which liability is alleged to exist. There shall be contribution as in cases of contract among the several persons so liable.

(c) Any person who:

(1) in violation of Section 201(c) of this title, engages in the business of advising others for compensation, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities, in violation of Section 201(c) of this title, or

(2) receives, directly or indirectly, any consideration from another person for advice as to the value of securities or their purchase or sale, whether through the issuance of analyses, reports or otherwise and employs any device, scheme, or artifice to defraud such other person or engages in any act, practice or course of business which operates or would operate as a fraud or deceit on such other person,

is liable to that person who may sue either at law or in equity to recover the consideration paid for such advice and any loss due to such advice, together with interest at ten percent (10%) per year from the date of payment of the consideration plus costs and

reasonable attorney's fees, less the amount of any income received from such advice.

(d) Any tender specified in this section may be made at any time before entry of judgment.

(e) Every cause of action under this section survives the death of any person who might have been a plaintiff or defendant.

(f) No person may sue under paragraph (1) of subsection (a) of this section more than three (3) years after the sale. No person may sue under paragraph (2) of subsection (a) of this section more than two (2) years after the untruth or omission was, ~~or in the exercise of reasonable care should have been,~~ discovered, ~~or such longer term of limitation as may be otherwise provided by law~~ but in no event more than three (3) years after the sale. No person may sue under this section if:

(1) the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid together with interest at ten percent (10%) per year from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within thirty (30) days of its receipt, or

(2) the buyer received such an offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within thirty (30) days of its receipt.

(g) No person may sue under paragraph (1) of subsection (c) of this section more than three (3) years from the date the advice was given. No person may sue under paragraph (2) of subsection (c) of this section more than ~~two (2) years~~ one (1) year after the fraud or deceit was, ~~or in the exercise of reasonable care should have been,~~ discovered, ~~or such longer term of limitation as may be otherwise provided by law~~ but in no event more than three (3) years after the date the advice was given.

(h) Provided, any longer term of limitation as otherwise provided by law shall apply to any actions brought under ~~this act~~ the Oklahoma Securities Act.

(i) No person who has made or engaged in the performance of any contract in violation of any provision of this title or any rule or order promulgated thereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract. Any defendant who prevails in an action brought under paragraph (1) or (2) of subsection (a) or paragraph (1) or (2) of subsection (c) of this section may recover his reasonable attorneys' fees and costs in the action from the plaintiff if the court, in its discretion, determines that the action was without substantial merit. Any plaintiff who prevails in an action brought under paragraph (1) or (2) of subsection (a) or paragraph (1) or (2) of subsection (c) of this section may recover his reasonable attorneys' fees and costs in the action from the defendant.

(j) Any condition, stipulation, or provision is void if it would bind a person acquiring any security to waive compliance with any provision of this title, or any rule or order promulgated thereunder.

(k) Every multilevel distribution company shall provide in its contract or plan of participation that such contract may be canceled within ninety (90) days from the date of the execution thereof for any reason at any time by a participant upon notification in writing to the company of his election to cancel. If the participant has purchased products while the contract of participation was in effect, all unencumbered products in a resalable condition then in the possession of the participant shall be repurchased. The repurchase shall be at a price of not less than ninety percent (90%) of the original net cost to the participant returning such goods,

taking into account any sales made by or through such participant prior to notification to the company of the election to cancel. Further, the company shall refund not less than ninety percent (90%) of any other consideration paid by the participant in order to participate in the marketing program.

(1) The rights and remedies provided for in this title are in addition to other rights or remedies that may exist in law or in equity; however, no additional cause of action is created unless specified in this section or Section 202(e) of this title.

SECTION 17. AMENDATORY 71 O.S. 1991, Section 409, is amended to read as follows:

Section 409. (a) Any person aggrieved by final order of the Administrator may obtain a review by the Commission by filing with the Administrator, within fifteen (15) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part and stating his specific grounds therefor. The petition; the record in the administrative hearing, including but not limited to the transcript; and written briefs submitted by the appealing parties and the Administrator shall be reviewed by the Commission. The costs of preparing the record of the administrative hearing shall be borne by the appealing parties. Oral argument by all parties shall be heard by the Commission ~~in~~ en banc unless waived by the party. Other than newly discovered evidence, additional evidence may only be presented by the appealing party and/or the Administrator on the request of the Commission. Upon the written request of the party on whose behalf the appeal is brought, or upon his own motion, the Administrator shall cause complete stenographic notes to be taken of the proceeding before the Commission. If requested by the appealing party, the cost of taking and transcribing such notes shall be borne by the said appealing party. If such notes are taken upon the motion of the Administrator, the cost shall be borne by the Department. The Commission or a

majority thereof shall make such order as is deemed proper, just, and equitable within sixty (60) days of receipt by the Administrator of the written petition of the appealing party or at such later time as agreed to by all parties.

(b) Any person aggrieved by a final order of the Commission, except a final order of the Commission to cease and desist as provided for in paragraph (1) of subsection (a) of Section 406 of this title, may obtain a review of the order by the Supreme Court of Oklahoma. Any person aggrieved by a final order of the Commission to cease and desist as provided for in paragraph (1) of subsection (a) of Section 406 of this title may obtain a review of the final order by filing a petition in the district court of Oklahoma County within thirty (30) days after the person is notified of the order. The proceedings for review shall be as now prescribed by law and by rules of the reviewing court, subject to the power of the reviewing court to make other and further rules with reference thereto.

(c) The commencement of proceedings under this section before the Commission shall not operate as a stay of the Administrator's order, unless so ordered by the Commission. The commencement of proceedings under this section before the Supreme Court shall not operate as a stay of the Commission's order, unless so ordered by the Court.

SECTION 18. AMENDATORY 71 O.S. 1991, Section 410, is amended to read as follows:

Section 410. (a) The Administrator may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this act, including rules and forms governing registration statements, applications, and reports, and defining any terms, whether or not used in this act, insofar as the definitions are not inconsistent with the provisions of this act. For the purpose of rules and forms, the Administrator may classify

securities, persons, and matters within his jurisdiction, and prescribe different requirements for different classes.

(b) No rule, form, or order may be made, amended, or rescinded unless the Administrator finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this act. In prescribing rules and forms the Administrator may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(c) The Administrator may by rule or order prescribe:

(1) the form and content of financial statements required under ~~this act~~ the Oklahoma Securities Act,

(2) the circumstances under which consolidated financial statements shall be filed, and

(3) whether any required financial statements shall be certified by independent or certified public accountants.

All financial statements shall be prepared in accordance with generally accepted accounting ~~practices~~ principles.

(d) All rules and forms of the Administrator shall be published.

(e) No provision of ~~this act~~ the Oklahoma Securities Act imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the Administrator, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(f) Every hearing in an administrative proceeding shall be public.

SECTION 19. AMENDATORY 71 O.S. 1991, Section 411, is amended to read as follows:

Section 411. (a) A document is filed when it is received by the Administrator.

(b) The Administrator shall keep a register of all applications for registration under this title and all registration ~~statements~~ ~~which are or have ever been effective,~~ orders issued pursuant to the provisions of ~~the Oklahoma Securities Act~~ this title and all denial, suspension, or revocation orders or any other orders of the Administrator or Commission which have been entered pursuant to the provisions of ~~the Oklahoma Securities Act~~ this title. The register shall be open for public inspection.

(c) The information contained in or filed with any registration statement, application, report, or notice of claim for exemption from registration may be made available to the public pursuant to such rules as the Administrator prescribes. Information or documents obtained by the Administrator in connection with an investigation or examination pursuant to this title do not constitute public information and shall not be made available to the public. The Administrator may disclose any information obtained in connection with an investigation pursuant to this title for the purpose of a civil, administrative or criminal proceeding. The Administrator may disclose such information to another regulatory entity so long as the receiving agency represents in writing that under applicable law protections exist to preserve the integrity, confidentiality and security of the information.

(d) Upon request and at such reasonable charges as he prescribes, the Administrator shall furnish to any person photostatic or other copies, certified under his seal of office if requested, of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution pursuant to the provisions of the Oklahoma Securities Act, any copy so

certified is prima facie evidence of the contents of the entry or document certified and shall be admissible in evidence in any administrative, criminal or civil action.

(e) The Administrator in his discretion may honor requests from interested persons for interpretive opinions or no-action letters.

(f) For dissemination of the materials referred to in this section and other similar information of public interest, the Administrator may establish a mailing registry.

(g) The Administrator may require payment of fees for any of the services set forth in this section as specified by Section 412 of this title.

(h) The Administrator may designate by order filing depositories for all records required to be filed and maintained under this title. These records may be maintained in original form or by means of microfilm, microfiche, photographic reproduction, computerization or other copying methods. In furtherance hereof, the Administrator is authorized to participate, in whole or in part, in the Central Registration Depository System, in cooperation with the National Association of Securities Dealers, Inc. and the North American Securities Administrators Association.

SECTION 20. AMENDATORY 71 O.S. 1991, Section 412, is amended to read as follows:

Section 412. (a) Unless otherwise provided for by law, the following shall be the fees charged pursuant to the provisions of the Oklahoma Securities Act. Once paid, such fees shall be nonrefundable:

- (1) Broker-dealer registration
fee or renewal fee..... \$300.00
- (2) Broker-dealer or issuer agent
or broker-dealer principal
registration fee or renewal fee..... \$50.00
- (3) Broker-dealer agent

- on an inactive basis, renewal fee..... \$10.00
- (4) Investment advisor registration fee
or renewal fee..... \$300.00
- (5) Investment adviser
representative registration fee or
renewal fee..... \$50.00
- (6) Combined broker-dealer/investment adviser
registration fee or renewal fee..... \$450.00
- (7) Combined agent/investment
adviser representative
of one combined broker -
dealer/investment adviser
registration fee or
renewal fee..... \$60.00
- (8) Mass transfer fee..... \$10.00
per agent
- (9) Mailing list fee..... \$30.00
per year
- (10) Review and approval fee for
sales literature package..... \$50.00
- (11) Post-registration reports..... \$50.00
- (12) Exemption notification or request for
order of exemption..... \$250.00
- (13) Interpretive opinion or
no-action request..... \$250.00
- (14) Affidavit request..... \$10.00
- (15) Service of process upon
the Administrator..... \$10.00
- (16) Amendments to Registration
Statements involving changes to
the issuer's application form:
(A) examination fee..... \$50.00; and

(B) a filing fee computed in the same manner as the filing fee required pursuant to paragraph (1) of subsection (b) of this section for any additional securities being registered.

(17) Actual charges for an on-site examination conducted pursuant to Section 405(e) of this title shall include the time spent by Department personnel in traveling to and from the examination site, conducting the examination, and preparing the examination report; travel expenses for meals, lodging, transportation, and other related expenses; and the cost of supplies, materials, photocopying and postage. Time shall be billed at Twenty-five Dollars (\$25.00) per employee hour with a minimum charge per examination of Two Hundred Dollars (\$200.00).

(18) Copying fee

(A) 8 1/2" by 14" or smaller..... \$.25 per page

(B) Larger than 8 1/2" by 14"..... \$1.00 per page

(C) Certified copy

8 1/2" by 14" or smaller..... \$1.00 per page

(D) Certified copy larger

than 8 1/2" by 14"..... \$2.00 per page

(19) Document search fee for commercial

purpose..... \$20.00 per hour

(b) Any person filing a registration statement shall pay an ~~initial~~ examination fee of Two Hundred Dollars (\$200.00) and:

(1) a filing fee computed upon the aggregate offering price of the securities sought to be registered in Oklahoma as follows:

(A) for securities registered pursuant to Sections 302, 303, or 304 of this title, a fee equal to one-tenth of one percent (.001%) of said price; provided, in no event shall the filing fee be less than Two Hundred

Dollars (\$200.00) or more than Two Thousand Five Hundred Dollars (\$2,500.00); or

(B) for securities registered pursuant to Section 304.1 of this title, a fee equal to one-twentieth of one percent (.0005%) of said price; provided, in no event shall the filing fee be less than One Hundred Dollars (\$100.00) or more than Two Thousand Five Hundred Dollars (\$2,500.00); or

(2) if the registration statement involves securities issued by an investment company, an indefinite amount of securities may be registered by paying a filing fee of One Thousand Five Hundred Dollars (\$1,500.00) with each application for registration. The registration shall cover a period of one (1) year, beginning with the date it becomes effective in this state and no subsequent sales report shall be required.

(c) All fees and other charges collected by the Administrator shall be deposited in the General Revenue Fund with the State Treasurer, except for the fees deposited in the Oklahoma Department of Securities ~~Commission~~ Revolving Fund.

(d) There is hereby created in the State Treasury a revolving fund for the Oklahoma Securities Commission to be designated the "Oklahoma Securities Commission Revolving Fund". On and after the effective date of this act, such fund shall be for the use of the Oklahoma Department of Securities and shall be redesignated the "Oklahoma Department of Securities Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of fees and other charges collected by the Administrator as follows:

(1) thirty-three percent (33%) of the filing fees collected for exemption notification;

(2) the fees collected pursuant to paragraphs (9), (14), (15), (18), and (19) of subsection (a) of this section;

(3) the fees collected pursuant to the provisions of Section 402 of this title as provided in paragraph (10) of subsection (a) of this section;

(4) the fees collected pursuant to subsections (e) and (f) of Section 405 of this title as provided in paragraph (17) of subsection (a) of this section including, but not limited to, the examination fees designated in paragraph (16) of subsection (a) of this section; and

(5) the amounts collected pursuant to subsections (e) and (f) of Section 411 of this title set forth in paragraph (13) of subsection (a) of this section.

(e) All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Oklahoma Department of Securities ~~Commission~~ as may be necessary to perform the duties imposed upon the said ~~Commission~~ Department by law. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

(f) At the close of each fiscal year, any unexpended monies in the Oklahoma Securities Commission Revolving Fund and, after the effective date of this act, in the Oklahoma Department of Securities Revolving Fund in excess of Three Hundred Fifty Thousand Dollars (\$350,000.00) shall be transferred to the General Revenue Fund of the state.

SECTION 21. This act shall become effective July 1, 1992.

SECTION 22. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the House of Representatives the 8th day of April, 1992.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1992.

President of the Senate