

§712. Unlawful practices

A. It shall be unlawful for any person:

(1) To offer to sell or to sell any security in violation of R.S. 51:703, 705, or any rule, regulation or order promulgated or issued by the commissioner under this Part.

(2) To offer to sell or to sell a security by means of any oral or written untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the buyer not knowing of the untruth or omission, if such person in the exercise of reasonable care could not have known of the untruth or omission.

(3) To offer or sell any security:

(a) Registered under R.S. 51:705(B) by means of any prospectus except a prospectus which complies with R.S. 51:705(B)(3).

(b) Registered under R.S. 51:705(E) by means of any prospectus except a prospectus which complies with R.S. 51:705(E)(3).

(c) Registered under R.S. 51:705(F) by means of any prospectus except a prospectus which complies with R.S. 51:705(F)(4).

B. It shall be unlawful for any person to make to any prospective purchaser, customer, or client any representation that the filing or effectiveness of a registration statement or the registration of any security under R.S. 51:705, or the existence of any exemption for any security or transaction means that the commissioner has passed in any way upon the truth, completeness, or accuracy of such registration statement or the merits of such security or has recommended or given approval to such security or transaction.

C. It shall be unlawful for any person who:

(1) Is a dealer, salesman, or investment adviser under this Part.

(2) Is making an application for registration as a dealer, salesman or investment adviser under this Part.

(3) Is an issuer which has filed a registration statement with respect to securities it intends to issue.

(4) Is an affiliate of any of the persons described in Paragraph (1), (2), or (3) of this Subsection knowingly to cause to be made, in any document filed with the commissioner or in any proceeding under this Part, any statement which is, at the time it is made and in light of the circumstances under which it is made, false or misleading in any material respect.

D. It shall be unlawful for any person in connection with the offer, sale, or purchase of any security, directly or indirectly:

(1) To employ any device, scheme, or artifice to defraud.

(2) To engage in any transaction, act, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser or seller.

E.(1) For purposes of this Subsection, the following terms shall have the meanings set forth below:

(a) "Allocated share" shall mean any plan security held by a trustee, beneficially or of record, that is allocated to the account of a participant.

(b) "Investment plan" shall mean any plan, trust or similar arrangement that invests in securities and that satisfies each of the following requirements:

(i) At least ten percent of the total number of participants are residents of or domiciled in this state.

(ii) The trustee or a majority of the trustees are residents of or domiciled in this state.

(c) "Issuing corporation" shall mean the issuer of a particular plan security.

(d) "Participants" shall mean all persons who have accounts in an investment plan.

(e) "Plan documents" shall mean the documents and other instruments pursuant to which an investment plan is established and governed.

(f) "Plan security" shall mean any security that is held beneficially or of record by a trustee, whether such security is at the time an allocated share, unallocated share or uninstructed share.

(g) "Trustee" shall mean the natural person, natural persons, entity or entities named as trustee or trustees under the terms of an investment plan, in the capacity as such.

(h) "Unallocated share" shall mean any plan security held by a trustee, beneficially or of record, that is not allocated to the account of a participant.

(i) "Uninstructed share" shall mean any allocated share as to which the trustee has not received, from the participant to whose account such share is allocated, instructions as to how to vote such allocated share in a matter properly submitted to the vote of the shareholders of the issuing corporation.

(2) If, with respect to any investment plan:

(a) The plan documents provide that participants have the right to direct in a confidential manner:

(i) Whether any plan securities will be tendered in response to a tender or exchange offer for such plan securities.

(ii) How any plan securities shall be voted on any particular matter to come before a vote of shareholders of the issuing corporation; and

(b) A valid tender or exchange offer has been made for plan securities or a matter has come before the vote of the shareholders of an issuing corporation relating, directly or indirectly, to the possible offer or sale of plan securities, whether pursuant to:

(i) A merger or consolidation of the issuing corporation with or into any other person.

(ii) The sale of all or substantially all of the assets of the issuing corporation.

(iii) The liquidation or dissolution of the issuing corporation.

(iv) A contested election of directors of the issuing corporation.

(v) The removal or adoption of any defensive devices by the issuing corporation, or otherwise, then, it shall be unlawful for the trustee not to permit participants to tender or direct the voting of the plan securities in the manner set forth in the plan documents, and the trustee shall have no authority or discretion whatsoever to tender or vote, as the case may be, any plan securities in any manner inconsistent with or contrary to the specific instructions of the participants relating to such plan securities.

Acts 1985, No. 722, §1; Acts 1991, No. 787, §1, eff. July 19, 1991; Acts 1999, No. 250, §1.