

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 SENATE BILL 1425

By: Montgomery

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5
6 AS INTRODUCED

7 An Act relating to the Oklahoma Uniform Securities
8 Act of 2004; amending 71 O.S. 2021, Section 1-102,
9 which relates to definitions; modifying definition;
and providing an effective date.

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

12 SECTION 1. AMENDATORY 71 O.S. 2021, Section 1-102, is
13 amended to read as follows:

14 Section 1-102. In this act, unless the context otherwise
15 requires:

16 1. "Administrator" means the securities Administrator appointed
17 by the Oklahoma Securities Commission;

18 2. "Agent" means an individual, other than a broker-dealer, who
19 represents a broker-dealer in effecting or attempting to effect
20 purchases or sales of securities or represents an issuer in
21 effecting or attempting to effect purchases or sales of the issuer's
22 securities. A partner, officer, or director of a broker-dealer or
23 issuer, or an individual having a similar status or performing
24 similar functions is an agent only if the individual otherwise comes

1 within the term. The term does not include an individual excluded
2 by rule adopted or order issued under this act;

3 3. "Bank" means:

- 4 a. a banking institution organized under the laws of the
5 United States,
- 6 b. a member bank of the Federal Reserve System,
- 7 c. any other banking institution, whether incorporated or
8 not, doing business under the laws of a state or of
9 the United States, a substantial portion of the
10 business of which consists of receiving deposits or
11 exercising fiduciary powers similar to those permitted
12 to be exercised by national banks under the authority
13 of the Comptroller of the Currency pursuant to Section
14 1 of Public Law 87-722 (12 U.S.C. Section 92a), and
15 which is supervised and examined by a state or federal
16 agency having supervision over banks, and which is not
17 operated for the purpose of evading this act, and
- 18 d. a receiver, conservator, or other liquidating agent of
19 any institution or firm included in subparagraph a, b
20 or c of this paragraph;

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

- 24 a. an agent,
- 25

- 1 b. an issuer,
- 2 c. a bank or savings institution if its activities as a
- 3 broker-dealer are limited to those specified in
- 4 subsections 3(a)(4)(B)(i) through (vi), (viii) through
- 5 (x), and (xi) if limited to unsolicited transactions;
- 6 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange
- 7 Act of 1934 (15 U.S.C. Sections 78c(a)(4) and (5)) or
- 8 a bank that satisfies the conditions described in
- 9 subsection 3(a)(4)(E) of the Securities Exchange Act
- 10 of 1934 (15 U.S.C. Section 78c(a)(4)),
- 11 d. an international banking institution, or
- 12 e. a person excluded by rule adopted or order issued
- 13 under this act;

14 5. "Commission" means the Oklahoma Securities Commission;

15 6. "Department" means the Oklahoma Department of Securities;

16 7. "Depository institution" means:

- 17 a. a bank, or
- 18 b. a savings institution, trust company, credit union, or
- 19 similar institution that is organized or chartered
- 20 under the laws of a state or of the United States,
- 21 authorized to receive deposits, and supervised and
- 22 examined by an official or agency of a state or the
- 23 United States if its deposits or share accounts are
- 24 insured to the maximum amount authorized by statute by

1 the Federal Deposit Insurance Corporation, the
2 National Credit Union Share Insurance Fund, or a
3 successor authorized by federal law. The term does
4 not include:

- 5 (1) an insurance company or other organization
6 primarily engaged in the business of insurance,
- 7 (2) a Morris Plan bank, or
- 8 (3) an industrial loan company;

9 8. "Federal covered investment adviser" means a person
10 registered under the Investment Advisers Act of 1940;

11 9. "Federal covered security" means a security that is, or upon
12 completion of a transaction will be, a covered security under
13 Section 18(b) of the Securities Act of 1933 (15 U.S.C. Section
14 77r(b)) or rules or regulations adopted pursuant to that provision;

15 10. "Filing" means the receipt under this act of a record by
16 the Administrator or a designee of the Administrator;

17 11. "Fraud," "deceit," and "defraud" are not limited to common
18 law deceit;

19 12. "Guaranteed" means guaranteed as to payment of all
20 principal and all interest;

21 13. "Institutional investor" means any of the following,
22 whether acting for itself or for others in a fiduciary capacity:

- 23 a. a depository institution or international banking
24 institution,

- b. an insurance company,
- c. a separate account of an insurance company,
- d. an investment company as defined in the Investment Company Act of 1940,
- e. a broker-dealer registered under the Securities Exchange Act of 1934,
- f. an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of Ten Million Dollars (\$10,000,000.00) or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this act, a depository institution, or an insurance company,
- g. a plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of Ten Million Dollars (\$10,000,000.00) or its investment decisions are made by a duly designated public official or by a named

1 fiduciary, as defined in the Employee Retirement
2 Income Security Act of 1974, that is a broker-dealer
3 registered under the Securities Exchange Act of 1934,
4 an investment adviser registered or exempt from
5 registration under the Investment Advisers Act of
6 1940, an investment adviser registered under this act,
7 a depository institution, or an insurance company,
8 h. a trust, if it has total assets in excess of Ten
9 Million Dollars (\$10,000,000.00), its trustee is a
10 depository institution, and its participants are
11 exclusively plans of the types identified in
12 subparagraph f or g of this paragraph, regardless of
13 the size of their assets, except a trust that includes
14 as participants self-directed individual retirement
15 accounts or similar self-directed plans,
16 i. an organization described in Section 501(c)(3) of the
17 Internal Revenue Code (26 U.S.C. Section 501(c)(3)),
18 corporation, Massachusetts trust or similar business
19 trust, limited liability company, or partnership, not
20 formed for the specific purpose of acquiring the
21 securities offered, with total assets in excess of Ten
22 Million Dollars (\$10,000,000.00),
23 j. a small business investment company licensed by the
24 Small Business Administration under Section 301(c) of

1 the Small Business Investment Act of 1958 (15 U.S.C.
2 Section 681(c)) with total assets in excess of Ten
3 Million Dollars (\$10,000,000.00),

4 k. a private business development company as defined in
5 Section 202(a)(22) of the Investment Advisers Act of
6 1940 (15 U.S.C. Section 80b-2(a)(22)) with total
7 assets in excess of Ten Million Dollars
8 (\$10,000,000.00),

9 l. a federal covered investment adviser acting for its
10 own account,

11 m. a "qualified institutional buyer" as defined in Rule
12 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted
13 under the Securities Act of 1933 (17 C.F.R. 230.144A),

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

17 o. any other person, other than an individual, of
18 institutional character with total assets in excess of
19 Ten Million Dollars (\$10,000,000.00) not organized for
20 the specific purpose of evading this act, or

21 p. any other person specified by rule adopted or order
22 issued under this act;

23 14. "Insurance company" means a company organized as an insurer
24 whose primary business is writing insurance or reinsuring risks
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1 underwritten by insurance companies and that are subject to
2 supervision by the insurance commissioner or a similar official or
3 agency of a state;

4 15. "Insured" means insured as to payment of all principal and
5 all interest;

6 16. "International banking institution" means an international
7 financial institution of which the United States is a member and
8 whose securities are exempt from registration under the Securities
9 Act of 1933;

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

- 21 a. an investment adviser representative,
- 22 b. a lawyer, accountant, engineer, or teacher whose
23 performance of investment advice is solely incidental
24 to the practice of the person's profession,

- 1 c. a broker-dealer or its agents whose performance of
2 investment advice is solely incidental to the conduct
3 of business as a broker-dealer and that does not
4 receive special compensation for the investment
5 advice,
6 d. a publisher of a bona fide newspaper, news magazine,
7 or business or financial publication of general and
8 regular circulation,
9 e. a depository institution, or
10 f. any other person excluded by rule adopted or order
11 issued under this act;

12 18. "Investment adviser representative" means an individual
13 employed by or associated with an investment adviser or federal
14 covered investment adviser and who makes any recommendations or
15 otherwise gives investment advice regarding securities, manages
16 accounts or portfolios of clients, determines which recommendation
17 or advice regarding securities should be given, provides investment
18 advice or holds herself or himself out as providing investment
19 advice, receives compensation to solicit, offer, or negotiate for
20 the sale of or for selling investment advice, or supervises
21 employees who perform any of the foregoing. The term does not
22 include an individual who:

- 23 a. performs only clerical or ministerial acts,
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- 1 b. is an agent whose performance of investment advice is
2 solely incidental to the individual acting as an agent
3 and who does not receive special compensation for
4 investment advisory services, or
5 c. is excluded by rule adopted or order issued under this
6 act;

7 19. "Issuer" means a person that issues or proposes to issue a
8 security, subject to the following:

- 9 a. the issuer of a voting trust certificate, collateral
10 trust certificate, certificate of deposit for a
11 security, or share in an investment company without a
12 board of directors or individuals performing similar
13 functions is the person performing the acts and
14 assuming the duties of depositor or manager pursuant
15 to the trust or other agreement or instrument under
16 which the security is issued,
17 b. the issuer of an equipment trust certificate or
18 similar security serving the same purpose is the
19 person by which the property or equipment is or will
20 be used or to which the property or equipment is or
21 will be leased or conditionally sold or that is
22 otherwise contractually responsible for assuring
23 payment of the certificate,
24

1 c. the issuer of a fractional undivided interest in an
2 oil, gas, or other mineral lease or in payments out of
3 production under a lease, right, or royalty is the
4 owner of an interest in the lease or in payments out
5 of production under a lease, right, or royalty,
6 whether whole or fractional, that creates fractional
7 interests for the purpose of sale;

8 20. "Nonissuer transaction" or "nonissuer distribution" means a
9 transaction or distribution not directly or indirectly for the
10 benefit of the issuer;

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

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

21 23. "Place of business" of a broker-dealer, an investment
22 adviser, or a federal covered investment adviser means:

23 a. an office at which the broker-dealer, investment
24 adviser, or federal covered investment adviser

1 regularly provides brokerage or investment advice or
2 solicits, meets with, or otherwise communicates with
3 customers or clients, or

4 b. any other location that is held out to the general
5 public as a location at which the broker-dealer,
6 investment adviser, or federal covered investment
7 adviser provides brokerage or investment advice or
8 solicits, meets with, or otherwise communicates with
9 customers or clients;

10 24. "Predecessor act" means the act repealed by Section 53 of
11 this act;

12 25. "Price amendment" means the amendment to a registration
13 statement filed under the Securities Act of 1933 or, if an amendment
14 is not filed, the prospectus or prospectus supplement filed under
15 the Securities Act of 1933 that includes a statement of the offering
16 price, underwriting and selling discounts or commissions, amount of
17 proceeds, conversion rates, call prices, and other matters dependent
18 upon the offering price;

19 26. "Principal place of business" of a broker-dealer or an
20 investment adviser means the executive office of the broker-dealer
21 or investment adviser from which the officers, partners, or managers
22 of the broker-dealer or investment adviser direct, control, and
23 coordinate the activities of the broker-dealer or investment
24 adviser;

1 27. "Promoter" includes:

- 2 a. a person who, acting alone or in concert with one or
3 more persons, takes the entrepreneurial initiative in
4 founding or organizing the business or enterprise of
5 an issuer,
6 b. an officer or director owning securities of an issuer
7 or a person who owns, beneficially or of record, ten
8 percent (10%) or more of a class of securities of the
9 issuer if the officer, director, or person acquires
10 any of those securities in a transaction within three
11 (3) years before the filing by the issuer of a
12 registration statement under this act and the
13 transaction is not an arms-length transaction, or
14 c. a member of the immediate family of a person within
15 subparagraph a or b of this paragraph if the family
16 member receives securities of the issuer from that
17 person in a transaction within three (3) years before
18 the filing by the issuer of a registration statement
19 under this act and the transaction is not an arms-
20 length transaction.

21 For purposes of this subsection, "immediate family" means a
22 spouse of a person within subparagraph a or b of this paragraph, an
23 emancipated child residing in such person's household, or an
24 individual claimed as a dependent by such person for tax purposes;

1 28. "Record" except in the phrases "of record," "official
2 record," and "public record," means information that is inscribed on
3 a tangible medium or that is stored in an electronic or other medium
4 and is retrievable in perceivable form;

5 29. "Registration statement" means the documentation provided
6 to the Securities and Exchange Commission or the Department in
7 connection with the registration of securities under the Securities
8 Act of 1933 or this title and includes any amendment thereto and any
9 report, document, exhibit or memorandum filed as part of such
10 statement or incorporated therein by reference;

11 30. "Sale" includes every contract of sale, contract to sell,
12 or disposition of, a security or interest in a security for value,
13 and "offer to sell" includes every attempt or offer to dispose of,
14 or solicitation of an offer to purchase, a security or interest in a
15 security for value. Both terms include:

- 16 a. a security given or delivered with, or as a bonus on
17 account of, a purchase of securities or any other
18 thing constituting part of the subject of the purchase
19 and having been offered and sold for value,
20 b. a gift of assessable stock involving an offer and
21 sale, and
22 c. a sale or offer of a warrant or right to purchase or
23 subscribe to another security of the same or another
24 issuer and a sale or offer of a security that gives

1 the holder a present or future right or privilege to
2 convert the security into another security of the same
3 or another issuer, including an offer of the other
4 security;

5 31. "Securities and Exchange Commission" means the United
6 States Securities and Exchange Commission;

7 32. "Security" means a note; stock; treasury stock; security
8 future; bond; debenture; evidence of indebtedness; certificate of
9 interest or participation in a profit-sharing agreement; collateral
10 trust certificate; preorganization certificate or subscription;
11 transferable share; investment contract; voting trust certificate;
12 certificate of deposit for a security; fractional undivided interest
13 in oil, gas, or other mineral rights; cryptocurrency; non-fungible
14 tokens; put, call, straddle, option, or privilege on a security,
15 certificate of deposit, or group or index of securities, including
16 an interest therein or based on the value thereof; put, call,
17 straddle, option, or privilege entered into on a national securities
18 exchange relating to foreign currency; or, in general, an interest
19 or instrument commonly known as a "security"; or a certificate of
20 interest or participation in, temporary or interim certificate for,
21 receipt for, guarantee of, or warrant or right to subscribe to or
22 purchase, any of the foregoing. The term:

- 23 a. includes both a certificated and an uncertificated
24 security,

- 1 b. does not include an insurance or endowment policy or
2 annuity contract under which an insurance company
3 promises to pay a sum of money either in a lump sum or
4 periodically for life or other specified period,
- 5 c. does not include an interest in a contributory or
6 noncontributory pension or welfare plan subject to the
7 Employee Retirement Income Security Act of 1974,
- 8 d. includes as an "investment contract" an investment in
9 a common enterprise with the expectation of profits to
10 be derived primarily from the efforts of a person
11 other than the investor and a "common enterprise"
12 means an enterprise in which the fortunes of the
13 investor are interwoven with those of either the
14 person offering the investment, a third party, or
15 other investors,
- 16 e. includes as an "investment contract," among other
17 contracts, an interest in a limited partnership and a
18 third party managed limited liability company and an
19 investment in a viatical or life settlement or similar
20 contract or agreement,
- 21 f. includes an investment of money or money's worth
22 including goods furnished or services performed in the
23 risk capital of a venture with the expectation of some
24 benefit to the investor where the investor has no

1 direct control over the investment or policy decision
2 of the venture, and

3 g. does not include an interest in an oil, gas or mineral
4 lease as part of a transaction between parties, each
5 of whom is engaged in the business of exploring for or
6 producing oil and gas or other valuable minerals as an
7 ongoing business or the execution of oil and gas
8 leases by land, mineral and royalty owners in favor of
9 a party or parties engaged in the business of
10 exploring for or producing oil and gas or other
11 valuable minerals;

12 33. "Self-regulatory organization" means a national securities
13 exchange registered under the Securities Exchange Act of 1934, a
14 national securities association of broker-dealers registered under
15 the Securities Exchange Act of 1934, a clearing agency registered
16 under the Securities Exchange Act of 1934, or the Municipal
17 Securities Rulemaking Board established under the Securities
18 Exchange Act of 1934;

19 34. "Sign" means, with present intent to authenticate or adopt
20 a record:

- 21 a. to execute or adopt a tangible symbol, or
22 b. to attach or logically associate with the record an
23 electronic symbol, sound, or process;

1 35. "State" means a state of the United States, the District of
2 Columbia, Puerto Rico, the United States Virgin Islands, or any
3 territory or insular possession subject to the jurisdiction of the
4 United States; and

5 36. "Underwriter" means any person who has purchased from an
6 issuer or from any other person with a view to, or offers or sells
7 for an issuer or for any other person in connection with, the
8 distribution of any security, or participates or has a direct or
9 indirect participation in any such undertaking, or participates or
10 has a participation in the direct or indirect underwriting of any
11 such undertaking. "Underwriter" does not include a person whose
12 interest is limited to a commission from an underwriter or broker-
13 dealer not in excess of the usual and customary distributor's or
14 seller's commission.

15 SECTION 2. This act shall become effective November 1, 2022.

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