

ENROLLED SENATE
BILL NO. 493

By: Cain of the Senate

and

Askins of the House

An Act relating to securities; amending 71 O.S. 2001, Sections 201, 202, 204, 306, 405, 406, 406.1, 409 and 412, as amended by Section 1, Chapter 422, O.S.L. 2002 (71 O.S. Supp. 2002, Section 412) which relate to broker-dealers, agents, and investment advisers, registration of securities, investigations, administrative remedies and judicial review; updating language; making language gender neutral; adding persons to certain registration renewal requirements; increasing certain time period; expanding authority of administrator under certain circumstances; prohibiting Administrator from taking certain action; providing exception; stating effect of certain order under certain circumstances; increasing certain time period; stating effect on certain order under certain circumstances; removing certain limitation on specified disclosure; authorizing court to grant certain relief; making language gender neutral; stating effect on certain order under certain circumstances; expanding authority of court; modifying certain hearing requirements; modifying certain appeals requirements; modifying certain fee requirement; modifying investment of certain fund; and providing an effective date.

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

SECTION 1. AMENDATORY 71 O.S. 2001, Section 201, is amended to read as follows:

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

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

(A) effects transactions in this state exclusively with or through:

- (i) the issuers of the securities involved in the transactions,
- (ii) other broker-dealers, or
- (iii) financial or institutional investors, whether acting for themselves or as trustees;

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

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

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

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

(B) is representing an issuer in effecting transactions in a security exempted by paragraph (1), (2), (3), (4), (5), (7), (8), or (9) of Section 401(a) of this title;

(C) is representing an issuer in effecting transactions exempted by paragraphs (1) through (18), (21) or (22) of Section 401(b) of this title or transactions in securities that are federal covered securities under Section 18(b)(4)(D) of the Securities Act of 1933, except when:

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

(ii) such individual is or has been within the past five (5) years subject to the following in connection with a violation of a state or federal securities law or regulation: an order denying, suspending or revoking registration or a cease and desist order of the Administrator; any similar order, judgment, or decree by another state securities agency, the United States Securities and Exchange Commission, or any self-regulatory securities organization; or an order of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person;

- (D) is representing an issuer in effecting transactions with existing employees, partners, members or directors of the issuer, or a subsidiary or affiliate of the issuer as those terms may be defined by rule or order, if no commission or other remuneration is paid or given, directly or indirectly, for soliciting any person in this state; or
- (E) is representing a broker-dealer in effecting in this state only those transactions described in Section 15(h) of the Securities Exchange Act of 1934 and satisfies the conditions set forth in Section 15(h) of the Securities Exchange Act of 1934.

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

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

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

- (A) the person's only clients in this state are investment companies as defined in and registered under the Investment Company Act of 1940 or insurance companies;
- (B) the person is licensed as an investment adviser under the laws of another state, has no place of business within this state, and the person's only clients in this state are other investment advisers, broker-dealers, or financial or institutional investors, whether acting for themselves or as trustees;
- (C) the person has no place of business located within this state and during any period of twelve (12) consecutive months, has no more than five ~~(5)~~ clients, other than those clients specified in subparagraph (B) of this paragraph, who are residents of this state;
- (D) the person is registered under Section 203 of the Investment Advisers Act of 1940 as an investment adviser or is not registered under Section 203 of the Investment Advisers Act of 1940 because that person is excepted from the definition of an investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940; however, such exemption shall not apply to such a person if such person fails or refuses to

pay the notice filing fee required by paragraph (5) of subsection (a) of Section 412 of this title and such failure or refusal to pay is not promptly remedied in accordance with this title or an order or other administrative action of the Administrator; or

- (E) the person is a full-time employee of this state, any county, municipality or school district of this state; or any other political subdivision of this state; or any agency or corporate or other instrumentality of any such political subdivision; and such person's activities as an investment adviser are required as part of such person's employment with such entity and limited to providing advice to such entity.

(3) The exemption from registration provided by subparagraph (B) of paragraph (2) of this subsection shall not be available to any person who acts as an investment adviser to this state, any county, municipality or school district of this state, or any other political subdivision of this state; any agency or corporate or other instrumentality of any such entity; or any pension fund for the benefit of employees of any such entity.

(d) (1) It is unlawful for any person to transact business in this state as an investment adviser representative unless registered under this act or unless ~~he~~ such person is exempt from registration as provided in paragraph (3) of this subsection. It is unlawful for any person required to be registered as an investment adviser under this act, or any person exempt from registration as an investment adviser under this act, to employ, supervise, be represented by or be associated with an investment adviser representative unless the investment adviser representative is registered under this act or unless the investment adviser representative is exempt from registration as provided in paragraph (3) of this subsection.

(2) It is unlawful for an investment adviser representative of an investment adviser exempt from registration under subparagraph (D) of paragraph (2) of subsection (c) of this section to transact business in this state as an investment adviser representative as defined by the United States Securities and Exchange Commission in Rule 203A-3 of the Investment Advisers Act of 1940, if such person has a place of business located within this state unless registered under this act or unless the person is exempt from registration as provided in subparagraphs (B) or (C) of paragraph (3) of this subsection.

(3) Subject to paragraph (4) of this subsection, a person shall be exempt from registration as an investment adviser representative if:

- (A) the person is employed by, supervised by, represents or is associated with an investment adviser required to be registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940, or with an investment adviser who is not registered under Section 203 of the Investment Advisers Act of 1940 because that person is excepted from the definition of

an investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940 and such investment adviser representative has no place of business located within this state. However, such exemption shall not apply to such a person if his or her affiliated investment adviser fails or refuses to pay the fifty-dollar-fee for investment adviser representatives as required under subsection (a) of Section 202.1 of this title and such failure or refusal to pay is not promptly remedied in accordance with this title or an order or other administrative action of the Administrator;

- (B) the person is licensed as an investment adviser representative under the laws of another state, has no place of business within this state, and the person's only clients in this state are investment advisers, broker-dealers, or financial or institutional investors, whether acting for themselves or as trustees; or
- (C) the person has no place of business located within this state and during any period of twelve (12) consecutive months, has no more than five clients, other than those clients specified in subparagraph (B) of this paragraph, who are residents of this state.

(4) The exemption from registration provided by subparagraph (B) of paragraph (3) of this subsection shall not be available to any person who acts as an investment adviser representative to this state, any county, municipality or school district of this state, or any other political subdivision of this state; any agency or corporate or other instrumentality of any such entity; or any pension fund for the benefit of employees of any such entity.

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

(e) Every registration ~~or~~ as a broker-dealer, agent, investment adviser or investment adviser representative and every exemption from registration as an investment adviser representative under this section expires on December 31 each year and may be renewed annually upon written application, as specified by the Administrator by rule or order, and payment of the fee set forth in Section 412 of this title without furnishing any further information unless specifically required by the Administrator. Application for renewals must be made no later than December 31 in each year; otherwise, the requirements for initial registration must be satisfied.

(f) For purposes of this section, "place of business" means:

(1) A place or office at which the investment adviser or investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients; and

(2) Any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

SECTION 2. AMENDATORY 71 O.S. 2001, Section 202, is amended to read as follows:

Section 202. (a) (1) A broker-dealer, agent, investment adviser or investment adviser representative required to be registered under this title may obtain an initial or renewal registration by filing in such form and in such manner as prescribed by rule or order of the Administrator an application, the filing fee set forth in Section 412 of this title and any other information determined to be necessary by the Administrator.

(2) If financial reports required do not coincide with registration dates, such reports for the registrant's preceding fiscal year shall be acceptable unless the Administrator by rule or order otherwise prescribes. The Administrator may by rule or order require an applicant for initial registration to publish an announcement of the application in one or more specified newspapers published in this state.

(b) If no denial order is in effect and no proceeding is pending pursuant to the provisions of Section 204 of this title, registration becomes effective at noon of the ~~thirtieth~~ forty-fifth day after a complete application is filed and proper payment is made. The Administrator may specify, by rule or order, an earlier effective date, and may defer, by order, the effective date until noon of the ~~thirtieth~~ forty-fifth day after the filing of any amendment.

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

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

(e) The Administrator, by rule, may require a minimum capital for registered broker-dealers and investment advisers.

SECTION 3. AMENDATORY 71 O.S. 2001, Section 204, is amended to read as follows:

Section 204. (a) The Administrator may issue a final order denying effectiveness to, or suspending or revoking the effectiveness of, any registration, or condition or limit registration of an applicant or registrant, or impose any sanction

authorized by Section 406 of this title if the Administrator finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

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

(2) has willfully violated or willfully failed to comply with any provision of the Oklahoma Securities Act or a predecessor act or any rule or order under this act or a predecessor act;

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

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

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

(6) is the subject of an order or other adjudication or determination entered within the past five (5) years by the securities administrator of any other state or by the United States Securities and Exchange Commission or by any other governmental securities agency denying, suspending or revoking registration as a broker-dealer, agent, investment adviser or investment adviser representative or the substantial equivalent of those terms as defined in the Oklahoma Securities Act, or is the subject of an order or other adjudication or determination entered within the past five (5) years by the securities administrator of any other state or by the United States Securities and Exchange Commission or by any other governmental securities agency barring the person from association with any other broker-dealer or investment adviser, or is the subject of an order suspending or expelling the person from a national or international securities exchange or national or international securities association, or is the subject of an order or other adjudication or determination of or by the National Association of Securities Dealers, Inc., or any other self-regulatory organization, suspending, canceling, revoking, or barring the person from membership in said organization or barring the person from association with any other member of said organization, or is the subject of a United States Post Office fraud order; but:

- (A) the Administrator may not institute a revocation or suspension proceeding under this subsection more than one (1) year from the date of the order relied on; and
- (B) may not enter an order under this subsection on the basis of an order under another state act unless that order was based on facts which, but for the situs would currently constitute a ground for an order under this section;

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

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

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

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

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

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

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

(14) refuses to allow or otherwise impedes the Administrator from conducting an examination under subsection (d) of Section 203 of this title, refuses access to any registrant's office to conduct such examination, or refuses to provide copies of the records referred to in subsection (a) of Section 203 of this title.

(b) The Administrator may not institute a suspension or revocation proceeding ~~on the basis of a fact or transaction based solely on material facts actually known to~~ by the Administrator ~~when the initial registration became effective~~ unless ~~the an~~ investigation or proceeding is instituted within ~~ninety (90) days following the effective date of registration~~ one (1) year after the Administrator actually knew the material facts.

(c) The Administrator's determination that an applicant or registrant lacks qualification under paragraph (10) of subsection (a) of this section is limited by the following provisions:

(1) The Administrator may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer if the broker-dealer is an individual; or an agent of the broker-dealer.

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

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

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

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

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

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

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

- (A) that the summary order has been entered and the reasons therefor;
- (B) that the person subject to the summary order, if desiring a hearing, must make written request for a hearing to the Administrator within fifteen (15) days after service of the notice is effective;
- (C) that within fifteen (15) days after receipt by the Administrator of a written request the matter will be set for hearing to determine whether the summary order should be modified, vacated or extended pending final

determination of any proceeding under subsection (a) of this section; and

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

(3) The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or the Administrator's designee extends the summary order pending a final determination of any proceeding under subsection (a) of this section. If no hearing is requested within thirty (30) days after service of the summary order 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~~ becomes final by operation of law. If a request for hearing on the summary order is timely made and if the hearing is not commenced by the Administrator within the time limit set forth herein, the summary order shall dissolve and a final order shall not be issued pursuant to subsection (a) of this section except upon reasonable notice and opportunity for a hearing.

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

(f) Withdrawal from registration as a broker-dealer, agent, investment adviser or investment adviser representative becomes effective ~~thirty (30)~~ sixty (60) days after receipt of an application to withdraw or within such shorter period of time as the Administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within ~~thirty (30)~~ sixty (60) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Administrator may nevertheless institute a proceeding under paragraph (2) of subsection (a) of this section within one (1) year after withdrawal became effective and enter an order as of the last date on which registration was effective.

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

SECTION 4. AMENDATORY 71 O.S. 2001, Section 306, is amended to read as follows:

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

- (1) the order is in the public interest; and
- (2) (A) the registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any report under Section 305(i) of this title is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;
- (B) any provision of the Oklahoma Securities Act or any rule, order, or condition lawfully imposed under said act has been willfully violated, in connection with the offering, by:
 - (i) the person filing the registration statement,
 - (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or
 - (iii) any underwriter;
- (C) the security registered or sought to be registered is the subject of any administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; provided, however:
 - (i) the Administrator may not institute a proceeding against an effective registration statement under this subparagraph more than one (1) year from the date of the order or injunction relied on, and
 - (ii) may not enter an order under this subparagraph on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;
- (D) the issuer's enterprise or method of business includes or would include activities which are illegal where performed;

- (E) the offering has worked or tended to work a fraud upon purchasers or would so operate;
- (F) the offering has been or would be made or is being made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options, profits, compensation, or remuneration paid directly or indirectly to any officer, director, employee, contractor or agent;
- (G) when a security is sought to be registered by notification, it is not eligible for such registration;
- (H) when a security is sought to be registered by coordination there has been a failure to comply with the undertaking required by Section 303(b)(4) of this title; or
- (I) an order has been issued by a court of competent jurisdiction under subsection (e) of this section or Section 406 of this title against the issuer of any security registered or sought to be registered under the Oklahoma Securities Act.

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

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

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

- (A) that the summary order has been entered and the reasons therefor;
- (B) that the person subject to the summary order, if desiring a hearing, must make written request for a hearing to the Administrator within fifteen (15) days after service of the notice is effective;
- (C) that within fifteen (15) days after receipt by the Administrator of a written request the matter will be set for hearing to determine whether the summary order should be modified, vacated or extended pending final

determination of any proceeding under subsection (a) of this section; and

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

(3) The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or the Administrator's designee extends the summary order pending a final determination of any proceeding under subsection (a) of this section. If no hearing is requested within thirty (30) days after service of the summary order 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~~ becomes final by operation of law. If a request for hearing on the summary order is timely made and if the hearing is not commenced by the Administrator within the time limit set forth herein, the summary order shall dissolve and a final order shall not be issued pursuant to subsection (a) of this section except upon reasonable notice and opportunity for a hearing.

(c) Except as provided in paragraph (1) of subsection (b) of this section or unless the right to notice and hearing is waived by the person against whom the stop order is issued, no stop order may be issued under this section without notice and opportunity for hearing as required by the Administrative Procedures Act. If the person to whom notice is addressed does not request a hearing within fifteen (15) days after the service of said notice is effective, a final order as provided in subsection (a) of this section may be issued.

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

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

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

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

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

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

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

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

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

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

SECTION 5. AMENDATORY 71 O.S. 2001, Section 405, is amended to read as follows:

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

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

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

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

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court of Oklahoma county or the district court in any other county where service can be obtained on one or more of the defendants, upon application by the Administrator, may issue to the person an order requiring him such person to appear before the Administrator, or the officer designated by him the Administrator, there to produce documentary evidence ~~if so ordered~~ or to ~~give evidence touching~~ testify about the matter under investigation or in question. The court may also grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice. Failure

to obey the order of the court may be punished by the court as a contempt of court.

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

(e) In addition to the investigations authorized by Section 405(a) of this title, the Administrator or a designated member of his staff shall examine as soon as possible all reports filed under this act for the purpose of determining whether additional information is required or whether additional investigation should be made. The Administrator is authorized to require the filing of any additional information which he deems necessary to correct any errors or deficiencies in any reports required to be filed.

SECTION 6. AMENDATORY 71 O.S. 2001, Section 406, is amended to read as follows:

Section 406. (a) If the Administrator reasonably believes, whether or not based upon an investigation conducted under Section 405 of this title, that a person has violated the Oklahoma Securities Act, except under the provisions of Section 202.1 or 305.2 of this title, or a rule or order of the Administrator under the Oklahoma Securities Act or has engaged in dishonest or unethical practices in the securities business, the Administrator, in addition to any specific power granted by any other section of the Oklahoma Securities Act, may impose one or more of the following sanctions:

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

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

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

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

(5) issue an order against a person who willfully violates the Oklahoma Securities Act or a rule or order of the Administrator

under the Oklahoma Securities Act, imposing a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or transaction or of Fifty Thousand Dollars (\$50,000.00) for multiple violations or transactions in a single proceeding or a series of related proceedings; or

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

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

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

(1) If the Administrator revokes the effectiveness of the registration of a broker-dealer, agent, investment adviser or investment adviser representative under Section 204 of this title or bars a person from association with a broker-dealer or investment adviser under this section or Section 204 of this title, the imposition of that sanction precludes imposition of the sanction specified in paragraph (5) of subsection (a) of this section; and

(2) The imposition by the Administrator of one or more sanctions under subsection (a) of this section with respect to a specific violation or transaction precludes the Administrator from later imposing any other sanctions under paragraphs (1) through (5) of subsection (a) of this section with respect to the violation or transaction. The Administrator however is not precluded from bringing an action under Section 406.1 of this title in addition to the imposition of one or more sanctions under subsection (a) of this section with respect to the violation or transaction.

(d) For purposes of determining any sanction to be imposed under paragraphs (1) through (5) of subsection (a) of this section, the Administrator shall consider, among other factors, the frequency and persistence of the conduct constituting a violation of the Oklahoma Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act or involving dishonest or unethical practices in the securities business, the number of persons adversely affected by the conduct, and the resources of the person committing the violation.

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

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

- (A) that the summary order has been entered and the reasons therefor;
- (B) that the person subject to the summary order, if desiring a hearing, must make written request for a hearing to the Administrator within fifteen (15) days after service of the notice is effective;
- (C) that within fifteen (15) days after receipt by the Administrator of a written request the matter will be set for hearing to determine whether the summary order should be modified, vacated or extended pending final determination of any proceeding under paragraph (1) of subsection (a) of this section; and
- (D) that a hearing shall be commenced within fifteen (15) days of the matter being set for hearing.

(3) The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or the Administrator's designee extends the summary order pending a final determination of any proceeding under paragraph (1) of subsection (a) of this section. If no hearing is requested within thirty (30) days after service of the summary order 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 becomes final by operation of law. If a request for hearing on the summary order is timely made and if the hearing is not commenced by the Administrator within the time limit set forth herein, the summary order shall dissolve and a final order shall not be issued pursuant to paragraph (1) of subsection (a) of this section except upon reasonable notice and opportunity for a hearing.

SECTION 7. AMENDATORY 71 O.S. 2001, Section 406.1, is amended to read as follows:

Section 406.1 (a) Upon a showing by the Administrator that a person has violated or is about to violate the Oklahoma Securities Act, except under the provisions of Section 202.1 or 305.2 of this title, or a rule or order of the Administrator under the Oklahoma Securities Act or that a person has engaged or is about to engage in dishonest or unethical practices in the securities business, the Administrator, prior to, concurrently with, or subsequent to an administrative proceeding, may bring an action in the district court of Oklahoma County or the district court of any other county where service can be obtained on one or more of the defendants and the district court may grant or impose one or more of the following appropriate legal or equitable remedies:

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

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

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

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

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

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

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

- (1) appointment of a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this state; and
- (2) other relief the court considers just.

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

SECTION 8. AMENDATORY 71 O.S. 2001, Section 409, is amended to read as follows:

Section 409. (a) Any person aggrieved by a 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 costs of preparing the record of the administrative hearing shall be borne by the appealing parties. Oral argument by all parties ~~shall~~ may be heard by the Commission en banc ~~unless waived by the~~ 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) ~~Any Appeals by any person aggrieved by a final order of the Commission, except a final order of the Commission to cease and desist as provided for in paragraph (1) of subsection (a) of Section 406 of this title, may obtain a review of the order by shall be taken to the Supreme Court of Oklahoma within thirty (30) days of the date that a copy of the order is mailed to the 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 as provided for in paragraph (1) of subsection (a) of Section 406 of this title ~~may obtain a review of the final order by filing a petition in shall be taken to the district court of Oklahoma County within thirty (30) days after the person is notified of the order of the date that a copy of the order is mailed to the 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 9. AMENDATORY 71 O.S. 2001, Section 412, as amended by Section 1, Chapter 422, O.S.L. 2002 (71 O.S. Supp. 2002, Section 412), is amended to read as follows:

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

- (1) Broker-dealer registration fee or renewal fee.....\$300.00
- (2) Broker-dealer or issuer agent or broker-dealer principal registration fee or renewal fee.....\$50.00
- (3) Broker-dealer agent on an inactive basis, renewal fee.....\$10.00
- (4) Investment adviser registration fee or renewal fee.....\$300.00
- (5) Investment adviser annual notice filing fee.....\$300.00
- (6) Investment adviser representative registration fee or renewal fee.....\$50.00
- (7) Mass transfer fee.....\$10.00
per ~~agent~~ transferee
- (8) Mailing list fee.....\$30.00 per year
- (9) Review of sales literature package.....\$50.00
- (10) Broker-dealer or investment adviser financial or operating reports.....\$50.00
- (11) Issuer sales reports.....\$50.00
- (12) Notice of exemption filing or request for order of exemption.....\$250.00
- (13) Interpretive opinion or no-action request.....\$250.00
- (14) Affidavit request.....\$10.00
- (15) Service of process upon the Administrator.....\$10.00
- (16) Amendments to registration statements or notice filings pursuant to Section 305.2 of this title involving changes to

the issuer's application or notice filing form:

- (A) examination fee.....\$50.00; and
 - (B) a filing fee computed in the same manner as the filing fee required pursuant to paragraph (1) of subsection (b) of this section for any additional securities being registered.
- (17) Copying fee.
- (A) 8 1/2" by 14" or smaller.....\$.25 per page
 - (B) Larger than 8 1/2" by 14".....\$1.00 per page
 - (C) Certified copy 8 1/2" by 4" or smaller.....\$1.00 per page
 - (D) Certified copy larger than 8 1/2" by 14".....\$2.00 per page
- (18) Document search fee for commercial purpose.....\$20.00 per hour
- (19) Notice filing fee for a federal covered security under Section 18 (b) (4) of the Securities Act of 1933.....\$250.00

(b) For the purpose of registering securities under this act, any person filing a registration statement shall pay an examination fee of Two Hundred Dollars (\$200.00) and a filing fee computed upon the aggregate offering price of the securities sought to be registered in Oklahoma as follows:

a fee equal to one-tenth of one percent (1/10 of 1%) of said price; provided, in no event shall the filing fee be less than Two Hundred Dollars (\$200.00) or more than Two Thousand Five Hundred Dollars (\$2,500.00); however, for securities registered pursuant to Section 304.1 of this title, the filing fee shall be computed as follows: a fee equal to one-twentieth of one percent (1/20 of 1%) of the aggregate offering price; provided, in no event shall the filing fee be less than One Hundred Dollars (\$100.00) or more than Two Thousand Five Hundred Dollars (\$2,500.00).

(c) Any person making a notice filing pursuant to Section 305.2(a) of this title, or renewing such a filing, shall pay a filing fee of Five Hundred Dollars (\$500.00) with each such notice or renewal filed.

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

(e) There is hereby created in the State Treasury a revolving fund for the Oklahoma Department of Securities to be designated the "Oklahoma Department of Securities Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of fees and other charges collected by the Administrator as follows:

(1) the fees collected pursuant to paragraphs (1), (4), (5), (8), (14), (15), (17), and (18) of subsection (a) of this section;

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

(3) the examination fees designated in paragraph (16) of subsection (a) and in subsection (b) of this section;

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

(5) One Hundred Fifty Dollars (\$150.00) of each filing fee collected pursuant to subsection (c) of this section.

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

(f) There is hereby created in the State Treasury a revolving fund for the Oklahoma Department of Securities to be designated the "Oklahoma Department of Securities Investor Education Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all amounts collected pursuant to court order or judgment in actions brought by the Administrator, and amounts received in multistate settlements participated in by the Department ~~which~~, and interest attributable to the investment of the fund that shall be deposited in the Oklahoma Department of Securities Investor Education Revolving Fund. The Fund may be invested in any investment instrument allowed by Oklahoma Statutes to the State Treasurer for the investment of state funds. Any amounts received from any court settlement in excess of One Million Dollars (\$1,000,000.00) shall be transferred to the General Fund. The Administrator shall use the moneys in this fund exclusively for the specific purposes of research for education and education of Oklahoma residents in matters concerning securities laws and general investor protection. All monies accruing to the

credit of the Oklahoma Department of Securities Investor Education Revolving Fund are hereby appropriated and may be budgeted and expended by the Oklahoma Department of Securities as may be necessary to perform the duties imposed upon the said Department by law. Expenditures from the Oklahoma Department of Securities Investor Education Revolving Fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

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

(1) examination, investigation and litigation expenses of the Oklahoma Department of Securities, including, but not limited to, court costs, filing fees, copying fees, and witness fees, and

(2) incidental operating expenses of the Oklahoma Department of Securities not to exceed One Hundred Dollars (\$100.00) per transaction.

(h) Once paid, fees shall be nonrefundable.

SECTION 10. This act shall become effective November 1, 2003.

Passed the Senate the 26th day of February, 2003.

Presiding Officer of the Senate

Passed the House of Representatives the 8th day of April, 2003.

Presiding Officer of the House
of Representatives

