

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL 724

By: Cain

COMMITTEE SUBSTITUTE

[ securities - Oklahoma Uniform Securities Act of  
2002 - repealer - codification - effective date ]

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1a of Title 71, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Uniform Securities Act (2002)".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2a of Title 71, unless there is created a duplication in numbering, reads as follows:

In this act, unless the context otherwise requires:

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

(2) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. A partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this act.

(3) "Bank" means:

(A) a banking institution organized under the laws of the United States;

(B) a member bank of the Federal Reserve System;

(C) any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this act; and

(D) a receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph (A), (B), or (C).

(4) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

(A) an agent;

(B) an issuer;

(C) a bank or savings institution if its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C. Sections 78c(a)(4) and (5)) or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(4));

(D) an international banking institution; or

(E) a person excluded by rule adopted or order issued under this act.

(5) "Depository institution" means:

(A) a bank; or

(B) a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include:

- (i) an insurance company or other organization primarily engaged in the business of insurance;
- (ii) a Morris Plan bank; or
- (iii) an industrial loan company.

(6) "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940.

(7) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)) or rules or regulations adopted pursuant to that provision.

(8) "Filing" means the receipt under this act of a record by the Administrator or a designee of the Administrator.

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

(10) "Guaranteed" means guaranteed as to payment of all principal and all interest.

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

- (A) a depository institution or international banking institution;
- (B) an insurance company;
- (C) a separate account of an insurance company;

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

(E) a broker-dealer registered under the Securities Exchange Act of 1934;

(F) an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this act, a depository institution, or an insurance company;

(G) a plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this act, a depository institution, or an insurance company;

(H) a trust, if it has total assets in excess of \$10,000,000, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph (F) or (G), regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(I) an organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability

company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$10,000,000;

(J) a small business investment company licensed by the Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. Section 681(c)) with total assets in excess of \$10,000,000;

(K) a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with total assets in excess of \$10,000,000;

(L) a federal covered investment adviser acting for its own account;

(M) a "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(H), adopted under the Securities Act of 1933 (17 C.F.R. 230.144A);

(N) a "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934 (17 C.F.R. 240.15a-6);

(O) any other person, other than an individual, of institutional character with total assets in excess of \$10,000,000 not organized for the specific purpose of evading this act; or

(P) any other person specified by rule adopted or order issued under this act.

(12) "Insurance company" means a company organized as an insurer whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and that are subject to supervision by the insurance commissioner or a similar official or agency of a state.

(13) "Insured" means insured as to payment of all principal and all interest.

(14) "International banking institution" means an international financial institution of which the United States is a member and

whose securities are exempt from registration under the Securities Act of 1933.

(15) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

(A) an investment adviser representative;

(B) a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

(C) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

(D) a publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;

(E) a bank or savings institution;

(F) any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser; or

(G) any other person excluded by rule adopted or order issued under this act.

(16) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal

covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

(A) performs only clerical or ministerial acts;

(B) is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services; or

(C) is excluded by rule adopted or order issued under this act.

(17) "Issuer" means a person that issues or proposes to issue a security, subject to the following:

(A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

(B) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.

(C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty,

whether whole or fractional, that creates fractional interests for the purpose of sale.

(18) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(19) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)).

(20) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government, governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(21) "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(A) an office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or

(B) any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

(22) "Predecessor act" means the act repealed by Section 51 of this act.

(23) "Price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering



price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(24) "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

(25) "Promoter" includes:

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

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

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

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

(26) "Record" except in the phrases "of record," "official record," and "public record," means information that is inscribed on

a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

(28) "Sale" includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include:

(A) a security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;

(B) a gift of assessable stock involving an offer and sale; and

(C) a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

(29) "Securities and Exchange Commission" means the United States Securities and Exchange Commission.

(30) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest

in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term:

(A) includes both a certificated and an uncertificated security;

(B) does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or other specified period;

(C) does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974;

(D) includes as an "investment contract" an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors;

(E) includes as an "investment contract," among other contracts, an interest in a limited partnership and a third party managed limited liability company and an investment in a viatical settlement or similar contract or agreement; and

(F) does not include an interest in an oil, gas or mineral lease as part of a transaction between parties, each of whom is engaged in the business of exploring for or producing oil and gas or

other valuable minerals as an ongoing business or the execution of oil and gas leases by land, mineral and royalty owners in favor of a party or parties engaged in the business of exploring for or producing oil and gas or other valuable minerals.

(31) "Self-regulatory organization" means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934.

(32) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach or logically associate with the record an electronic symbol, sound, or process.

(33) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(34) "Underwriter" means any person who has purchased from an issuer or from any other person with a view to, or offers or sells for an issuer or for any other person in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking. "Underwriter" does not include a person whose interest is limited to a commission from an underwriter or broker-dealer not in excess of the usual and customary distributor's or seller's commission.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18a of Title 71, unless there is created a duplication in numbering, reads as follows:

"Securities Act of 1933" (15 U.S.C. Section 77a et seq.), "Securities Exchange Act of 1934" (15 U.S.C. Section 78a et seq.), "Public Utility Holding Company Act of 1935" (15 U.S.C. Section 79 et seq.), "Investment Company Act of 1940" (15 U.S.C. Section 80a-1 et seq.), "Investment Advisers Act of 1940" (15 U.S.C. Section 80b-1 et seq.), "Employee Retirement Income Security Act of 1974" (29 U.S.C. Section 1001 et seq.), "National Housing Act" (12 U.S.C. Section 1701 et seq.), "Commodity Exchange Act" (7 U.S.C. Section 1 et seq.), "Internal Revenue Code" (26 U.S.C. Section 1 et seq.), "Securities Investor Protection Act of 1970" (15 U.S.C. Section 78aaa et seq.), "Securities Litigation Uniform Standards Act of 1998" (112 Stat. 3227), "Small Business Investment Act of 1958" (15 U.S.C. Section 661 et seq.), and "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. Section 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this act, or as later amended and the Administrator shall have the authority to update any amended provision of those statutes by rule or order.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19a of Title 71, unless there is created a duplication in numbering, reads as follows:

A reference in this act to an agency or department of the United States is also a reference to a successor agency or department.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20a of Title 71, unless there is created a duplication in numbering, reads as follows:

This Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section

7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)). This Act authorizes the filing of records and signatures, when specified by provisions of this act or by a rule adopted or order issued under this act, in a manner consistent with Section 104(a) of that act (15 U.S.C. Section 7004(a)).

## ARTICLE 2

### EXEMPTIONS FROM REGISTRATION OF SECURITIES

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 101a of Title 71, unless there is created a duplication in numbering, reads as follows:

The following securities are exempt from the requirements of Sections 10 and 32 of this act:

(1) A security, including a revenue obligation or a separate security as defined in Rule 131 (17 C.F.R. 230.131) adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one or more States; by a political subdivision of one or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing; 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 201a and 302a of this act 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) a security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor;

(3) a security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:

(A) an international banking institution;

(B) a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a);

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

(D) any other depository institution;;

(4) a security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is:

(A) regulated in respect to its rates and charges by the United States or a state;

(B) regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory; or

(C) a public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that act;

(6) a federal covered security specified in Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)) or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this act; a put or a call option contract, a warrant, a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934; or the underlying security in connection with the offer, sale, or exercise of an option or other derivative security that was exempt when the option or other derivative security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78i(b));

(7) a security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the Investment Company Act of 1940 (15 U.S.C. Section 80a-



3(c)(10)(B)); except that with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a rule may be adopted under this act limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying the scope of the exemption and the grounds for denial or suspension, and requiring an issuer:

(A) to file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the Administrator does not disallow the exemption within the period established by the rule;

(B) to file a request for exemption authorization for which a rule under this act may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with Section 511a of this act, and grounds for denial or suspension of the exemption; or

(C) to register under Section 204a of this act;

(8) a member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a not for profit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative; and

(9) an equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)).

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 102a of Title 71, unless there is created a duplication in numbering, reads as follows:

The following transactions are exempt from the requirements of Sections 201a and 404a of this act:

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

(2) a nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this act, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days, if, at the date of the transaction:

(A) the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(B) the security is sold at a price reasonably related to its current market price;

(C) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution; and

(D) a nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this act or a record filed with the Securities and Exchange Commission that is publicly available contains:

(i) a description of the business and operations of the issuer;

- (ii) the names of the issuer's executive officers and the names of the issuer's directors, if any;
- (iii) an audited balance sheet of the issuer as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and
- (iv) an audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; or

the issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless the issuer of the security is a unit investment trust registered under the Investment Company Act of 1940; or the issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or the issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had the audited balance sheet, a pro forma balance sheet for the combined organization;

(3) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in a security of a foreign issuer that is a margin security defined in regulations

or rules adopted by the Board of Governors of the Federal Reserve System;

(4) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));

(5) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in a security that:

(A) is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories; or

(B) has a fixed maturity or a fixed interest or dividend, if:

- (i) a default has not occurred during the current fiscal year or within the three previous fiscal years or during the existence of the issuer and any predecessor if less than three fiscal years, in the payment of principal, interest, or dividends on the security; and
- (ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous 12 months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(6) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act effecting an unsolicited order or offer to purchase;

(7) a nonissuer transaction executed by a bona fide pledgee without the purpose of evading this act;

(8) a nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others;

(9) a transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the Administrator after a hearing;

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

(11) a transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:

(A) the note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;

(B) a general solicitation or general advertisement of the transaction is not made; and

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this act as a broker-dealer or as an agent;

(12) a transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(13) a sale or offer to sell to:

(A) an institutional investor;

(B) a federal covered investment adviser; or

(C) any other person exempted by rule adopted or order issued under this act;

(14) a sale or an offer to sell securities of an issuer, if part of a single issue, to:

(A) not more than 25 purchasers during any 12 consecutive months, other than those designated in paragraph (13);

(B) a general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this act or an agent registered under this act for soliciting a prospective purchaser in this state; and

(D) the issuer reasonably believes that all the purchasers in this state, other than those designated in paragraph (13), are purchasing for investment;

(15) a transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if:

(A) no commission or other remuneration, other than a standby commission, is paid or given, directly or indirectly, for soliciting a 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;

(16) a 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.

(17) an offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(A) a registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 C.F.R. 230.165); and

(B) a stop order of which the offeror is aware has not been issued against the offeror by the Administrator or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;

(18) an offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

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

(B) a solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the Administrator under this act; and

(C) a stop order of which the offeror is aware has not been issued by the Administrator under this act and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;

(19) 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, 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;

(20) a rescission offer, sale, or purchase under Section 510;



(21) employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

(A) directors; general partners; trustees, if the issuer is a business trust and officers;

(B) family members who acquire such securities from those persons through gifts or domestic relations orders;

(C) former employees, directors, general partners, trustees, and officers if those individuals were employed by or providing services to the issuer when the securities were offered; and

(D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than 50 percent (50%) of their annual income from those organizations;

(22) a transaction involving:

(A) a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;

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

(C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 C.F.R. 230.162); or

(23) a nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this act, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this act; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than One Hundred Eighty (180) days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this act, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with the Oklahoma Administrative Procedures Act, the Administrator, by rule adopted or order issued under this act, may revoke the designation of a securities exchange under this paragraph, if the Administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

(c) This act, except Section 29 and subsections (b) and (c) of Section 38, 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 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 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 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 103a of Title 71, unless there is created a duplication in numbering, reads as follows:

A rule adopted or order issued under this act may exempt a security, transaction, or offer; a rule under this act may exempt a class of securities, transactions, or offers from any or all of the requirements of Sections 10 and 32 of this act; and an order under this act may waive, in whole or in part, any or all of the conditions for an exemption or offer under Sections 101a and 102a of this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 104a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this act may deny, suspend application of, condition, limit, or revoke an exemption created under subsections (3)(C) or (D), (7) or (8) of Section 6 of this act or Section 7 of this act or an exemption or waiver created under Section 8 of this act with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in subsection (d) of Section 15 or Section 42 of this act and only prospectively.

(b) A person does not violate Section 10, 12, 32, or 38 of this act by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if

the person did not know, and in the exercise of reasonable care could not have known, of the order.

### ARTICLE 3

#### REGISTRATION OF SECURITIES AND

##### NOTICE FILING OF FEDERAL COVERED SECURITIES

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 201a of Title 71, unless there is created a duplication in numbering, reads as follows:

It is unlawful for a person to offer or sell a security in this state unless:

- (1) the security is a federal covered security;
- (2) the security, transaction, or offer is exempted from registration under Sections 6 through 8 of this act; or
- (3) the security is registered under this act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 202a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) With respect to a federal covered security, as defined in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(2)), that is not otherwise exempt under Sections 6 through 8 of this act, the issuer shall file a notice with the Administrator prior to an offer in this state. A separate notice 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, or renewal thereof, shall be accompanied by the filing fee set forth in Section 412 of this title. The Administrator may, by rule or order, prescribe other 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) A notice filing under subsection (a) of this section is effective for one year commencing on the later of the notice filing

or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by rule or order under this act to be filed and by paying a renewal fee as provided in Section 412 of this title. A previously filed consent to service of process complying with Section 49 of this act may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) With respect to a security that is a federal covered security under Section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(4)(D)), a rule under this act may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process complying with Section 611 signed by the issuer not later than 15 days after the first sale of the federal covered security in this state and the payment of a fee as provided in Section 412 of this title.

(d) Except with respect to a federal security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)), if the Administrator finds that there is a failure to comply with a notice or fee requirement of this section, the Administrator may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the Administrator. If the deficiency is not corrected 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 the investment company did not pay the filing fee required by 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 act. 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.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 203a of Title 71, unless there is created a duplication in numbering, reads as follows:

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

(b) A registration statement under this section must contain or be accompanied by the following records in addition to the information specified in Section 14 of this act and a consent to service of process complying with Section 49 of this act:

(1) a copy of the latest form of prospectus filed under the Securities Act of 1933;

(2) a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this act;

(3) copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the Administrator; and

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

(c) A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

(1) a stop order under subsection (d) of this section or Section 15 of this act or issued by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under Section 412 of this title; and

(2) the registration statement has been on file for at least 20 days or a shorter period provided by rule adopted or order issued under this act.

(d) The registrant shall promptly notify the Administrator in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the Administrator may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The Administrator shall promptly notify the registrant of the order by telegram, telephone, or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

(e) If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the Administrator, the registration statement is automatically effective under this act when all the conditions are satisfied or waived. If the registrant notifies the Administrator of the date when the federal registration statement is expected to become effective, the Administrator shall promptly notify the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the Administrator intends the institution of a proceeding under Section 15 of this act. The notice by the Administrator does not preclude the institution of such a proceeding.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 204a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) A security may be registered by qualification under this section.

(b) A registration statement under this section must contain the information or records specified in Section 14 of this act, a consent to service of process complying with Section 49 of this act, and the following information or records:

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

(2) with respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five years; the amount of securities of the issuer held



by the person as of the 30th day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three years or proposed to be effected;

(3) with respect to persons covered by paragraph (2), the aggregate sum of the remuneration paid to those persons during the previous 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer;

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

(5) with respect to a promoter, if the issuer was organized within the previous three years, the information or records specified in paragraph (2), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;

(6) with respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three (3) years or proposed to be effected; and a statement of the reasons for making the offering;

(7) the capitalization and long term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary,

including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two years or is obligated to issue its securities;

(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter;

(9) the estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire

property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

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

(11) the dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two years, and a copy of the contract;

(12) a description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities;

(13) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with subsection (17) (B) of Section 7 of this act;

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

(15) a signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

(16) a signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement;

(17) a balance sheet of the issuer as of a date within four months before the filing of the registration statement; a statement of income and changes in financial position for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and

(18) any additional information or records required by rule adopted or order issued under this act.

(c) A registration statement under this section becomes effective 30 days, or any shorter period provided by rule adopted or order issued under this act, after the date the registration statement or the last amendment other than a price amendment is filed, if:

(1) a stop order is not in effect and a proceeding is not pending under Section 15 of this act;

(2) the Administrator has not issued an order under Section 15 of this act postponing effectiveness; and

(3) the applicant or registrant has not requested that effectiveness be delayed.

(d) The Administrator may delay effectiveness once for not more than ninety (90) days if the Administrator determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The Administrator may also delay effectiveness for a further period of not more than thirty (30) days if the Administrator determines that the delay is necessary or appropriate.

(e) A rule adopted or order issued under this act may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection (b) of this section be sent or given to each person to which an offer is made, before or concurrently, with the earliest of:

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

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

(3) payment pursuant to such a sale; or

(4) delivery of the security pursuant to such a sale.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 205a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this act.

(b) A person filing a registration statement shall pay the filing fee set forth in Section 412 of this act. If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under Section 15 of this act, the Administrator shall retain the fee.

(c) A registration statement filed under Section 12 or 13 of this act must specify:

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

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

(3) any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission, or a court.

(d) A record filed under this act or the predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(e) In the case of a nonissuer distribution, information or a record may not be required under subsection (i) of this section or Section 13 of this act, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

(f) A rule adopted or order issued under this act may require as a condition of registration that a security issued within the previous five years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in

escrow; and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this act, but the Administrator may not reject a depository institution solely because of its location in another state.

(g) A rule adopted or order issued under this act may require as a condition of registration that a security registered under this act be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this act or preserved for a period specified by the rule or order, which may not be longer than five years.

(h) Except while a stop order is in effect under Section 15 of this act, a registration statement is effective for one year after its effective date, or for any longer period designated in an order under this act during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this act are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the Administrator.

(i) While a registration statement is effective, the person that filed the registration statement shall file reports, not more

often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

(j) A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the Administrator so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee as provided in Section 412 of this title. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the amendment is filed and the additional registration fee is paid.

(k) The records of an issuer registered or required to be registered under this act are subject to such reasonable periodic, special, or other audits or inspections by a representative of the Administrator, within or without this state, as the Administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The Administrator may copy, and remove for audit or inspection copies of, all records the Administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The Administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 206a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) The Administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the Administrator finds that the order is in the public interest and that:



(1) the registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under subsection (j) of Section 14 of this act as of its effective date, or a report under subsection (i) of Section 14 of this act, is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) this act or a rule adopted or order issued under this act or a condition imposed under this act has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function, a promoter of the issuer, or a 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 by an underwriter;

(3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this act applicable to the offering, but the Administrator may not institute a proceeding against an effective registration statement under this paragraph more than one year after the date of the order or injunction on which it is based, and the Administrator may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;

(4) the issuer's enterprise or method of business includes or would include activities that are unlawful where performed;

(5) with respect to a security sought to be registered under Section 12 of this act, there has been a failure to comply with the undertaking required by subsection (b) (4) of Section 12 of this act;

(6) the applicant or registrant has not paid the filing fee, but the Administrator shall void the order if the deficiency is corrected; or

(7) the offering:

(A) will work or tend to work a fraud upon purchasers or would so operate; or

(B) has been or would be made or is being made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation; 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.

(b) To the extent practicable, the Administrator by rule adopted or order issued under this act shall publish standards that provide notice of conduct that violates subsection (a) (7) of this section.

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

(d) The Administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the Administrator shall promptly notify each person specified in subsection (e) of this section that the order has been

issued, the reasons for the revocation, denial, postponement, or suspension, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing and such hearing shall be commenced within fifteen (15) days of the matter being set for hearing. If a hearing is not requested and none is ordered by the Administrator, within thirty (30) days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(e) Unless the right to notice and hearing is waived, a stop order may not be issued under this section without:

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

(2) an opportunity for hearing; and

(3) findings of fact and conclusions of law in a record in accordance with the Oklahoma Administrative Procedures Act.

(f) The Administrator may modify or vacate a stop order issued under this section if the Administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 207a of Title 71, unless there is created a duplication in numbering, reads as follows:

The Administrator may waive or modify, in whole or in part, any or all of the requirements of Sections 11, 12, and subsection (b) of Section 13 of this act or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to subsection (i) of Section 14 of this act.

ARTICLE 4

BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER  
REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 301a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) It is unlawful for a person to transact business in this state as a broker-dealer, unless the person is registered under this act as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d) of this section.

(b) The following persons are exempt from the registration requirement of subsection (a) of this section:

(1) a broker-dealer without a place of business in this state if its only transactions effected in this state are with:

(A) the issuer of the securities involved in the transactions;

(B) a person registered as a broker-dealer under this act or a broker-dealer not required to be registered as a broker-dealer under this act;

(C) an institutional investor;

(D) a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;

(E) a bona fide preexisting customer whose principal place of residence is not in this state and the person is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the customer maintains a principal place of residence;

(F) a bona fide preexisting customer whose principal place of residence is in this state but was not present in this state when the customer relationship was established, if:

- (i) the broker-dealer is registered under the Securities Exchange Act of 1934 or a broker-dealer not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and
- (ii) within forty-five (45) days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than seventy-five (75) days after the date on which the application is filed, or, if earlier, the date on which the Administrator notifies the person that the Administrator has denied the application for registration or has stayed the pendency of the application for cause;

(G) not more than three customers in this state during the previous 12 months, in addition to those specified in subparagraphs (A) through (F) and under subparagraph (H) of this section, if the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the broker-dealer has its principal place of business; and

(H) any other person exempted by rule or order under this act; and

(2) a person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision.

(c) It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser or a federal covered investment adviser by an order of the Administrator under this act, the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause shown, an order under this act may modify or waive the prohibitions of this subsection.

(d) A rule or order under this act may permit:

(1) A broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(A) an individual from Canada or other foreign jurisdiction that is temporarily resident in this state and with whom the broker-dealer had a bona fide client relationship before the individual entered the United States;

(B) an individual from Canada or other foreign jurisdiction who is present in this state and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or

(C) an individual who is resident in this state, with whom the broker-dealer client relationship arose while the individual was

temporarily or permanently resident in Canada or the other foreign jurisdiction, and

(2) an agent who represents a broker-dealer, that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of any securities in this state as permitted for a broker-dealer described in paragraph 1 of this subsection.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 302a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this act as an agent or is exempt from registration as an agent under subsection (b) of this section.

(b) The following individuals are exempt from the registration requirement of subsection (a) of this section:

(1) an individual who represents a broker-dealer in effecting transactions in this state limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78(o)(2));

(2) an individual who represents a broker-dealer that is exempt under subsections (b) or (d) of Section 17 of this act;

(3) an individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries to existing employees, partners, members or directors of the issuer or the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(4) an individual who represents an issuer and who effects transactions in the issuer's securities exempted by Section 7 of this act, other than subsections (11) and (14);

(5) an individual who represents an issuer who effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(6) an individual who represents a broker-dealer registered in this state under subsection (a) of Section 17 of this act or exempt under subsection (b) of Section 17 of this act in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;

(7) an individual who represents an issuer in connection with the purchase of the issuer's own securities;

(8) an individual who represents an issuer and who restricts participation to performing ministerial or clerical work; or

(9) any other individual exempted by rule adopted or order issued under this act.

(c) The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this act or an issuer that is offering or selling its securities in this state.

(d) It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered



under subsection (a) of this section or exempt from registration under subsection (b) of this section.

(e) Unless authorized by rule adopted or order issued under this act, an individual may not act as an agent for more than one broker-dealer or more than one issuer at a time, unless the broker-dealers or the issuers for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this act.

(f) It is unlawful for an individual acting as an agent, directly or indirectly, to conduct business in this state on behalf of a broker-dealer or issuer if the registration of the individual as an agent or investment adviser representative has been denied, or is suspended or revoked; or the individual is subject to a cease and desist order or is barred from employment or association with a broker-dealer, investment adviser or a federal covered investment adviser by an order of the securities regulator of a state, the Securities and Exchange Commission, or a self-regulatory organization; or the individual is subject to an order of a court of competent jurisdiction temporarily, preliminarily or permanently enjoining such individual.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 303a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this act as an investment adviser or is exempt from registration as an investment adviser under subsection (b) of this section.

(b) The following persons are exempt from the registration requirement of subsection (a) of this section:

(1) a federal covered investment adviser; however, such exemption shall not apply to such a person if such person fails or refuses to pay the notice filing fee required in subsection (c) of

Section 21 of this act and such failure or refusal to pay is not promptly remedied in accordance with this act or an order or other administrative action of the Administrator;

(2) a person without a place of business in this state that is registered under the securities act of the state in that the person has its principal place of business if its only clients in this state are:

(A) federal covered investment advisers, investment advisers registered under this act, or broker-dealers registered under this act;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence; or

(D) any other client exempted by rule adopted or order issued under this act;

(3) a person without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five clients that are residents of this state in addition to those specified under paragraph (1) of this subsection; or

(4) any other person exempted by rule adopted or order issued under this act.

(c) It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this state if the registration of the individual is suspended or revoked, or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this act, the Securities and Exchange Commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could

not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the Administrator, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

(d) It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this act as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under subsection (a) of Section 20 of this act or is exempt from registration under subsection (b) of Section 20 of this act.

(e) The exemption from registration provided by subparagraph (B) of paragraph (1) of subsection (b) of this section shall not be available to any person who acts as an investment adviser to the state, any county, municipality or school district of this state, or any other political subdivision of this state; any agency or corporate or other instrumentality of any such entity; or any pension fund for the benefit of employees of any such entity.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 304a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this act as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection (b) of this section.

(b) The following individuals are exempt from the registration requirement of subsection (a) of this section:

(1) an individual who is employed by or associated with an investment adviser that is exempt from registration under subsection (b) of Section 19 of this act unless the individual has a place of business in this state or is not a "supervised person" as that term

is defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); and

(2) any other individual exempted by rule adopted or order issued under this act.

(c) The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this act or a federal covered investment adviser that has made or is required to make a notice filing under Section 21 of this act.

(d) An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser unless a rule adopted or order issued under this act prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.

(e) It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is has been denied, or is suspended or revoked; or the individual is subject to a cease and desist order or is barred from employment or association with an investment adviser or a federal covered investment adviser by an order of the securities regulator of a state, the Securities and Exchange Commission, or a self-regulatory organization; or the individual is subject to an order of a court of competent jurisdiction temporarily, preliminarily or permanently enjoining such individual. Upon request from a federal covered investment adviser and for good cause, the Administrator, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

(f) An investment adviser registered under this act, a federal covered investment adviser that has filed a notice under Section 21 of this act, or a broker-dealer registered under this act is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this act, a federal covered investment adviser who has filed a notice under Section 21 of this act, or a broker-dealer registered under this act with which the individual is employed or associated as an investment adviser representative.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 305a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) Except with respect to a federal covered investment adviser described in subsection (b) of this section, it is unlawful for a federal covered investment adviser to transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (c) of this section.

(b) The following federal covered investment advisers are not required to comply with subsection (c) of this section:

(1) a federal covered investment adviser without a place of business in this state if its only clients in this state are:

(A) federal covered investment advisers, investment advisers registered under this act, and broker-dealers registered under this act;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this state; or

(D) other clients specified by rule adopted or order issued under this act;

(2) a federal covered investment adviser without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five clients that are residents in this state in addition to those specified under paragraph (1) of this subsection; and

(3) any other person excluded by rule adopted or order issued under this act.

(c) A person acting as a federal covered investment adviser, not excluded under subsection (b) of this section, shall file a notice containing a consent to service of process complying with Section 49 of this act, such records as have been filed with the Securities and Exchange Commission under the Investment Advisers Act of 1940 required by rule or order under this act, and the fee specified in Section 412 of this title.

(d) The notice under subsection (c) of this section becomes effective upon its filing and expires at midnight on December 31 each year.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 306a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application that contains:

(1) the information required for the filing of a uniform application, a consent to service of process complying with Section 49 of this act, the fee specified in Section 412 of this title and any reasonable fees charged by the designee of the Administrator for processing the filing; and

(2) upon request by the Administrator, any other financial or other information that the Administrator determines is appropriate.

(b) If the information contained in an application that is filed under subsection (a) of this section is or becomes inaccurate

or incomplete in any material respect, the registrant shall promptly file a correcting amendment.

(c) If an order is not in effect and a proceeding is not pending under Section 27 of this act, registration becomes effective at noon on the 45th day after a completed application is filed unless the registration is denied. A rule adopted or order issued under this act may set an earlier effective date or may defer the effective date until noon on the 45th day after the filing of any amendment completing the application.

(d) A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under Section 27 of this act, a registration may be automatically renewed each year by filing such records as are required by rule or order under this act, by paying the fee specified in Section 412 of this act, and by paying costs charged by the designee of the Administrator for processing the filings.

(e) A rule or order under this act may impose such other conditions not inconsistent with the National Securities Markets Improvement Act of 1996. An order issued under this act may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 307a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an

application for registration pursuant to Section 17 or 19 of this act, or a notice pursuant to Section 21 of this act, for the unexpired portion of the current registration or notice filing.

(b) A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or upon a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this act. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. Any predecessor registered under this act shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within 45 days after filing its amendment to effect succession.

(c) A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or upon a date designated by the registrant.

(d) A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this act.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 308a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) If an agent registered under this act terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this act terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant



terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

(b) If an agent registered under this act terminates employment by or association with a broker-dealer registered under this act and begins employment by or association with another broker-dealer registered under this act, or if an investment adviser representative registered under this act terminates employment by or association with an investment adviser registered under this act or a federal covered investment adviser who has filed a notice under Section 21 of this act, and begins employment by or association with another investment adviser registered under this act, or a federal covered investment adviser who has filed a notice under Section 21 of this act, upon the filing by or on behalf of the registrant, within thirty (30) days after the termination, of an application for registration that complies with the requirement of subsection (a) of Section 22 of this act, and payment of the filing fee required under Section 412 of this title, the registration of the agent or investment adviser, is:

(1) immediately effective as of the date of the completed filing if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record does not contain a new or amended disciplinary disclosure within the previous twelve (12) months; or

(2) temporarily effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's

Investment Advisor Registration Depository record or successor record contains a new or amended disciplinary disclosure within the preceding twelve (12) months.

(c) The Administrator may withdraw the temporary registration if there are or were grounds for discipline under Section 27 of this act and the Administrator does so within thirty (30) days after the filing of the application. If the Administrator does not withdraw the temporary registration within the 30 day period, registration becomes automatically effective on the 31st day after filing.

(d) The Administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under paragraph (b) (1) or (2) of this section based on the public interest and the protection of investors.

(e) If the Administrator determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this act may require the registration be canceled or terminated or the application denied. The Administrator may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 309a of Title 71, unless there is created a duplication in numbering, reads as follows:

Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective sixty (60) days after filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this act unless a revocation or suspension proceeding is pending when the application is filed or a revocation or

suspension proceeding is instituted within sixty (60) days after the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule or order under this act. The Administrator may institute a revocation or suspension proceeding under Section 27 of this act within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 310a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this act may establish minimum financial requirements for broker-dealers registered or required to be registered under this act and investment advisers registered or required to be registered under this act.

(b) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a broker-dealer registered or required to be registered under this act and an investment adviser registered or required to be registered under this act shall file such financial reports as are required by rule or order under this act. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22):

(1) a broker-dealer registered or required to be registered under this act and an investment adviser registered or required to be registered under this act shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records as required by rule adopted or order issued under this act.

(2) broker-dealer records required to be maintained under paragraph (1) of this subsection may be maintained in any form of data storage acceptable under Section 17(a) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78q(a)) if they are readily accessible to the Administrator; and

(3) investment adviser records required to be maintained under paragraph (1) of this subsection may be maintained in any form of data storage required by rule adopted or order issued under this act.

(d) The records of a broker-dealer registered or required to be registered under this act and an investment adviser registered or required to be registered under this act are subject to such reasonable periodic, special, or other audits or inspections by a representative of the Administrator, within or without this state, as the Administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The Administrator may copy, and remove for audit or inspection copies of, all records the Administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The Administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser

representative may not have custody over funds or securities of a client except under the supervision of an investment adviser or federal covered investment adviser. A rule or order under this act may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(f) With respect to an investment adviser registered or required to be registered under this act, a rule adopted or order issued under this act may require that information be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(g) A rule adopted or order issued under this act may require any individual registered under Section 18 or 20 of this act to participate in a continuing education program which is approved by the Securities and Exchange Commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this act may require continuing education for an individual registered under Section 20 of this act.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 311a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) If the Administrator finds that the order is in the public interest and subsection (d) of this section authorizes the action, an order issued under this act may deny an application, or may condition or limit registration:

(1) of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative; and

(2) if the applicant is a broker-dealer or investment adviser, any partner, officer, or director, any person having a similar

status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser.

(b) If the Administrator finds that the order issued is in the public interest and subsection (d) of this section authorizes the action an order issued under this act may revoke, suspend, condition, or limit the registration of a registrant and if the registrant is a broker-dealer or investment adviser, any partner, officer, or director, any person having a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser. However, the Administrator:

(1) may not institute a revocation or suspension proceeding under this subsection based on an order issued by another state that is reported to the Administrator or designee later than one year after the date of the order on which it is based; and

(2) under paragraphs (5) (A) through (B) of subsection (d) of this section may not issue an order on the basis of an order under the state securities act of another state unless the other order was based on conduct for which subsection (d) of this section would authorize the action had the conduct occurred in this state.

(c) If the Administrator finds that the order is in the public interest and subsection (d) (1) through (7), (9), (10), (11), (13) or (14) of this section authorizes the action, an order under this act may censure, impose a bar, impose a civil penalty in an amount not to exceed a maximum of [\$\_] for a single violation or [\$\_] for several violations, and/or recover the costs of the investigation on a registrant and if the registrant is a broker-dealer or investment adviser, any partner, officer, or director, any person having a similar function or any person directly or indirectly controlling the broker-dealer or investment adviser.

(d) A person may be disciplined under subsections (a) through (c) of this section if the person:

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

(2) has willfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous ten (10) years;

(3) has willfully violated any rule of a national or international securities exchange or a national or international securities association with respect to a customer, client or transaction in this state;

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

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

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

(A) the securities, depository institution, insurance or other financial services regulator of a state, or by the Securities and Exchange Commission or other federal agency denying, revoking,

barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;

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

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

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

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

(F) a depository institution regulator suspending or barring a person from the banking or depository institution business;

(7) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;

(8) is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the Administrator may not enter an order against an applicant or registrant under this



paragraph without a finding of insolvency as to the applicant or registrant;

(9) refuses to allow or otherwise impedes the Administrator from conducting an audit or inspection under subsection (d) of Section 26 of this act or refuses access to any registrant's office to conduct an audit or inspection under subsection (d) of Section 26 of this act;

(10) has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous ten (10) years;

(11) has not paid the proper filing fee within thirty (30) days after having been notified by the Administrator of a deficiency, but the Administrator shall vacate an order under this paragraph when the deficiency is corrected;

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

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

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

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

(13) is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, franchise, or commodities laws of a state;

(14) has engaged in dishonest or unethical practices in the securities, banking, insurance, or commodities business within the previous ten (10) years; or

(15) is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by subsection (e) of this section. The Administrator may require an applicant for registration under Section 18 or 20 of this act who has not been registered in a state within the two (2) years preceding the filing of an application in this state to successfully complete an examination.

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

(f) The Administrator may summarily postpone an application or summarily suspend a registration before final determination of an administrative proceeding. Upon the issuance of the order, the Administrator shall promptly notify each person subject to the order

that the order has been issued, the reasons for the action, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing and such hearing shall be commenced within fifteen (15) days of the matter being set for hearing. If a hearing is not requested and none is ordered by the Administrator within thirty (30) days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) An order may not be issued under this section, except under subsection (f) of this section, without:

- (1) appropriate notice to the applicant or registrant;
- (2) opportunity for hearing; and
- (3) findings of fact and conclusions of law in a record in accordance with the Oklahoma Administrative Procedures Act.

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

(i) The Administrator may not institute a proceeding under subsection (a), (b), or (c) of this section based solely on material facts actually known by the Administrator unless an investigation or the proceeding is instituted within one year after the Administrator actually knew the material facts.

## ARTICLE 5

### FRAUD AND LIABILITIES

SECTION 28. AMENDATORY 71 O.S. 2001, 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) 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.~~

~~(e) 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 Administrative Procedures Act. If the person to whom notice is addressed does not request a hearing within fifteen (15) days after the service of 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 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 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 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 (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 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 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 401a of Title 71, unless there is created a duplication in numbering, reads as follows:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

(1) to employ a device, scheme, or artifice to defraud;

(2) to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; or

(3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 402a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) It is unlawful for a person that advises others, for compensation, either directly or indirectly, or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities, or that, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities:

(1) to employ a device, scheme, or artifice to defraud another person; or

(2) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

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

(c) (1) A rule adopted under this act may define an act, practice, or course of business of an investment adviser or an investment adviser representative as fraudulent, deceptive or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

(2) A rule adopted or order issued under this act may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 403a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) In a civil action or administrative proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the exemption, exception, preemption, or exclusion.

(b) In a criminal proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 404a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) Except as otherwise provided in subsection (b) of this section, it is unlawful for a person to distribute a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising communication relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this act, unless the sales and advertising literature is first filed with the Department with the fee specified in Section 412 of this title and the Department has responded indicating that the Administrator has no objection to its distribution or use.

(b) This Section does not apply to sales and advertising literature specified in subsection (a) of this section relating to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by Section 6, 7, or 8 of this act except as may be required pursuant to subsection (7) of Section 6 of this act.

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 405a of Title 71, unless there is created a duplication in numbering, reads as follows:

It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this act, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary in order to make the statement made,

in the light of the circumstances under which it was made, not false or misleading.

SECTION 34. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 406a of Title 71, unless there is created a duplication in numbering, reads as follows:

The filing of an application for registration, a registration statement, a notice filing under this act, or the registration of a person, a notice filing by a person, or the registration of a security under this act does not constitute a finding by the Administrator that a record filed under this act is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the Administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client, a representation inconsistent with this section.

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 407a of Title 71, unless there is created a duplication in numbering, reads as follows:

A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to an alleged untrue statement that is contained in a record required by the Administrator, or designee of the Administrator, the Securities and Exchange Commission, or a self-regulatory organization, unless it is proven that the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

SECTION 36. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 408a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) A person who willfully violates this act, or a rule adopted or order issued under this act, except Section 32 of this act or the notice filing requirements of Section 11 or 21 of this act, or that willfully violates Section 33 of this act knowing the statement made to be false or misleading in a material respect, upon conviction, shall be fined not more than Ten Thousand Dollars (\$10,000) or imprisoned not more than ten (10) years, or both such fine and imprisonment. An individual convicted of violating a rule or order under this act may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order.

(b) This act does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

(c) On a criminal matter referred by the Administrator, the Attorney General or district attorney may designate and appoint one or more lawyers of the Department as special assistants as available for the purpose of assisting in or conducting a criminal prosecution arising by reason of an investigation or proceeding under this section.

SECTION 37. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 409a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) Enforcement of civil liability under this Section is subject to the Securities Litigation Uniform Standards Act of 1998.

(b) A person is liable to a purchaser if the person sells a security in violation of Section 10 of this section, or by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading,

the purchaser not knowing the untruth or omission, and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(1) The purchaser may maintain an action at law or in equity to recover the consideration paid for the security, and interest at the legal rate of interest per year from the date of the purchase, less the amount of any income received on the security, plus costs, and reasonable attorneys' fees determined by the court, upon the tender of the security, or for actual damages as provided in paragraph (3) of this subsection.

(2) The tender referred to in paragraph (1) of this subsection may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in paragraph (3) of this subsection.

(3) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at the legal rate of interest per year from the date of purchase, costs, and reasonable attorneys' fees determined by the court.

(c) A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care,

could not have known of the untruth or omission. An action under this subsection is governed by the following:

(1) The seller may maintain an action at law or in equity to recover the security, and any income received on the security, costs, and reasonable attorney's fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in paragraph (3) of this subsection.

(2) The tender referred to in paragraph (1) of this subsection may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in paragraph (3) of this subsection.

(3) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest at the legal rate of interest per year from the date of sale of the security, costs, and reasonable attorneys' fees determined by the court.

(d) A person acting as a broker-dealer or agent that sells or buys a security in violation of subsection (a) of Section 17, subsection (a) of Section 18, or Section 34 of this act is liable to the customer. The customer, if a purchaser, may maintain an action at law or in equity for recovery of actual damages as specified in subsections (b)(1) through (3) of this section; or, if a seller, a remedy as specified in subsections (c)(1) through (3) of this section.

(e) A person acting as an investment adviser or investment adviser representative that provides investment advice in violation of subsection (a) of Section 19, subsection (a) of Section 20, or

Section 34 of this act is liable to the client. The client may maintain an action at law or in equity to recover the consideration paid for the advice, interest at the legal rate of interest per year from the date of payment, costs, and reasonable attorney's fees determined by the court.

(f) A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person. An action under this subsection is governed by the following:

(1) The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the legal rate of interest per year from the date of the fraudulent conduct, costs, and reasonable attorney's fees determined by the court, less the amount of any income received as a result of the fraudulent conduct.

(2) This subsection does not apply to a broker-dealer or its agents, if the investment advice is solely incidental to the conduct of business as a broker-dealer and no special compensation is received for the investment advice.

(g) The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (b) through (f) of this section:

(1) a person that directly or indirectly controls a person liable under subsections (b) through (f) of this section, unless the controlling 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 existence of the facts by reason of which the liability is alleged to exist;



(2) an individual who is a managing partner, executive officer, or director of a person liable under subsections (b) through (f) of this section, including each individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist;

(3) an individual who is an employee of or associated with a person liable under subsections (b) through (f) of this section and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist;

(4) a person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (b) through (f) of this section, unless 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 existence of the facts by reason of which liability is alleged to exist; and

(5) any other person who materially aids in the conduct giving rise to the liability under subsections (b) through (f) of this section, unless the person sustains the burden or proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of the facts by reason of which liability is alleged to exist.

(h) A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

(i) A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(j) A person may not obtain relief:

(1) under subsection (b) of this section for violation of Section 10 of this act, or under subsection (d) or (e) of this section, unless the action is commenced within one year after the violation occurred; or

(2) under subsection (b) of this section, other than for violation of Section 10 of this act, or under subsection (c) or (f) of this section, unless the action is instituted within the earlier of two years after discovery of the facts constituting the violation and five years after such violation.

(k) A person that has made, or has engaged in the performance of, a contract in violation of this act or a rule adopted or order issued under this act, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of the act, may not base an action on the contract.

(l) A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this act or a rule adopted or order issued under this act is void.

(m) The rights and remedies provided by this act are in addition to any other rights or remedies that may exist, but this act does not create a cause of action not specified in this section.

SECTION 38. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 410a of Title 71, unless there is created a duplication in numbering, reads as follows:

A purchaser, seller, or recipient of investment advice may not maintain an action under Section 37 of this act if:

(1) the purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted:

(A) an offer stating the respect in which liability under Section 37 of this act may have arisen and fairly advising the

purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misstatements or omissions in the information that was required by this act to be furnished to that person at the time of the purchase, sale, or investment advice;

(B) if the basis for relief under this section may have been a violation of subsection (b) of Section 37 of this act, offering to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the legal rate of interest per year from the date of purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at the legal rate of interest per year from the date of purchase in cash equal to the damages computed in the manner provided in this subsection;

(C) if the basis for relief under this section may have been a violation of subsection (c) of Section 37 of this act, offering to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser, and interest at the legal rate of interest from the date of the sale, or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the legal rate of interest per year from the date of the sale;

(D) if the basis for relief under this section may have been a violation of subsection (d) of Section 37 of this act, and if the

customer is a purchaser, an offer to pay as specified in subparagraph (B) of this subsection; or, if the customer is a seller, an offer to tender or to pay as specified in subparagraph (C) of this subsection;

(E) if the basis for relief under this section may have been a violation of subsection (e) of Section 37 of this act, an offer to reimburse in cash the consideration paid for the advice and interest at the legal rate of interest per year from the date of payment; or

(F) if the basis for relief under this section may have been a violation of subsection (f) of Section 37 of this act, an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the legal rate of interest per year from the date of the violation causing the loss;

(2) an offer under paragraph (1) of this subsection states that it must be accepted by the purchaser, seller, or recipient of investment advice within thirty (30) days after the date of its receipt by the purchaser, seller, or recipient of investment advice, or any shorter period, of not less than three days, that the Administrator, by order, specifies;

(3) the offeror has the present ability to pay the amount offered or to tender the security under paragraph (1) of this subsection;

(4) the offer under paragraph (1) of this subsection is delivered to the purchaser seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and,

(5) the purchaser, seller, or recipient of investment advice that accepts the offer under paragraph (1) of this subsection, in a record within the period specified under paragraph (2) of this subsection is paid in accordance with the terms of the offer.

#### ARTICLE 6

ADMINISTRATION AND JUDICIAL REVIEW

SECTION 39. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 501a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) The Administrator shall administer this act.

(b) This act does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(c) The Administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the Administrator may collaborate with public and nonprofit organizations with an interest in investor education. The Administrator may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education program.

SECTION 40. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 502a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) The Administrator may:

(1) conduct public or private investigations within or outside of this state which the Administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this act or a rule adopted or order issued under this act, or to aid in the enforcement of this act or in the adoption of rules and forms under this act;

(2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the Administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(3) publish a record concerning an action, proceeding, or an investigation under, or a violation of, this act or a rule adopted or order issued under this act if the Administrator determines it is necessary or appropriate in the public interest and for the protection of investors.

(b) For the purpose of an investigation or proceeding under this act, the Administrator or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the Administrator considers relevant or material to the investigation or proceeding.

(c) If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the Administrator under this act, the Administrator may apply to the district court of Oklahoma County or the district court in any other county where service can be obtained or a court of another state to enforce compliance. The court may:

(1) hold the person in contempt;

(2) order the person to appear before the Administrator or an officer designated by the Administrator;

(3) order the person to testify about the matter under investigation or in question;

(4) order the production of records;

(5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;

(6) impose a civil penalty of not less than \$[\_\_\_] and not greater than \$[\_\_\_] for each violation; and

(7) grant any other necessary or appropriate relief.

(d) This section does not preclude a person from applying to the district court of Oklahoma County or a court of another state for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(e) An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the Administrator or a designated officer under this act or in an action or proceeding instituted by the Administrator under this act on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the Administrator may apply to the district court of Oklahoma County to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

(f) At the request of a law enforcement or another governmental or regulatory agency or a self-regulatory organization, the Administrator may provide assistance if the requesting entity states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting entity administers or enforces. The Administrator may provide the assistance by using the authority to

investigate and the powers conferred by this section as the Administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this act or other law of this state if occurring in this state. In deciding whether to provide the assistance, the Administrator may consider whether the requesting entity is permitted and has agreed to provide assistance reciprocally within its state, federal or foreign jurisdiction to the Administrator on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this state; and the availability of resources and employees of the Administrator to carry out the request for assistance.

SECTION 41. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 503a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) If the Administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or constituting a dishonest or unethical practice or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this act or a rule adopted or order issued under this act or a dishonest or unethical practice, the Administrator may, prior to, concurrently with, or subsequent to an administrative proceeding, maintain an action in the district court of Oklahoma County or the district court of any other county where service can be obtained to enjoin the act, practice, or course of business and to enforce compliance with this act or a rule adopted or order issued under this act.

(b) In an action under this section and on a proper showing, the court may:



(1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) order other appropriate or ancillary relief, which may include:

(A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the Administrator, for the defendant or the defendant's assets;

(B) ordering the Administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(C) imposing a civil penalty up to \$[ ] for a single violation or up to \$[ ] for more than one violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act; and

(D) ordering the payment of prejudgment and postjudgment interest; or

(3) order such other relief as the court considers appropriate.

(c) The Administrator may not be required to post a bond in an action or proceeding under this act.

SECTION 42. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 504a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) If the Administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or constituting a dishonest or unethical practice or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of

business constituting a violation of this act or a rule adopted or order issued under this act or a dishonest or unethical practice, the Administrator may:

(1) issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act;

(2) issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under subparagraph (D) or (F) of paragraph (1) of subsection (b) of Section 17 of this act or an investment adviser under subparagraph (C) of paragraph (1) of subsection (b) of Section 19 of this act; or

(3) issue an order under Section 9 of this act.

(b) An order under subsection (a) of this section is effective on the date of issuance. Upon issuance of the order, the Administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the Administrator will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within fifteen (15) days after receipt of a request in a record from the person, the matter will be scheduled for a hearing and the hearing shall be commenced within fifteen (15) days of the matter being set for hearing. If a person subject to the order does not request a hearing and none is ordered by the Administrator within thirty (30) days after the date of service of the order, the order becomes final as to that person by operation of law. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) If a hearing is requested or ordered pursuant to subsection (b) of this section, a hearing must be held pursuant to the Oklahoma Administrative Procedures Act. A final order may not be issued

unless the Administrator makes findings of fact and conclusions of law in a record in accordance with the state administrative procedure act. The final order may make final, vacate, or modify the order issued under subsection (a) of this section.

(d) In a final order under subsection (c) of this section, the Administrator may impose a civil penalty up to \$[ ] for a single violation or up to \$[ ] for more than one violation.

(e) In a final order, the Administrator may charge the actual cost of an investigation or proceeding for a violation of this act or a rule adopted or order issued under this act.

(f) If a petition for judicial review of a final order is not filed in accordance with Section 47 of this act, the Administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(g) If a person does not comply with an order under this section, the Administrator may petition a court of competent jurisdiction to enforce the order. The court may not require the Administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than \$[ ] but not greater than \$[ ] for each violation and may grant any other relief the court determines is just and proper in the circumstances.

SECTION 43. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 505a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) The Administrator may:

(1) issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this act and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;

(2) by rule, define terms, whether or not used in this act, but those definitions may not be inconsistent with this act; and

(3) by rule, classify securities, persons, and transactions and adopt different requirements for different classes.

(b) Under this act, a rule or form may not be adopted or amended, or an order issued or amended, unless the Administrator finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this act. In adopting, amending, and repealing rules and forms, Section 46 of this act applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

(c) Subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisers Act of 1940, the Administrator may require that a financial statement filed under this act be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this act. A rule adopted or order issued under this act may establish:

(1) subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisers Act of 1940, the form and content of financial statements required under this act;

(2) whether unconsolidated financial statements must be filed;  
and

(3) whether required financial statements must be audited by an independent certified public accountant.

(d) The Administrator may provide interpretative opinions or issue determinations that the Administrator will not institute a proceeding or an action under this act against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this act. The charge for interpretative opinions or determinations that the Administrator will not institute an action or a proceeding under this act shall be specified in Section 412 of this title.

(e) A hearing in an administrative proceeding under this act shall be conducted in public.

SECTION 44. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 506a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) The Administrator shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this act or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this act or the predecessor act; and interpretative opinions or no action determinations issued under this act.

(b) The Administrator shall make all rules, forms, interpretative opinions, and orders available to the public.

(c) The Administrator shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person who so requests. The charge for furnishing the record or certification shall be specified in Section 412 of this

title. A copy of the record certified or a certificate by the Administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence.

SECTION 45. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 507a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) Except as otherwise provided in subsection (b) of this section, records obtained by the Administrator or filed under this act, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.

(b) The following records are not public records and are not available for public examination under subsection (a) of this section:

(1) a record obtained by the Administrator or created by a representative of the Administrator in connection with an audit or inspection under subsection (k) of Section 14 or subsection (d) of Section 26 of this act or an investigation under Section 40 of this act;

(2) a part of a record filed in connection with a registration statement under Sections 10 and 12 through 14 of this act or a record obtained under subsection (k) of Section 14 or subsection (d) of Section 26 of this act that contains trade secrets or confidential information if the person filing the registration statement or providing the record has asserted a claim of confidentiality or privilege that is authorized by law;

(3) a record in a litigation file;

(4) a nonpublic record received from a person specified in subsection (a) of Section 46 of this act; and

(5) any social security number, residential address, and residential telephone number contained in a record that is filed.

(c) If disclosure is for the purpose of a civil or administrative investigation, action, or proceeding brought by the Administrator or a criminal referral made by the Administrator or to a person specified in subsection (a) of Section 46, the Administrator may disclose a record obtained in connection with an audit or inspection under subsection (d) of Section 26 of this act or a record obtained or created in connection with an investigation under Section 40 of this act so long as the receiving person specified in subsection (a) of Section 46 of this act provides assurances to undertake such safeguards as are necessary and appropriate to protect the confidentiality of files to which access is granted and information derived therefrom.

SECTION 46. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 508a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) The Administrator shall, in its discretion, cooperate, coordinate, consult, and, subject to Section 45 of this act, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, and a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.

(b) In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this act, the Administrator shall, in its

discretion, take into consideration in carrying out the public interest the following general policies:

(1) maximizing effectiveness of regulation for the protection of investors;

(2) maximizing uniformity in federal and state regulatory standards; and

(3) minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

(c) The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes:

(1) establishing or employing one or more designees as a central depository for registration and notice filings under this act and for records required or allowed to be maintained under this act;

(2) developing and maintaining uniform forms;

(3) conducting a joint examination or investigation;

(4) holding a joint administrative hearing;

(5) instituting and prosecuting a joint civil or administrative proceeding;

(6) sharing and exchanging personnel;

(7) coordinating registrations under Sections 10 and 17 through 20 of this act and exemptions under Section 8 of this act;

(8) sharing and exchanging records, subject to Section 45 of this act;

(9) formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases;

(10) formulating common systems and procedures;

(11) notifying the public of proposed rules, forms, statements of policy, and guidelines;

(12) attending conferences and other meetings among securities regulators, which may include representatives of governmental and



private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity; and

(13) developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.

SECTION 47. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 509a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) Any person aggrieved by final order of the Administrator may obtain a review by the Commission by filing with the Administrator, within fifteen (15) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part and stating the person's specific grounds therefor. The petition, the record upon which the final order was issued, and written briefs submitted by the appealing parties and the Administrator shall be reviewed by the Commission. The cost of preparing the record of the administrative hearing shall be borne by the appealing parties. Oral argument by all parties may be heard by the Commission en banc if requested by an appealing party. Other than newly discovered evidence, additional evidence may only be presented by the appealing party and/or the Administrator on the request of the Commission. Upon the written request of the party on whose behalf the appeal is brought, or upon the party's own motion, the Administrator shall cause complete stenographic notes to be taken of the proceeding before the Commission. If requested by the appealing party, the cost of taking and transcribing such notes shall be borne by the said appealing party. If such notes are taken upon the motion of the Administrator, the cost shall be borne by the Department. The Commission or a majority thereof shall make such order as is deemed proper, just, and equitable within sixty (60) days of receipt by the Administrator of the written petition of the appealing party or at such later time as agreed to by all parties.

(b) Appeals by any person aggrieved by a final order of the Commission, except a final order of the Commission to cease and desist shall be taken to the Supreme Court of this state within thirty (30) days of the date that a copy of the order is mailed to such person, as shown by the certificate of mailing attached to the order. Any person aggrieved by a final order of the Commission to cease and desist shall be taken to the district court of Oklahoma County within thirty (30) days of the date that a copy of the order is mailed to such person, as shown by the certificate of mailing attached to the order. The proceedings for review shall be as now prescribed by law and by rules of the reviewing court, subject to the power of the reviewing court to make other and further rules with reference thereto.

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

SECTION 48. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 510a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) Sections 10, 11, subsection (a) of Section 17, subsection (a) of Section 18, subsection (a) of Section 19, subsection (a) of Section 20, 29, 34, 37, and 38 of this act do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this state or the offer to purchase or the purchase is made and accepted in this state.

(b) Subsection (a) of Section 17, subsection (a) of Section 18, subsection (a) of Section 19, subsection (a) of Section 20, 29, 34, 37, and 38 of this act do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the

purchase is made in this state or the offer to sell or the sale is made and accepted in this state.

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

(1) originates from within this state; or

(2) is directed by the offeror to a place in this state and received at the place to which it is directed.

(d) For the purpose of this section, an offer to purchase or to sell is accepted in this state, whether or not either party is then present in this state, if the acceptance:

(1) is communicated to the offeror in this state and the offeree reasonably believes the offeror to be present in this state and the acceptance is received at the place in this state to which it is directed; and

(2) has not previously been communicated to the offeror, orally or in a record, outside this state.

(e) An offer to sell or to purchase is not made in this state when a publisher circulates or there is circulated on the publisher's behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this state, or that is published in this state but has had more than two thirds of its circulation outside this state during the previous 12 months or when a radio or television program or other electronic communication originating outside this state is received in this state. A radio or television program, or other electronic communication is considered as having originated in this state if either the broadcast studio or the originating source of transmission is located in this state, unless:

(1) the program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state;

(2) the program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state;

(3) the program or communication is an electronic communication that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system; or

(4) the program or communication consists of an electronic communication that originates in this state, but which is not intended for distribution to the general public in this state.

(f) Subsection (a) of Section 19, subsection (a) of Section 20, subsection (a) of Section 21, 30, 33, and 34 of this act apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

SECTION 49. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 511a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) A consent to service of process required by this act must be signed and filed in the form required by a rule adopted or order issued under this act. A consent appointing the Administrator the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative under this act or a rule adopted or order issued under this act after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

(b) If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this act or a rule adopted or order issued under this act and the person has not filed a consent to service of process under subsection (a) of this section, the act, practice, or course of business constitutes the appointment of the Administrator as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative and has the same force and validity as if the service were made personally on the person.

(c) Service under subsection (a) or (b) of this section may be made by providing a copy of the process to the office of the Administrator, but it is not effective unless:

(1) the plaintiff, which may be the Administrator, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and

(2) the plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the Administrator in a proceeding before the Administrator, allows.

(d) Service pursuant to subsection (c) of this section may be used in a proceeding before the Administrator or by the Administrator in a civil action in which the Administrator is the moving party. 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. 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.

(e) If process is served under subsection (c) of this section, the court, or the Administrator in a proceeding before the Administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

## ARTICLE 7

### TRANSITION

SECTION 50. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 521a of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of this act or may be instituted on the basis of conduct occurring before the effective date of this act, but a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within five (5) years after the effective date of this act, whichever is earlier.

(b) All effective registrations under the predecessor act, all administrative orders relating to the registrations, rules,

statements of policy, interpretative opinions, declaratory rulings, no action determinations, and conditions imposed on the registrations under the predecessor act remain in effect while they would have remained in effect if this act had not been enacted. They are considered to have been filed, issued, or imposed under this act, but are exclusively governed by the predecessor act.

(c) The predecessor act exclusively applies to an offer or sale made within one (1) year after the effective date of this act pursuant to an offering made in good faith before the effective date of this act on the basis of an exemption available under the predecessor act.

SECTION 51. REPEALER 71 O.S. 2001, Sections 1, 2, 101, 102, 201 through 204, 301 through 304, 305, 305.2, 306, 402 through 411, 413 and 501, are hereby repealed.

SECTION 52. This act shall become effective July 1, 2004.

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