

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 1549

By: Winchester

4
5
6 AS INTRODUCED

7 An Act relating to securities; amending Sections 27,
8 36, 37, 41 and 42, Chapter 347, O.S.L. 2003 (71 O.S.
9 Supp. 2006, Sections 1-410, 1-508, 1-509, 1-603 and
10 1-604), which relate to the Oklahoma Uniform
11 Securities Act of 2004; modifying post-registration
12 requirements; requiring contemporaneous filings by
13 broker-dealers of certain information; requiring
14 Administrator to adopt rules; requiring filing of
15 documents related to failure to receive and deliver
16 certain securities; authorizing fine for failure to
17 comply; authorizing right of action at law or in
18 equity to enforce certain provisions; authorizing
19 recovery of costs, attorney fees and other amount;
20 modifying reference to penalties, fines and
21 enforcement provisions; modifying provisions related
22 to creation of causes of action; modifying civil
23 enforcement provisions; modifying administrative
24 enforcement provisions; providing for effect of
invalidity of certain provisions; providing for
codification; and providing an 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:

1 Section 1-410. A. Subject to Section 15(h) of the Securities
2 Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of
3 the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-18a), a
4 rule adopted or order issued under this act may establish minimum
5 financial requirements for broker-dealers registered or required to
6 be registered under this act and investment advisers registered or
7 required to be registered under this act.

8 B. Subject to Section 15(h) of the Securities Exchange Act of
9 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment
10 Advisers Act of 1940 (15 U.S.C. Section 80b-18a), a broker-dealer
11 registered or required to be registered under this act and an
12 investment adviser registered or required to be registered under
13 this act shall file such financial reports as are required by a rule
14 adopted or order issued under this act. If the information
15 contained in a record filed under this subsection is or becomes
16 inaccurate or incomplete in a material respect, the registrant shall
17 promptly file a correcting amendment.

18 C. Upon any filing with the Securities and Exchange Commission
19 or any self-regulatory organization of any record created and
20 maintained in accordance with Exchange Act Rule 17 C.F.R., Section
21 240.17a-3(a)(4)(v), or the filing of any record that contains or
22 includes such information, including any filing in accordance with
23 Exchange Act Rule 17 C.F.R., Section 240.17a-25, every broker-dealer
24 shall contemporaneously file a copy of such ledger, or record

1 containing such information, in the same form, with the
2 Administrator.

3 D. Upon any filing of a periodic Short Interest or Short
4 Interest report with the Securities and Exchange Commission or a
5 self-regulatory organization, or the filing of any record that
6 contains such information, every broker-dealer shall
7 contemporaneously file a copy of such report, or record containing
8 such information, with the Administrator. The Administrator shall
9 establish by rule the format for such reports, which shall conform
10 as nearly as possible to the format and process of submission
11 required by the Exchange Commission or self-regulatory organization
12 requiring the report, and if possible, such reports shall be in a
13 commonly used, electronic format.

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

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

23 G. In addition to any other remedies available in equity or at
24 law, a broker-dealer who fails to timely file with the Administrator

1 any of the information required to be filed under subsections C
2 through E of this section is subject to a fine of Ten Thousand
3 Dollars (\$10,000.00) for each business day the broker-dealer fails
4 to file the required record, ledger, or other information,
5 commencing on the first business day after the broker-dealer fails
6 to file the required record, ledger, or other information and
7 continuing until such time as the required record, ledger, or other
8 information is filed.

9 H. Any person may sue at law or in equity to enforce the filing
10 of the information required under subsections C through E of this
11 section and for payment of the fine described in subsection G of
12 this section; provided, that the court in such an action may waive
13 all or part of the fine upon a showing of reasonable cause by the
14 broker-dealer for its failure to comply with subsections C through E
15 of this section. Upon a finding of liability for failure to file,
16 such person shall be entitled to recover in connection with such
17 action costs, reasonable attorney fees, and fifty percent (50%) of
18 the fine described under subsection G of this section.

19 I. Subject to Section 15(h) of the Securities Exchange Act of
20 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment
21 Advisers Act of 1940 (15 U.S.C. Section 80b-18a):

22 1. A broker-dealer registered or required to be registered
23 under this act and an investment adviser registered or required to
24 be registered under this act shall make and maintain the accounts,

1 correspondence, memoranda, papers, books, and other records as
2 required by rule adopted or order issued under this act;

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

8 3. Investment adviser records required to be maintained under
9 paragraph 1 of this subsection may be maintained in any form of data
10 storage required by rule adopted or order issued under this act.

11 ~~D.~~ J. The records of a broker-dealer registered or required to
12 be registered under this act and an investment adviser registered or
13 required to be registered under this act are subject to such
14 reasonable periodic, special, or other audits or inspections by a
15 representative of the Administrator, within or without this state,
16 as the Administrator considers necessary or appropriate in the
17 public interest and for the protection of investors. An audit or
18 inspection may be made at any time and without prior notice. The
19 Administrator may copy, and remove for audit or inspection copies
20 of, all records the Administrator reasonably considers necessary or
21 appropriate to conduct the audit or inspection. The Administrator
22 may assess a reasonable charge for conducting an audit or inspection
23 under this subsection.

24

1 ~~E.~~ K. Subject to Section 15(h) of the Securities Exchange Act
2 of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment
3 Advisers Act of 1940 (15 U.S.C. Section 80b-18a), an agent may not
4 have custody of funds or securities of a customer except under the
5 supervision of a broker-dealer and an investment adviser
6 representative may not have custody of funds or securities of a
7 client except under the supervision of an investment adviser or
8 federal covered investment adviser. A rule adopted or order issued
9 under this act may prohibit, limit, or impose conditions on a
10 broker-dealer regarding custody of funds or securities of a customer
11 and on an investment adviser regarding custody of securities or
12 funds of a client.

13 ~~F.~~ L. With respect to an investment adviser registered or
14 required to be registered under this act, a rule adopted or order
15 issued under this act may require that information be furnished or
16 disseminated to clients or prospective clients in this state as
17 necessary or appropriate in the public interest and for the
18 protection of investors and advisory clients.

19 ~~G.~~ M. A rule adopted or order issued under this act may require
20 any individual registered under Section ~~19~~ 1-402 or ~~21~~ 1-404 of this
21 act ~~act~~ title to participate in a continuing education program which is
22 approved by the Securities and Exchange Commission and administered
23 by a self-regulatory organization or, in the absence of such a
24 program, a rule adopted or order issued under this act may require

1 continuing education for an individual registered under Section ~~21~~
2 1-404 of this ~~act~~ title.

3 SECTION 2. AMENDATORY Section 36, Chapter 347, O.S.L.
4 2003 (71 O.S. Supp. 2006, Section 1-508), is amended to read as
5 follows:

6 Section 1-508. A. ~~A~~ In addition to all other penalties, fines
7 and enforcement provisions provided by law or in this act, a person
8 who willfully violates this act, or a rule adopted or order issued
9 under this act, except Section ~~32~~ 1-504 of this ~~act~~ title or the
10 notice filing requirements of Section ~~11~~ 1-302 or ~~22~~ 1-405 of this
11 ~~act~~ title, or that willfully violates Section ~~33~~ 1-505 of this ~~act~~
12 title knowing the statement made to be false or misleading in a
13 material respect, upon conviction, shall be fined not more than One
14 Hundred Thousand Dollars (\$100,000.00) or imprisoned not more than
15 ten (10) years, or both such fine and imprisonment. An individual
16 convicted of violating a rule adopted or order issued under this act
17 may be fined, but may not be imprisoned, if the individual did not
18 have knowledge of the rule or order.

19 B. This act does not limit the power of this state to punish a
20 person for conduct that constitutes a crime under other laws of this
21 state.

22 C. On a criminal matter referred by the Administrator, the
23 prosecuting attorney may designate and appoint one or more lawyers
24 of the Department as special assistants as available for the purpose

1 of assisting in or conducting a criminal prosecution arising by
2 reason of an investigation or proceeding under this section.

3 SECTION 3. AMENDATORY Section 37, Chapter 347, O.S.L.
4 2003 (71 O.S. Supp. 2006, Section 1-509), is amended to read as
5 follows:

6 Section 1-509. A. Enforcement of civil liability under this
7 section is subject to the Securities Litigation Uniform Standards
8 Act of 1998.

9 B. A person is liable to a purchaser if the person sells a
10 security in violation of Section ~~10~~ 1-301 of this ~~section~~ title, or
11 by means of an untrue statement of a material fact or an omission to
12 state a material fact necessary in order to make the statement made,
13 in light of the circumstances under which it is made, not
14 misleading, the purchaser not knowing the untruth or omission, and
15 the seller not sustaining the burden of proof that the seller did
16 not know and, in the exercise of reasonable care, could not have
17 known of the untruth or omission. An action under this subsection
18 is governed by the following:

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

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

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

15 C. A person is liable to the seller if the person buys a
16 security by means of an untrue statement of a material fact or
17 omission to state a material fact necessary in order to make the
18 statement made, in light of the circumstances under which it is
19 made, not misleading, the seller not knowing of the untruth or
20 omission, and the purchaser not sustaining the burden of proof that
21 the purchaser did not know, and in the exercise of reasonable care,
22 could not have known of the untruth or omission. An action under
23 this subsection is governed by the following:

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

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

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

20 D. A person acting as a broker-dealer or agent that sells or
21 buys a security in violation of subsection A of Section ~~18~~ 1-401,
22 subsection A of Section ~~19~~ 1-402, or Section ~~34~~ 1-506 of this ~~act~~
23 title is liable to the customer. The customer, if a purchaser, may
24 maintain an action at law or in equity for recovery of actual

1 damages as specified in paragraphs 1 through 3 of subsection B of
2 this section; or, if a seller, a remedy as specified in paragraphs 1
3 through 3 of subsection C of this section.

4 E. A person acting as an investment adviser or investment
5 adviser representative that provides investment advice for
6 compensation in violation of subsection A of Section ~~20~~ 1-403,
7 subsection A of Section ~~21~~ 1-404, or Section ~~34~~ 1-506 of this ~~act~~
8 title is liable to the client. The client may maintain an action at
9 law or in equity to recover the consideration paid for the advice,
10 interest at the legal rate of interest per year from the date of
11 payment, costs, and reasonable ~~attorney's~~ attorney fees determined
12 by the court.

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

20 1. The person defrauded may maintain an action to recover the
21 consideration paid for the advice and the amount of any actual
22 damages caused by the fraudulent conduct, interest at the legal rate
23 of interest per year from the date of the fraudulent conduct, costs,
24 and reasonable ~~attorney's~~ attorney fees determined by the court,

1 less the amount of any income received as a result of the fraudulent
2 conduct.

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

7 G. The following persons are liable jointly and severally with
8 and to the same extent as persons liable under subsections B through
9 F of this section:

10 1. A person that directly or indirectly controls a person
11 liable under subsections B through F of this section, unless the
12 controlling person sustains the burden of proof that the person did
13 not know, and in the exercise of reasonable care could not have
14 known, of the existence of the conduct by reason of which the
15 liability is alleged to exist;

16 2. An individual who is a managing partner, executive officer,
17 or director of a person liable under subsections B through F of this
18 section, including an individual having a similar status or
19 performing similar functions, unless the individual sustains the
20 burden of proof that the individual did not know and, in the
21 exercise of reasonable care could not have known, of the existence
22 of the conduct by reason of which the liability is alleged to exist;

23 3. An individual who is an employee of or associated with a
24 person liable under subsections B through F of this section and who

1 materially aids the conduct giving rise to the liability, unless the
2 individual sustains the burden of proof that the individual did not
3 know and, in the exercise of reasonable care could not have known,
4 of the existence of the conduct by reason of which the liability is
5 alleged to exist;

6 4. A person that is a broker-dealer, agent, investment adviser,
7 or investment adviser representative that materially aids the
8 conduct giving rise to the liability under subsections B through F
9 of this section, unless the person sustains the burden of proof that
10 the person did not know and, in the exercise of reasonable care
11 could not have known, of the existence of the conduct by reason of
12 which liability is alleged to exist; and

13 5. Any other person who materially aids in the conduct giving
14 rise to the liability under subsections B through F of this section,
15 unless the person sustains the burden or proof that the person did
16 not know and, in the exercise of reasonable care could not have
17 known, of the existence of the conduct by reason of which liability
18 is alleged to exist.

19 H. A person liable under this section has a right of
20 contribution as in cases of contract against any other person liable
21 under this section for the same conduct.

22 I. A cause of action under this section survives the death of
23 an individual who might have been a plaintiff or defendant.

24 J. A person may not obtain relief:

1 1. Under subsection B of this section for violation of Section
2 ~~10~~ 1-301 of this ~~act~~ title, or under subsection D or E of this
3 section, unless the action is commenced within one year after the
4 violation occurred; or

5 2. Under subsection B of this section, other than for violation
6 of Section ~~10~~ 1-301 of this ~~act~~ title, or under subsection C or F of
7 this section, unless the action is instituted within the earlier of
8 two (2) years after discovery of the facts constituting the
9 violation or five (5) years after such violation.

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

16 L. A condition, stipulation, or provision binding a person
17 purchasing or selling a security or receiving investment advice to
18 waive compliance with this act or a rule adopted or order issued
19 under this act is void.

20 M. The rights and remedies provided by this act are in addition
21 to any other rights or remedies that may exist, but this act does
22 not create a cause of action not specified in this section or
23 subsection G and subsection H of Section 1-410 of this title.

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1 SECTION 4. AMENDATORY Section 41, Chapter 347, O.S.L.
2 2003 (71 O.S. Supp. 2006, Section 1-603), is amended to read as
3 follows:

4 Section 1-603. A. If the Administrator believes that a person
5 has engaged, is engaging, or is about to engage in an act, practice,
6 or course of business constituting a violation of this act or a rule
7 adopted or order issued under this act or constituting a dishonest
8 or unethical practice or that a person has, is, or is about to
9 engage in an act, practice, or course of business that materially
10 aids a violation of this act or a rule adopted or order issued under
11 this act or a dishonest or unethical practice, the Administrator
12 may, prior to, concurrently with, or subsequent to an administrative
13 proceeding, maintain an action in the district court of Oklahoma
14 County or the district court of any other county where service can
15 be obtained to enjoin the act, practice, or course of business and
16 to enforce compliance with this act or a rule adopted or order
17 issued under this act.

18 B. In an action under this section and on a proper showing, the
19 court may:

20 1. Issue a permanent or temporary injunction, restraining
21 order, or declaratory judgment;

22 2. Order other appropriate or ancillary relief, which may
23 include:

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- 1 a. an asset freeze, accounting, writ of attachment, writ
2 of general or specific execution, and appointment of a
3 receiver or conservator, that may be the
4 Administrator, for the defendant or the defendant's
5 assets,
- 6 b. ordering the Administrator to take charge and control
7 of a defendant's property, including investment
8 accounts and accounts in a depository institution,
9 rents, and profits; to collect debts; and to acquire
10 and dispose of property,
- 11 c. imposing a civil penalty up to a maximum of Five
12 Thousand Dollars (\$5,000.00) for a single violation or
13 up to Two Hundred Fifty Thousand Dollars (\$250,000.00)
14 for more than one violation; an order of rescission,
15 restitution, or disgorgement directed to a person that
16 has engaged in an act, practice, or course of business
17 constituting a violation of this act or the
18 predecessor act or a rule adopted or order issued
19 under this act or the predecessor act, and
- 20 d. ordering the payment of prejudgment and postjudgment
21 interest; ~~or~~

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

24 4. Order such other relief as the court considers appropriate.

1 C. The Administrator may not be required to post a bond in an
2 action or proceeding under this act.

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

6 Section 1-604. A. If the Administrator determines that a
7 person has engaged, is engaging, or is about to engage in an act,
8 practice, or course of business constituting a violation of this act
9 or a rule adopted or order issued under this act or constituting a
10 dishonest or unethical practice or that a person has materially
11 aided, is materially aiding, or is about to materially aid an act,
12 practice, or course of business constituting a violation of this act
13 or a rule adopted or order issued under this act or constituting a
14 dishonest or unethical practice, the Administrator may:

15 1. Issue an order directing the person to cease and desist from
16 engaging in the act, practice, or course of business or to take
17 other action necessary or appropriate to comply with this act;

18 2. Issue an order denying, suspending, revoking, or
19 conditioning the exemptions for a broker-dealer under subparagraph d
20 or f of paragraph 1 of subsection B of Section ~~18~~ 1-401 of this ~~act~~
21 title or an investment adviser under subparagraph c of paragraph 2
22 of subsection B of Section ~~20~~ 1-403 of this ~~act~~ title; ~~or~~

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

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

2 B. An order under subsection A of this section is effective on
3 the date of issuance. Upon issuance of the order, the Administrator
4 shall promptly serve each person subject to the order with a copy of
5 the order and a notice that the order has been entered. The order
6 must include a statement whether the Administrator will seek a civil
7 penalty or costs of the investigation, a statement of the reasons
8 for the order, and notice that, within fifteen (15) days after
9 receipt of a request in a record from the person, the matter will be
10 scheduled for a hearing and the hearing shall be commenced within
11 fifteen (15) days of the matter being set for hearing. If a person
12 subject to the order does not request a hearing and none is ordered
13 by the Administrator, within thirty (30) days after the date of
14 service of the order, the order, that may include a civil penalty or
15 costs of the investigation if a civil penalty or costs were sought
16 in the statement accompanying the order, becomes final as to that
17 person by operation of law. If a hearing is requested or ordered,
18 the Administrator, after notice of and opportunity for hearing to
19 each person subject to the order, may modify or vacate the order or
20 extend it until final determination.

21 C. If a hearing is requested or ordered pursuant to subsection
22 B of this section, a hearing must be held pursuant to the
23 Administrative Procedures Act. A final order may not be issued
24 unless the Administrator makes findings of fact and conclusions of

1 law in a record in accordance with the Administrative Procedures
2 Act. The final order may make final, vacate, or modify the order
3 issued under subsection A of this section.

4 D. In a final order under subsection C of this section, the
5 Administrator may impose a civil penalty up to a maximum of Five
6 Thousand Dollars (\$5,000.00) for a single violation or up to Two
7 Hundred Fifty Thousand Dollars (\$250,000.00) for multiple violations
8 in a single proceeding or a series of related proceedings.

9 E. In a final order, the Administrator may charge the actual
10 cost of an investigation or proceeding for a violation of this act
11 or a rule adopted or order issued under this act.

12 F. If a petition for judicial review of a final order is not
13 filed in accordance with Section 47 1-609 of this ~~act~~ title, the
14 Administrator may file a certified copy of the final order with the
15 clerk of a court of competent jurisdiction. The order so filed has
16 the same effect as a judgment of the court and may be recorded,
17 enforced, or satisfied in the same manner as a judgment of the
18 court.

19 G. If a person does not comply with an order under this
20 section, the Administrator may petition a court of competent
21 jurisdiction to enforce the order. The court may not require the
22 Administrator to post a bond in an action or proceeding under this
23 section. If the court finds, after service and opportunity for
24 hearing, that the person was not in compliance with the order, the

1 court may adjudge the person in civil contempt of the order. The
2 court may impose a further civil penalty against the person for
3 contempt in an amount not to exceed One Thousand Dollars (\$1,000.00)
4 for each violation and may grant any other relief the court
5 determines is just and proper in the circumstances.

6 SECTION 6. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1-702 of Title 71, unless there
8 is created a duplication in numbering, reads as follows:

9 If any provision of this act or its application to any person or
10 circumstance is held invalid, the invalidity shall not affect other
11 provisions or applications of the chapter which can be given effect
12 without the invalid provision or application.

13 SECTION 7. This act shall become effective November 1, 2007.

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