

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

CONFERENCE COMMITTEE

SUBSTITUTE FOR ENGROSSED

SENATE BILL NO. 665

By: Fisher of the Senate

and

Benson of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to securities; amending 71 O.S. 1991, Sections 2, as amended by Section 2, Chapter 241, O.S.L. 1992, 16, 102, as amended by Section 8, Chapter 241, O.S.L. 1992, 201, 202, as amended by Section 9, Chapter 241, O.S.L. 1992, 203, 204 and 303, as amended by Sections 10 and 12, Chapter 241, O.S.L. 1992, 304, 305, 306, as amended by Section 14, Chapter 241, O.S.L. 1992, 307, 401, as amended by Section 15, Chapter 241, O.S.L. 1992, 402, 405, 406, 408, as amended by Section 16, Chapter 241, O.S.L. 1992, 412, as last amended by Section 2, Chapter 270, O.S.L. 1994 and 413 (71 O.S. Supp. 1994, Sections 2, 102, 202, 204, 303, 306, 401, 408 and 412), which relate to regulation of securities; modifying, deleting and adding definitions; adding position to unclassified service; making certain additional activities unlawful for investment advisers; making certain persons exempt from registration as broker-dealer or agent and as investment adviser or investment adviser representative; providing for form and procedure for filing certain application; deleting certain bond requirements; providing for certain examinations of records and authorizing copying of records; authorizing disciplinary action against certain additional persons; modifying time period for instituting certain proceeding; clarifying provisions to which certain limitations apply; clarifying and conforming language; requiring certain fees accompany certain registrations; authorizing waiver and modification of certain requirements under certain conditions; modifying required information; authorizing Administrator to make or cause certain examinations without notice to be made of issuers and providing for copying of certain records; deleting certain condition for issuing stop order; clarifying that records of investment certificate issuer are subject to certain examination and audit; modifying provisions related to securities, offers and transactions exempt from registration; making certain distribution of prospectus unlawful and making certain exception; deleting certain special examination authorization; deleting certain requirements of contracts of multilevel distribution

companies; clarifying language pertaining to fees; modifying fees deposited in revolving fund; modifying service by mail requirements; repealing 71 O.S. 1991, Section 103, relating to securities of financial institutions; 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 2, as amended by Section 2, Chapter 241, O.S.L. 1992 (71 O.S. Supp. 1994, Section 2), is amended to read as follows:

Section 2. 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, member 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~~ the person 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 or her own account. "Broker-dealer" does not include:

- (1) an agent,i
- (2) an issuer,i
- (3) a ~~bank, savings~~ depository institution, ~~or trust
company,i~~ 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~~ any other person the Administrator, by rule or order, designates.

(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) "Depository institution" means:

(1) a person that is organized, chartered, or holding an authorization certificate under the laws of a state or of the United States which authorizes the person to receive deposits, including a savings, share, certificate, or deposit account, and which is supervised and examined for the protection of depositors by an official or agency of a state or the United States; or

(2) a trust company or other institution that is authorized by federal or state law to exercise fiduciary powers of the type a national bank is permitted to exercise under the authority of the Comptroller of the Currency and is supervised and examined by an official or agency of a state or the United States.

The term does not include an insurance company or other organization primarily engaged in the insurance business or a

Morris Plan bank, industrial loan company, or a similar bank or company unless its deposits are insured by a federal agency.

(h) "Financial or institutional investor" means any of the following, whether acting for itself or others in a fiduciary capacity:

(1) a depository institution;

(2) an insurance company;

(3) a separate account of an insurance company;

(4) an investment company as defined in the Investment Company Act of 1940;

(5) an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of Five Million Dollars (\$5,000,000.00) or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is either a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, a depository institution, or an insurance company;

(6) a qualified institutional buyer as defined in Rule 144A adopted by the United States Securities and Exchange Commission (17 C.F.R. 230.144A); or

(7) any other institutional buyer.

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

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

~~(i)~~ (k) "Investment adviser" means 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. "Investment adviser" does not include:

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

(2) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of ~~his~~ their profession or;

(3) any person who:

(A) does not exercise investment discretion with respect to the assets of clients or maintain custody of the assets of clients for the purpose of investing those assets, except when the person is acting as a bona fide fiduciary in a capacity such as an executor, trustee, personal representative, estate or trust agent, guardian, conservator, or person serving in a similar fiduciary capacity;

(B) does not accept or receive, directly or indirectly, any commission, fee, or other remuneration contingent upon the purchase or sale of any specific security by a client of such person; and

(C) does not advise on the purchase or sale of specific securities;

(4) 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(s)(18)~~ 2(u)(17) of this title;

~~(3)~~ (5) a broker-dealer whose performance of these services is solely incidental to the conduct of ~~his~~ its business as a broker-dealer and who receives no special compensation for them;

~~(4)~~ (6) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication of general, regular, and paid circulation;

~~(5)~~ (7) an investment adviser representative; or

~~(6)~~ (8) such other persons not within the intent of this paragraph as the Administrator may by rule or order designate.

~~(j)~~ (1) "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) supervises employees who perform any of the acts described in this subsection.

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

~~(n)~~ (o) "Person" means an individual, a corporation, a partnership, a limited liability company, 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.

~~(e)~~ (p) "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.

(q) "Promoter" includes:

(1) a person who, acting alone or in concert with one or more persons, takes the entrepreneurial initiative in founding or organizing the business or enterprise of an issuer;

(2) an officer or director owning securities of an issuer or a person who owns, beneficially or of record, ten percent (10%) or more of a class of securities of the issuer if the officer, director, or person acquires any of those securities in a transaction within three (3) years before the filing by the issuer of a registration statement under this act and the transaction is not an arms-length transaction; or

(3) a member of the immediate family of a person within paragraph (1) or (2) of this subsection if the family member receives securities of the issuer from that person in a transaction within three (3) years before the filing by the issuer of a registration statement under this act and the transaction is not an arms-length transaction.

For purposes of this subsection, "immediate family" means a spouse of a person within paragraph (1) or (2) of this subsection, an emancipated child residing in such person's household, or an individual claimed as a dependent by such person for tax purposes.

~~(p)~~ (r) "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.

~~(q)~~ (s) (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.

~~(r)~~ (t) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Company Act of 1940" and "Investment Advisers Act of 1940" mean the federal statutes of those names as amended heretofore or hereafter.

~~(s)~~ (u) "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)~~ (15) 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)~~ (16) 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)~~ (17) 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.

~~(t)~~ (v) "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.

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

~~(v)~~ (x) "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 2. AMENDATORY 71 O.S. 1991, Section 16, is amended to read as follows:

Section 16. The ~~Commission's~~ Department of Securities' attorney, securities investigator ~~and~~, securities examiner and network administrator positions shall be, ~~as of the effective date of this act,~~ in the unclassified service and are in no way subject to any of the provisions of the Merit System of Personnel Administration or of the rules and regulations promulgated by the Office of Personnel Management except those relating to leave regulations.

SECTION 3. AMENDATORY 71 O.S. 1991, Section 102, as amended by Section 8, Chapter 241, O.S.L. 1992 (71 O.S. Supp. 1994, 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:

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

(3) acting as principal for their own account, knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which the person is acting and obtaining the consent of the client to such

transaction. The prohibitions of this subparagraph shall not apply to any transaction with a customer of a broker-dealer if such broker-dealer is not acting as an investment adviser in relation to such transaction.

(b) ~~It~~ In the solicitation of advisory clients, it is unlawful for any person to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(c) Except as may be permitted by rule or order, it is unlawful for any investment ~~adviser~~ adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

(1) that the investment ~~adviser~~ adviser 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 ~~adviser~~ adviser without the consent of the other party to the contract; and

(3) that the investment ~~adviser~~ adviser, if a partnership or limited liability company, shall notify the other party to the contract of any change in the membership of the partnership or limited liability company within a reasonable time after the change.

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, 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~~

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~~promulgated thereunder. Any 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. "Assignment", as used in 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 ~~adviser~~ adviser is a partnership or limited liability company, 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 ~~adviser~~ adviser having only a minority interest in the business of the investment ~~adviser~~ adviser, or from the admission to the investment ~~adviser~~ adviser 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)~~ (d) It is unlawful for any investment ~~adviser~~ adviser 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 ~~adviser~~ adviser fails to notify the Administrator that ~~he~~ the investment adviser has or may have custody.

SECTION 4. AMENDATORY 71 O.S. 1991, Section 201, is amended to read as follows:

Section 201. (a) (1) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless ~~he~~ the person is so registered under this act or unless the person is exempt from registration as provided in paragraph (2) or (3) of this subsection.

(2) A person shall be exempt from registration as a broker-dealer if the person has no place of business in this state and:

(A) 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) financial or institutional investors, whether acting for themselves or as trustees;

(B) is licensed under the securities act of a state in which that person maintains a place of business and offers and sells securities in this state to a person who is an existing customer of the broker-dealer and whose principal place of residence is not in this state; or

(C) during any period of twelve (12) consecutive months, does not direct more than fifteen offers and sales in this state to persons other than those specified in division (iii) of subparagraph (A) of paragraph (2) of this subsection, whether or not the offeror or any of the offerees is then present in this state, so long as that person is licensed under the laws of a state in which he or she maintains a place of business.

(3) An individual shall be exempt from registration as an agent if the individual:

(A) is representing a broker-dealer exempt under paragraph (2) of this subsection;

(B) is effecting transactions in a security exempted by paragraph (1), (2), (3), (4), (5), (7), or (8) of Section 401(a) of this title;

(C) is effecting transactions exempted by paragraphs (1) through (18), (21) or (22) of Section 401(b) of this title except when:

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

(ii) 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: an order

denying, suspending or revoking registration or a cease and desist order of the Administrator; 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 an order of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person; or

(D) is effecting transactions with existing employees, partners, members or directors of the issuer, or a subsidiary or affiliate of the issuer as those terms may be defined by rule or order, if no commission or other remuneration is paid or given, directly or indirectly, for soliciting any person in this state.

(b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is so registered. The registration of an agent is not effective during any period when ~~he~~ the agent is not associated with a particular broker-dealer registered under this act or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make ~~him~~ the person an agent, the agent as well as the broker-dealer or issuer shall promptly notify the Administrator.

(c) (1) It is unlawful for any person to transact business in this state as an investment adviser or investment adviser representative unless ~~he is~~ so registered under this act or unless ~~he is~~ exempt from registration as provided in paragraph (2) of this subsection.

(2) Subject to paragraph (3) of this subsection, a person shall be exempt from registration as an investment adviser or investment adviser representative if:

(A) ~~his~~ the person's only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies;

- (B) ~~he~~ the person is licensed under the laws of a state in which the person maintains a place of business, has no place of business in this state, and:
- (i) ~~his~~ the person's only clients in this state are other investment advisers, broker-dealers, 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~~ investors, whether acting for themselves or as trustees, or
- (ii) during any period of twelve (12) consecutive months ~~he,~~ does not direct business communications into this state in any manner to more than five (5) present or prospective clients other than those specified in division (i) of this ~~paragraph~~ subparagraph, whether or not ~~he~~ that person or any of the persons to whom the communications are directed is then present in this state; or
- (C) ~~he~~ is a full-time employee of this state, any county, municipality or school district of this state; or any other political subdivision of this state; or any agency or corporate or other instrumentality of any such political subdivision; and such person's activities as an investment adviser or investment adviser representative are required as part of such person's employment with such entity.

(3) The exemptions from registration provided by subparagraphs (A) and (B) of paragraph (2) of this subsection shall not be available to any person who acts as an investment adviser or investment adviser representative to this state, any county, municipality or school district of this state, or any other political subdivision of this state; any agency or corporate

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or other instrumentality of any such entity; or any pension fund for the benefit of employees of any such entity.

(4) The registration of an investment adviser representative is not effective during any period when ~~he~~ the person is not associated with a particular investment adviser registered under this act. When an investment adviser representative begins or terminates a connection with an investment adviser, or begins or terminates those activities which make ~~him~~ the person an investment adviser representative, the investment adviser representative as well as the investment adviser shall promptly notify the Administrator.

(d) Every registration expires one (1) year from its effective date unless renewed; provided the Administrator may require by rule or order that all registrations and renewals of registrations expire on December 31 of the year of registration or renewal. For this purpose the Administrator may prorate registration or renewal fees accordingly.

SECTION 5. AMENDATORY 71 O.S. 1991, Section 202, as amended by Section 9, Chapter 241, O.S.L. 1992 (71 O.S. Supp. 1994, 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~~ in such form and in such manner as prescribed by rule or order of the Administrator for an application and a consent to service of process pursuant to the provisions of Section 413 of this title. The application shall include:

- (A) the applicant's type and place of organization;
- (B) the applicant's proposed method of doing business;
and
- (C) the qualifications and business history of the applicant.

(2) Applications for 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;

(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;

(C) financial statements or such other information regarding applicant's financial condition and history as may be required by rule or order of the Administrator; and

(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 6. AMENDATORY 71 O.S. 1991, Section 203, is amended to read as follows:

Section 203. (a) Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the Administrator, by rule, prescribes. Said records shall be

preserved for three (3) years unless the Administrator, by rule, prescribes otherwise for particular types of records.

(b) Every registered broker-dealer and investment adviser shall file such financial reports as the Administrator, by rule, prescribes. A filing fee as required by the Oklahoma Securities Act shall be submitted with each report, except that no more than two such fees shall be required annually.

(c) If the information contained in any document filed with the Administrator is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given pursuant to the provisions of Section 201 of this title.

(d) All the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special, or other examinations without notice by representatives of the Administrator, within or without this state, as the Administrator deems necessary or appropriate in the public interest or for the protection of investors. The Administrator may copy records or require a registered person to copy records and provide the copies to the Administrator to the extent and in a manner reasonable under the circumstances. For the purpose of avoiding unnecessary duplication of examinations, the Administrator may cooperate with the securities administrators of other states, the United States Securities and Exchange Commission, and any national securities exchange or national securities association registered pursuant to the provisions of the Securities Exchange Act of 1934.

SECTION 7. AMENDATORY 71 O.S. 1991, Section 204, as amended by Section 10, Chapter 241, O.S.L. 1992 (71 O.S. Supp. 1994, 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~~ the Administrator 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)~~ (1) 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)~~ (2) 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)~~ (3) 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)~~ (4) 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)~~ (5) 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)~~ (6) is the subject of an order or other adjudication or determination 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, suspending 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 or other adjudication or determination entered within the past five (5) years by the securities administrator of any other state or by the United States Securities and Exchange

Commission barring the person from association with any other broker-dealer or investment adviser, or is the subject of an order suspending or expelling ~~him~~ the person from a national or international securities exchange or national or international securities association, or is the subject of an order or other adjudication or determination of or by the National Association of Securities Dealers, Inc., or any other self-regulatory organization, suspending, canceling or barring ~~him~~ the person from membership in said organization or barring ~~him~~ the person from association with any other member of said organization, or is the subject of a United States Post Office fraud order; but ~~(i)~~:

(A) 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~~r~~i and ~~(ii)~~

(B) ~~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;

(7) is the subject of a cease and desist order entered after notice and opportunity for hearing by the Administrator, the securities agency or administrator of another state, the United States Securities and Exchange Commission or the Commodity Futures Trading Commission;

~~(G)~~ (8) has engaged in dishonest or unethical practices in the securities business;

~~(H)~~ (9) is insolvent, either in the sense that ~~his~~ liabilities exceed ~~his~~ assets or in the sense that ~~he~~ the person cannot meet ~~his~~ obligations as they mature; but the Administrator may not enter an order against a broker-dealer or investment adviser under this ~~subparagraph~~ paragraph without a finding of insolvency as to the broker-dealer or investment adviser;

~~(I)~~ (10) 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)~~ (c) of this section; or

~~(J)~~ (11) 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)~~ (12) has failed to exercise reasonable supervision of ~~his~~ its agents if ~~he is~~ a broker-dealer or a designated principal, or of ~~his~~ its investment adviser representatives if ~~he is~~ an investment adviser to ensure compliance with the Oklahoma Securities Act; or

~~(B)~~ (13) has failed to pay the proper filing fee; but the Administrator may enter only a denial order under this ~~subparagraph~~ paragraph, and ~~he~~ shall vacate any such order when the deficiency has been corrected.

~~(e)~~ (b) 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)~~ ninety (90) days following the effective date of registration.

~~(d)~~ (c) The Administrator's determination that an applicant or registrant lacks qualification under paragraph (10) of subsection (a) of this section is limited by 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~~ the broker-dealer 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~~ the investment adviser 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)~~ (d) (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:

(A) the summary order has been entered and the reasons therefor;

(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~~ the person or at such ~~sooner~~ earlier time during regular business

hours of the Department as mutually agreed upon by the Department and ~~said~~ the 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~~ a 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~~ the 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)~~ (e) 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)~~ (f) 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)~~ paragraph (2) of subsection (a) of this section within one (1) year after withdrawal became effective and enter a ~~revocation or suspension~~ an order as of the last date on which registration was effective.

~~(h)~~ (g) No order may be entered under any part of this section except under paragraph 1 of subsection ~~(e)~~ (d) 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 8. AMENDATORY 71 O.S. 1991, Section 303, as amended by Section 12, Chapter 241, O.S.L. 1992 (71 O.S. Supp. 1994, 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, and the fees set forth in Section 412 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 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 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.

(e) Upon failure to receive the required notification ~~and or~~ 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~~ (d) of this section. The Administrator shall promptly ~~notifies~~ notify the registrant (and promptly ~~confirms~~ confirm by letter, telegram or facsimile transmission when ~~he~~ ~~notifies~~ notifying by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of ~~this~~ subsection (d) of this section as to notice and post-effective amendment, the stop order is void as of the time of its entry.

(f) The Administrator may by rule or otherwise waive either or both of the conditions specified in paragraphs (2) and (3) of subsection (c) of this section.

(g) If the federal registration statement becomes effective before all the conditions in ~~this subsection and subsection~~ subsections (c) and (d) 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, at the registrant's expense, whether all the conditions are satisfied and whether ~~he~~ the Administrator 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.

(h) The Administrator by rule or order may waive or modify the application of a requirement of this section if a provision or an amendment, repeal, or other alteration of the securities registration provisions of the Securities Act of 1933, or the regulations adopted under that act, render the waiver or modification appropriate for further coordination of state and federal registration.

SECTION 9. AMENDATORY 71 O.S. 1991, Section 304, is amended to read as follows:

Section 304. (a) Any security may be registered by qualification.

(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, and the fees set forth in Section 412 of this title:

(1) with respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) with respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: ~~his name, address age, and principal occupation for~~ business experience during the past five (5) years; the amount of securities of the issuer held by ~~him~~ the person as of a specified date within thirty (30) days of the filing of the registration statement; the amount of the securities covered by the registration statement to which ~~he~~ the person has indicated ~~his~~ an intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three (3) years or proposed to be effected;

(3) with respect to persons covered by paragraph (2) of this subsection: the remuneration paid during the past twelve (12) months and estimated to be paid during the next fiscal year, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries, and affiliates) to all those persons in the aggregate;

(4) with respect to any person owning of record, or beneficially if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer: the information specified in paragraph (2) of this subsection other than his occupation;

(5) with respect to every promoter if the issuer was organized within the past three (3) years: the information specified in paragraph (2) of this subsection, any amount paid to ~~him~~ the promoter and option or options extended or other benefits within that period or intended to be paid to ~~him~~ the promoter, and the consideration for any such payment;

(6) 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~~ the person as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three (3) years or proposed to be effected; and a statement of ~~his~~ the reasons for making the offering;

(7) the capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two (2) years or is obligated to issue any of its securities;

(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including

separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(9) the estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition);

(10) a description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in paragraph (2), (4), (5), (6), or (8) of this subsection and by any person who holds or will hold ten percent (10%) or more in the aggregate of any such options;

(11) the dates of, parties to, and general effect concisely stated of, every management or other material contract made or to

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be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two (2) years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(12) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

(13) a specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

(14) a signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state whether the security when sold will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer;

(15) the written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement;

(16) a balance sheet of the issuer as of a date within four (4) months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three (3) 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 three (3) years; and, if any part of the proceeds of the offering is to be applied to the

purchase of any business, the same financial statements which would be required if that business were the registrant; and

(17) such additional information as the Administrator requires by rule or order.

(c) A registration statement under this section becomes effective when the Administrator so orders.

(d) The Administrator shall by rule or order require as a condition of registration under this section that a prospectus containing any designated part of the information specified in subsection (b) of this section and other information which ~~he deems~~ is deemed informative to an offeree, under such rules and regulations as adopted by the Administrator, be sent or given to each person to whom an offer is made before or concurrently with:

(1) the first written offer made to ~~him~~ the person (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken ~~by him~~ as a participant in the distribution;

(2) the confirmation of any sale made by or for the account of any such person;

(3) payment pursuant to any such sale; or

(4) delivery of the security pursuant to any such sale, whichever first occurs.

SECTION 10. AMENDATORY 71 O.S. 1991, Section 305, is amended to read as follows:

Section 305. (a) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer.

(b) Every registration statement shall:

(1) specify the amount of securities to be offered in this state; ~~and~~

(2) specify the states in which a registration statement or similar document in connection with the offering has been or is to be filed; ~~and~~

(3) specify any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the Securities and Exchange Commission; and (4) contain an undertaking by the applicant to promptly file correcting amendments with the Administrator pursuant to such rules as he may prescribe, at any time when the information contained in any document required to be filed with the Administrator is or becomes inaccurate or incomplete in any material respect.

(c) Any document filed pursuant to the provisions of the Oklahoma Securities Act may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(d) The Administrator may permit, by rule or otherwise, the omission of any item of information or document from any registration statement.

(e) In the case of a nonissuer distribution, information may not be required pursuant to the provisions of Section 304 of this title or subsection (i) of this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(f) The Administrator, by rule or order, may require as a condition of registration by qualification or coordination that the proceeds from the sale of the registered security be escrowed until the issuer receives a specified amount.

The Administrator, by rule or order, may determine the conditions of any escrow required pursuant to the provisions of this section, but he may not reject a depository solely because of location in another state.

(g) The Administrator, by rule or order, may require as a condition of registration that any security registered by qualification or coordination be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the Administrator or preserved for any period up to three (3) years specified in the rule or order.

(h) Every registration statement is effective for one (1) year from its effective date. Registration statements other than those relating to securities issued by an investment company may be effective for any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken ~~by him~~ as a participant in the distribution, except during the time a stop order is in effect pursuant to the provisions of Section 306 of this title. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction:

(1) if the registration statement is effective; and

(2) between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement pursuant to the provisions of Section 306 of this title, if the registration statement did not relate in whole or in part to a nonissuer distribution and one (1) year from the effective date of the registration statement. A registration statement may not be withdrawn for one (1) year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only at the discretion of the Administrator.

(i) So long as a registration statement is effective, the Administrator may require the person who filed the registration statement to file reports not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering. A filing fee shall be submitted with each report, except that no more than two such fees shall be required annually.

(j) The Administrator shall, as deemed prudent and necessary for the protection of the public, make or cause to be made examinations without notice of accounts, correspondence, memoranda and other records, within or without this state, of issuers registered under this act. The Administrator may copy records or

require a registered issuer to copy records and provide the copies to the Administrator to the extent and in a manner reasonable under the circumstances. For the purpose of avoiding unnecessary duplication or examination, the Administrator, insofar as it is practicable in administering this subsection, may cooperate with the securities administrators of other states and the United States Securities and Exchange Commission.

SECTION 11. AMENDATORY 71 O.S. 1991, Section 306, as amended by Section 14, Chapter 241, O.S.L. 1992 (71 O.S. Supp. 1994, 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~~ the Administrator finds that:

- (1) the order is in the public interest; and
- (2) (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 report under Section 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 the Oklahoma Securities Act or any rule, order, or condition lawfully imposed under 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; provided, however:
 - (i) the Administrator may not institute a proceeding against an effective registration statement under 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 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; or

~~(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 subsection (e) of this section or Section 406 of this title against the issuer of any security registered or sought to be registered under 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~~ the Administrator when the registration statement became effective unless the proceeding is instituted within the next thirty (30) days.

(b) (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 paragraph (1) of subsection (c) of this section that:

(A) the summary order has been entered and the reasons therefor;

(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~~ a 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 under paragraph (1) of subsection (b) of this section without:

(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~~ the Administrator 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~~ the conservator 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 12. AMENDATORY 71 O.S. 1991, Section 307, is amended to read as follows:

Section 307. (a) In addition to all other applicable registration provisions specified in the Oklahoma Securities Act, investment certificate issuers are subject to the provisions of this section. As used in this section:

(1) "Investment certificate" means thrift certificates, certificates of deposit, savings obligations and similar ~~evidences of indebtedness~~, certificates or obligations issued and sold by an investment certificate issuer as defined in paragraph (2) of this subsection; and

(2) "Investment certificate issuer" means any financial institution or person, other than a federally or state chartered bank, bank holding company, trust company or savings and loan association, or any credit union, which accepts investor funds or deposits in exchange for the issuance of investment certificates; provided, however, the term "investment certificate issuer" shall not include a financial institution or person which, as of ~~the~~

~~effective date of this act~~ November 1, 1985, issued only the following securities:

- (i) ~~any security~~ investment certificates exempt under the provisions of subsection (a) or (b) of Section 401 of Title 71 of the Oklahoma Statutes this title,
- (ii) ~~any securities which are~~ investment certificates registered by coordination under Section 303 of Title 71 of the Oklahoma Statutes this title, and/or
- (iii) any other security as to which the Administrator, by rule or order, finds that registration is not necessary or appropriate for the protection of investors.

Nothing contained in this act shall be construed as precluding an investment certificate issuer from qualifying for and relying upon any of the exemptions from the provisions of Sections 301 and 402 of Title 71 of the Oklahoma Statutes this title as contained in Section 401 of Title 71 of the Oklahoma Statutes this title.

(b) In addition to other powers conferred by the Oklahoma Securities Act, the Administrator shall have power to require an investment certificate issuer to:

(1) Cause its books and records to be made available at its offices and to provide to the Department a trial balance within five (5) days of the commencement of any examination. Such books and records shall be audited at least once each year by an independent certified public accountant in accordance with generally accepted auditing standards, and the report thereof, including financial statements prepared in accordance with generally accepted accounting principles, furnished to the Administrator in such form as he may require;

(2) Observe methods and standards, including classification standards of loans, which the Administrator may prescribe by rule adopted and promulgated pursuant to the Oklahoma Administrative Procedures Act, subsection A of Section 303 of Title 75 of the Oklahoma Statutes, for determining the value of various types of assets;

(3) Maintain its accounting systems and procedures in accordance with such regulations as adopted and promulgated by the Administrator pursuant to the Oklahoma Administrative Procedures Act, subsection A of Section 303 of Title 75 of the Oklahoma Statutes, provided, the accounting system required shall have due regard to the size of the investment certificate issuer;

(4) Charge off the whole or any part of an asset, the value of which, at the time of the Administrator's action, has deteriorated for reasons set forth by the Administrator by rule adopted and promulgated pursuant to the Oklahoma Administrative Procedures Act, subsection A of Section 303 of Title 75 of the Oklahoma Statutes; and

(5) Write down an asset to market value as prescribed by the Administrator by rule adopted and promulgated pursuant to the Oklahoma Administrative Procedures Act, subsection A of Section 303 of Title 75 of the Oklahoma Statutes.

(c) Every investment certificate issuer shall obtain from the Administrator a written acknowledgment, issued in accordance with procedures adopted and promulgated pursuant to the Oklahoma Administrative Procedures Act, subsection A of Section 303 of Title 75 of the Oklahoma Statutes, that the investment certificate issuer engages in the business of accepting investor funds or deposits in exchange for the issuance of investment certificates. Any investment certificate issuer who obtains such an acknowledgment shall be subject to this section and shall possess all of the rights, powers and privileges and shall be subject to all of the duties, restrictions and limitations contained herein. No company or person who fails to obtain such acknowledgment within ninety (90) days of the effective date of the adoption by the Administrator of procedures governing the issuance of a written acknowledgment shall possess or exercise, unless expressly given and possessed or exercised under other laws, any of the benefits, rights, powers or privileges which are herein conferred on investment certificate issuers. Any company or person who fails to obtain a written acknowledgment as described herein may not engage in the business of issuing investment certificates.

(d) Any officer, director or employee of an investment certificate issuer found by the Administrator to be dishonest, reckless, unfit to participate in the conduct of the affairs of the institution, or practicing a continuing disregard or violation of laws, rules, regulations or orders which are likely to cause substantial loss to the company or likely to seriously weaken the condition of the company shall be removed immediately from office by the board of directors of the investment certificate issuer of which he is an officer, director or employee, on the written order of the Administrator; provided, that said investment certificate issuer or officer, employee or director may within ten (10) days file a notice of protest for said removal with the Commission, and as soon as possible thereafter, the Commission will review the order of said Administrator and make such findings as it deems proper, and that, pending said time, the said officer, employee or director shall not perform any of the duties of his office.

(e) After the effective date of this act, an investment certificate issuer shall not, without the consent of the Administrator:

(1) Make a loan to any of its stockholders owning twenty-five percent (25%) or more of the stock of the investment certificate issuer, or its officers or directors;

(2) Make a loan to any employee in excess of Ten Thousand Dollars (\$10,000.00); or

(3) Make a loan to or other investment in or purchase any asset from any company in which any of its officers, directors or stockholders may have any direct or indirect interest, unless made in an arm's length transaction.

(f) After the effective date of this act, an investment certificate issuer shall not without the consent of the Administrator:

(1) Lend money in excess of ten percent (10%) of its shareholders' equity to any person, association, partnership or corporation liable for such obligations; provided, however, that this limitation does not apply to the purchase of investment securities; or

(2) Engage in, or acquire any interest in, any business prohibited to a bank chartered under the laws of the State of Oklahoma.

(g) The shareholders' equity of an investment certificate issuer shall not be less than ten percent (10%) of the investment certificates outstanding. Provided, an investment certificate issuer lawfully incorporated and operating in this state on or before November 1, 1985, with less than the above specified shareholders' equity shall, at the beginning of each fiscal year thereafter, increase its shareholders' equity by a minimum of one-fourth (1/4) the difference between its shareholders' equity on November 1, 1985, and the above specified amount until such time as its shareholders' equity equals or exceeds the amount specified above. For purposes of computing the shareholders' equity, the reserve against bad debts shall be included.

(h) Every investment certificate issuer shall maintain a reserve against bad debts in an amount required by the Administrator by rule adopted and promulgated pursuant to the Oklahoma Administrative Procedures Act, subsection A of Section 303 of Title 75 of the Oklahoma Statutes, but in no event shall the reserve against bad debts be less than two percent (2%) of the total loans outstanding.

(i) If the Administrator finds the capital of an investment certificate issuer to be impaired according to the standard set forth in subsection (g) of this section, the Administrator may:

(1) Give notice of such impairment to the directors and shareholders of such investment certificate issuer and levy an assessment in a designated amount upon the holders of record of such investment certificate issuer's stock to remedy an impairment of capital. Upon receipt of an order to levy an assessment, the directors shall cause to be sent to all holders of stock, at their addresses as listed on the books of the investment certificate issuer, a notice of the amount of the assessment and a copy of this subsection. If an assessment is not paid within ninety (90) days after the order is mailed, the Administrator, at his discretion, may offer the shares of the defaulting stockholders

for sale at public auction at a price which shall not be less than the amount of the assessment and the cost of the sale; or

(2) Apply to the district court of any county where the assets of the investment certificate issuer are located for an order appointing a conservator of, and directing him to rehabilitate, the investment certificate issuer. If all reasonable efforts to rehabilitate the investment certificate issuer fail, the Administrator may apply to the court for an order directing the appointment of a liquidator to dissolve any such issuer and liquidate its assets. All rights and interests of the stockholders in the stock, property and assets of such investment certificate issuer are thereby terminated except the right of stockholders to the balance of the proceeds of liquidation, if any, after all other valid claims, including interest, against the assets of the investment certificate issuer and the proceeds of liquidation have been satisfied. The conservator or liquidator appointed under this subsection shall meet qualifications established by the Administrator by rule adopted and promulgated pursuant to the Oklahoma Administrative Procedures Act, subsection A of Section 303 of Title 75 of the Oklahoma Statutes.

(j) Whenever the capital or reserve of any investment certificate issuer shall be impaired according to the standards set forth in subsections (g) and (h) of this section, the investment certificate issuer shall make no new loans, renew any investment certificates or sell new investment certificates without the consent of the Administrator.

(k) (1) It shall be unlawful for any investment certificate issuer to issue investment certificates while insolvent.

(2) Every officer, director, principal stockholder, or every other person who materially participates or aids in the issuance of an investment certificate in violation of this subsection, or who directly or indirectly controls any such person, shall be liable jointly and severally, unless the officer, director, principal stockholder, or any other person who so participates, aids, or controls, sustains the burden of proof that ~~he~~ the person 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.

(3) The rights and remedies provided for in this subsection are in addition to any other rights or remedies provided for in Title 71 of the Oklahoma Statutes, or that may exist at law or in equity.

(1) The Administrator ~~shall, at least every eighteen (18) months or~~ may as often as ~~he~~ the Administrator deems it prudent and necessary for the protection of the public, make or cause to be made examinations of the books, records, papers, assets and liabilities of every kind and character owned by, or relating to, every investment certificate issuer. Any investment certificate issuer so examined shall pay to the Administrator the charges incurred in such examination as specified in ~~subsection (f) of Section 405 of Title 71 of the Oklahoma Statutes or any rule adopted pursuant thereto~~ Section 412 of this title.

(m) Every investment certificate issuer shall make and file with the Administrator reports at such times and in such form as the Administrator may prescribe by rule or order. Such reports shall be verified by the oath of either the president, the vice-president, or the secretary and attested by the signature of two or more of the directors. Each such report shall exhibit in detail, as may be required by the Administrator, the resources and liabilities of the investment certificate issuer at the close of business on the day to be specified by the Administrator.

(n) Every investment certificate issuer ~~that is~~ whose investor funds or deposits are not insured by an agency of the government ~~as defined by Section 103 of Title 71 of the Oklahoma Statutes~~ shall disclose on the face of each investment certificate in ten-point type the following:

"This certificate is not insured by the Federal Deposit Insurance Corporation or any other agency of the government."

SECTION 13. AMENDATORY 71 O.S. 1991, Section 401, as amended by Section 15, Chapter 241, O.S.L. 1992 (71 O.S. Supp. 1994, 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 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~~ direct obligation 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~~ a depository institution if the deposit or share accounts of the depository institution are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor to an applicable agency authorized by federal law; ~~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 membership or equity interest in, or any retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative, nonprofit, operated as a not for profit membership corporation or association organized in compliance with the laws of this state cooperative under the laws of any state if not traded to the public; 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) (5) 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~~ said act; 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) (6) Any security issued by any person ~~organized and operated~~ 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 provided the Administrator is provided with a notice at such time and in such form as provided by rule or order; ~~and~~~~

~~(9) (7) 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) (8) Any security offered, sold, issued, distributed or transferred to an employee, officer or director in connection with an employee a 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 in each case designed for the participation of such persons.~~

(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~~ preceding the transaction ~~and~~ if a nationally recognized securities manual designated by the Administrator by rule or order contains:

(A) the names of the issuer's officers and directors ~~;~~

- (B) a balance sheet of the issuer as of a date within eighteen (18) months prior to the transaction; and
- (C) a profit-and-loss statement for either the fiscal year preceding that date or the most recent year of operations; ~~or~~

~~(B) the.~~

The Administrator may impose, by rule or order, additional requirements as a condition of the exemption established in this paragraph as necessary for the protection of investors. In addition, the Administrator may promulgate rules specifying application of this exemption;

(3) Any nonissuer transaction in a security that 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)~~ (4) 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)~~ (5) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters; ~~and~~

~~(5)~~ (6) Any transaction in a bond or other evidence of indebtedness secured by a real ~~or chattel~~ estate mortgage or, deed of trust, personal property security agreement, or by an agreement for the sale of real estate or ~~chattels~~ personal property, 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)~~ (7) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator; ~~and~~

~~(7)~~ (8) Any transaction executed by a bona fide ~~pledgee~~ secured party without ~~any~~ a purpose of evading the provisions of the Oklahoma Securities Act; ~~and~~

~~(8)~~ (9) ~~An 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, investor or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity; and~~

~~(9)~~ (10) (A) Any sale by an issuer to not more than twenty-five purchasers, other than those designated in paragraph ~~(8)~~ (9) 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)~~ (9) 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)~~ (9) of this subsection; and

(iii) no public advertising or solicitation is used in any such solicitation or 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 508 of Regulation D adopted by the United States Securities and Exchange Commission (17 C.F.R. 230.501 through 230.508), provided that:

(i) offering expenses do not exceed those allowed for securities registered pursuant to the provisions of the Oklahoma Securities Act; ~~and~~

(ii) no general advertising or general solicitation is used; and

(iii) 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~~ by rule or order define terms used in this section insofar as the definitions are not inconsistent with the provisions of this act; ~~and~~

~~(10)~~ (11) 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)~~ (12) 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)~~ ten (10) 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) (A) An offer, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(i) a registration or offering statement or similar document as required under the Securities Act of 1933 has been filed, but is not effective;

(ii) a registration statement has been filed under this act, but is not effective; and

(iii) no stop order of which the offeror is aware has been entered by the Administrator or the United States Securities and Exchange Commission, and no examination or public proceeding which may culminate in that kind of order is known by the offeror to be pending.

(B) An offer, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

- (i) a registration statement has been filed under this act, but is not effective; and
- (ii) no stop order of which the offeror is aware has been entered by the Administrator and no examination or public proceeding that may culminate in that kind of order is known by the offeror to be pending; and

(14) 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 Department of 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)~~ (15) 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 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 is filed with the Administrator at such time and in such form as ~~provided~~ specified by rule or order; ~~and~~

~~(15)~~ (16) (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 buyers are then present in ~~the~~ this 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 vote by security holders pursuant to law or the articles or certificate of incorporation, the partnership agreement or the controlling agreement among security holders on a merger, consolidation, reorganization, reclassification of securities, or sale of assets in consideration of the issuance of securities of another 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) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, reclassification of securities, or other reorganization to which the issuer, or its parent or subsidiary, and the other person, or its parent or subsidiary, are parties, if:

- (A) the securities to be distributed are registered under the Securities Act of 1933 before the vote by security holders on the transaction; or
- (B) the securities to be distributed are not required to be registered under the Securities Act of 1933, written notice of the transaction and a copy of the materials, if any, by which approval of the transaction will be solicited from such security holders is given to the Administrator at least ten (10) full business days before the vote by security holders on the transaction and the Administrator does not commence a proceeding to deny the exemption within the next ten (10) full business days; however, such notice shall not be required if the sole purpose of the transaction is to change an issuer's domicile solely within the United States;

(18) 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~~ commence a proceeding to deny 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)~~ (19) A nonissuer transaction ~~in a security~~ by a broker-dealer or agent registered under the provisions of Section 202 of this title in a security of a class outstanding for not less than ninety (90) days if:

- (A) (i) the issuer of the security has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934; and
- (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 or a registered broker-dealer 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 or registered broker-dealer has paid a the fee ~~as designated by the Administrator by rule set forth in Section 412 of this title; and~~

~~(19)~~ (20) 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~~ that 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~~ that is of senior or substantially equal rank, or ~~which~~ that differs only in terms of voting rights, from the security listed on such exchange or national market system; or
- (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)~~ (21) 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
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Dealers, Inc., or involving any security of the same issuer that is of senior or substantially equal rank, or that differs only in terms of voting rights, from the security listed on such exchange or national market system, 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)~~ (22) 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.

The Administrator may, as to any transaction, waive the conditions of any exemption provided by this subsection.

(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)~~ (6) or ~~(10)~~ (8) 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. 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 the summary order, the Administrator shall promptly notify all interested parties that:

- (A) the summary order has been entered and the reasons therefor~~;~~;
- (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 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~~ subsection.

(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~~ the 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~~ subsection 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~~ the person sustains the burden of proof that ~~he~~ the person 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 14. AMENDATORY 71 O.S. 1991, Section 402, is amended to read as follows:

Section 402. (a) It is unlawful to distribute to investors or prospective investors, including customers or prospective customers of an investment adviser, or otherwise use any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature in any manner in connection with the offer or sale of any security unless ~~it~~:

(1) it has been filed with the Department of Securities; and approved by the

(2) the Department has responded indicating that the Administrator has no objection to its distribution or use.

(b) The Administrator may exempt, by rule, any class of sales literature from the provisions of this section.

(c) The Administrator shall require the payment of a fee as set forth in Section 412 of this title to defray the expenses of the review ~~and approval~~ of each sales literature package, to include any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature to be used in any manner in connection with the offer or sale of any security.

SECTION 15. AMENDATORY 71 O.S. 1991, Section 405, is amended to read as follows:

Section 405. (a) The Administrator in his discretion:

(1) may make such public or private investigations within or outside of this state as he deems necessary to determine whether any person has violated or is about to violate any provision of this act or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder~~;~~

(2) may require or permit any person to file a statement in writing, under oath or otherwise as the Administrator determines, as to all the facts and circumstances concerning the matter to be investigated~~;~~ and

(3) may publish information concerning any violation of this act or any rule or order hereunder.

(b) For the purpose of any investigation or proceeding under this act, the Administrator or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Administrator deems relevant or material to the inquiry. However, no provision of this act shall be construed to require, or to authorize the Administrator to require, any investment ~~advisor~~ adviser engaged in rendering investment advisory services to disclose the identity, investments, or affairs of any client of such investment advisor, except insofar as such disclosure may be necessary or appropriate in a particular proceeding or investigation having as its objective the enforcement of a provision of this act.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court of Oklahoma county or the district court in any other county where service can be obtained on one or more of the defendants, upon application by the Administrator, may issue to the person an order requiring him to appear before the Administrator, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(d) No person is excused from attending and testifying or from producing any document or record before the Administrator, or in obedience to the subpoena of the Administrator or any officer designated by him, or in any proceeding instituted by the Administrator, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt

from prosecution and punishment for perjury or contempt committed in testifying.

(e) In addition to the investigations ~~and examinations~~ authorized by Section 405(a) of this title, the Administrator or a designated member of his staff shall examine as soon as possible all reports filed under this act for the purpose of determining whether additional information is required or whether additional investigation should be made. The Administrator is authorized to require the filing of any additional information which he deems necessary to correct any errors or deficiencies in any reports required to be filed. ~~The Administrator shall, as he deems it prudent and necessary for the protection of the public and under policies established by the Commission, make or cause to be made special examinations of accounts, correspondence, memoranda and other records, within or without this state, of broker-dealers, investment advisers and issuers registered under this act. A written report of every such examination shall be prepared by the Administrator, or other person designated by him, and retained in the office of the Department. For the purpose of avoiding unnecessary duplication of examination, the Administrator, insofar as he deems it practicable in administering this subsection, may cooperate with the Securities Administrators of other states, the Securities and Exchange Commission, and any national securities association registered under the Securities Exchange Act of 1934.~~

~~(f) Every broker-dealer, investment adviser and issuer examined under the provisions of subsection (e) of this section shall pay to the Administrator, or other person designated by him, the proper charges incurred in such examination, including the actual expense of the Administrator or the expenses and compensation of his authorized representatives and the expense and compensation of assistants employed therein specified by Section 412 of this title.~~

SECTION 16. AMENDATORY 71 O.S. 1991, Section 406, is amended to read as follows:

Section 406. (a) If the Administrator reasonably believes, whether or not based upon an investigation conducted under Section Req. No. 1250Page 65

405 of this title, that a person has violated the Oklahoma Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act or has engaged in dishonest or unethical practices in the securities business, the Administrator, in addition to any specific power granted by any other section of the Oklahoma Securities Act, may impose one or more of the following sanctions:

(1) issue an order against the person to cease and desist from engaging in such violation or dishonest or unethical practices or doing any act in furtherance thereof; ~~or~~

(2) censure the person, if the person is a registered broker-dealer, agent, investment adviser, or investment adviser representative; ~~or~~

(3) bar or suspend the person from association with a broker-dealer or investment adviser subject to the provisions of the Oklahoma Securities Act; or

(4) issue an order against a person who willfully violates the Oklahoma Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act, imposing a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or transaction or of Fifty Thousand Dollars (\$50,000.00) for multiple violations or transactions in a single proceeding or a series of related proceedings.

(b) Except as provided in subsection (e) of this section or unless the right to notice and hearing is waived by the person against whom the sanction is imposed, the sanctions provided in subsection (a) of this section may be imposed in an administrative proceeding only after notice and hearing as required by the Oklahoma Administrative Procedures Act. If the person to whom notice is addressed does not request a hearing within fifteen (15) days after the receipt of said notice, a permanent order shall be issued.

(c) Imposition of the sanctions under this section is limited as follows:

(1) If the Administrator revokes the registration of a broker-dealer, agent, investment adviser or investment adviser

representative under Section 204 of this title or bars a person from association with a broker-dealer or investment adviser under this section or Section 204 of this title, the imposition of that sanction precludes imposition of the sanction specified in paragraph (4) of subsection (a) of this section; and

(2) The imposition by the Administrator of one or more sanctions under subsection (a) of this section with respect to a specific violation or transaction precludes the Administrator from later imposing any other sanctions under paragraphs (1) through (4) of subsection (a) of this section with respect to the violation or transaction. The Administrator however is not precluded from bringing an action under Section 406.1 of this title in addition to the imposition of one or more sanctions under subsection (a) of this section with respect to the violation or transaction.

(d) For purposes of determining any sanction to be imposed under paragraphs (1) through (4) of subsection (a) of this section, the Administrator shall consider, among other factors, the frequency and persistence of the conduct constituting a violation of the Oklahoma Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act or involving dishonest or unethical practices in the securities business, the number of persons adversely affected by the conduct, and the resources of the person committing the violation.

(e) (1) If the Administrator makes written findings of fact to support the conclusion that the public interest will be harmed by delay in issuing a cease and desist order pursuant to paragraph (1) of subsection (a) of this section, the Administrator may issue a summary order to cease and desist pending the hearing required by subsection (b) of final determination of any proceeding under this section. ~~Once~~

(2) Upon the entry of the summary order ~~is entered~~, the Administrator shall promptly notify the person subject to the summary order that:

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

(C) within fifteen (15) days after receipt of a written request for a hearing from ~~said~~ the person or at such ~~sooner~~ earlier time during regular business hours of the Department as mutually agreed upon by the Department and ~~said~~ the 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 paragraph (1) of 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~~ the hearing is not commenced by the Administrator within the time limit set forth ~~above herein,~~ the summary order shall dissolve and a ~~cease and desist~~ permanent order shall not be issued pursuant to paragraph (1) of subsection (a) of this section except upon reasonable notice and opportunity for a hearing.

SECTION 17. AMENDATORY 71 O.S. 1991, Section 408, as amended by Section 16, Chapter 241, O.S.L. 1992 (71 O.S. Supp. 1994, 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 discovered, 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 one (1) year after the fraud or deceit was discovered, 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 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.~~

~~(l)~~ 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 18. AMENDATORY 71 O.S. 1991, Section 412, as last amended by Section 2, Chapter 270, O.S.L. 1994 (71 O.S. Supp. 1994, 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~~ of 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)~~ Sections 203(d) and 305(j) of this title ~~shall include~~ including 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 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%~~ 1/10 of 1%) 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%~~ 1/20 of 1%) 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 Eight Hundred~~

~~Dollars (\$1,800.00)~~ One Thousand Six Hundred Fifty Dollars
(\$1,650.00) 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 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 on-site examination 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,~~ and the examination fees designated in paragraph (16) of subsection (a) and subsection (b) of this section;

(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; and

(6) ~~Three Hundred Dollars (\$300.00)~~ One Hundred Fifty Dollars
(\$150.00) of each filing fee collected pursuant to paragraph (2) of subsection (b) 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 as may be necessary to perform the duties imposed upon the said 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) For the fiscal year ending June 30, 1994, and for each fiscal year thereafter, 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 Five Hundred Thousand Dollars (\$500,000.00) shall be transferred to the General Revenue Fund of the state.

SECTION 19. AMENDATORY 71 O.S. 1991, Section 413, is amended to read as follows:

Section 413. (a) Sections 101, 201(a), 301, 404 and 408 of this title apply to persons who sell or offer to sell when:

- (1) an offer to sell is made in this state or or
- (2) an offer to buy is made and accepted in this state.

(b) Sections 101, 201(a), 404 and 408 of this title apply to persons who buy or offer to buy when:

- (1) an offer to buy is made in this state or or
- (2) an offer to sell is made and accepted in this state.

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer:

- (1) originates from this state ; or
- (2) is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance:

- (1) is communicated to the offeror in this state ; and
- (2) has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either

party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).

(e) An offer to sell or to buy is not made in this state when:

(1) the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds (2/3) of its circulation outside this state during the past twelve (12) months; or

(2) a radio or television program originating outside this state is received in this state.

(f) Sections 102 and 201(c), as well as Section 404 of this title so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(g) Every applicant for registration under this act and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the Administrator, in such form as he by rule prescribes, an irrevocable consent appointing the Administrator or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor executor or administrator which arises under this act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the Administrator, but it is not effective unless:

(1) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of

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the service and a copy of the process by ~~registered~~ certified mail, return receipt requested and delivery restricted to the addressee, to the defendant or respondent at his last address on file with the Administrator⁷; and

(2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(h) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this act or any rule or order hereunder, and ~~he~~ has not filed a consent to service of process under subsection (g) of this section ~~and personal jurisdiction over him cannot otherwise be obtained in this state,~~ that conduct shall be considered equivalent to ~~his~~ appointment of the Administrator or ~~his~~ the Administrator's successor in office to be ~~his~~ that person's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against ~~him~~ that person or ~~his~~ a successor executor or administrator which grows out of that conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the Administrator, and it is not effective unless:

(1) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by ~~him~~ the Administrator, forthwith sends notice of the service and a copy of the process by ~~registered~~ certified mail, return receipt requested and delivery restricted to the addressee, to the defendant or respondent at his last-known address or takes other steps which are reasonably calculated to give actual notice⁷; and

(2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

~~(i) When process is served under this section, the court, or the Administrator in a proceeding before him, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend~~ Service by mail shall

be effective on the date of receipt or if refused, on the date of refusal by the defendant or respondent. Acceptance or refusal of service by mail by a person who is fifteen (15) years of age or older shall constitute acceptance or refusal by the party addressed. Acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. A return receipt signed at such registered office or principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail.

SECTION 20. REPEALER 71 O.S. 1991, Section 103, is hereby repealed.

SECTION 21. This act shall become effective July 1, 1995.

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.

45-1-1250 JY