

1 STATE OF OKLAHOMA

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

3 SENATE BILL 979

By: Johnson (Mike)

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 postregistration
11 requirements, violations, civil liability and
12 enforcement; adding certain filing requirements;
13 requiring preservation of certain documents for
14 specified time period; establishing fine; providing
15 remedies; making certain penalties cumulative;
16 updating statutory references; conforming language;
17 allowing order of certain fine; and providing an
18 effective date.

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

20 SECTION 1. AMENDATORY Section 27, Chapter 347, O.S.L.
21 2003 (71 O.S. Supp. 2006, Section 1-410), is amended to read as
22 follows:

23 Section 1-410. A. Subject to Section 15(h) of the Securities
24 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

1 be registered under this act and investment advisers registered or
2 required to be registered under this act.

3 B. Subject to Section 15(h) of the Securities Exchange Act of
4 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment
5 Advisers Act of 1940 (15 U.S.C. Section 80b-18a), a broker-dealer
6 registered or required to be registered under this act and an
7 investment adviser registered or required to be registered under
8 this act shall file such financial reports as are required by a rule
9 adopted or order issued under this act. If the information
10 contained in a record filed under this subsection is or becomes
11 inaccurate or incomplete in a material respect, the registrant shall
12 promptly file a correcting amendment.

13 C. Upon any filing with the Securities and Exchange Commission
14 or any self-regulatory organization of any record created and
15 maintained in accordance with Exchange Act Rule 17 CFR 240.17a-
16 3(a)(4)(v), or the filing of any record that contains or includes
17 such information, including any filing in accordance with Exchange
18 Act Rule 17 CFR 240.17a-25, every broker-dealer shall
19 contemporaneously file a copy of such ledger, or record containing
20 such information, in the same form, with the Oklahoma Securities
21 Administrator.

22 D. Upon any filing of a periodic Short Interest or Short
23 Interest report with the Securities and Exchange Commission or a
24 self-regulatory organization, or the filing of any record that

1 contains such information, every broker-dealer shall
2 contemporaneously file a copy of such report, or record containing
3 such information, with the Administrator. The Administrator shall
4 establish by rule the format for such reports, which shall conform
5 as nearly as possible to the format and process of submission
6 required by the Exchange Commission or self-regulatory organization
7 requiring the report, and if possible, such reports shall be in a
8 commonly used, electronic format.

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

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

18 G. In addition to any other remedies available in equity or at
19 law, a broker-dealer who fails to timely file with the Administrator
20 any of the information required to be filed under subsections C
21 through E of this section is subject to a fine of \$10,000 for each
22 business day the broker-dealer fails to file the required record,
23 ledger, or other information, commencing on the first business day
24 after the broker-dealer fails to file the required record, ledger,

1 or other information and continuing until such time as the required
2 record, ledger, or other information is filed.

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

13 I. Subject to Section 15(h) of the Securities Exchange Act of
14 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment
15 Advisers Act of 1940 (15 U.S.C. Section 80b-18a):

16 1. A broker-dealer registered or required to be registered
17 under this act and an investment adviser registered or required to
18 be registered under this act shall make and maintain the accounts,
19 correspondence, memoranda, papers, books, and other records as
20 required by rule adopted or order issued under this act;

21 2. Broker-dealer records required to be maintained under
22 paragraph 1 of this subsection may be maintained in any form of data
23 storage acceptable under Section 17(a) of the Securities Exchange
24

1 Act of 1934 (15 U.S.C. Section 78q(a)) if they are readily
2 accessible to the Administrator; and

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

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

19 E. 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), an agent may not
22 have custody of funds or securities of a customer except under the
23 supervision of a broker-dealer and an investment adviser
24 representative may not have custody of funds or securities of a

1 client except under the supervision of an investment adviser or
2 federal covered investment adviser. A rule adopted or order issued
3 under this act may prohibit, limit, or impose conditions on a
4 broker-dealer regarding custody of funds or securities of a customer
5 and on an investment adviser regarding custody of securities or
6 funds of a client.

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

13 G. A rule adopted or order issued under this act may require
14 any individual registered under Section 19 or 21 of this act to
15 participate in a continuing education program which is approved by
16 the Securities and Exchange Commission and administered by a self-
17 regulatory organization or, in the absence of such a program, a rule
18 adopted or order issued under this act may require continuing
19 education for an individual registered under Section 21 of this act.

20 SECTION 2. AMENDATORY Section 36, Chapter 347, O.S.L.
21 2003 (71 O.S. Supp. 2006, Section 1-508), is amended to read as
22 follows:

23 Section 1-508. A. A In addition to all other penalties, fines
24 and enforcement provisions provided by law, a person who willfully

1 violates ~~this act~~ Section 1-101 et seq. of this title, or a rule
2 adopted or order issued under ~~this act~~ Section 1-101 et seq. of this
3 title, except Section ~~32~~ 1-504 of this ~~act~~ title or the notice
4 filing requirements of Section ~~11~~ 1-302 or ~~22~~ 1-405 of this ~~act~~
5 title, or that willfully violates Section ~~33~~ 1-505 of this ~~act~~ title
6 knowing the statement made to be false or misleading in a material
7 respect, upon conviction, shall be fined not more than One Hundred
8 Thousand Dollars (\$100,000.00) or imprisoned not more than ten (10)
9 years, or both such fine and imprisonment. An individual convicted
10 of violating a rule adopted or order issued under this act may be
11 fined, but may not be imprisoned, if the individual did not have
12 knowledge of the rule or order.

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

16 C. On a criminal matter referred by the Administrator, the
17 prosecuting attorney may designate and appoint one or more lawyers
18 of the Department as special assistants as available for the purpose
19 of assisting in or conducting a criminal prosecution arising by
20 reason of an investigation or proceeding under this section.

21 SECTION 3. AMENDATORY Section 37, Chapter 347, O.S.L.
22 2003 (71 O.S. Supp. 2006, Section 1-509), is amended to read as
23 follows:
24

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

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

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

21 2. The tender referred to in paragraph 1 of this subsection may
22 be made any time before entry of judgment. Tender requires only
23 notice in a record of ownership of the security and willingness to
24 exchange the security for the amount specified. A purchaser that no

1 longer owns the security may recover actual damages as provided in
2 paragraph 3 of this subsection.

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

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

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

23 2. The tender referred to in paragraph 1 of this subsection may
24 be made any time before entry of judgment. Tender requires only

1 notice in a record of the present ability to pay the amount tendered
2 and willingness to take delivery of the security for the amount
3 specified. If the purchaser no longer owns the security, the seller
4 may recover actual damages as provided in paragraph 3 of this
5 subsection.

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

13 D. A person acting as a broker-dealer or agent that sells or
14 buys a security in violation of subsection A of Section ~~18~~ 1-401,
15 subsection A of Section ~~19~~ 1-402, or Section ~~34~~ 1-506 of this ~~act~~
16 title is liable to the customer. The customer, if a purchaser, may
17 maintain an action at law or in equity for recovery of actual
18 damages as specified in paragraphs 1 through 3 of subsection B of
19 this section; or, if a seller, a remedy as specified in paragraphs 1
20 through 3 of subsection C of this section.

21 E. A person acting as an investment adviser or investment
22 adviser representative that provides investment advice for
23 compensation in violation of subsection A of Section ~~20~~ 1-403,
24 subsection A of Section ~~21~~ 1-404, or Section ~~34~~ 1-506 of this ~~act~~

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

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

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

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

23

24

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

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

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

17 3. An individual who is an employee of or associated with a
18 person liable under subsections B through F of this section and who
19 materially aids the conduct giving rise to the liability, unless the
20 individual sustains the burden of proof that the individual did not
21 know and, in the exercise of reasonable care could not have known,
22 of the existence of the conduct by reason of which the liability is
23 alleged to exist;

24

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

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

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

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

19 J. A person may not obtain relief:

20 1. Under subsection B of this section for violation of Section
21 ~~10~~ 1-301 of this ~~act~~ title, or under subsection D or E of this
22 section, unless the action is commenced within one year after the
23 violation occurred; or

24

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

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

12 L. A condition, stipulation, or provision binding a person
13 purchasing or selling a security or receiving investment advice to
14 waive compliance with this act or a rule adopted or order issued
15 under this act is void.

16 M. The rights and remedies provided by this act are in addition
17 to any other rights or remedies that may exist, but this act does
18 not create a cause of action not specified in this section or in
19 subsections G and H of Section 1-410 of this title.

20 SECTION 4. AMENDATORY Section 41, Chapter 347, O.S.L.
21 2003 (71 O.S. Supp. 2006, Section 1-603), is amended to read as
22 follows:

23 Section 1-603. A. If the Administrator believes that a person
24 has engaged, is engaging, or is about to engage in an act, practice,

1 or course of business constituting a violation of Section 1-101 et
2 seq. of this act title or a rule adopted or order issued under this
3 act or constituting a dishonest or unethical practice or that a
4 person has, is, or is about to engage in an act, practice, or course
5 of business that materially aids a violation of this act or a rule
6 adopted or order issued under this act or a dishonest or unethical
7 practice, the Administrator may, prior to, concurrently with, or
8 subsequent to an administrative proceeding, maintain an action in
9 the district court of Oklahoma County or the district court of any
10 other county where service can be obtained to enjoin the act,
11 practice, or course of business and to enforce compliance with this
12 act or a rule adopted or order issued under this act.

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

15 1. Issue a permanent or temporary injunction, restraining
16 order, or declaratory judgment;

17 2. Order other appropriate or ancillary relief, which may
18 include:

19 a. an asset freeze, accounting, writ of attachment, writ
20 of general or specific execution, and appointment of a
21 receiver or conservator, that may be the
22 Administrator, for the defendant or the defendant's
23 assets,

24

1 b. ordering the Administrator to take charge and control
2 of a defendant's property, including investment
3 accounts and accounts in a depository institution,
4 rents, and profits; to collect debts; and to acquire
5 and dispose of property,

6 c. imposing a civil penalty up to a maximum of Five
7 Thousand Dollars (\$5,000.00) for a single violation or
8 up to Two Hundred Fifty Thousand Dollars (\$250,000.00)
9 for more than one violation; an order of rescission,
10 restitution, or disgorgement directed to a person that
11 has engaged in an act, practice, or course of business
12 constituting a violation of this act or the
13 predecessor act or a rule adopted or order issued
14 under this act or the predecessor act, and

15 d. ordering the payment of prejudgment and postjudgment
16 interest; ~~or~~

17 3. Order payment of the fine described in subsection G of

18 Section 1-410 of this title; or

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

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

22 SECTION 5. AMENDATORY Section 42, Chapter 347, O.S.L.
23 2003 (71 O.S. Supp. 2006, Section 1-604), is amended to read as
24 follows:

1 Section 1-604. A. If the Administrator determines that a
2 person has engaged, is engaging, or is about to engage in an act,
3 practice, or course of business constituting a violation of Section
4 1-101 et seq. of this act title or a rule adopted or order issued
5 under Section 1-101 et seq. of this act title or constituting a
6 dishonest or unethical practice or that a person has materially
7 aided, is materially aiding, or is about to materially aid 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, the Administrator may:

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

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

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

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

22 B. An order under subsection A of this section is effective on
23 the date of issuance. Upon issuance of the order, the Administrator
24 shall promptly serve each person subject to the order with a copy of

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

17 C. If a hearing is requested or ordered pursuant to subsection
18 B of this section, a hearing must be held pursuant to the
19 Administrative Procedures Act. A final order may not be issued
20 unless the Administrator makes findings of fact and conclusions of
21 law in a record in accordance with the Administrative Procedures
22 Act. The final order may make final, vacate, or modify the order
23 issued under subsection A of this section.

24

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

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

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

16 G. If a person does not comply with an order under this
17 section, the Administrator may petition a court of competent
18 jurisdiction to enforce the order. The court may not require the
19 Administrator to post a bond in an action or proceeding under this
20 section. If the court finds, after service and opportunity for
21 hearing, that the person was not in compliance with the order, the
22 court may adjudge the person in civil contempt of the order. The
23 court may impose a further civil penalty against the person for
24 contempt in an amount not to exceed One Thousand Dollars (\$1,000.00)

1 for each violation and may grant any other relief the court
2 determines is just and proper in the circumstances.

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

4
5 51-1-1522 TEK 11/3/2007 7:02:15 AM

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24