

and

Toure of the House

An Act relating to securities; amending 71 O.S. 1991, Sections 16, as amended by Section 2, Chapter 196, O.S.L. 1995, 204, as last amended by Section 5, Chapter 152, O.S.L. 1998, Section 10, Chapter 279, O.S.L. 1997, as amended by Section 7, Chapter 152, O.S.L. 1998, 306, as last amended by Section 8, Chapter 152, O.S.L. 1998, 401, as last amended by Section 15, Chapter 141, O.S.L. 1998, 406, as last amended by Section 9, Chapter 152, O.S.L. 1998, 411, as last amended by Section 20, Chapter 279, O.S.L. 1997, 412 and 413, as last amended by Sections 12 and 13, Chapter 152, O.S.L. 1998, 801, 802, as last amended by Section 22, Chapter 279, O.S.L. 1997, 804, as amended by Section 24, Chapter 279, O.S.L. 1997, 805, 806, 807, as amended by Section 25, Chapter 279, O.S.L. 1997, 808, as amended by Section 3, Chapter 169, O.S.L. 1992, 810, as last amended by Section 26, Chapter 279, O.S.L. 1997, 813, 814, 815 and 817, as last amended by Sections 27, 28 and 29, Chapter 279, O.S.L. 1997, and 818, as amended by Section 30, Chapter 279, O.S.L. 1997 (71 O.S. Supp. 1998, Sections 16, 204, 305.2, 306, 401, 406, 411, 412, 413, 802, 804, 807, 808, 810, 814, 815, 817 and 818), which relate to the Oklahoma Securities Act and the Oklahoma Business Opportunity Sales Act; including certain positions in the unclassified service; clarifying time period for making request for certain hearing and conforming language; correcting language; requiring separate notice be filed for each class of securities offered in state and conforming language; modifying fee requirement; modifying registration by qualification requirements and requiring separate registration application for each class of securities; modifying information certain document must contain to qualify transaction for exemption from registration and filing requirements; adding sanction which Administrator may impose for violation of Oklahoma Securities Act; modifying information pertaining to application for registration which may be made available to the public; providing for receipt of electronic filings for which manual signatures are not required; adding and modifying fees charged under the Oklahoma Securities Act; clarifying language pertaining to service on Administrator; modifying statutory references; including electronic transmission in definition of advertising as used in the Oklahoma Business Opportunity Sales Act; modifying language pertaining to orders issued by Administrator; clarifying when summary order may be issued and modifying parties who must be notified; modifying business opportunity

registration procedures and related fee requirements; modifying information requirements of certain disclosure document; expanding certain requirement to testify or produce documents; authorizing Administrator to accept assurance of discontinuance of act and stating stipulations which may be included; modifying information to be reviewed by Oklahoma Securities Commission when review of final order is requested; modifying fee provisions; providing for appointment of Administrator as seller's agent and for service on Administrator; stating conditions under which service is effective and may be used; stating fees to be paid under the Oklahoma Business Opportunity Sales Act, making fees nonrefundable, and providing for deposit of fees; 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 16, as amended by Section 2, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1998, Section 16), is amended to read as follows:

Section 16. The Department of Securities' attorney, securities investigator, securities examiner ~~and~~, chief financial officer, network administrator, and business manager positions shall be in the unclassified service and are in no way subject to any of the provisions of the Merit System of Personnel Administration or of the rules ~~and regulations~~ promulgated by the Office of Personnel Management except those relating to leave regulations.

SECTION 2. AMENDATORY 71 O.S. 1991, Section 204, as last amended by Section 5, Chapter 152, O.S.L. 1998 (71 O.S. Supp. 1998, Section 204), is amended to read as follows:

Section 204. (a) The Administrator may issue a final order 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 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 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, revoking, 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 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:

(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 a hearing to the Administrator within fifteen (15) days after service of the notice is effective;

(C) that within fifteen (15) days after receipt by the Administrator of a written request the matter will be set 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

(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 or her~~ the Administrator's 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~~ the Administrator's 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.

(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) 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 service of said notice is effective, a final order as provided in subsection (a) of this section may be issued.

SECTION 3. AMENDATORY Section 10, Chapter 279, O.S.L. 1997, as amended by Section 7, Chapter 152, O.S.L. 1998 (71 O.S. Supp. 1998, Section 305.2), is amended to read as follows:

Section 305.2 (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. A separate notice may describe the securities of an investment company offered through the same prospectus shall be filed for each class of an issuer's securities offered in this state. Each notice shall be for an indefinite amount of securities. A notice shall be effective upon the date of receipt by the Administrator and shall remain in effect for a period of one (1) year, or such shorter period as the Administrator provides by rule or order. A notice describing a single class of an issuer's securities filed after June 30, 1999,

may be renewed annually. A notice, or a renewal thereof, shall be accompanied by the ~~examination fee and appropriate~~ filing fee set forth in subsection ~~(b)~~ (c) of Section 412 of this title. The Administrator may, by rule or order, prescribe notice filing and renewal requirements, and the requirements for filing of reports of the dollar amount of securities sold or offered to be sold to persons located in this state.

(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 or order, 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 this title.

(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~~ the Administrator 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.

~~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~~ The Administrator may also require the registration by qualification of the securities of an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940, for which ~~an~~ the investment company did not pay the ~~examination and filing fees~~ fee required by subsection ~~(b)~~ (c) of Section 412 of this title. Each such registration shall be effective for one (1) year. Investment companies required by the Administrator to register securities must file a separate registration application for each class of

securities to be registered. The application for such registration shall include the Form U-1, a copy of the federal registration statement and the examination and filing fees set forth in subsection (b) of Section 412 of this title. In addition, the application shall include the maximum examination and filing fees set forth in subsection (b) of Section 412 of this title for each twelve-month period, or part thereof, for which the investment company was required but did not pay the appropriate investment company notice filing fee.

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

SECTION 4. AMENDATORY 71 O.S. 1991, Section 306, as last amended by Section 8, Chapter 152, O.S.L. 1998 (71 O.S. Supp. 1998, 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 subsection (c) of this section:

- (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 a hearing to the Administrator within fifteen (15) days after service of the notice is effective;
- (C) that within fifteen (15) days after receipt by the Administrator of a written request the matter will be set 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
- (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 or her~~ the Administrator's 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~~ the Administrator's 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) 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 stop 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 service of said notice is effective, 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 issuer.

SECTION 5. AMENDATORY 71 O.S. 1991, Section 401, as last amended by Section 15, Chapter 141, O.S.L. 1998 (71 O.S. Supp. 1998, 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;

(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; and

(9) Any qualified charitable gift annuity contract issued by a qualified charitable organization pursuant to the Oklahoma Charitable Gift Annuity Act.

(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~~ an income 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;

(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 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 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) The Administrator 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. 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~~ service of ~~said~~ the notice is effective, 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 subsection (d).

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

- (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 a hearing to the Administrator within fifteen (15) days after ~~receipt~~ service of the notice is effective;
- (C) that within fifteen (15) days after receipt by the Administrator of a written request the matter will be set for hearing to determine whether the summary order should be modified, vacated or 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 ~~his or her~~ the Administrator's designee extends the summary order pending a final determination 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~~ the Administrator's 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 ~~this~~ subsection (d) of this section except upon reasonable notice and opportunity for a hearing. No order pursuant to this subsection may operate retroactively. No person may be considered to have violated Section 301 or 402 of this title by reason of any offer or sale effected after the entry of an order pursuant to this subsection if 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.

(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~~ the Administrator 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 6. AMENDATORY 71 O.S. 1991, Section 406, as last amended by Section 9, Chapter 152, O.S.L. 1998 (71 O.S. Supp. 1998, 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 202.1 or 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;

(4) place limitations on the activities, functions, or operations of the person; ~~or~~

(5) 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; or

(6) recover the costs of the investigation conducted under Section 405 of this title.

(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 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 service of notice is effective, a final order 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 (5) 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 (5) 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 (5) 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:

- (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 a hearing to the Administrator within fifteen (15) days after service of the notice is effective;
- (C) that within fifteen (15) days after receipt by the Administrator of a written request the matter will be set for hearing to determine whether the summary order should be modified, vacated or 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 or her~~ the Administrator's designee extends the summary order pending a final determination of any proceeding under paragraph (1) of 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 the Administrator's 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 paragraph (1) of subsection (a) of this section except upon reasonable notice and opportunity for a hearing.

SECTION 7. AMENDATORY 71 O.S. 1991, Section 411, as last amended by Section 20, Chapter 279, O.S.L. 1997 (71 O.S. Supp. 1998, 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 the 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 or subsequent to any 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.

(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 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.

(e) Upon request and at such reasonable charges as ~~he~~ the Administrator 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 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.

(f) The Administrator in his or her discretion may honor requests from interested persons for interpretive opinions or 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.

(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.

(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.

(i) The Administrator may designate by order filing depositories for all records required to be filed and maintained under this title. The Administrator may receive electronic filings for which manual signatures shall not be required. These records may be maintained in original form or by means of microfilm, microfiche, photographic reproduction, computerization, digital imaging 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, and any other electronic filing depository.

SECTION 8. AMENDATORY 71 O.S. 1991, Section 412, as last amended by Section 12, Chapter 152, O.S.L. 1998 (71 O.S. Supp. 1998, 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:

- (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 adviser registration
fee or renewal fee..... \$300.00
- (5) Investment adviser annual notice
filing fee..... \$300.00
- (6) Investment adviser representative
registration fee or renewal fee \$50.00
- (7) Mass transfer fee..... \$10.00 per agent
- (8) Mailing list fee..... \$30.00 per year
- (9) Review of sales literature package..... \$50.00
- (10) Broker-dealer or investment
adviser financial or operating
reports..... \$50.00
- (11) Issuer sales reports..... \$50.00

- (12) Notice of exemption filing or
request for order of exemption \$250.00
- (13) Interpretive opinion or no-action
request..... \$250.00
- (14) Affidavit request..... \$10.00
- (15) Service of process upon the
Administrator..... \$10.00
- (16) Amendments to registration
statements or notice filings
pursuant to Section 305.2 of
this title involving changes to
the issuer's application or
notice filing form:
 - (A) examination fee \$50.00; and
 - (B) a filing fee computed in
the same manner as the
filing fee required
pursuant to paragraph (1)
of subsection (b) of this
section for any additional
securities being
registered.

(17) Actual charges for an on-site examination conducted pursuant to 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) Copying fee

- (A) 8 1/2" by 14" or smaller \$.25 per page
 - (B) Larger than 8 1/2" by 14" \$1.00 per page
 - (C) Certified copy 8 1/2" by
14" or smaller \$1.00 per page
 - (D) Certified copy larger than
8 1/2" by 14" \$2.00 per page
- (19) Document search fee for commercial
purpose..... \$20.00 per hour
- (20) Notice filing fee for a federal
covered security under Section
18 (b) (4) of the Securities Act
of 1933..... \$250.00

(b) For the purpose of registering securities under this act, 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~~ a filing fee computed upon the aggregate offering price of the securities sought to be registered in Oklahoma ~~or the aggregate offering price of the securities described in a notice filing pursuant to Section 305.2 of this title~~ as follows:

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); 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 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~~
or.

~~(2) if the~~ (c) Any person making a notice filing pursuant to Section 305.2(a) of this title involves securities issued by an investment company in an indefinite amount, the filing fee shall be One Thousand Six Hundred Fifty Dollars (\$1,650.00) with each notice filing, or renewing such a filing, shall pay a filing fee of Five Hundred Dollars (\$500.00) with each such notice or renewal filed.

~~(e)~~ (d) 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)~~ (e) There is hereby created in the State Treasury a revolving fund for the Oklahoma Department of Securities to be designated 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) the fees collected pursuant to paragraphs (1), (4), (5), (8), (14), (15), (18) and (19) of subsection (a) of this section;

(2) the fees collected pursuant to the provisions of Section 402 of this title as provided in paragraph (9) of subsection (a) of this section;

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

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

(5) Fifty-five Dollars (\$55.00) of each filing fee collected pursuant to subsection (c) of this section.

~~(e)~~ (f) 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)~~ (g) At the end of each fiscal year, any unexpended monies 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)~~ (h) 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.

~~(h)~~ (i) Once paid, fees shall be nonrefundable.

SECTION 9. AMENDATORY 71 O.S. 1991, Section 413, as last amended by Section 13, Chapter 152, O.S.L. 1998 (71 O.S. Supp. 1998, Section 413), is amended to read as follows:

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

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

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

(1) an offer to buy is made in this state; or

(2) an offer to sell is made and accepted in this state.

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

(1) originates from this state; or

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

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

(1) is communicated to the offeror in this state; and

(2) has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).

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

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

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

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

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

(1) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by the plaintiff, promptly sends notice of the service and a copy of the process by certified mail, return receipt requested and delivery restricted to the addressee, to the defendant or respondent at ~~his~~ the defendant's or respondent's last address on file with the Administrator; and

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

(h) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this act or any rule or order hereunder, and has not filed a consent to service of process under subsection (g) of this section, that conduct shall be considered equivalent to appointment of the Administrator or the

Administrator's successor in office to be ~~that~~ the person's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against ~~that~~ the person or a the person's successor executor or administrator that grows out of that conduct and that is brought under this act or any rule or order hereunder, with the same force and validity as if served on ~~him~~ the person personally. Service on the Administrator 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, promptly sends notice of the service and a copy of the process by certified mail, return receipt requested and delivery restricted to the addressee, to the defendant or respondent at ~~his~~ the defendant's or respondent's last-known address or takes other steps that are reasonably calculated to give actual notice; and

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

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

to have been signed by an employee authorized to receive certified mail.

(j) Refusal by any person to accept delivery of the certified mail provided for in this section, or the refusal to sign the return receipt, or the lack of knowledge of the Administrator of any address to which process may have been mailed shall not in any manner affect the legality of the service, and the person shall be presumed to have had knowledge of the contents of the process.

(k) Service as provided in subsection (g) or (h) of this section may be used in a suit, action or proceeding before the Administrator, or by the Administrator where the Administrator is the moving party.

SECTION 10. AMENDATORY 71 O.S. 1991, Section 801, is amended to read as follows:

Section 801. Sections ~~4~~ 801 through ~~27~~ 829 of this ~~act~~ title shall be known and may be cited as the "Oklahoma Business Opportunity Sales Act".

SECTION 11. AMENDATORY 71 O.S. 1991, Section 802, as last amended by Section 22, Chapter 279, O.S.L. 1997 (71 O.S. Supp. 1998, 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 or other electronic transmission, 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;
- (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;
- (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;
- (4) The seller guarantees that the purchaser will derive income from the business which exceeds the price paid to the seller;
- (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;
- (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;
- (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 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, limited liability company, 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 12. AMENDATORY 71 O.S. 1991, Section 804, as amended by Section 24, Chapter 279, O.S.L. 1997 (71 O.S. Supp. 1998, Section 804), is amended to read as follows:

Section 804. A. The Administrator may issue a final order denying or revoking any exemption specified in Section 803 of this title, not including the exemption provided for in paragraphs 2 and 7 of Section 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.

~~Unless~~ Except as provided in subsection B 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 ~~subsection~~ 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~~ service of such notice is effective, a final order shall be issued.

B. If the ~~public interest or the protection of purchasers so requires~~ 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 deny or revoke any of the specified exemptions, not including the exemption provided for in paragraphs 2 and 7 of Section 803 of this 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~~ the respondent or respondents:

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

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~~ service of the notice is effective;

3. That within fifteen (15) days after receipt by the Administrator of a written request the matter will be set 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. The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or ~~his or her~~ the Administrator's 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~~ the Administrator's 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~~ an 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 806 of ~~the Oklahoma Business Opportunity Sales Act~~ this title by reason of any offer or sale effected after the entry of an order under Section 804 of ~~the Oklahoma Business Opportunity Sales Act~~ this title 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 13. AMENDATORY 71 O.S. 1991, Section 805, is amended to read as follows:

Section 805. In any administrative, civil or criminal proceeding related to ~~Sections 1 through 27 of~~ the Oklahoma Business Opportunity Sales Act, the burden of proving an exemption, an exception from a definition or an exclusion is upon the person claiming it.

SECTION 14. AMENDATORY 71 O.S. 1991, Section 806, is amended to read as follows:

Section 806. It is unlawful for any person to offer or sell any business opportunity, as defined in Section ~~2~~ 802 of ~~the Oklahoma Business Opportunity Sales Act~~ this title, in this state unless the business opportunity is registered under the provisions of the Oklahoma Business Opportunity Sales Act or is exempt under Section ~~3~~ 803 of ~~the Oklahoma Business Opportunity Sales Act~~ this title.

SECTION 15. AMENDATORY 71 O.S. 1991, Section 807, as amended by Section 25, Chapter 279, O.S.L. 1997 (71 O.S. Supp. 1998, 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, the appropriate fee ~~as required by subsection C of this section~~ set forth in Section 829 of this title, 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 the consent to service of process required by Section 818 of this title.~~

~~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 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 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~~ and B of this section.

~~E.~~ D. 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)~~ as set forth in Section 829 of this title 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 as set forth in Section 829 of this title.~~

~~F. E. The Administrator may by rule or order require the filing of all proposed literature or advertising prior to its use and payment of a the review and approval fee in the amount of Twenty-five Dollars (\$25.00) as set forth in Section 829 of this title for each sales literature or advertising package. ~~The fee shall be deposited in the Oklahoma Department of Securities Revolving Fund.~~~~

SECTION 16. AMENDATORY 71 O.S. 1991, Section 808, as amended by Section 3, Chapter 169, O.S.L. 1992 (71 O.S. Supp. 1998, Section 808), is amended to read as follows:

Section 808. A. It shall be unlawful for any person to offer or sell any business opportunity required to be registered pursuant to the Oklahoma Business Opportunity Sales Act unless a written disclosure document as filed pursuant to Section 807 of this title is delivered to each purchaser at least ten (10) business days prior to 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.

B. The disclosure document shall have a cover sheet which is entitled, in at least ten-point bold type, "DISCLOSURE REQUIRED BY THE STATE OF OKLAHOMA". Under the title shall appear the statement in at least ten-point type that "THE REGISTRATION OF THIS BUSINESS OPPORTUNITY DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE STATE OF OKLAHOMA. THE INFORMATION CONTAINED IN THIS DISCLOSURE DOCUMENT HAS NOT BEEN VERIFIED BY THIS STATE. IF YOU HAVE ANY QUESTIONS OR CONCERNS ABOUT THIS INVESTMENT, SEEK PROFESSIONAL ADVICE BEFORE YOU SIGN A CONTRACT OR MAKE ANY PAYMENT. YOU ARE TO BE PROVIDED TEN (10) BUSINESS DAYS TO REVIEW THIS DOCUMENT BEFORE SIGNING ANY CONTRACT OR AGREEMENT OR MAKING ANY PAYMENT TO THE SELLER OR THE SELLER'S REPRESENTATIVE". The seller's

name and principal business address, along with the date of the disclosure document shall also be provided on the cover sheet. No other information shall appear on the cover sheet. The disclosure document shall contain the following information unless the seller uses a disclosure document as provided in Section 807 of this title:

1. The names and residential addresses of those salespersons who will engage in the offer or sale of the business opportunity in this state;

2. The name of the seller; whether the seller is doing business as an individual, partnership ~~or~~, corporation, limited liability company, or any other form of business entity; the names under which the seller has done, is doing or intends to do business; and the name of any parent or affiliated company that will engage in business transactions with purchasers or which will take responsibility for statements made by the seller;

3. The names, addresses and titles of the seller's officers, directors, trustees, general managers, principal executives, agents and any other persons charged with responsibility for the seller's business activities relating to the sale of the business opportunity;

4. Prior business experience of the seller relating to business opportunities including:

- a. the name, address and a description of any business opportunity previously offered by the seller,
- b. the length of time the seller has offered each such business opportunity, and
- c. the length of time the seller has conducted the business opportunity currently being offered to the purchaser;

5. With respect to persons identified in paragraph 3 of subsection B of this section:

- a. a description of the persons' business experience for the ten-year period preceding filing date of the disclosure document. The description of business experience shall list principal occupations and employers, and
- b. a listing of the persons' educational and professional backgrounds, including the names of schools attended and degrees received, and any other information that will demonstrate sufficient knowledge and experience to perform the services proposed;

6. Whether the seller or any person identified in paragraph 3 of subsection B of this section:

- a. has been convicted of any felony, has pleaded nolo contendere to a felony charge or has been the subject of any criminal, civil or administrative proceedings alleging: The violation of any business opportunity law, securities law, commodities law, franchise law, fraud or deceit, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations; or
- b. has filed in bankruptcy, been adjudged bankrupt, been reorganized due to insolvency, or was an owner, principal officer or general partner of any other person that has so filed or was so adjudged or reorganized during or within seven (7) years of the date of the disclosure document;

7. The name(s) of the person(s) identified in paragraph 6 of subsection B of this section, nature of and parties to the action or proceeding, court or other forum, date of the institution of the action, docket reference to the action, current status of the action

or proceeding, terms and conditions or any order or decree, the penalties or damages assessed and terms of settlement;

8. The initial payment required, or when the exact amount cannot be determined, a detailed estimate of the amount of the initial payment to be made to the seller;

9. A detailed description of the actual services the seller agrees to perform for the purchaser;

10. A detailed description of any training the seller agrees to provide for the purchaser;

11. A detailed description of services the seller agrees to perform in connection with the placement of equipment, products or supplies at a location, as well as any agreement necessary in order to locate or operate equipment, products or supplies on a premises neither owned nor leased by the purchaser or seller;

12. A detailed description of any license(s) or permit(s) that will be necessary in order for the purchaser to engage in or operate the business opportunity;

13. Any representations made by the seller to the purchaser concerning sales or earnings that may be made from the business opportunity, including, but not limited to:

- a. the bases or assumptions for any actual, average, projected or forecasted sales, profits, income or earnings,
- b. the total number of purchasers who, within a period of three (3) years of the date of the disclosure document, purchased a business opportunity involving the product, equipment, supplies or services being offered to the purchaser, and
- c. the total number of purchasers who, within three (3) years of the date of the disclosure document, purchased a business opportunity involving the product, equipment, supplies or services being offered

to the purchaser who, to the seller's knowledge, have actually received earnings in the amount or range specified;

14. A detailed description of the elements of a guarantee made by a seller to a purchaser. Such description shall include, but shall not be limited to, the duration, terms, scope, conditions and limitations of the guarantee;

15. A statement describing any contractual restrictions, prohibitions or limitations on the purchaser's conduct. The seller shall attach a copy of all business opportunity and other contracts or agreements proposed for use or in use in this state including, without limitation, all lease agreements, option agreements and purchase agreements;

16. The rights and obligations of the seller and the purchaser regarding termination of the business opportunity contract or agreement;

17. A statement accurately describing the grounds upon which the purchaser may initiate legal action to terminate the business opportunity contract or agreement;

18. A copy of the most recent audited financial statements of the seller. If the seller's audited financial statements are dated more than four (4) months prior to the filing of the disclosure document, the seller shall submit unaudited financial statements for the interim period;

19. A list of the states in which the business opportunity is registered;

20. A list of the states in which the disclosure document is on file;

21. A list of the states which have denied, suspended or revoked the registration of the business opportunity;

22. A section entitled "Risk Factors" containing a series of short concise statements summarizing the principal factors which

make the business opportunity a high risk or one of a speculative nature. Each statement shall include a cross-reference to the page on which further information regarding that risk factor can be found in the disclosure document; and

23. Any additional information as the Administrator may require by rule or order.

SECTION 17. AMENDATORY 71 O.S. 1991, Section 810, as last amended by Section 26, Chapter 279, O.S.L. 1997 (71 O.S. Supp. 1998, Section 810), is amended to read as follows:

Section 810. A. The Administrator may issue 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.

Except as provided in subsection C of this section or unless the right to notice and hearing is waived by the person against whom the order is to be issued, no order may be issued under this section

without notice and opportunity for hearing as required by the Administrative Procedures Act. If the person to whom such notice is addressed does not request a hearing within fifteen (15) days after the service of the notice is effective, an order as provided in this subsection shall be issued.

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~~ respondent or respondents:

- 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 a hearing to the Administrator within fifteen (15) days after ~~receipt~~ service of the notice is effective,
- c. that within fifteen (15) days after receipt by the Administrator of a written request the matter will be set 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
- d. that a hearing shall be commenced within fifteen (15) days of the matter being set for hearing.

~~3.~~ 2. 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 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 said 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.

~~D. Except as provided in paragraph 1 of subsection C 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 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 18. AMENDATORY 71 O.S. 1991, Section 813, is amended to read as follows:

Section 813. A. The Administrator:

1. May make such public or private investigations within or outside of this state as the Administrator deems necessary to determine whether any person has violated or is about to violate any provision of the Oklahoma Business Opportunity Sales Act or any rule

or order hereunder, or to aid in the enforcement of the act or in the prescribing of rules and forms hereunder;

2. May require or permit any person to file a statement, 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 the Oklahoma Business Opportunity Sales Act or any rule or order hereunder.

B. For the purpose of any investigation or proceeding pursuant to the Oklahoma Business Opportunity Sales Act, the Administrator or ~~any officer designated by the Administrator~~ the Administrator's 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 relevant or material to the inquiry.

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 or her to appear before the Administrator, there to produce documentary evidence if so ordered or to give evidence touching upon the matters under investigation or in question. Failure to obey the order of the court may be punishable by the court as contempt.

D. No person is excused from attending and testifying or from producing any document or record before the Administrator or ~~any officer designated by the Administrator~~ the Administrator's designee, or in obedience to the subpoena of the Administrator or the Administrator's designee, in any proceeding instituted by the Administrator, on the grounds that the testimony or evidence,

documentary or otherwise, required by the Administrator may tend to incriminate him or her or subject him or her to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture on account of any transaction, matter or thing concerning which he or she is compelled, after claiming his or her 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.

SECTION 19. AMENDATORY 71 O.S. 1991, Section 814, as last amended by Section 27, Chapter 279, O.S.L. 1997 (71 O.S. Supp. 1998, 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 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. 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 only after notice and opportunity for hearing as required by the Administrative Procedures Act. If the person to whom notice is addressed does not request a hearing within fifteen (15) days after the ~~receipt~~ service of the notice, a final order ~~shall~~ as provided for in subsection A of this section may 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.

Upon the entry of the summary order, the Administrator shall promptly notify the person subject to the summary order:

- 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 a hearing to the Administrator within fifteen (15) days after ~~receipt~~ service of the notice is effective,
- c. that within fifteen (15) days after receipt by the Administrator of a written request the matter will be set for hearing to determine whether the summary order should be modified, vacated or extended pending a 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.

2. The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or ~~his or her~~ the Administrator's designee extends the summary order pending a final determination of any proceeding under paragraph 1 of 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~~ the Administrator's 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 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.

E. When the Administrator has authority to institute an action or proceeding pursuant to this section, the Administrator may accept an assurance of discontinuance of an act or practice that is alleged to be unlawful under Section 819 of this title from the person who is alleged to have engaged or be about to engage in the act or practice. The assurance shall not constitute an admission of guilt. The assurance may include a stipulation for any or all of the following:

1. The voluntary payment by the person for the costs of investigation;

2. An amount to be held in escrow pending the outcome of an action; or

3. An amount for restitution to an aggrieved person.

An assurance of discontinuance shall be in writing and filed with the Administrator. Unless rescinded by the parties or voided by a court for good cause, the assurance may be enforced in the district court of Oklahoma County by the parties to the assurance. The assurance may be modified by the parties or by a court for good cause.

SECTION 20. AMENDATORY 71 O.S. 1991, Section 815, as last amended by Section 28, Chapter 279, O.S.L. 1997 (71 O.S. Supp. 1998, 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~~ the ground therefor. The petition, the record ~~in the administrative hearing, including but not limited to the transcript~~ upon which the final order was issued, 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 21. AMENDATORY 71 O.S. 1991, Section 817, as last amended by Section 29, Chapter 279, O.S.L. 1997 (71 O.S. Supp. 1998, 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 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 or subsequent to any application for registration filed pursuant to this title, or any 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 in his or her discretion may honor written requests from interested persons for interpretive opinions or 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~~ as set forth in Section 829 of this title.

SECTION 22. AMENDATORY 71 O.S. 1991, Section 818, as amended by Section 30, Chapter 279, O.S.L. 1997 (71 O.S. Supp. 1998, 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. Every seller shall file with the Administrator, in such form as the Administrator may prescribe, an irrevocable consent appointing the Administrator or the Administrator's 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 that arises under the Oklahoma Business Opportunity Sales Act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service on the Administrator may be made by leaving a copy of the process in the office of the Administrator, but is not effective unless:

1. The plaintiff, who may be the Administrator, in a suit, action, or proceeding instituted by the plaintiff, promptly sends notice of the service and a copy of the process by certified mail, return receipt requested and delivery restricted to the addressee,

to the defendant or respondent at the defendant's or respondent's last address on file with the Administrator; and

2. The plaintiff's affidavit of compliance with this subsection is filed in the suit, action or proceeding on or before the return date of the process, if any, or within such further time as the court, or the Administrator in a proceeding before the Administrator, allows.

F. 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~~ under subsection E of this section, 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~~ that 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 on the Administrator 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~~ promptly sends notice of the service and a copy of the process by certified mail, return receipt requested and delivery restricted to the addressee, to the defendant or respondent at the defendant's or respondent's last-known address or takes other steps ~~which~~ that are reasonably calculated to give actual notice; and

2. The plaintiff's affidavit of compliance with this subsection is filed in the ~~ease~~ suit, action, or proceeding on or before the return day of the process, if any, or within such further time as the court, or the Administrator in a proceeding before the Administrator, allows.

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

H. Refusal by any person to accept delivery of the certified mail provided for in this section, or the refusal to sign the return receipt, or the lack of knowledge of the Administrator of any address to which process may have been mailed, shall not in any manner affect the legality of the service, and the person shall be presumed to have had knowledge of the contents of the process.

I. Service as provided for in subsection E or F of this section may be used in a suit, action, or proceeding before the Administrator, or by the Administrator where the Administrator is the moving party. 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 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 829 of Title 71, unless there is created a duplication in numbering, reads as follows:

A. Unless otherwise provided for by law, the following shall be the fees charged pursuant to the provisions of the Oklahoma Business Opportunity Sales Act. Once paid, the fees shall be nonrefundable.

- | | |
|--|----------|
| 1. Registration filing fee | \$250.00 |
| 2. Registration renewal fee | \$150.00 |
| 3. Review of sales literature or advertising package | \$ 50.00 |
| 4. Sales report filing fee | \$ 50.00 |
| 5. Interpretive opinion or no-action request | \$250.00 |
| 6. Request for order of exemption | \$250.00 |

B. All fees and other charges collected by the Administrator shall be deposited in the General Revenue Fund, except for the fees deposited in the Oklahoma Department of Securities Revolving Fund. The fees deposited in the Oklahoma Department of Securities Revolving Fund shall be the fees set forth in paragraphs 3, 5, and 6 of subsection A of this section.

SECTION 24. This act shall become effective July 1, 1999.

SECTION 25. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 9th day of March, 1999.

President of the Senate

Passed the House of Representatives the ____ day of _____ ,
1999.

Speaker of the House of
Representatives