

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

SENATE BILL NO. 303

By: Henry of the Senate

and

Toure of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to securities; amending 71 O.S. 1991, Sections 2 and 102, as last amended by Sections 1 and 3, Chapter 196, O.S.L. 1995, 201, as amended by Section 4, Chapter 196, O.S.L. 1995, 202, as last amended by Section 5, Chapter 196, O.S.L. 1995, 203, as amended by Section 6, Chapter 196, O.S.L. 1995, 204, as last amended by Section 7, Chapter 196, O.S.L. 1995, 301, 305, 306 and 401, as last amended by Sections 10, 11 and 13, Chapter 196, O.S.L. 1995, 402, as amended by Section 14, Chapter 196, O.S.L. 1995, 404, 405 and 406, as amended by Sections 15 and 16, Chapter 196, O.S.L. 1995, 406.1, 408, as last amended by Section 17, Chapter 196, O.S.L. 1995, 410 and 411, as amended by Sections 18 and 19, Chapter 241, O.S.L. 1992, 412, as last amended by Section 18, Chapter 196, O.S.L. 1995, 802 and 803, as amended by Sections 1 and 2, Chapter 169, O.S.L. 1992, 804, 807, 810, 814, 815 and 817, as amended by Sections 4, 5, 6 and 7, Chapter 169, O.S.L. 1992 and 818 (71 O.S. Supp. 1996, Sections 2, 102, 201, 202, 203, 204, 305, 306, 401, 402, 405, 406, 408, 410, 411, 412, 802, 803, 810, 814, 815 and 817), which relate to regulation of securities and business opportunities; modifying and adding definitions; deleting certain prohibition relating to advisory activities; modifying and adding exemptions from registration; making certain acts unlawful; modifying registration renewal provisions; modifying registration procedures, information required in application, and authority relating to minimum capital requirements; requiring notice filing, fee and corrected filing of certain investment advisers exempt from registration; authorizing Administrator to suspend activities of investment advisers under certain circumstances; modifying time period for which certain records must be preserved and authorizing Administrator to require certain information to be disseminated; modifying summary order procedures and conditions under which final order may be issued; modifying registration requirements; requiring issuer of certain federal covered securities to file certain notice and appropriate fees; authorizing Administrator by rule to prescribe filing requirements and waive certain provisions; authorizing Administrator to issue stop order relating to federal covered securities under certain conditions; modifying provisions relating to issuance of stop order to deny effectiveness of registration statement; modifying venue for order to

appoint conservator; exempting certain securities and transactions from certain registration and filing requirements; requiring notice and opportunity for hearing before final order denying or revoking certain exemptions may be issued; exempting literature relating to federal covered securities from certain filing and review requirements; clarifying effect of certain filings; deleting discretionary power of Administrator to publish certain information; exempting provisions relating to federal covered securities from certain sanction and penalty provisions; clarifying language relating to civil liabilities; deleting duplicate language relating to certain hearings; authorizing maintenance of certain records in computer format; making certain files and reports confidential and clarifying information which may be disclosed; authorizing Administrator to issue certain determinations; adding, modifying, and clarifying certain fees; creating petty cash fund, stating maximum amount, providing for administration of fund, and limiting expenditures to certain purposes; requiring certain financial statements be audited and prepared in accordance with certain standards; defining term; modifying conditions under which Administrator may impose sanctions and modifying certain fees relating to sale of business opportunity; requiring notice and opportunity for hearing before final order may be issued; modifying summary order provisions; authorizing Administrator to require certain additional information; requiring certain fees be deposited in General Revenue Fund; extending time period before registration of business opportunity becomes effective; clarifying when certain filing is deemed complete; prohibiting certain costs from being assessed for or against Administrator; clarifying language; replacing requirement for registered mail with certified mail; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 71 O.S. 1991, Section 2, as last amended by Section 1, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1996, 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.

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 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;
- (2) an issuer;
- (3) a depository institution; or
- (4) 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) "Federal covered security" means any security described as a covered security in Section 18(b) of the Securities Act of 1933.

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

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

~~(k)~~ (l) "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 depository institution;

(2) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of 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(u)(17)~~ 2(v)(17) of this title;

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

(6) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service of general, regular, and paid circulation, whether communicated in hard copy form or by electronic means;

(7) an investment adviser representative; or

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

~~(1)~~ (m) "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, supervised by, representing, or associated with an investment adviser, except clerical or ministerial personnel, 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; or

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

~~(5)~~ supervises employees who perform any of the acts described in this subsection.

~~(m)~~ (n) "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.

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

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

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

~~(r)~~ (s) "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.

~~(s)~~ (t) (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.

~~(t)~~ (u) "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.

~~(u)~~ (v) "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 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
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public by a broker-dealer or agent registered pursuant to this title;

(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;

(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

(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.

~~(v)~~ (w) "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.

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

~~(x)~~ (y) "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 102, as last amended by Section 3, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1996, 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) 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 to enter into, extend, or renew any investment advisory contract unless it provides in writing:

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

(3) that the investment 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.

"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 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 having only a minority interest in the business of the investment adviser, or from the admission to the investment 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.

(d) It is unlawful for any investment 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 fails to notify the Administrator that the investment adviser has or may have custody.

SECTION 3. AMENDATORY 71 O.S. 1991, Section 201, as amended by Section 4, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1996, 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 the person is so registered under this act or unless the person is

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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 representing an issuer in 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 representing an issuer in 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 representing an issuer in 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; or
- (E) is representing a broker-dealer in effecting in this state only those transactions described in Section 15(h) of the Securities Exchange Act of 1934 and satisfies the conditions set forth in Section 15(h) of the Securities Exchange Act of 1934.

(b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is ~~so~~ registered or is exempt from registration. The registration of an agent is not effective during any period when the agent is not associated with a particular broker-dealer registered under this act or a particular

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issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make 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 ~~so~~ registered under this act or unless 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) the person's only clients in this state are investment companies as defined in and registered under the Investment Company Act of 1940 or insurance companies;
- (B) the person is licensed as an investment adviser under the laws of a another state ~~in which the person maintains a place of business~~, has no place of business ~~in~~ within this state, and:
 - ~~(i)~~ the person's only clients in this state are other investment advisers, broker-dealers, or financial or institutional investors, whether acting for themselves or as trustees, ~~or~~
 - ~~(ii)~~ ~~during any period of twelve (12) consecutive months, 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 subparagraph, whether or not that person or any of the persons to whom the communications are directed is then present in this state; or~~
- (C) the person has no place of business located within this state and during any period of twelve (12) consecutive months, has no more than five (5) clients, other than those clients specified in

subparagraph (B) of this paragraph, who are residents of this state;

- (D) the person is registered under Section 203 of the Investment Advisers Act of 1940 as an investment adviser or is not registered under Section 203 of the Investment Advisers Act of 1940 because that person is excepted from the definition of an investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940; however, such exemption shall not apply to such a person if such person fails or refuses to pay the notice filing fee required by paragraph (5) of subsection (a) of Section 412 of this title and such failure or refusal to pay is not promptly remedied in accordance with this title or an order or other administrative actions of the Administrator; or
- (E) the person 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)~~ through (D) 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 or other instrumentality of any such entity; or any pension fund for the benefit of employees of any such entity.

(d) (1) It is unlawful for any person to transact business in this state as an investment adviser representative unless registered under this act or unless he is exempt from registration

as provided in paragraph (2) of this subsection. It is unlawful for any person required to be registered as an investment adviser under this act, or any person exempt from registration as an investment adviser under this act, to employ, supervise, be represented by or be associated with an investment adviser representative unless the investment adviser representative is registered under this act or unless the investment adviser representative is exempt from registration as provided in paragraph (2) of this subsection.

(2) (A) A person shall be exempt from registration as an investment adviser representative if he is employed by, supervised by, represents or is associated with an investment adviser required to be registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940, or with an investment adviser who is not registered under Section 203 of the Investment Advisers Act of 1940 because that person is excepted from the definition of an investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940 and such investment adviser representative has no place of business located within this state; or

(B) A person shall be exempt from registration as an investment adviser representative if 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 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 representative are required as part of such person's employment with such entity.

~~(4)~~ (3) The registration of an investment adviser representative is not effective during any period when the person is not associated with a particular investment adviser registered

or exempt from registration 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 the person an investment adviser representative, the investment adviser representative as well as the investment adviser shall promptly notify the Administrator.

~~(d)~~ (e) Every registration under this section 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 each year of registration or renewal. For this purpose the Administrator may prorate registration or renewal fees accordingly and may be renewed annually upon written application, as specified by the Administrator by rule or order, and payment of the fee set forth in Section 412 of this title without furnishing any further information unless specifically required by the Administrator. Application for renewals must be made no later than December 31 in each year; otherwise, the requirements for initial registration must be satisfied.

(f) For purposes of this section, "place of business" means a place or office from which the investment adviser or investment adviser representative regularly provides advisory services or otherwise solicits, meets with, or communicates with clients.

SECTION 4. AMENDATORY 71 O.S. 1991, Section 202, as last amended by Section 5, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1996, Section 202), is amended to read as follows:

Section 202. (a) (1) A broker-dealer, agent, investment adviser or investment adviser representative required to be registered under this title may obtain an initial or renewal registration by filing 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,~~ the filing fee set forth in Section 413 412 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)~~ (2) 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.

(b) 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~~ a complete application is filed and proper payment is made.
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.~~

(c) When an application is denied or withdrawn, the Administrator shall retain the fee.

~~(e)~~ (d) 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)~~ (e) 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.~~

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 202.1 of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) Unless otherwise exempt from registration as an investment adviser pursuant to paragraph (2) of subsection (c) of Section 201 of Title 71 of the Oklahoma Statutes, it is unlawful for any person who is exempt from registration as an investment adviser pursuant to subparagraph (D) of paragraph (2) of subsection (c) of Section 201 of Title 71 of the Oklahoma Statutes to transact business in this state as an investment adviser unless such person files with the Administrator such documents filed with the United States Securities and Exchange Commission as the Administrator may, by rule, prescribe; and submits the notice filing fee set forth in Title 71 of the Oklahoma Statutes. Every notice filing under this section shall be effective from its date of filing and expire on December 31 each year, and may be renewed annually as of January 1 of each year thereafter as the Administrator prescribes by rule. For purposes of this subsection, "date of filing" shall mean the date all of the required documentation has been submitted to the Administrator and payment of the proper fees is made.

(b) If the information contained in any document filed with the Administrator under this section is or becomes inaccurate or

incomplete in any material respect, the investment adviser shall promptly file a correcting amendment unless notification of the correction has been given pursuant to the provisions of Section 201(d) of Title 71 of the Oklahoma Statutes.

(c) The Administrator may suspend the activities of an investment adviser transacting business in this state if there has been a violation of the provisions of this section that has not been promptly remedied in accordance with this title or an order or other administrative actions of the Administrator.

SECTION 6. AMENDATORY 71 O.S. 1991, Section 203, as amended by Section 6, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1996, 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~~ such period as the Administrator may, by rule, ~~prescribes otherwise for particular types of records~~ prescribe.

(b) Every registered broker-dealer and investment adviser shall file such financial or operating reports as the Administrator, by rule, prescribes. A filing fee as required by ~~the Oklahoma Securities Act~~ Section 412 of this title 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**(b)** 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.

(e) With respect to registered investment advisers, the Administrator may require that certain information be furnished or disseminated to clients or prospective clients as necessary or appropriate in the public interest or for the protection of investors and advisory clients.

SECTION 7. AMENDATORY 71 O.S. 1991, Section 204, as last amended by Section 7, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1996, Section 204), is amended to read as follows:

Section 204. (a) The Administrator may ~~by~~ issue a final order denying, suspend, or revoke denying effectiveness to, or suspending or revoking the effectiveness of, any registration or impose any sanction authorized by Section 406 of this title if the Administrator finds that the order is in the public interest and 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:

(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;

(2) has willfully violated or willfully failed to comply with any provision of ~~this act~~ the Oklahoma Securities Act or a

predecessor act or any rule or order under this act or a predecessor act;

(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;

(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;

(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;

(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 or by any other governmental securities agency 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~~ the Oklahoma Securities 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 or by any other governmental securities agency barring the person from association with any other broker-dealer or investment adviser, or is the subject of an order suspending or expelling 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 the person from membership in said organization or barring the person from association with any other member of said organization, or is the subject of a United States Post Office fraud order; but:

(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; and

(B) 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;

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

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

(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 (c) of this section; or

(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;

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

(13) has failed to pay the proper filing fee; but the Administrator may enter only a denial order under this paragraph,

and shall vacate any such order when the deficiency has been corrected.

(b) The Administrator may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to ~~him~~ the Administrator when the initial registration became effective unless the proceeding is instituted within ninety (90) days following the effective date of registration.

(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:

(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 the broker-dealer if the broker-dealer is an individual; or 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 the investment adviser if the investment adviser is an individual or 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.

(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) that the summary order has been entered and the reasons therefor;
- (B) that the person subject to the summary order, if desiring a hearing, must make written request for ~~such a~~ hearing to the Administrator within fifteen (15) days after receipt of the notice; ~~and~~
- (C) that within fifteen (15) days after receipt by the Administrator of a written request ~~for a hearing from the person or at such earlier time during regular business hours of the Department as mutually agreed upon by the Department and the person, a~~ the matter will be set for 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~~ extended pending final determination of any proceeding under subsection (a) of this section; and
- (D) that a hearing shall be commenced within fifteen (15) days of the matter being set for hearing.

(3) The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or ~~a designated hearing officer~~ his or her designee extends the summary order pending a final determination of any proceeding under subsection (a) of this section. ~~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 no hearing is requested and none is ordered by the Administrator, the summary order will remain in effect until it is modified or vacated by the Administrator or his or her designee. If a request for hearing on the summary order is

timely made and if the hearing is not commenced by the Administrator within the time limit set forth herein, the summary order shall dissolve and a ~~permanent~~ final order shall not be issued pursuant to subsection (a) of this section except upon reasonable notice and opportunity for a hearing.

(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.

(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 proceeding under paragraph (2) of subsection (a) of this section within one (1) year after withdrawal became effective and enter an order as of the last date on which registration was effective.

~~(g) No order may be entered under any part of this section except under paragraph 1 of subsection (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~~ Except as provided in paragraph (1) of subsection (d) of this section or unless the right to notice and hearing is waived by the person against whom the final order is to be issued, no order may be issued under this section without notice and opportunity for hearing as required by the Oklahoma Administrative Procedures Act. If the person to whom such notice is addressed does not request a hearing within fifteen (15) days after the receipt of said notice, a final order as provided in subsection (a) of this section may be issued.

SECTION 8. AMENDATORY 71 O.S. 1991, Section 301, is amended to read as follows:

Section 301. It is unlawful for any person to offer or sell any security in this state unless:

- (1) it is registered under this act or ~~(2)~~ the security or transaction is exempted under Section 401 of this title; or
- (2) it is a federal covered security.

SECTION 9. AMENDATORY 71 O.S. 1991, Section 305, as last amended by Section 10, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1996, 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;
- (2) specify the states in which a registration statement or similar document in connection with the offering has been or is to be filed;
- (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) A registration statement may not be made effective until all of the documents described above are submitted to the Administrator, unless waived by the Administrator pursuant to subsection (b) of this section, and proper payment of fees is made. 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 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 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 305.2 of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) Prior to the offer in this state of the securities of an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940, the issuer must file a notice with the Administrator. The Administrator may, by rule, prescribe notice filing requirements and require the filing of reports of the dollar amount of securities sold or offered to be sold to persons located in this state. Such filings shall be accompanied by the appropriate fees set forth in Section 412 of Title 71 of the Oklahoma Statutes. The notice filing shall cover a period of one (1) year, beginning with the date it becomes effective in this state, and may be renewed annually thereafter by submitting the examination fee and appropriate filing fee, both of which are set forth in Section 412(b) of Title 71 of the Oklahoma Statutes.

(b) With respect to any security that is a federal covered security under Section 18(b)(3) or (4) of the Securities Act of 1933, the Administrator, by rule, may require the filing of any document filed with the United States Securities and Exchange Commission, together with a consent to service of process and the fee required by Section 412 of Title 71 of the Oklahoma Statutes.

(c) The Administrator may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under Section 18(b)(1) of the Securities Act of 1933, if he finds that:

- (1) the order is in the public interest, and
- (2) there is a failure to comply with any condition established under this section.

(d) The Administrator, by rule or order, may waive any or all of the provisions of this section.

SECTION 11. AMENDATORY 71 O.S. 1991, Section 306, as last amended by Section 11, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1996, 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 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) 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) 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 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) that the summary order has been entered and the reasons therefor;
- (B) that the person subject to the summary order, if desiring a hearing, must make written request for ~~such a~~ hearing to the Administrator within fifteen (15) days after receipt of the notice; ~~and~~
- (C) that within fifteen (15) days after receipt by the Administrator 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~~ will be set for hearing to determine whether the summary order should be modified, vacated or ~~become a permanent order as provided in~~ extended pending final determination of any proceeding under subsection (a) of this section; and
- (D) that a hearing shall be commenced within fifteen (15) days of the matter being set for hearing.

(3) The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or a ~~designated hearing officer~~ his or her designee extends the summary order pending a final determination of any proceeding under subsection (a) of this section. ~~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 no hearing is requested and none is ordered by the Administrator, the summary order will remain in effect until it is modified or vacated by the Administrator or his or her designee. 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~~ final 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~~ Except as provided in paragraph (1) of subsection (b) of this section or unless the right to notice and hearing is waived by the person against whom the stop order is issued, no order may be issued under this section without notice and opportunity for 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 final order as provided in subsection (a) of this section may be issued.

(d) The Administrator may vacate or modify a stop order if 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 or the district court of any other county where service can be obtained for an order appointing a conservator of, and directing 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 401, as last amended by Section 13, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1996, Section 401), is amended to read as follows:

Section 401. (a) The following securities are exempt from Sections 301, 305.2 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;

(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;

(3) Any security issued by and representing an interest in or a direct obligation of or guaranteed by 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;

(4) 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 operated as a not for profit membership cooperative under the laws of any state if not traded to the public;

(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 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;

(6) Any security issued by any person operating not for 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;

(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

(8) Any security issued to an employee, officer or director in connection with a stock purchase, option, savings, pension, thrift, profit-sharing or similar benefit plan or trust in each case designed for the participation of such persons.

(b) The following transactions are exempted from Sections 301, 305.2 and 402 of this title:

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

(2) Any nonissuer transaction in an outstanding security of a class outstanding in the hands of the public for not less than one hundred eighty (180) days preceding the transaction if a nationally recognized securities manual designated by the Administrator by rule or order, or a document filed with the United States Securities and Exchange Commission that is publicly available through that agency's Electronic Data Gathering Retrieval System (EDGAR), 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.

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;

(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;~~

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

(6) Any transaction in a bond or other evidence of indebtedness secured by a real estate mortgage, deed of trust, personal property security agreement, or by an agreement for the sale of real estate or 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;

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

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

(9) An offer or sale to a financial or institutional investor or to a broker-dealer;

(10) (A) Any sale by an issuer to not more than twenty-five purchasers, other than those designated in paragraph (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 (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 (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~~ this title, except that such limitation shall not apply to sales of securities effected in reliance on Rule 506 of Regulation D (17 C.F.R. 230.506);
- (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 by rule or order define terms used in this section insofar as the definitions are not inconsistent with the provisions of this act;

(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;
- (B) the number of subscribers does not exceed ten; and
- (C) no payment is made by any subscriber;

(12) Any transaction pursuant to an offer to existing security holders of the issuer 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 ten (10) full business days;

(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 to be an industrial foundation, which approval and certification shall be conclusive as to the nature and purpose of such industrial foundation;

(15) Any offer to sell or sale of securities issued by any person who is operating not for 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 a notice is filed with the Administrator at such time and in such form as specified by rule or order;

- (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 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;

(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 does not 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;

(19) A nonissuer transaction 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 (C) of the Securities Exchange Act of 1934; 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 the fee set forth in Section 412 of this title;

(20) A transaction by an issuer:

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

(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

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

(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~~ may issue a final order denying or revoking any exemption specified in paragraph (6) or (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~~ 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 final order is to be issued, no order may be issued under this section without notice and opportunity for 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 final order as provided in this subsection may be issued.

(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 such an order pursuant to subsection (d) of this section, the Administrator, by order, may summarily deny or revoke any of the specified exemptions pending final determination of any proceeding pursuant to ~~this~~ subsection (d).

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

- (A) that the summary order has been entered and the reasons therefor;
- (B) that the person subject to the summary order, if desiring a hearing, must make written request for ~~such a~~ hearing to the Administrator within fifteen (15) days after receipt of the notice; ~~and~~
- (C) that within fifteen (15) days after receipt by the Administrator 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~~, the matter will be set for 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 extended pending final determination of any proceeding pursuant to subsection (d) of this section; and
- (D) that a hearing shall be commenced within fifteen (15) days of the matter being set for hearing.

(3) The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or ~~designated hearing officer~~ his or her designee 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 of any proceeding pursuant to subsection (d) of this section. If no hearing is requested and none is ordered by the Administrator, the summary order will~~

remain in effect until it is modified or vacated by the Administrator or his or her designee. If a request for hearing on the summary order is timely made and if the hearing is not commenced by the Administrator within the time limit set forth herein, the summary order shall dissolve and a ~~permanent~~ final order shall not be issued pursuant to this 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 the person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the order.

~~(e)~~ (f) 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.

(g) The Administrator may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under Section 18(b)(1) of the Securities Act of 1933, if he finds that:

(1) the order is in the public interest, and

(2) there is a failure to submit any filing or fee required under this title or by rule or order.

SECTION 13. AMENDATORY 71 O.S. 1991, Section 402, as amended by Section 14, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1996, 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, except a federal covered security, unless:

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

(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 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 14. AMENDATORY 71 O.S. 1991, Section 404, is amended to read as follows:

Section 404. (a) Neither of the following constitutes a finding by the Administrator that any document filed under this act is true, complete, and not misleading:

(1) the fact that a notice filing under Section 202.1 or 305.2 of this title has been filed, or the fact that an application for registration under Sections 201 - 204, inclusive, or a registration statement under Sections 301 - 306, inclusive, has been filed, nor

(2) the fact that a person or security is effectively registered ~~constitutes a finding by the Administrator that any document filed under this act is true, complete, and not misleading.~~

Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the Administrator has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.

(b) It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection (a) of this section.

SECTION 15. AMENDATORY 71 O.S. 1991, Section 405, as amended by Section 15, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1996, 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; and

(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 his or her designee, 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~~ deemed relevant or material to the inquiry. However, no provision of this act shall be construed to require, or to authorize the Administrator, or his or her designee, to require, any investment adviser engaged in rendering investment advisory services to disclose the identity, investments, or affairs of any client of such investment adviser, 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 his or her designee, or in obedience to the subpoena of the Administrator or ~~any officer designated by him~~ his or her designee, 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 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.

SECTION 16. AMENDATORY 71 O.S. 1991, Section 406, as amended by Section 16, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1996, 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 405 of this title, that a person has violated the Oklahoma Securities Act, except under the provisions of Section 305.2 of this title, 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;

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

(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~~ final order ~~shall~~ may be issued.

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

(1) If the Administrator revokes the effectiveness of 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 final determination of any proceeding under this section.

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

- (A) that the summary order has been entered and the reasons therefor;
- (B) that the person subject to the summary order, if desiring a hearing, must make written request for ~~such a~~ a hearing to the Administrator within fifteen (15) days after receipt of the notice; ~~and~~
- (C) that within fifteen (15) days after receipt by the Administrator of a written request ~~for a hearing~~

~~from the person or at such earlier time during regular business hours of the Department as mutually agreed upon by the Department and the person, a the matter will be set for 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 extended pending final determination of any proceeding under paragraph (1) of subsection (a) of this section; and~~

(D) that a hearing shall be commenced within fifteen (15) days of the matter being set for hearing.

(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~~ or her designee extends the summary order pending a final determination of any proceeding under paragraph (1) of subsection (a) of this section. ~~The~~ If no hearing is requested and none is ordered by the Administrator, 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 will remain in effect until it is modified or vacated by the Administrator. If a request for hearing on the summary order is timely made and if the hearing is not commenced by the Administrator within the time limit set forth herein, the summary order shall dissolve and a ~~permanent~~ final 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 406.1, is amended to read as follows:

Section 406.1 (a) Upon a showing by the Administrator that a person has violated or is about to violate the Oklahoma Securities Act, except under the provisions of Section 305.2 of this title, or a rule or order of the Administrator under the Oklahoma Securities Act or that a person has engaged or is about to engage in dishonest or unethical practices in the securities business, the Administrator, initially prior to, concurrently with, or

subsequent to an administrative proceeding, may bring an action in the district court of Oklahoma County or the district court of any other county where service can be obtained on one or more of the defendants and the district court may grant or impose one or more of the following appropriate legal or equitable remedies:

(1) Upon a showing of a violation of the Oklahoma Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act or conduct involving dishonest or unethical practices in the securities business:

- (i) a temporary restraining order, permanent or temporary prohibitory or mandatory injunction, or a writ of prohibition or mandamus;
- (ii) a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or of Fifty Thousand Dollars (\$50,000.00) for multiple violations in a single proceeding or a series of related proceedings;
- (iii) a declaratory judgment;
- (iv) restitution to investors;
- (v) the appointment of a receiver or conservator for the defendant or the defendant's assets; and
- (vi) other relief the court deems just.

(2) Upon a showing that the defendant is about to violate the Oklahoma Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act or that the defendant is about to engage in dishonest or unethical practices in the securities business only:

- (i) a temporary restraining order; or
- (ii) a temporary or permanent injunction; or
- (iii) a writ of prohibition or mandamus.

(b) In determining the appropriate relief under subsection (a) of this section, the court shall consider any enforcement actions taken and/or sanctions that may have been imposed by the Administrator under Section 406 of this title in connection with the subject transactions.

(c) The Administrator shall not be required to post a bond in an action under this section.

(d) Upon a showing by the securities agency or administrator of another state that a person has violated the securities act of that state or a rule or order of the securities agency or administrator of that state, the court, in addition to any other legal or equitable remedies, may impose one or more of the following remedies:

(1) appointment of a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this state; and

(2) other relief the court considers just.

(e) No costs shall be assessed for or against the Administrator in any proceeding under the Oklahoma Securities Act brought by or against it in any court except as otherwise provided by law.

SECTION 18. AMENDATORY 71 O.S. 1991, Section 408, as last amended by Section 17, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1996, 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 in 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~~ Sections 201(c) and 201(d) 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~~ Sections 201(c) and 201(d) 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) 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 19. AMENDATORY 71 O.S. 1991, Section 410, as amended by Section 18, Chapter 241, O.S.L. 1992 (71 O.S. Supp. 1996, Section 410), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

SECTION 20. AMENDATORY 71 O.S. 1991, Section 411, as amended by Section 19, Chapter 241, O.S.L. 1992 (71 O.S. Supp. 1996, Section 411), is amended to read as follows:

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

(b) The Administrator shall keep a register of all applications for registration under this title and all registration orders issued pursuant to the provisions of this title and all denial, suspension or revocation orders or any other orders of the Administrator or Oklahoma Securities Commission which have been entered pursuant to the provisions of this title. The register and all such orders may be maintained in computer format or any other form of data storage and shall be open for public inspection.

(c) The information contained in or filed with any ~~registration statement~~ application filed pursuant to Section 201 of this title, any application filed pursuant to Section 301 of this title, sales report, or notice of claim for exemption from registration may be made available to the public pursuant to such rules as the Administrator prescribes. ~~Information or documents obtained by the Administrator in connection with an investigation or examination pursuant to this title do not constitute public information and shall not be made available to the public.~~

(d) Examination files, litigation files, and investigatory files and reports shall be kept confidential. If an investigatory file is created as a result of a complaint, grievance or inquiry,

the complaint, grievance or inquiry shall be a part of the investigatory file and the existence of the complaint, grievance or inquiry and the matters and documents contained therein shall not be disclosed except pursuant to this title. A settlement agreement may, upon determination of the Administrator, remain part of the investigatory file and may be used against the person or entity involved only if the person or entity involved violates the terms of the settlement agreement. The Administrator may disclose any information obtained in connection with an investigation pursuant to this title for the purpose of a civil, ~~or~~ administrative action brought by the Administrator or a criminal proceeding referral. The Administrator may disclose such information to a law enforcement agency or another governmental or regulatory entity so long as the receiving agency represents in writing that under applicable law protections exist to preserve the integrity, confidentiality and security of the information.

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

~~(e)~~ (f) The Administrator in his discretion may honor requests from interested persons for interpretive opinions or ~~no-action letters~~ may issue determinations that the Administrator will not institute enforcement proceedings against certain specified persons for engaging in certain specified activities where the determination is consistent with the purposes fairly intended by the policy and provisions of this act.

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

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

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

SECTION 21. AMENDATORY 71 O.S. 1991, Section 412, as last amended by Section 18, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1996, 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 <u>adviser</u>
registration fee or renewal fee | \$300.00 |
| (5) <u>Investment adviser annual
notice filing fee</u> | <u>\$300.00</u> |
| (6) Investment adviser representative
registration fee or renewal fee | \$50.00 |
| (7) <u>Investment adviser representative
annual notice filing fee</u> | <u>\$50.00</u> |

~~(6)~~ (8) Combined broker-

dealer/investment adviser	
registration fee or renewal fee	\$450.00
(7) <u>(9)</u> Combined agent/investment adviser representative of one combined broker-dealer investment adviser	
registration fee or renewal fee	\$60.00
(8) <u>(10)</u> Mass transfer fee	\$10.00
	per agent
(9) <u>(11)</u> Mailing list fee	\$30.00
	per year
(10) <u>(12)</u> Review of sales literature package	\$50.00
<u>(13)</u> <u>Broker-dealer or investment adviser financial or operating reports</u>	<u>\$50.00</u>
(11) Post-registration	
<u>(14)</u> <u>Issuer sales reports</u>	\$50.00
(12) Exemption notification	
<u>(15)</u> <u>Notice of exemption filing or request for order of exemption</u>	\$250.00
(13) <u>(16)</u> Interpretive opinion or no-action request	\$250.00
(14) <u>(17)</u> Affidavit request	\$10.00
(15) <u>(18)</u> Service of process upon the Administrator	\$10.00
(16) <u>(19)</u> Amendments to Registration Statements <u>registration statements or notice filings pursuant to Section 305.2 of this title involving changes to the issuer's application or notice filing form:</u>	
(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)~~ (20) Actual charges for an on-site examination conducted pursuant to Sections 203(d) and 305(j) of this title 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)~~ (21) 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)~~ (22) Document search fee for

commercial purpose \$20.00 per hour

(b) Any person filing a registration statement or a notice filing pursuant to Section 305.2 of this title 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 (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) however, for securities registered pursuant to Section 304.1 of this title, the filing fee shall be computed as follows: a fee equal to one-twentieth of one percent (1/20 of 1%) of ~~said~~ the aggregate offering 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~~ notice filing pursuant to Section 305.2 of this title involves securities issued by an investment company, ~~in an indefinite amount of securities may be registered by paying a,~~ the filing fee of shall be One Thousand Six Hundred Fifty Dollars (\$1,650.00) with each ~~application for registration notice filing.~~ 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 Department of Securities Commission to be designated the "Oklahoma Department of 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)~~ (1), (4), (5), (11), (17), (18), (21) and (22) of subsection (a) of this section;

~~(3)~~ (2) the fees collected pursuant to the provisions of Section 402 of this title as provided in paragraph ~~(10)~~ (12) of subsection (a) of this section;

~~(4)~~ (3) the on-site examination fees collected pursuant to paragraph ~~(17)~~ (20) of subsection (a) of this section, and the examination fees designated in paragraph ~~(16)~~ (19) of subsection (a) and in subsection (b) of this section; and

~~(5)~~ (4) the amounts collected pursuant to ~~subsections (e) and subsection (f)~~ of Section 411 of this title set forth in paragraph ~~(13)~~ (16) of subsection (a) of this section; ~~and~~

~~(6) 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~~ At the end of 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.

(g) There is hereby created a petty cash fund for the Oklahoma Department of Securities. The Director of State Finance and the Administrator are hereby authorized and it shall be their duty to fix the maximum amount of the petty cash fund, not to exceed Five Hundred Dollars (\$500.00). The Director of State Finance shall prescribe all forms, systems, and procedures for administering the petty cash fund. The fund shall be used solely to pay:

- (1) examination, investigation and litigation expenses of the Oklahoma Department of Securities, including, but not limited to, court costs, filing fees, copying fees, and witness fees, and
- (2) incidental operating expenses of the Oklahoma Department of Securities not to exceed One Hundred Dollars (\$100.00) per transaction.

SECTION 22. AMENDATORY 71 O.S. 1991, Section 802, as amended by Section 1, Chapter 169, O.S.L. 1992 (71 O.S. Supp. 1996, Section 802), is amended to read as follows:

Section 802. As used in the Oklahoma Business Opportunity Sales Act, Section 801 et seq. of this title, unless otherwise provided:

1. "Administrator" means the Administrator of the Oklahoma Department of Securities.

2. "Advertising" means any circular, prospectus, advertisement or other material or any communication by radio, television, newspapers, magazines, pictures or similar means used in connection with an offer or sale of any business opportunity.

3. a. "Business opportunity" means a contract or agreement, between a seller and purchaser, express or implied, orally or in writing, wherein it is agreed that the seller or a person recommended by the seller shall provide to the purchaser any products, equipment, supplies or services enabling the purchaser to start a business and the seller represents directly or indirectly, orally or in writing, that:

(1) The seller or a person recommended by the seller will provide or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases or other similar devices, on premises neither owned nor leased by the purchaser or seller; ~~or~~

(2) The seller or a person recommended by the seller will provide or assist the purchaser in finding outlets or accounts for the purchaser's products or services; ~~or~~

(3) The seller or a person specified by the seller will purchase any or all products made, produced, fabricated, grown, bred or modified by the purchaser; ~~or~~

- (4) The seller guarantees that the purchaser will derive income from the business which exceeds the price paid to the seller; ~~or~~
 - (5) The seller will refund all or part of the price paid to the seller, or repurchase any of the products, equipment or supplies provided by the seller or a person recommended by the seller, if the purchaser is dissatisfied with the business; or
 - (6) The seller will provide a marketing plan.
- b. "Business opportunity" does not include:
- (1) Any offer or sale of an on-going business operated by the seller and to be sold in its entirety; ~~or~~
 - (2) Any offer or sale of a business opportunity to an on-going business where the seller will provide products, equipment, supplies or services which are substantially similar to the products, equipment, supplies or services sold by the purchaser in connection with the purchaser's on-going business; ~~or~~
 - (3) Any offer or sale of a business opportunity which involves a marketing plan made in conjunction with the licensing of a federally registered trademark or federally registered service mark provided that the seller has a minimum net worth of One Million Dollars (\$1,000,000.00) as determined on the basis of the seller's most recent audited financial statements prepared within thirteen (13) months of ~~such an~~ offer or sale in accordance with generally accepted accounting principles and audited in accordance with generally accepted auditing standards. Net worth may be determined on a consolidated basis where the seller is at least eighty percent (80%) owned by one person

and that person expressly guarantees the obligation of the seller with regard to the offer or sale of any business opportunity claimed to be excluded under this division; or

(4) Any offer or sale of a business opportunity by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator or a judicial offer or sale of a business opportunity.

4. "Department" means the Oklahoma Department of Securities.

5. "Franchise" means a contract or agreement between a seller and a purchaser, express or implied, orally or in writing, where it is agreed that:

- a. A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan prescribed in substantial part by a franchisor; and
- b. The operation of the franchisee's business pursuant to such a plan is substantially associated with the franchisor's business and trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor or its affiliate.

For the purposes of this paragraph, "franchisee" shall mean a person to whom a franchise is granted and "franchisor" shall mean a person who grants a franchise.

6. "Marketing plan" means advice or training, provided to the purchaser by the seller or a person recommended by the seller, pertaining to the sale of any products, equipment, supplies or services and the advice or training includes, but is not limited to, preparing or providing:

- a. Promotional literature, brochures, pamphlets or advertising materials;
- b. Training regarding the promotion, operation or management of the business opportunity; or

c. Operational, managerial, technical or financial guidelines or assistance.

7. "Offer" or "offer to sell" includes every attempt to dispose of a business opportunity for value or solicitation of an offer to purchase a business opportunity.

8. "On-going business" means an existing business that, for at least six (6) months prior to the offer, has been operated from a specific location, has been open for business to the general public and has substantially all of the equipment and supplies necessary for operating the business.

9. "Person" means an individual, corporation, trust, partnership, incorporated or unincorporated association or any other entity.

10. "Purchaser" means a person who enters into a contract or agreement for the acquisition of a business opportunity or a person to whom an offer to sell a business opportunity is directed.

11. "Sale" or "sell" includes every contract or agreement of sale, contract to sell, disposition of a business opportunity or interest in a business opportunity for value.

12. "Seller" means a person who sells or offers to sell a business opportunity or any agent or person who directly or indirectly acts on behalf of such person.

SECTION 23. AMENDATORY 71 O.S. 1991, Section 803, as amended by Section 2, Chapter 169, O.S.L. 1992 (71 O.S. Supp. 1996, Section 803), is amended to read as follows:

Section 803. The following business opportunities are exempt from Sections 806 through 811 of this title:

1. Any offer or sale of a business opportunity for which the immediate cash payment made by the purchaser for any business opportunity is at least Twenty-five Thousand Dollars (\$25,000.00) if the immediate cash payment does not exceed twenty percent (20%) of the purchaser's net worth as determined exclusive of principal residence, furnishings therein, and automobiles. The Administrator may by rule withdraw or further condition the availability of this exemption.

2. Any offer or sale of a business opportunity for which the purchaser is required to make a payment to the seller or a person recommended by the seller not to exceed ~~Two Hundred Fifty Dollars (\$250.00)~~ during the period from any time before commencing operation to within six (6) months after commencing operation of the business opportunity Five Hundred Dollars (\$500.00). For purposes of this paragraph, "payment" means the total amount the purchaser becomes obligated to pay to the seller or to any third party either prior to or at the time of delivery of the products, equipment, supplies or services or within one (1) year of the commencement of operation of the business opportunity by the purchaser. If payment is over a period of time, "payment" shall include the sum of the down payment and the total periodic payments. If the purchaser may enter at different levels, "payment" means the total sum the purchaser is obligated to pay to enter at the level chosen by the purchaser.

3. Any offer or sale of a business opportunity where the seller has a net worth of not less than One Million Dollars (\$1,000,000.00) as determined on the basis of the seller's most recent audited financial statements, prepared within thirteen (13) months of such offer or sale in accordance with generally accepted accounting principles and audited in accordance with generally accepted auditing standards. Net worth may be determined on a consolidated basis where the seller is at least eighty percent (80%) owned by one person and that person expressly guarantees the obligations of the seller with regard to the offer or sale of any business opportunity claimed to be exempt under this paragraph. The Administrator may by rule withdraw or further condition the availability of this exemption.

4. Any offer or sale of a business opportunity where the purchaser has a net worth of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00). Net worth shall be determined exclusive of principal residence, furnishings therein, and automobiles. The Administrator may by rule withdraw or further condition the availability of this exemption.

5. Any offer or sale of a business opportunity where the purchaser is a bank, savings and loan association, trust company, insurance company, credit union, investment company as defined by the Investment Company Act of 1940, pension or profit sharing trust or other financial institution or institutional buyer or a dealer registered pursuant to the Oklahoma Securities Act, where the purchaser is acting for itself or in a fiduciary capacity.

6. Any offer or sale of a ~~business opportunity which is defined as a~~ franchise as defined in Section 802 of this title provided that the seller delivers to each purchaser at the earlier of the first personal meeting, or ten (10) business days prior to the earlier of the execution by a purchaser of any contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity, one of the following disclosure documents:

- a. A Uniform Franchise Offering Circular prepared in accordance with the guidelines adopted by the North American Securities Administrators Association, Inc., or
- b. A disclosure document prepared pursuant to the Federal Trade Commission rule entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 16 C.F.R. Section 436.

For the purposes of this paragraph, a personal meeting shall mean a face-to-face meeting between the purchaser and the seller or their representatives, which is held for the purpose of discussing the offer or sale of a business opportunity. The Administrator may by rule adopt any amendment to the Uniform Franchise Offering Circular that has been adopted by the North American Securities Administrators Association, Inc. or any amendment to the disclosure document prepared pursuant to the Federal Trade Commission rule entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity

Ventures, 16 C.F.R. Section 436, that has been adopted by the Federal Trade Commission.

7. Any offer or sale of a business opportunity for which the required cash payment made by a purchaser ~~for to participate in~~ any business opportunity does not exceed ~~Five Hundred Dollars (\$500.00)~~ Seven Hundred Fifty Dollars (\$750.00) and the required payment is made for:

- a. the not-for-profit sale of sales demonstration equipment, material or samples, and/or ~~the required payment is made for~~
- b. product inventory sold to the purchaser at a bona fide wholesale price.

8. Any offer or sale of a business opportunity which the Administrator exempts by order or a class of business opportunities which the Administrator exempts by rule upon the finding that such exemption would not be contrary to public interest and that registration would not be necessary or appropriate for the protection of purchasers.

9. Any business which is operated under a lease or license on the premises of the lessor or licensor as long as such business is incidental to the business conducted by the lessor or the licensor on such premises, including, without limitation, leased departments, licensed departments and concessions.

SECTION 24. AMENDATORY 71 O.S. 1991, Section 804, is amended to read as follows:

Section 804. A. The Administrator may ~~by~~ issue a final order ~~deny denying~~ or ~~revoke~~ revoking any exemption specified in Section ~~3~~ 803 of this title, not including the exemption provided for in paragraphs 2 and 7 of Section ~~3~~ 803 of the Oklahoma Business Opportunity Sales Act, with respect to a particular offering of one or more business opportunities if the Administrator finds that the order is in the public interest and that:

1. Any provision of the Oklahoma Business Opportunity Sales Act or any rule, order or condition lawfully imposed pursuant to the act has been willfully violated, in connection with the offer or sale of the business opportunity by the seller, any partner,

officer or director of the seller, any persons occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the seller;

2. The business opportunity is the subject of an administrative order denying, suspending, or revoking a registration or a permanent or temporary injunction of any court of competent jurisdiction; but the Administrator:

- a. may not institute a proceeding pursuant to this paragraph more than one (1) year from the date of the order or injunction relied on, and
- b. may not enter an order pursuant to this paragraph on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts, other than facts which establish jurisdiction, which would currently constitute a ground for an order under this section;

3. The seller's enterprise or method of business, or that of the business opportunity, includes or would include activities which are illegal where performed;

4. The business opportunity or the offering of a business opportunity has worked or tended to work a fraud upon purchasers or would so operate; or

5. The seller's literature or advertising is misleading, incorrect, incomplete or deceptive.

~~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~~ Unless the right to notice and hearing is waived by the person against whom the final order is to be issued, no order may be issued under this subsection without notice and opportunity for hearing as required by the Oklahoma Administrative Procedures Act. If the person to whom such notice is addressed does not request a hearing within fifteen (15) days after the receipt of such notice, a final order shall be issued.

B. If the public interest or the protection of purchasers so requires, the Administrator may by order summarily deny or revoke

any of the specified exemptions, not including the exemption provided for in paragraphs 2 and 7 of Section ~~3~~ 803 of this ~~act~~ title, pending final determination of any proceeding under this section. Upon the entry of the summary order, the Administrator shall promptly notify all interested parties ~~that~~ :

1. That the summary order has been entered and of the reasons therefor and that;

2. That the person subject to the summary order, if desiring a hearing, must make written request for a hearing to the Administrator within fifteen (15) days after receipt of the notice;

3. That within fifteen (15) days of the after receipt by the Department Administrator of a written request the matter will be set down for hearing to determine whether the summary order should be modified, vacated, or extended pending final determination of any proceeding under subsection A of this section; and

4. That a hearing shall be commenced within fifteen (15) days of the matter being set for hearing. Said request for hearing shall be made within fifteen (15) days of receipt of the notice of entry of the summary order. If no hearing is requested in the time specified and none is ordered by the Administrator, the summary order will become permanent in effect unless it is modified or vacated by the Administrator. The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or his or her designee extends the summary order pending a final determination of any proceeding under subsection A of this section. If no hearing is requested and none is ordered by the Administrator, the summary order will remain in effect until it is modified or vacated by the Administrator or his or her designee. If a request for hearing on the summary order is timely made and if the hearing is not commenced by the Administrator within the time limit set forth herein, the summary order shall dissolve and a final order shall not be issued pursuant to subsection A of this section except upon reasonable notice and opportunity for a hearing.

C. No order under this section may operate retroactively.

D. No person may be considered to have violated Section ~~6~~ 806 of the Oklahoma Business Opportunity Sales Act by reason of any offer or sale effected after the entry of an order under Section 4 804 of the Oklahoma Business Opportunity Sales Act if he or she sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the order.

SECTION 25. AMENDATORY 71 O.S. 1991, Section 807, is amended to read as follows:

Section 807. A. In order to register a business opportunity, the seller shall file with the Administrator one of the following disclosure documents with the appropriate cover sheet as required by Section 808 of this title, a consent to service of process as specified in subsection B of this section ~~and~~, the appropriate fee as required by subsection C of this section, and any other information determined by the Administrator to be necessary:

1. A Uniform Franchise Offering Circular prepared in accordance with the guidelines adopted by the North American Securities Administrators Association, Inc. The Administrator may by rule adopt any amendment to the Uniform Franchise Offering Circular that has been adopted by the North American Securities Administrators Association, Inc.;

2. A disclosure document prepared pursuant to the Federal Trade Commission rule entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures; 16 C.F.R. Section 436. The Administrator may by rule adopt any amendment to the disclosure document prepared pursuant to 16 C.F.R. Section 436 that has been adopted by the Federal Trade Commission; or

3. A disclosure document prepared pursuant to Section 808 of this title.

B. Every seller shall file, in the form as the Administrator may prescribe, an irrevocable consent appointing the Administrator or the successor in office to be the seller's agent to receive service of any lawful process in any noncriminal suit, action or proceeding against the seller or the seller's successor, executor

or administrator which arises under the Oklahoma Business Opportunity Sales Act after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service may be made by leaving a copy of the process in the office of the Administrator, but is not effective unless the plaintiff, who may be the Administrator in a suit, action or proceeding, forthwith sends notice of the service and a copy of the process by registered mail to the defendant's or respondent's last address on file with the Administrator, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return date of the process, if any, or within such further time as the court allows.

C. The seller shall pay a filing fee in the amount of Two Hundred Fifty Dollars (\$250.00) which shall be deposited in the General Revenue Fund of the State Treasury. No additional fee shall be imposed by rule.

D. A registration automatically becomes effective upon the expiration of ~~ten (10)~~ fifteen (15) full business days after a complete filing, provided that no order has been issued or that no proceeding is pending pursuant to Section 810 of this title. The Administrator may by order waive or reduce the time period prior to effectiveness, provided that a complete filing has been made. The Administrator may by order defer the effective date until the expiration of ~~ten (10)~~ fifteen (15) full business days after the filing of any amendment. For purposes of this subsection, a filing shall be deemed complete upon receipt by the Administrator of the items described in subsections A through C of this section.

E. The registration is effective for one (1) year commencing on the day of effectiveness and may be renewed annually upon the filing of a current disclosure document accompanied by any documents or information that the Administrator may by rule or order require. A renewal fee in the amount of One Hundred Fifty Dollars (\$150.00) shall accompany each request for renewal. The renewal fee shall be deposited in the General Revenue Fund of the State Treasury. Failure to renew upon the close of the one-year period of effectiveness will result in expiration of the

registration. The Administrator may by rule or order require the filing of a sales report and payment of a report filing fee in the amount of Ten Dollars (\$10.00) which shall be deposited in the General Revenue Fund of the State Treasury.

F. The Administrator may by rule or order require the filing of all proposed literature or advertising prior to its use and payment of a review and approval fee in the amount of Twenty-five Dollars (\$25.00) for each sales literature or advertising package. The fee shall be deposited in the Oklahoma Department of Securities Revolving Fund.

SECTION 26. AMENDATORY 71 O.S. 1991, Section 810, as amended by Section 4, Chapter 169, O.S.L. 1992 (71 O.S. Supp. 1996, Section 810), is amended to read as follows:

Section 810. A. The Administrator may issue ~~an~~ a final order denying effectiveness to, or suspending or revoking effectiveness of, any registration if the Administrator finds that the order is in the public interest and that:

1. The registration as of its effective date or as of any earlier date in the case of any order denying effectiveness, or any amendment as of its effective date, or any report 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;

2. Any provision of the Oklahoma Business Opportunity Sales Act or any rule, order or condition lawfully imposed pursuant to the act has been willfully violated, in connection with the business opportunity:

- a. by the person filing the registration, or
- b. by the seller, any partner, officer or director of the seller, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the seller, but only if the person filing the registration is directly or indirectly controlled by or acting for the seller;

3. The business opportunity registered or sought to be registered is the subject of an administrative order denying, suspending or revoking a registration or a permanent or temporary injunction of any court of competent jurisdiction; but the Administrator:

- a. may not institute a proceeding against an effective registration pursuant to this paragraph more than one (1) year from the date of the order or injunction relied on, and
- b. may not enter an order pursuant to this paragraph on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts, other than facts which establish jurisdiction, which would currently constitute a ground for an order under this section;

4. The seller's enterprise or method of business, or that of the business opportunity, includes or would include activities which are illegal where performed;

5. The business opportunity or the offering of a business opportunity has worked or tended to work a fraud upon purchasers or would so operate;

6. There has been a failure to file any documents or information required by Section 807 of this title;

7. The seller has failed to pay the proper filing fee but the Administrator may enter only a denial order under this paragraph and the Administrator shall vacate any such order when the deficiency has been corrected; or

8. The seller's literature or advertising is misleading, incorrect, incomplete or deceptive.

B. The Administrator may not institute a proceeding under this section against an effective registration on the basis of a fact or transaction known to the Administrator when the registration became effective unless the proceeding is instituted within thirty (30) days from the date the registration became effective.

C. 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 pending final determination of any proceeding under this section.

2. Upon the entry of the summary order, the Administrator shall promptly notify the seller ~~that~~:

- a. that the summary order has been entered and the reasons therefor,
- b. that the person subject to the summary order, if desiring a hearing, must make written request for ~~such a~~ hearing to the Administrator within fifteen (15) days after receipt of the notice, ~~and~~
- c. that within fifteen (15) days after receipt by the Administrator 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~~ the matter will be set for 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~~ extended pending final determination of any proceeding under subsection A of this section~~;~~, and
- d. that a hearing shall be commenced within fifteen (15) days of the matter being set for hearing.

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~~ or her designee extends the summary order pending a final determination of any proceeding under subsection A of this section. ~~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 no hearing is requested and none is ordered by the Administrator, the summary order will remain in

effect until it is modified or vacated by the Administrator or his or her designee. 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.

D. ~~No stop order may be entered under any part of this section, except under~~ Except as provided in paragraph 1 of subsection C of this section, without appropriate prior notice to the seller, opportunity for hearing, and written findings of fact and conclusions of law or unless the right to notice and hearing is waived by the person against whom the final order is to be issued, no order may be issued under this section without notice and opportunity for hearing as required by the Oklahoma Administrative Procedures Act. If the person to whom such notice is addressed does not request a hearing within fifteen (15) days after the receipt of the notice, a final order as provided in subsection A of this section shall be issued.

E. The Administrator may vacate or modify an order issued under this section if the Administrator finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

SECTION 27. AMENDATORY 71 O.S. 1991, Section 814, as amended by Section 5, Chapter 169, O.S.L. 1992 (71 O.S. Supp. 1996, Section 814), is amended to read as follows:

Section 814. A. Whenever it appears to the Administrator that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Oklahoma Business Opportunity Sales Act or any rule or order hereunder, the Administrator may:

1. Issue an order directing ~~the~~ each person to cease and desist from continuing the act or practice and/or issue an order 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; or

2. ~~Initially~~ Prior to, concurrently with, or subsequent to an administrative proceeding pursuant to paragraph 1 of this subsection, bring an action in 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 to enjoin the acts or practices and to enforce compliance with the Oklahoma Business Opportunity Sales Act or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets or the court may order rescission, which shall include restitution plus the legal interest rate, for any sales of business opportunities determined to be unlawful pursuant to the Oklahoma Business Opportunity Sales Act or any rule or order hereunder. The court shall not require the Administrator to post a bond. No costs shall be assessed for or against the Administrator in a proceeding under the Oklahoma Business Opportunity Sales Act brought by or against the Administrator in any court except as otherwise provided by law.

B. Except as provided in subsection D 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 paragraph 1 of subsection A of this section may be imposed ~~in an administrative proceeding~~ only after notice and opportunity for hearing as required by ~~Article II of the Administrative Procedures Act, Section 309 et seq. of Title 75 of the Oklahoma Statutes.~~ If the person to whom notice is addressed does not request a hearing within fifteen (15) days after the receipt of ~~said~~ the notice, a ~~permanent~~ final order shall be issued.

C. For purposes of determining any sanction to be imposed under 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 Business Opportunity Sales Act or a rule or order of the Administrator

under the Oklahoma Business Opportunity Sales Act, the number of persons adversely affected by the conduct, and the resources of the person committing the violation.

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 a cease and desist order pursuant to paragraph 1 of subsection A of this section, the Administrator may issue a summary order pending the hearing required by subsection B of this section.

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

- a. that the summary order has been entered and the ~~reason~~ reasons therefor,
- b. that the person subject to the summary order, if desiring a hearing, must make written request for ~~such a~~ a hearing to the Administrator within fifteen (15) days after receipt of the notice, ~~and~~
- c. that within fifteen (15) days after receipt by the Administrator of a written request ~~for a~~ the matter will be set for 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~~ extended pending a proceeding under paragraph 1 of subsection A of this section, and
- d. that a hearing shall be commenced within fifteen (15) days of the matter being set for hearing.

2. 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~~ or her designee extends the summary order pending a final determination of any proceeding under paragraph 1 of subsection A of this section. ~~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 no hearing is requested and none is ordered by the Administrator, the summary order will remain in effect until it is modified or vacated by the Administrator or his or her designee. 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 above, the summary order shall dissolve and a cease and desist order shall not be issued pursuant to paragraph 1 of subsection A of this section except upon reasonable notice and opportunity for a hearing as provided in subsection B of this section.

SECTION 28. AMENDATORY 71 O.S. 1991, Section 815, as amended by Section 6, Chapter 169, O.S.L. 1992 (71 O.S. Supp. 1996, Section 815), is amended to read as follows:

Section 815. A. Any person aggrieved by a final order of the Administrator may obtain a review by the Oklahoma Securities Commission by filing with the Oklahoma Securities Commission at the offices of the Department of Securities, within fifteen (15) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part and stating his ground therefor. The petition, the record in the administrative hearing, including but not limited to the transcript, and written briefs submitted by the appealing parties and the Administrator shall be reviewed by the Oklahoma Securities Commission. The cost of preparing the record of the administrative hearing shall be borne by the appealing parties. Oral argument by all parties shall be heard by the Oklahoma Securities Commission en banc unless waived by the party. Other than newly discovered evidence, additional evidence may only be presented by the appealing party and/or the Administrator on the request of the Oklahoma Securities Commission. Upon the written request of the party on whose behalf the appeal is brought, or upon his own motion, the Administrator shall cause complete stenographic notes to be taken of the proceeding before the Oklahoma Securities Commission. If requested by the appealing

party, the cost of taking and transcribing such notes shall be borne by the said appealing party. If such notes are taken upon the motion of the Administrator, the cost shall be borne by the Department. The Oklahoma Securities Commission or a majority thereof shall make such order as is deemed proper, just and equitable within sixty (60) days of receipt by the Oklahoma Securities Commission of the written petition of the appealing party or at such later time as agreed to in writing by all parties.

B. Any person aggrieved by a final order of the Oklahoma Securities Commission may obtain a review of the order by the Supreme Court of Oklahoma. The proceedings for review shall be as now prescribed by law and by rules of the reviewing court, subject to the power of the other court to make other and further rules with reference thereto.

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

SECTION 29. AMENDATORY 71 O.S. 1991, Section 817, as amended by Section 7, Chapter 169, O.S.L. 1992 (71 O.S. Supp. 1996, Section 817), is amended to read as follows:

Section 817. A. A document is filed when it is received by the Administrator.

B. The Administrator shall keep a register of all applications for registration ~~and disclosure documents which are or have been effective~~ pursuant to the Oklahoma Business Opportunity Sales Act and all orders which have been entered under the act. The register and all such orders may be maintained in computer form or any other form of data storage and shall be open for public inspection.

C. The information contained in or filed with any application for registration filed pursuant to this title, or any ~~registration~~

~~statement, filing, application or~~ report filed with the Administrator may be made available to the public under such rules as the Administrator may prescribe. Litigation files and investigatory files and reports shall be kept confidential. If an investigatory file is created as a result of a complaint, grievance or inquiry, the complaint, grievance or inquiry shall be a part of such investigatory file and the existence of the complaint, grievance or inquiry and the matters and documents contained therein shall not be disclosed except pursuant to this title. A settlement agreement may, upon determination of the Administrator, remain part of the investigatory file and may be used against the person or entity involved only if the person or entity involved violates the terms of the settlement agreement. The Administrator may disclose any information obtained in connection with an investigation pursuant to this title for the purpose of a civil or administrative action brought by the Administrator, or a criminal referral. The Administrator may disclose such information to a law enforcement agency or another governmental or regulatory entity so long as the receiving entity represents in writing that under applicable law protections exist to preserve the integrity, confidentiality, and security of the information.

D. The Administrator may honor written requests from interested persons for interpretive opinions or ~~no-action letters~~ may issue determinations that the Administrator will not institute enforcement proceedings against certain specified persons for engaging in certain specified activities where the determination is consistent with the purposes fairly intended by the policy and provisions of this act upon the payment of a fee in the amount of Two Hundred Fifty Dollars (\$250.00) which shall be deposited in the Oklahoma Department of Securities Revolving Fund.

SECTION 30. AMENDATORY 71 O.S. 1991, Section 818, is amended to read as follows:

Section 818. A. The provisions of the Oklahoma Business Opportunity Sales Act concerning sales and offers to sell apply to persons who sell or offer to sell when:

1. An offer to sell is made in this state;
2. An offer to purchase is made and accepted in this state;

or

3. The purchaser is domiciled in this state and the business opportunity is or will be operated in this state.

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

1. The offer originates from this state; or

2. The offer 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.

C. For the purpose of this section, an offer 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.

D. An offer to sell is not made in this state when:

1. The publisher circulates or there is circulated on his or her 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.

E. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by the Oklahoma Business Opportunity Sales Act or any rule or order hereunder, and the person has not filed a consent to service of process and

personal jurisdiction over the person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the person's appointment of the Administrator or the Administrator's successor in office to be the person's agent to receive service of any lawful process in any noncriminal suit, action or proceeding against the person or the person's successor, executor or administrator which grows out of that conduct and which is brought pursuant to the Oklahoma Business Opportunity Sales Act or any rule or order hereunder with the same force and validity as if served on the person 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 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's or respondent's last-known address or takes other steps which are reasonably calculated to give actual notice; 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.

F. When process is served under this section, the court, or the Administrator in a proceeding before the Administrator, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

SECTION 31. This act shall become effective July 1, 1997.

SECTION 32. 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.