ENGROSSED SENATE
BILL NO. 979 By: Crain, Johnson (Mike) and Paddack of the Senate

and

Adkins of the House

[postregistration requirements – fine - penalties - effective date]

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

SECTION 1. AMENDATORY Section 27, Chapter 347, O.S.L. 2003 (71 O.S. Supp. 2006, Section 1-410), is amended to read as follows:

Section 1-410. 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-18a), 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 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-18a), 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 a rule adopted or order issued 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. Upon any filing with the Securities and Exchange Commission or any self-regulatory organization of any record created and maintained in accordance with Exchange Act Rule 17 CFR 240.17a-3(a)(4)(v), or the filing of any record that contains or includes such information, including any filing in accordance with Exchange Act Rule 17 CFR 240.17a-25, every broker-dealer shall contemporaneously file a copy of such ledger, or record containing such information, in the same form, with the Oklahoma Securities Administrator.

D. Upon any filing of a periodic Short Interest or Short Interest report with the Securities and Exchange Commission or a self-regulatory organization, or the filing of any record that contains such information, every broker-dealer shall contemporaneously file a copy of such report, or record containing such information, with the Administrator. The Administrator shall establish by rule the format for such reports, which shall conform as nearly as possible to the format and process of submission

required by the Exchange Commission or self-regulatory organization requiring the report, and if possible, such reports shall be in a commonly used, electronic format.

E. Every broker-dealer shall file with the Administrator, on a quarterly basis, all ledgers or other records reflecting securities failed to receive and failed to deliver, as of the end of such quarter, which are already created and maintained in accordance with Exchange Act Rule 17 CFR 240.17a-3(a)(4)(v).

F. The Administrator shall preserve for a period of not less than three (3) years, the first two (2) years in an easily accessible place, all records that have been filed with the Administrator pursuant to subsections C through E of this section.

G. In addition to any other remedies available in equity or at law, a broker-dealer who fails to timely file with the Administrator any of the information required to be filed under subsections C through E of this section is subject to a fine of $10,000 for each business day the broker-dealer fails to file the required record, ledger, or other information, commencing on the first business day after the broker-dealer fails to file the required record, ledger, or other information and continuing until such time as the required record, ledger, or other information is filed.

H. Any person may sue at law or in equity to enforce the filing of the information required under subsections C through E of this section and for payment of the fine described in subsection G of

this section, provided that the court in such an action may waive all or part of the fine upon a showing of reasonable cause by the broker-dealer for its failure to comply with subsections C through E of this section. Upon a finding of liability for failure to file, such person shall be entitled to recover in connection with such action costs, reasonable attorney fees, and fifty percent (50%) of the fine described in subsection G of this section.

I. 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-18a):

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.

J. 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.

K. 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-18a), 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 of funds or securities of a client except under the supervision of an investment adviser or federal covered investment adviser. A rule adopted or order issued 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.

L. 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.

M. A rule adopted or order issued under this act may require any individual registered under Section 19 or 21 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 21 of this act.

SECTION 2. AMENDATORY Section 36, Chapter 347, O.S.L. 2003 (71 O.S. Supp. 2006, Section 1-508), is amended to read as follows:

Section 1-508. A. ~~A~~ In addition to all other penalties, fines and enforcement provisions provided by law, a person who willfully violates ~~this act~~ Section 1-101 et seq. of this title, or a rule adopted or order issued under ~~this act~~ Section 1-101 et seq. of this title, except Section ~~32~~ 1-504 of this ~~act~~ title or the notice filing requirements of Section ~~11~~ 1-302 or ~~22~~ 1-405 of this ~~act~~

title, or that willfully violates Section ~~33~~ 1-505 of this ~~act~~ title knowing the statement made to be false or misleading in a material respect, upon conviction, shall be fined not more than One Hundred Thousand Dollars ($100,000.00) or imprisoned not more than ten (10) years, or both such fine and imprisonment. An individual convicted of violating a rule adopted or order issued 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 prosecuting 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 3. AMENDATORY Section 37, Chapter 347, O.S.L. 2003 (71 O.S. Supp. 2006, Section 1-509), is amended to read as follows:

Section 1-509. 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~~ 1-301 of this ~~section~~ title, 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 the 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 ~~18~~ 1-401, subsection A of Section ~~19~~ 1-402, or Section ~~34~~ 1-506 of this ~~act~~ title 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 paragraphs 1 through 3 of subsection B of this section; or, if a seller, a remedy as specified in paragraphs 1 through 3 of subsection C of this section.

E. A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of subsection A of Section ~~20~~ 1-403, subsection A of Section ~~21~~ 1-404, or Section ~~34~~ 1-506 of this ~~act~~ title 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 conduct 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 an 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 conduct 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 conduct 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 conduct 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 conduct 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~~ 1-301 of this ~~act~~ title, 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~~ 1-301 of this ~~act~~ title, or under subsection C or F of this section, unless the action is instituted within the earlier of two (2) years after discovery of the facts constituting the violation or five (5) 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 this 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 or in subsections G and H of Section 1-410 of this title.

SECTION 4. AMENDATORY Section 41, Chapter 347, O.S.L. 2003 (71 O.S. Supp. 2006, Section 1-603), is amended to read as follows:

Section 1-603. 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 Section 1-101 et seq. of this ~~act~~ title 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 a maximum of Five Thousand Dollars ($5,000.00) for a single violation or up to Two Hundred Fifty Thousand Dollars ($250,000.00) 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 payment of the fine described in subsection G of Section 1-410 of this title; or

4. 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 5. AMENDATORY Section 42, Chapter 347, O.S.L. 2003 (71 O.S. Supp. 2006, Section 1-604), is amended to read as follows:

Section 1-604. 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 Section 1-101 et seq. of this ~~act~~ title or a rule adopted or order issued under Section 1-101 et seq. of this ~~act~~ title 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 constituting 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 ~~18~~ 1-401 of this ~~act~~ title or an investment adviser under subparagraph c of paragraph 2 of subsection B of Section ~~20~~ 1-403 of this ~~act~~ title; ~~or~~

3. Order payment of the fine described in subsection G of Section 1-410 of this title; or

4. Issue an order under Section ~~9~~ 1-204 of this ~~act~~ title.

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, that may include a civil penalty or costs of the investigation if a civil penalty or costs were sought in the statement accompanying 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 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 Administrative Procedures 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 a maximum of Five Thousand Dollars ($5,000.00) for a single violation or up to Two Hundred Fifty Thousand Dollars ($250,000.00) for multiple violations in a single proceeding or a series of related proceedings.

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~~ 1-609 of this ~~act~~ title, 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 to exceed One Thousand Dollars ($1,000.00) for each violation and may grant any other relief the court determines is just and proper in the circumstances.

SECTION 6. This act shall become effective November 1, 2007.

Passed the Senate the 8th day of March, 2007.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2007.

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Presiding Officer of the House of Representatives