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TITLE 71

CHAPTER 1. OKLAHOMA UNIFORM SECURITIES ACT OF 2004

ARTICLE 1

SECURITIES COMMISSION

§ 1-101. Short title,

This act shall be known and may be cited as the "Oklahoma Uniform Securities Act of 2004."

§ 1-102. Definitions

In this act, unless the context otherwise requires:

1. "Administrator" means the securities Administrator appointed by the Oklahoma Securities Commission;
2. "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. A partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this act;
3. "Bank" means:
 - a. a banking institution organized under the laws of the United States,
 - b. a member bank of the Federal Reserve System,
 - c. any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this act, and
 - d. a receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph a, b or c of this paragraph;
4. "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:
 - a. an agent,
 - b. an issuer,
 - c. a bank or savings institution if its activities as a broker-dealer are limited to those

specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C. Sections 78c(a)(4) and (5)) or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(4)),

d. an international banking institution, or

e. a person excluded by rule adopted or order issued under this act;

5. "Commission" means the Oklahoma Securities Commission;

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

7. "Depository institution" means:

a. a bank, or

b. a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include:

(1) an insurance company or other organization primarily engaged in the business of insurance,

(2) a Morris Plan bank, or

(3) an industrial loan company;

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

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

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

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

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

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

a. a depository institution or international banking 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 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,

h. a trust, if it has total assets in excess of Ten Million Dollars (\$10,000,000.00), its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph f or g of this paragraph, regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans,

i. an organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of Ten Million Dollars (\$10,000,000.00),

j. a small business investment company licensed by the Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. Section 681(c)) with total assets in excess of Ten Million Dollars (\$10,000,000.00),

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

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

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

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

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

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

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

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

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

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

- a. an investment adviser representative,
- b. a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession,
- c. a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice,
- d. a publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation,
- e. a depository institution, or
- f. any other person excluded by rule adopted or order issued under this act;

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

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

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

- a. the issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued,
- b. the issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property or equipment is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate,
- c. the issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale;

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

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

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

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

a. an office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients, or

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

24. "Predecessor act" means the act repealed by Section 52 of this act [Section 1-701 of this title];

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

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

27. "Promoter" includes:

a. a person who, acting alone or in concert with one or more persons, takes the entrepreneurial initiative in founding or organizing the business or enterprise of an issuer,

b. an officer or director owning securities of an issuer or a person who owns, beneficially or of record, ten percent (10%) or more of a class of securities of the issuer if the officer, director, or person acquires any of those securities in a transaction within three (3) years before the filing by the issuer of a registration statement under this act and the transaction is not an arms-length transaction, or

c. a member of the immediate family of a person within subparagraph a or b of this paragraph if the family member receives securities of the issuer from that person in a transaction within three (3) years before the filing by the issuer of a registration statement under this act and the transaction is not an arms-length transaction.

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

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

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

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

- a. a security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value,
- b. a gift of assessable stock involving an offer and sale, and
- c. a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security;

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

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

- a. includes both a certificated and an uncertificated security,
- b. does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or other specified period,
- c. does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974,
- d. includes as an "investment contract" an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors,
- e. includes as an "investment contract," among other contracts, an interest in a limited partnership and a third party managed limited liability company and an investment in a viatical or life settlement or similar contract or agreement,
- f. includes an investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of some benefit to the investor where the investor has no direct control over the investment or policy decision of the venture, and
- g. does not include an interest in an oil, gas or mineral lease as part of a transaction between parties, each of whom is engaged in the business of exploring for or producing

oil and gas or other valuable minerals as an ongoing business or the execution of oil and gas leases by land, mineral and royalty owners in favor of a party or parties engaged in the business of exploring for or producing oil and gas or other valuable minerals;

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

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

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

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

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

§ 1-103. References to federal statutes

"Securities Act of 1933" (15 U.S.C. Section 77a et seq.), "Securities Exchange Act of 1934" (15 U.S.C. Section 78a et seq.), "Public Utility Holding Company Act of 1935" (15 U.S.C. Section 79 et seq.), "Investment Company Act of 1940" (15 U.S.C. Section 80a-1 et seq.), "Investment Advisers Act of 1940" (15 U.S.C. Section 80b-1 et seq.), "Employee Retirement Income Security Act of 1974" (29 U.S.C. Section 1001 et seq.), "National Housing Act" (12 U.S.C. Section 1701 et seq.), "Commodity Exchange Act" (7 U.S.C. Section 1 et seq.), "Internal Revenue Code" (26 U.S.C. Section 1 et seq.), "Securities Investor Protection Act of 1970" (15 U.S.C. Section 78aaa et seq.), "Securities Litigation Uniform Standards Act of 1998" (112 Stat. 3227), "Small Business Investment Act of 1958" (15 U.S.C. Section 661 et seq.), and "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. Section 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this act, or as later amended.

§ 1-104. Reference to federal agencies

A reference in this act to an agency or department of the United States is also a reference to a successor agency or department.

§ 1-105. Electronic records and signatures

This Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)). This Act authorizes the filing of records and signatures, when specified by provisions of this act or by a rule adopted or order issued under this act, in a manner consistent with Section 104(a) of that act (15 U.S.C. Section 7004(a)).

ARTICLE 2

EXEMPTIONS FROM REGISTRATION OF SECURITIES

§ 1-201. Exempt securities

The following securities are exempt from the requirements of Sections 10 and 32 of this act [Sections 1-301 and 1-504 of this title]:

1. A security, including a revenue obligation or a separate security as defined in Rule 131 (17 C.F.R. 230.131) adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one or more states; by a political subdivision of one or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing; however, notwithstanding the provisions of Section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, Public Law 98-440, any security that is offered and sold pursuant to Section 4(5) of the Securities Act of 1933 or that is a mortgage related security as that term is defined in Section 3(a)(41) of the Securities Exchange Act of 1934 shall not be exempt from Sections 10 and 32 of this act [Sections 1-301 and 1-504 of this title] by virtue of such Secondary Mortgage Market Enhancement Act but may be exempt based upon the availability of the exemptions from registration provided for in this section;
2. A security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor;
3. A security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:
 - a. an international banking institution,
 - b. a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a),
 - c. a trust company or other institution that is authorized by federal or state law to exercise fiduciary powers of the type a national bank is permitted to exercise under the authority of the Comptroller of the Currency and is supervised and examined by an official or agency of a state or the United States, or
 - d. any other depository institution;
4. A security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to transact insurance business in this state by the Insurance Commissioner;
5. A security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is:
 - a. regulated in respect to its rates and charges by the United States or a state,
 - b. regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory, or
 - c. a public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of

that act;

6. A federal covered security specified in Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)) or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this act; a put or a call option contract, a warrant, or a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or the underlying security in connection with the offer, sale, or exercise of an option or other derivative security that was exempt when the option or other derivative security was written or issued; or an option or other derivative security designated by the Securities and Exchange Commission under Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78i(b));

7. A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the Investment Company Act of 1940 (15 U.S.C. Section 80a-3(c)(10)(B)); except that with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a rule may be adopted under this act limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to subparagraph b of this paragraph the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with Section 49 of this act [Section 1-611 of this title], and the grounds for denial or suspension, and requiring an issuer:

a. to file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and providing that the exemption becomes effective if the Administrator does not disallow the exemption within the period established by the rule,

b. to file a request for exemption, or

c. to register under Section 13 of this act [Section 1-304 of this title];

8. A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a not for profit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative; and

9. An equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)).

§ 1-202. Exempt transactions

The following transactions are exempt from the requirements of Sections 10 and 32 of this act [Sections 1-301 and 1-504 of this title]:

1. An isolated nonissuer transaction, whether effected by or through a broker-dealer or not;

2. A nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this act, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days, if, at the date of the transaction:

a. the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person,

b. the security is sold at a price reasonably related to its current market price,

c. the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution, and

d. a nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this act or a record filed with the Securities and Exchange Commission that is publicly available contains:

(1) a description of the business and operations of the issuer,

(2) the names of the issuer's executive officers and the names of the issuer's directors, if any,

(3) an audited balance sheet of the issuer as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization, and

(4) an audited income statement for each of the issuer's two (2) immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement, or

e. the issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless the issuer of the security is a unit investment trust registered under the Investment Company Act of 1940; or the issuer of the security, including its predecessors, has been engaged in continuous business for at least three (3) years; or the issuer of the security has total assets of at least Two Million Dollars (\$2,000,000.00) based on an audited balance sheet as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had the audited balance sheet, a pro forma balance sheet for the combined organization;

3. A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;

4. A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));

5. A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in a security that:

a. is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories, or

b. has a fixed maturity or a fixed interest or dividend, if:

(1) a default has not occurred during the current fiscal year or within the three (3) previous fiscal years or during the existence of the issuer and any predecessor if less than three (3) fiscal years, in the payment of principal, interest, or dividends on the security, and

(2) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve (12) months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

6. A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act effecting an unsolicited order or offer to purchase;

7. A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this act;

8. A nonissuer transaction by a federal covered investment adviser with investments under management in excess of One Hundred Million Dollars (\$100,000,000.00) acting in the exercise of discretionary authority in a signed record for the account of others;

9. A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the Administrator after a hearing;

10. A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

11. A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:

a. the note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit,

b. a general solicitation or general advertisement of the transaction is not made, and

c. a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this act as a broker-dealer or as an agent;

12. A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

13. A sale or offer to sell to:

a. an institutional investor,

b. a federal covered investment adviser, or

c. any other person exempted by rule adopted or order issued under this act;

14. A sale or an offer to sell securities by an issuer, if the transaction is part of a single issue in which:

a. not more than twenty-five purchasers during any twelve (12) consecutive months, other than those designated in paragraph 13 of this section,

b. a general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities,

c. a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this act or an agent registered under this act for soliciting a prospective purchaser in this state, and

d. the issuer reasonably believes that all the purchasers in this state, other than those designated in paragraph 13 of this section, are purchasing for investment;

15. A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if:

a. no commission or other remuneration, other than a standby commission, is paid or given, directly or indirectly, for soliciting a security holder in this state, or

b. the issuer first files a notice specifying the terms of the offer and the Administrator, by order, does not disallow the exemption within the next ten (10) full business days;

16. A sale from or in this state to not more than thirty-two persons of a unit consisting of interests in oil, gas or mining titles or leases or any certificate of interest or participation, or conveyance in any form of an interest therein, or in payments out of production pursuant to such titles or leases, whether or not offered in conjunction with, or as an incident to, an operating agreement or other contract to drill oil or gas wells or otherwise exploit the minerals on the particular leases, whether or not the seller or any buyers are then present in this state, if:

a. the seller reasonably believes that all buyers are purchasing for investment,

b. no commission is paid or given directly or indirectly for the solicitation of any such sale excluding any commission paid or given by and between parties each of whom is engaged in the business of exploring for or producing oil and gas or other valuable minerals,

c. no public advertising or public solicitation is used in any such solicitation or sale, and

d. sales are effected only to persons the seller has reasonable cause to believe are capable of evaluating the risk of the prospective investment and able to bear the economic risk of the investment; but the Administrator, by rule or order, as to any specific transaction, may withdraw or further condition this exemption or decrease the number of sales permitted or waive the conditions in subparagraphs a, b and c of this paragraph, with or without substitution of a limitation on remuneration.

For purposes of this subsection, no units of the issuer shall be integrated; however, this exemption cannot be combined or used in conjunction with any other transactional exemption;

17. An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

a. a registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 C.F.R. 230.165), and

b. no stop order of which the offeror is aware has been issued against the offeror by the Administrator or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;

18. An offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

- a. a registration statement has been filed under this act, but is not effective,
- b. a solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the Administrator under this act, and
- c. a stop order of which the offeror is aware has not been issued by the Administrator under this act and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;

19. A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties if:

- a. the securities to be distributed are registered under the Securities Act of 1933 before the vote by security holders on the transaction, or
- b. the securities to be distributed are not required to be registered under the Securities Act of 1933, written notice of the transaction and a copy of the materials, if any, by which approval of the transaction will be solicited from such security holders is given to the Administrator at least ten (10) full business days before the vote by security holders on the transaction and the Administrator does not commence a proceeding to deny the exemption within the next ten (10) full business days; however, such notice shall not be required if the sole purpose of the transaction is to change an issuer's domicile solely within the United States;

20. A rescission offer, sale, or purchase under Section 38 of this act [Section 1-510 of this title];

21. An offer or sale of a security through a broker-dealer registered under this act to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this act;

22. Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

- a. directors; general partners; trustees, if the issuer is a business trust; and officers,
- b. family members who acquire such securities from those persons through gifts or domestic relations orders,
- c. former employees, directors, general partners, trustees, and officers if those individuals were employed by or providing services to the issuer when the securities were offered, and
- d. insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent (50%) of their annual income from those organizations;

23. A transaction involving:

- a. a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock,

b. an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, or

c. the solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 C.F.R. 230.162); or

24. A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this act, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this act; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty (180) days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this act, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with the Administrative Procedures Act, the Administrator, by rule adopted or order issued under this act, may revoke the designation of a securities exchange under this paragraph, if the Administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

§ 1-203. Additional exemptions and waivers

A rule adopted or order issued under this act may exempt a security, transaction, or offer; a rule under this act may exempt a class of securities, transactions, or offers from any or all of the requirements of Sections 10 and 32 of this act [Sections 1-301 and 1-504 of this title]; and an order under this act may waive, in whole or in part, any or all of the conditions for an exemption or offer under Sections 6 and 7 of this act [Sections 1-201 and 1-202 of this title].

§ 1-204. Denial, suspension of application, revocation, condition, or limitation of exemptions

A. Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this act may deny, suspend application of, condition, limit, or revoke an exemption created under subparagraph c or d of paragraph 3 of Section 6 of this act [Section 1-201 of this title], or paragraph 7 or 8 of Section 6 of this act [Section 1-201 of this title] or Section 7 of this act [Section 1-202 of this title] or an exemption or waiver created under Section 8 of this act [Section 1-203 of this title] with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in subsection D of Section 15 or Section 42 of this act [Section 1-306 or Section 1-604 of this title] and only prospectively.

B. A person does not violate Section 10, 32 or 38 of this act [Section 1-301, 1-504 or 1-510 of this title] by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

ARTICLE 3

REGISTRATION OF SECURITIES AND

NOTICE FILING OF FEDERAL COVERED SECURITIES

§ 1-301. Offer or Sell Security in State

It is unlawful for a person to offer or sell a security in this state unless:

1. The security is a federal covered security;
2. The security, transaction, or offer is exempted from registration under Sections 6 through 8 of this act [Sections 1-201 through 1-203 of this title]; or
3. The security is registered under this act.

§ 1-302. Federal covered security notice filing

A. With respect to a federal covered security, as defined in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(2)), that is not otherwise exempt under Section 6 through 8 of this act [Sections 1-201 through 1-203 of this title], the issuer shall file a notice with the Administrator prior to an offer in this state. A separate notice shall be filed for each class of an issuer's securities offered in this state. Each notice shall be for an indefinite amount of securities. A notice, or renewal thereof, shall be accompanied by the filing fee set forth in Section 50 of this act [Section 1-612 of this title]. The Administrator may, by rule or order, prescribe notice filing and renewal requirements, and the requirements for filing of reports of the dollar amount of securities sold or offered to be sold to persons located in this state.

B. A notice filing under subsection A of this section is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by rule or order under this act to be filed and by paying a renewal fee as provided in Section 50 of this act [Section 1-612 of this title]. A previously filed consent to service of process complying with Section 49 of this act [Section 1-611 of this title] may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

C. With respect to a security that is a federal covered security under Section 18(b)(4)(D) [subsequently renumbered 18(b)(4)(E)] of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(4)(D)[subsequently renumbered 15 U.S.C. Section 77r(b)(4)(E)]), a rule under this act may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process complying with Section 49 of this act [Section 1-611 of this title] signed by the issuer not later than fifteen (15) days after the first sale of the federal covered security in this state and the payment of a fee as provided in Section 50 of this act [Section 1-612 of this title].

D. Except with respect to a federal covered security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)), if the Administrator finds that there is a failure to comply with a notice or fee requirement of this section, the Administrator may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the Administrator.

§ 1-303. Securities registration by coordination

A. A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.

B. A registration statement under this section must contain or be accompanied by the following records in addition to the information specified in Section 14 of this act [Section 1-305 of this title] and a consent to service of process complying with Section 49 of this act [Section 1-611 of this title]:

1. A copy of the latest form of prospectus filed under the Securities Act of 1933;
2. A copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this act;

3. Copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the Administrator; and

4. An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the Securities and Exchange Commission and in any event not later than the first business day after the day the amendment is forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

C. A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

1. A stop order under subsection D of this section or Section 15 of this act [Section 1-306 of this title] or issued by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under Section 15 of this act [Section 1-306 of this title]; and

2. The registration statement has been on file for at least twenty (20) days or a shorter period provided by rule adopted or order issued under this act.

D. The registrant shall promptly notify the Administrator in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the Administrator may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The Administrator shall promptly notify the registrant of the order by telegram, telephone, or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

E. If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the Administrator, the registration statement is automatically effective under this act when all the conditions are satisfied or waived. If the registrant notifies the Administrator of the date when the federal registration statement is expected to become effective, the Administrator shall promptly notify the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the Administrator intends the institution of a proceeding under Section 15 of this act [Section 1-306 of this title]. The notice by the Administrator does not preclude the institution of such a proceeding.

§ 1-304. Securities registration by qualification

A. A security may be registered by qualification under this section.

B. A registration statement under this section must contain the information or records specified in Section 14 of this act [Section 1-305 of this title], a consent to service of process complying with Section 49 of this act [Section 1-611 of this title], and the following information or records:

1. With respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

2. With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five (5) years; the amount of securities of the issuer held by the person as of the 30th day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the

- person in any material transaction with the issuer or a significant subsidiary effected within the previous three (3) years or proposed to be effected;
3. With respect to persons covered by paragraph 2 of this subsection, the aggregate sum of the remuneration paid to those persons during the previous twelve (12) months and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer;
 4. With respect to a person owning of record or owning beneficially, if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer, the information or records specified in paragraph 2 of this subsection other than the person's occupation;
 5. With respect to a promoter, if the issuer was organized within the previous three (3) years, the information or records specified in paragraph 2 of this subsection, any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;
 6. With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three (3) years or proposed to be effected; and a statement of the reasons for making the offering;
 7. The capitalization and long term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two (2) years or is obligated to issue its securities;
 8. The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter;
 9. The estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

10. A description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in paragraph 2, 4, 5, 6, or 8 of this subsection and by any person that holds or will hold ten percent (10%) or more in the aggregate of those options;

11. The dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two (2) years, and a copy of the contract;

12. A description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities;

13. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with subparagraph b of paragraph 18 of Section 7 of this act [Section 1-202 of this title];

14. A specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;

15. A signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

16. A signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement;

17. A balance sheet of the issuer as of a date within four (4) months before the filing of the registration statement; a statement of income and changes in financial position for each of the three (3) fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three (3) years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and

18. Any additional information or records required by rule adopted or order issued under this act.

C. A registration statement under this section becomes effective thirty (30) days, or any shorter period provided by rule adopted or order issued under this act, after the date the registration statement or the last amendment other than a price amendment is filed, if:

1. A stop order is not in effect and a proceeding is not pending under Section 15 of this act [Section 1-306 of this title];

2. The Administrator has not issued an order under Section 15 of this act [Section 1-306 of this title] postponing effectiveness; and

3. The applicant or registrant has not requested that effectiveness be delayed.

D. The Administrator may delay effectiveness once for not more than ninety (90) days if the Administrator determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The Administrator may also delay effectiveness for a further period of not more than thirty (30) days if the Administrator determines that the delay is necessary or appropriate.

E. A rule adopted or order issued under this act may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection B of this section be sent or given to each person to which an offer is made, before or concurrently, with the earliest of:

1. The first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;
2. The confirmation of a sale made by or for the account of the person;
3. Payment pursuant to such a sale; or
4. Delivery of the security pursuant to such a sale.

§ 1-305. Registration -- Requirements and provisions

A. A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this act.

B. A person filing a registration statement shall pay the filing fee set forth in Section 50 of this act [Section 1-612 of this title]. If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under Section 15 of this act [Section 1-306 of this title], the Administrator shall retain the fee.

C. A registration statement filed under Section 12 or 13 of this act [Section 1-303 or 1-304 of this title] must specify:

1. The amount of securities to be offered in this state;
2. The states in which a registration statement or similar record in connection with the offering has been or is to be filed; and
3. Any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission, or a court.

D. A record filed under this act or the predecessor act within five (5) years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

E. In the case of a nonissuer distribution, information or a record may not be required under subsection I of this section or Section 13 of this act [Section 1-304 of this title], unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

F. A rule adopted or order issued under this act may require as a condition of registration that a security issued within the previous five (5) years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this act, but the

Administrator may not reject a depository institution solely because of its location in another state.

G. A rule adopted or order issued under this act may require as a condition of registration that a security registered under this act be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this act or preserved for a period specified by the rule or order, which may not be longer than five (5) years.

H. Except while a stop order is in effect under Section 15 of this act [Section 1-306 of this title], a registration statement is effective for one year after its effective date, or for any longer period designated in an order under this act during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this act are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the Administrator.

I. While a registration statement is effective, the person that filed the registration statement shall file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

J. A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the Administrator so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee as provided in Section 50 of this act [Section 1-612 of this title]. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the amendment is filed and the additional registration fee is paid.

K. The records of an issuer 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.

§ 1-306. Denial, suspension, or revocation of effectiveness of registration statement

A. The Administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the Administrator finds that the order is in the public interest and that:

1. The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under subsection J of Section 14 of this act [Section 1-305 of this title] as of its effective date, or a report under subsection I of Section 14 of this act [Section 1-305 of this title], is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;
2. This act or a rule adopted or order issued under this act or a condition imposed under this act has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function, a promoter of the issuer, or a person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting

for the issuer; or by an underwriter;

3. The security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this act applicable to the offering, but the Administrator may not institute a proceeding against an effective registration statement under this paragraph more than one year after the date of the order or injunction on which it is based, and the Administrator may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;

4. The issuer's enterprise or method of business includes or would include activities that are unlawful where performed;

5. With respect to a security sought to be registered under Section 12 of this act [Section 1-303 of this title], there has been a failure to comply with the undertaking required by paragraph 4 of subsection B of Section 12 of this act [Section 1-303 of this title];

6. The applicant or registrant has not paid the filing fee, but the Administrator shall void the order if the deficiency is corrected; or

7. The offering:

a. will work or tend to work a fraud upon purchasers or would so operate, or

b. has been or would be made or is being made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation; promoters' profits or participation; or unreasonable amounts or kinds of options, profits, compensation, or remuneration paid directly or indirectly to any officer, director, employee, contractor or agent.

B. To the extent practicable, the Administrator by rule adopted or order issued under this act shall publish standards that provide notice of conduct that violates paragraph 7 of subsection A of this section.

C. The Administrator may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the Administrator when the registration statement became effective unless the proceeding is instituted within thirty (30) days after the registration statement became effective.

D. The Administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the Administrator shall promptly notify each person specified in subsection E of this section that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing and such hearing shall be commenced within fifteen (15) days of the matter being set for hearing. If a hearing is not requested and none is ordered by the Administrator, within thirty (30) days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

E. Unless the right to notice and hearing is waived, a stop order may not be issued under this section without:

1. Appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;

2. An opportunity for hearing; and
3. Findings of fact and conclusions of law in a record in accordance with the Administrative Procedures Act.

F. The Administrator may modify or vacate a stop order issued under this section if the Administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

§ 1-307. Waiver or modification

The Administrator may waive or modify, in whole or in part, any or all of the requirements of Sections 11, 12, and subsection B of Section 13 of this act [Sections 1-302, 1-303, and 1-304 of this title] or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to subsection I of Section 14 of this act [Section 1-305 of this title].

§ 1-308. Investment certificate issuers -- Registration requirements

A. In addition to all other applicable registration provisions specified in this act, investment certificate issuers are subject to the provisions of this section. As used in this section:

1. "Investment certificate" means thrift certificates, certificates of deposit, savings obligations and similar certificates or obligations issued and sold by an investment certificate issuer as defined in paragraph 2 of this subsection; and
2. "Investment certificate issuer" means any financial institution or person, other than a federally or state chartered bank, bank holding company, trust company or savings and loan association, or any credit union, which accepts investor funds or deposits in exchange for the issuance of investment certificates; provided, however, the term "investment certificate issuer" shall not include a financial institution or person which, as of November 1, 1985, issued only the following securities:

- a. investment certificates exempt under the provisions of Sections 6 through 8 of this act [Sections 1-201 through 1-203 of this title],
- b. investment certificates registered by coordination under Section 12 of this act [Section 1-303 of this title], or
- c. any other security as to which the Administrator, by rule or order, finds that registration is not necessary or appropriate for the protection of investors.

Nothing contained in this act shall be construed as precluding an investment certificate issuer from qualifying for and relying upon any of the exemptions from the provisions of Sections 10 and 32 of this act [Sections 1-301 and 1-504 of this title] as contained in Sections 6 through 8 of this act [Sections 1-201 through 1-203 of this title].

B. In addition to other powers conferred by this act, the Administrator shall have power to require an investment certificate issuer to:

1. Cause its books and records to be made available at its offices and to provide to the Department a trial balance within five (5) days of the commencement of any examination. The books and records shall be audited at least once each year by an independent certified public accountant in accordance with generally accepted auditing standards, and the report thereof, including financial statements prepared in accordance with generally accepted accounting principles, furnished to the Administrator in such form as he or she may require;
2. Observe methods and standards, including classification standards of loans, which

the Administrator may prescribe by rule adopted and promulgated pursuant to the Administrative Procedures Act for determining the value of various types of assets;

3. Maintain its accounting systems and procedures in accordance with such regulations as adopted and promulgated by the Administrator pursuant to the Administrative Procedures Act; provided, the accounting system required shall have due regard to the size of the investment certificate issuer;

4. Charge off the whole or any part of an asset, the value of which, at the time of the Administrator's action, has deteriorated for reasons set forth by the Administrator by rule adopted and promulgated pursuant to the Administrative Procedures Act; and

5. Write down an asset to market value as prescribed by the Administrator by rule adopted and promulgated pursuant to the Administrative Procedures Act.

C. Every investment certificate issuer shall obtain from the Administrator a written acknowledgment, issued in accordance with procedures adopted and promulgated pursuant to the Administrative Procedures Act, that the investment certificate issuer engages in the business of accepting investor funds or deposits in exchange for the issuance of investment certificates. Any investment certificate issuer who obtains such an acknowledgment shall be subject to this section and shall possess all the rights, powers and privileges and shall be subject to all of the duties, restrictions and limitations contained herein. No company or person who fails to obtain such acknowledgment within ninety (90) days of the effective date of the adoption by the Administrator of procedures governing the issuance of a written acknowledgment shall possess or exercise, unless expressly given and possessed or exercised under other laws, any of the benefits, rights, powers or privileges which are herein conferred on investment certificate issuers. Any company or person who fails to obtain a written acknowledgment as described herein may not engage in the business of issuing investment certificates.

D. Any officer, director or employee of an investment certificate issuer found by the Administrator to be dishonest, reckless, unfit to participate in the conduct of the affairs of the institution, or practicing a continuing disregard or violation of laws, rules, regulations or orders which are likely to cause substantial loss to the company or likely to seriously weaken the condition of the company shall be removed immediately from office by the board of directors of the investment certificate issuer of which he or she is an officer, director or employee, on the written order of the Administrator; provided, that the investment certificate issuer or officer, employee, or director may within ten (10) days file a notice of protest for the removal with the Commission, and as soon as possible thereafter, the Commission will review the order of the Administrator and make findings as it deems proper, and that, pending said time, the officer, employee or director shall not perform any of the duties of his office.

E. An investment certificate issuer shall not, without the consent of the Administrator:

1. Make a loan to any of its stockholders owning twenty-five percent (25%) or more of the stock of the investment certificate issuer, or its officers or directors;

2. Make a loan to any employee in excess of Ten Thousand Dollars (\$10,000.00); or

3. Make a loan to or other investment in or purchase any asset from any company in which any of its officers, directors or stockholders may have any direct or indirect interest, unless made in an arm's length transaction.

F. An investment certificate issuer shall not, without the consent of the Administrator:

1. Lend money in excess of ten percent (10%) of its shareholders' equity to any person, association, partnership or corporation liable for such obligations; provided, however, that this limitation does not apply to the purchase of investment securities; or

2. Engage in, or acquire any interest in, any business prohibited to a bank chartered under the laws of this state.

G. The shareholders' equity of an investment certificate issuer shall not be less than ten percent (10%) of the investment certificates outstanding. Provided, an investment certificate issuer lawfully incorporated and operating in this state on or before November 1, 1985, with less than the above specified shareholders' equity shall, at the beginning of each fiscal year thereafter, increase its shareholders' equity by a minimum of one-fourth (1/4) the difference between its shareholders' equity on November 1, 1985, and the above specified amount until such time as its shareholders' equity equals or exceeds the amount specified above. For purposes of computing the shareholders' equity, the reserve against bad debts shall be included.

H. Every investment certificate issuer shall maintain a reserve against bad debts in an amount required by the Administrator by rule adopted and promulgated pursuant to the Administrative Procedures Act, but in no event shall the reserve against bad debts be less than two percent (2%) of total loans outstanding.

I. If the Administrator finds the capital of an investment certificate issuer to be impaired according to the standard set forth in subsection G of this section, the Administrator may:

1. Give notice of the impairment to the directors and shareholders of the investment certificate issuer and levy an assessment in a designated amount upon the holders of record of the investment certificate issuer's stock to remedy an impairment of capital. Upon receipt of an order to levy an assessment, the directors shall cause to be sent to all holders of stock, at their addresses as listed on the books of the investment certificate issuer, a notice of the amount of the assessment and a copy of this subsection. If an assessment is not paid within ninety (90) days after the order is mailed, the Administrator, at his or her discretion, may offer the shares of the defaulting stockholders for sale at public auction at a price which shall not be less than the amount of the assessment and the cost of the sale; or

2. Apply to the district court of any county where the assets of the investment certificate issuer are located for an order appointing a conservator of, and directing him to rehabilitate, the investment certificate issuer. If all reasonable efforts to rehabilitate the investment certificate issuer fail, the Administrator may apply to the court for an order directing the appointment of a liquidator to dissolve any such issuer and liquidate its assets. All rights and interests of the stockholders in the stock, property and assets of such investment certificate issuer are thereby terminated except the rights of stockholders to the proceeds of liquidation, if any, after all other valid claims, including interest, against the assets of the investment certificate issuer and the proceeds of liquidation have been satisfied. The conservator or liquidator appointed under this subsection shall meet qualifications established by the Administrator by rule adopted and promulgated pursuant to the Administrative Procedures Act.

J. Whenever the capital or reserve of any investment certificate issuer shall be impaired according to the standards set forth in subsections G and H of this section, the investment certificate issuer shall make no new loans, renew any investment certificates or sell new investment certificates without the consent of the Administrator.

K. 1. It shall be unlawful for any investment certificate issuer to issue investment certificates when insolvent.

2. Every officer, director, principal stockholder, or every other person who materially participates or aids in the issuance of an investment certificate in violation of this subsection, or who directly or indirectly controls any such person, shall be jointly and severally liable, unless the officer, director, principal stockholder, or any other person who so participates, aids or controls, sustains the burden of proof that the person did not know, and could not have known, of the existence of the facts by reason of which liability is alleged to exist. There shall be contribution as in cases of contract among the persons so liable.

3. The rights and remedies provided for in this subsection are in addition to any other

rights or remedies provided for in Title 71 of the Oklahoma Statutes, or that may exist at law or in equity.

L. The Administrator may as often as he or she deems it prudent and necessary for the protection of the public, make or cause to be made examinations of the books, records, papers, assets and liabilities of every kind and character owned by, or relating to, every investment certificate issuer.

M. Every investment certificate issuer shall make and file with the Administrator reports at such times and in such form as the Administrator may prescribe by rule or order. The reports shall be verified by the oath of either the president, the vice-president, or the secretary and attested by the signature of two or more of the directors. Each report shall exhibit in detail, as may be required by the Administrator, the resources and liabilities of the investment certificate issuer at the close of business on the day to be specified by the Administrator.

N. Every investment certificate issuer whose investor funds or deposits are not insured by an agency of the government shall disclose on the face of each investment certificate in ten-point type the following:

“This certificate is not insured by the Federal Deposit Insurance Corporation or any other agency of the government.”

ARTICLE 4

BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS

§ 1-401. Broker-dealer registration requirement and exemptions

A. It is unlawful for a person to transact business in this state as a broker-dealer, unless the person is registered under this act as a broker-dealer or is exempt from registration as a broker-dealer under subsection B or D of this section.

B. The following persons are exempt from the registration requirement of subsection A of this section:

1. A broker-dealer without a place of business in this state if its only transactions effected in this state are with:

- a. the issuer of the securities involved in the transactions,
- b. a broker-dealer registered under this act or a broker-dealer not required to be registered as a broker-dealer under this act,
- c. an institutional investor,
- d. a nonaffiliated federal covered investment adviser with investments under management in excess of One Hundred Million Dollars (\$100,000,000.00) acting for the account of others pursuant to discretionary authority in a signed record,
- e. a bona fide preexisting customer whose principal place of residence is not in this state and the person is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the customer maintains a principal place of residence,
- f. a bona fide preexisting customer whose principal place of residence is in

this state but was not present in this state when the customer relationship was established, if:

(1) the broker-dealer is registered under the Securities Exchange Act of 1934 or the broker-dealer is not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence, and

(2) within forty-five (45) days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than seventy-five (75) days after the date on which the application is filed, or, if earlier, the date on which the Administrator notifies the person that the Administrator has denied the application for registration or has stayed the pendency of the application for cause,

g. not more than three customers in this state during the previous twelve (12) months, in addition to those specified in subparagraphs a through f and under subparagraph h of this paragraph, if the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the broker-dealer has its principal place of business, and

h. any other person exempted by rule or order under this act; and

2. A person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision.

C. It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked under this act; or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser or a federal covered investment adviser by an order of the securities regulator of a state, the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause shown, an order under this act may modify or waive the prohibitions of this subsection.

D. A rule adopted or order issued under this act may permit:

1. A broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

a. an individual from Canada or other foreign jurisdiction that is temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States,

b. an individual from Canada or other foreign jurisdiction who is present in this state and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that

foreign jurisdiction, or

c. an individual who is resident in this state, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction, and

2. An agent who represents a broker-dealer, that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of any securities in this state as permitted for a broker-dealer described in paragraph 1 of this subsection.

§ 1-402. Agent registration requirement and exemptions

A. It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this act as an agent or is exempt from registration as an agent under subsection B of this section.

B. The following individuals are exempt from the registration requirement of subsection A of this section:

1. An individual who represents a broker-dealer in effecting transactions in this state limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)(2));

2. An individual who represents a broker-dealer that is exempt under subsection B or D of Section 18 of this act [Section 1-401 of this title];

3. An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries to existing employees, partners, members or directors of the issuer or the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

4. An individual who represents an issuer and who effects transactions in the issuer's securities exempted by Section 7 of this act [Section 1-202 of this title], other than paragraphs 11 and 14 of Section 7 of this act [Section 1-202 of this title];

5. An individual who represents an issuer who effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under Section 18(b)(3) or 18(b)(4)(D) [subsequently renumbered 18(b)(4)(E)] of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(3) or 77r(b)(4)(D) [subsequently renumbered 15 U.S.C. Section 77r(b)(4)(E)]) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

6. An individual who represents a broker-dealer registered in this state under subsection A of Section 18 of this act [Section 1-401 of this title] or exempt under subsection B of Section 18 of this act [Section 1-401 of this title] in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of One Hundred Million Dollars (\$100,000,000.00) acting for the account of others pursuant to discretionary authority in a signed record;

7. An individual who represents an issuer in connection with the purchase of the issuer's own securities;

8. An individual who represents an issuer and who restricts participation to performing ministerial or clerical work; or

9. Any other individual exempted by rule adopted or order issued under this act.

C. The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this act or an issuer that is offering, selling or purchasing its securities in this state.

D. It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection A of this section or exempt from registration under subsection B of this section.

E. Unless prohibited by rule adopted or order issued under this act, an individual may act as an agent for more than one broker-dealer or more than one issuer at a time.

F. It is unlawful for an individual acting as an agent, directly or indirectly, to conduct business in this state on behalf of a broker-dealer or issuer if the registration of the individual as an agent is suspended or revoked under this act; or the individual is barred from employment or association with a broker-dealer by an order under this act, the Securities and Exchange Commission, or a self-regulatory organization; or the individual is subject to an order of a court of competent jurisdiction temporarily, preliminarily or permanently enjoining such individual from conducting business in this state on behalf of a broker-dealer or issuer.

§ 1-403. Investment adviser registration requirement and exemptions

A. It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this act as an investment adviser or is exempt from registration as an investment adviser under subsection B of this section.

B. The following persons are exempt from the registration requirement of subsection A of this section:

1. A federal covered investment adviser;

2. A person without a place of business in this state that is registered under the securities act of the state in which that person has its principal place of business if its only clients in this state are:

a. federal covered investment advisers, investment advisers registered under this act, or broker-dealers registered under this act,

b. institutional investors,

c. bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence, or

d. any other client exempted by rule adopted or order issued under this act;

3. A person without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five clients that are residents of this state in addition to those specified under paragraph 2 of this subsection; or

4. Any other person exempted by rule adopted or order issued under this act.

C. It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this state if the registration of the individual is suspended or revoked under this act, or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this act, the Securities and Exchange Commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have

known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the Administrator, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

D. It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this act as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under subsection A of Section 21 of this act [Section 1-404 of this title] or is exempt from registration under subsection B of Section 21 of this act [Section 1-404 of this title].

E. The exemption from registration provided by subparagraph b of paragraph 2 of subsection B of this section shall not be available to any person who acts as an investment adviser to the state, any county, municipality or school district of this state, or any other political subdivision of this state; any agency or corporate or other instrumentality of any such entity; or any pension fund for the benefit of employees of any such entity.

§ 1-404. Investment adviser representative registration requirement and exemptions

A. It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this act as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection B of this section.

B. The following individuals are exempt from the registration requirement of subsection A of this section:

1. An individual who is employed by or associated with an investment adviser that is exempt from registration under subsection B of Section 20 of this act [Section 1-403 of this title] unless the individual has a place of business in this state or is not a "supervised person" as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); and

2. Any other individual exempted by rule adopted or order issued under this act.

C. The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this act or a federal covered investment adviser that has made or is required to make a notice filing under Section 22 of this act [Section 1-405 of this title].

D. An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser at a time unless a rule adopted or order issued under this act prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.

E. It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked; or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this act, the Securities and Exchange Commission, or a self-regulatory organization; or the individual is subject to an order of a court of competent jurisdiction temporarily, preliminarily or permanently enjoining such individual from conducting business in this state on behalf of an investment adviser or a federal covered investment adviser. Upon request from a federal covered investment adviser and for good cause, the Administrator, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

F. An investment adviser registered under this act, a federal covered investment adviser that has filed a notice under Section 22 of this act [Section 1-405 of this title], or a broker-dealer registered under this act is not required to employ or associate with an individual as an investment adviser representative for the referral of investment advisory clients so long as any compensation paid by

such persons for such referral is paid to an investment adviser registered under this act, a federal covered investment adviser who has filed a notice under Section 22 of this act [Section 1-405 of this title], or a broker-dealer registered under this act with which the individual is employed or associated as an investment adviser representative.

§ 1-405. Federal covered investment adviser notice filing

A. Except with respect to a federal covered investment adviser described in subsection B of this section, it is unlawful for a federal covered investment adviser to transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection C of this section.

B. The following federal covered investment advisers are not required to comply with subsection C of this section:

1. A federal covered investment adviser without a place of business in this state if its only clients in this state are:

a. federal covered investment advisers, investment advisers registered under this act, and broker-dealers registered under this act,

b. institutional investors,

c. bona fide preexisting clients whose principal places of residence are not in this state, or

d. other clients specified by rule adopted or order issued under this act;

2. A federal covered investment adviser without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five clients that are residents in this state in addition to those specified under paragraph 1 of this subsection; and

3. Any other person excluded by rule adopted or order issued under this act.

C. A person acting as a federal covered investment adviser, not excluded under subsection B of this section, shall file a notice containing a consent to service of process complying with Section 49 of this act [Section 1-611 of this title], such records as have been filed with the Securities and Exchange Commission under the Investment Advisers Act of 1940 required by rule or order under this act, and the fee specified in Section 50 of this act [Section 1-612 of this title].

D. The notice under subsection C of this section becomes effective upon its filing and expires at midnight on December 31 each year.

§ 1-406. Registration application -- Time of becoming effective

A. A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application that contains:

1. The information required for the filing of a uniform application, a consent to service of process complying with Section 49 of this act [Section 1-611 of this title], the fee specified in Section 50 of this act [Section 1-612 of this title] and any reasonable fees charged by the designee of the Administrator for processing the filing; and

2. Upon request by the Administrator, any other financial or other information that the Administrator determines is appropriate.

B. If the information contained in an application that is filed under subsection A of this section is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.

C. If an order is not in effect and a proceeding is not pending under Section 28 of this act [Section 1-411 of this title], registration becomes effective at noon on the 45th day after a completed application is filed unless the registration is denied. A rule adopted or order issued under this act may set an earlier effective date or may defer the effective date until noon on the 45th day after the filing of any amendment completing the application.

D. A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under Section 28 of this act [Section 1-411 of this title], a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this act, by paying the fee specified in Section 50 of this act [Section 1-612 of this title], and by paying costs charged by the designee of the Administrator for processing the filings.

E. A rule adopted or order issued under this act may impose such other conditions not inconsistent with the National Securities Markets Improvement Act of 1996. An order issued under this act may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

§ 1-407. Succession and change in registration of broker-dealer or investment adviser

A. A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to Section 18 or 20 of this act [Section 1-401 or 1-403 of this title], or a notice pursuant to Section 22 of this act [Section 1-405 of this title], for the unexpired portion of the current registration or notice filing.

B. A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or upon a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this act. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. Any predecessor registered under this act shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within forty-five (45) days after filing its amendment to effect succession.

C. A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or upon a date designated by the registrant.

D. A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this act.

§ 1-408. Termination of employment or association of agent and investment adviser representative -- Transfer of employment or association

A. If an agent registered under this act terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this act terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

B. If an agent registered under this act terminates employment by or association with a broker-

dealer registered under this act and begins employment by or association with another broker-dealer registered under this act; or if an investment adviser representative registered under this act terminates employment by or association with an investment adviser registered under this act; or a federal covered investment adviser that has filed a notice under Section 22 of this act [Section 1-405 of this title], and begins employment by or association with another investment adviser registered under this act or a federal covered investment adviser that has filed a notice under Section 22 of this act [Section 1-405 of this title]; then upon the filing by or on behalf of the registrant, within thirty (30) days after the termination, of an application for registration that complies with the requirement of subsection A of Section 23 of this act [Section 1-406 of this title], and payment of the filing fee required under Section 50 of this act [Section 1-612 of this title], the registration of the agent or investment adviser representative, is:

1. Immediately effective as of the date of the completed filing if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record does not contain a new or amended disciplinary disclosure within the previous twelve (12) months; or

2. Temporarily effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record contains a new or amended disciplinary disclosure within the preceding twelve (12) months.

C. The Administrator may withdraw the temporary registration if there are or were grounds for discipline under Section 28 of this act [Section 1-411 of this title] and the Administrator does so within thirty (30) days after the filing of the application. If the Administrator does not withdraw the temporary registration within the 30-day period, registration becomes automatically effective on the 31st day after filing.

D. The Administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under paragraph 1 or 2 of subsection B of this section based on the public interest and the protection of investors.

E. If the Administrator determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this act may require the registration be canceled or terminated or the application denied. The Administrator may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

§ 1-409. Withdrawal of registration of broker-dealer, agent, investment adviser, and investment adviser representative

Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective sixty (60) days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this act unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued under this act. The Administrator may institute a revocation or suspension proceeding under Section 28 of this act [Section 1-411 of this title] within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending when the application is filed.

§ 1-410. Postregistration requirements

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. 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.

D. 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.

E. 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.

F. 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.

G. A rule adopted or order issued under this act may require any individual registered under Section 19 or 21 of this act [Section 1-402 or 1-404 of this title] 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 1-404 of this title].

§ 1-411. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration

A. If the Administrator finds that the order is in the public interest and subsection D of this section authorizes the action, an order issued under this act may deny an application, or may condition or limit registration:

1. Of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative; and
2. If the applicant is a broker-dealer or investment adviser, any partner, officer, or director, any person having a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser.

B. If the Administrator finds that the order issued is in the public interest and subsection D of this section authorizes the action an order issued under this act may revoke, suspend, condition, or limit the registration of a registrant and if the registrant is a broker-dealer or investment adviser, any partner, officer, or director, any person having a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser. However, the Administrator:

1. May not institute a revocation or suspension proceeding under this subsection based on an order issued by another state that is reported to the Administrator or designee later than one year after the date of the order on which it is based; and
2. Under subparagraphs a and b of paragraph 5 of subsection D of this section may not issue an order on the basis of an order under the state securities act of another state unless the other order was based on conduct for which subsection D of this section would authorize the action had the conduct occurred in this state.

C. If the Administrator finds that the order is in the public interest and paragraphs 1 through 6, 8, 9, 10, 12 or 13 of subsection D of this section authorizes the action, an order under this act may censure, impose a bar, impose a civil penalty in an amount not to exceed a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or Two Hundred Fifty Thousand Dollars (\$250,000.00) for multiple violations on a registrant, and/or recover the costs of the investigation from a registrant and if the registrant is a broker-dealer or investment adviser, from any partner, officer, or director, any person having a similar function or any person directly or indirectly controlling the broker-dealer or investment adviser.

D. A person may be disciplined under subsections A through C of this section if the person:

1. Has filed an application for registration in this state under this act or the predecessor act within the previous ten (10) years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;
2. Has willfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous ten (10) years;
3. Has been convicted of any felony or within the previous ten (10) years has been convicted of a misdemeanor involving a security, a commodity futures or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;
4. Is enjoined or restrained by a court of competent jurisdiction in an action instituted by the Administrator under this act or a predecessor act, a state, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

5. Is the subject of an order, issued after notice and opportunity for hearing by:
 - a. the securities, depository institution, insurance or other financial services regulator of a state, or by the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative,
 - b. the securities regulator of a state or by the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser,
 - c. the Securities and Exchange Commission or by a self-regulatory organization suspending, barring, canceling or expelling the registrant from membership in a self-regulatory organization,
 - d. a court adjudicating a United States Postal Service fraud,
 - e. the insurance regulator of a state denying, suspending, or revoking the registration of an insurance agent, or
 - f. a depository institution regulator suspending or barring a person from the banking or depository institution business;
6. Is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;
7. Is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the Administrator may not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant;
8. Refuses to allow or otherwise impedes the Administrator from conducting an audit or inspection under subsection D of Section 27 of this act [Section 1-410 of this title] or refuses access to any registrant's office to conduct an audit or inspection under subsection D of Section 27 of this act [Section 1-410 of this title];
9. Has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous ten (10) years;
10. Has not paid the proper filing fee within thirty (30) days after having been notified by the Administrator of a deficiency, but the Administrator shall vacate an order under this paragraph when the deficiency is corrected;
11. After notice and opportunity for a hearing, has been found within the previous ten (10) years:
 - a. by a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking or finance is regulated,

b. to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative or similar person, or

c. to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

12. Is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance or insurance laws of a state;

13. Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance or insurance business within the previous ten (10) years; or

14. Is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by subsection E of this section. The Administrator may require an applicant for registration under Section 19 or 21 of this act [Section 1-402 or 1-404 of this title] who has not been registered in a state within the two (2) years preceding the filing of an application in this state to successfully complete an examination.

E. A rule adopted or order issued under this act may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this act may waive, in whole or in part, an examination as to an individual and a rule adopted under this act may waive, in whole or in part, an examination as to a class of individuals if the Administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

F. The Administrator may summarily postpone an application or summarily suspend a registration before final determination of an administrative proceeding. Upon the issuance of the order, the Administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing and such hearing shall be commenced within fifteen (15) days of the matter being set for hearing. If a hearing is not requested and none is ordered by the Administrator, within thirty (30) days after the date of service of the order, the order becomes final 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 the order until final determination.

G. An order may not be issued under this section, except under subsection F of this section, without:

1. Appropriate notice to the applicant or registrant;
2. Opportunity for hearing; and
3. Findings of fact and conclusions of law in a record in accordance with the Administrative Procedures Act. If the person to whom the notice is addressed does not request a hearing within fifteen (15) days after the service of notice is effective, a final order as provided in subsection A, B or C of this section may be issued.

H. A person who controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the Administrator under subsections A through C of this section to the same

extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is the basis for discipline under this section.

I. The Administrator may not institute a proceeding under subsection A, B or C of this section based solely on material facts actually known by the Administrator unless an investigation or the proceeding is instituted within one year after the Administrator actually knew the material facts.

ARTICLE 5

FRAUD AND LIABILITIES

§ 1-501. General fraud

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

1. To employ a device, scheme, or artifice to defraud;
2. To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; or
3. To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

§ 1-502. Prohibited conduct in providing investment advice

A. It is unlawful for a person that advises others, for compensation, either directly or indirectly, or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities, or that, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities:

1. To employ a device, scheme, or artifice to defraud another person;
2. To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; or
3. To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

B. 1. A rule adopted under this act may define an act, practice, or course of business of an investment adviser or an investment adviser representative as fraudulent, deceptive or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

2. A rule adopted or order issued under this act may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

§ 1-503. Evidentiary burden

A. In a civil action or administrative proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the exemption, exception, preemption, or exclusion.

B. In a criminal proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

§ 1-504. Filing of sales and advertising literature

A. Except as otherwise provided in subsection B of this section, it is unlawful for a person to distribute a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising communication relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this act, unless the sales and advertising literature is first filed with the Department with the fee specified in Section 50 of this act [Section 1-612 of this title] and the Department has responded indicating that the Administrator has no objection to its distribution or use.

B. This section does not apply to sales and advertising literature specified in subsection A of this section relating to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by Section 6, 7, or 8 of this act [Section 1-201, 1-202, or 1-203 of this title] except as may be required pursuant to paragraph 7 of Section 6 of this act [Section 1-201 of this title].

§ 1-505. Misleading filings

It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this act, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

§ 1-506. Misrepresentations concerning registration or exemption

The filing of an application for registration, a registration statement, or a notice filing under this act, or the registration of a person or security under this act, does not constitute a finding by the Administrator that a record filed under this act is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the Administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client, a representation inconsistent with this section.

§ 1-507. Qualified immunity

A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to an alleged untrue statement that is contained in a record required by the Administrator, or designee of the Administrator, the Securities and Exchange Commission, or a self-regulatory organization, unless it is proven that the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

§ 1-508. Violations -- Criminal penalties -- Administrative fines

A. A person who willfully violates this act, or a rule adopted or order issued under this act, except Section 32 of this act [Section 1-504 of this title] or the notice filing requirements of Section 11 or 22 of this act [Section 1-302 or 1-405 of this title], or that willfully violates Section 33 of this act [Section 1-505 of this 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.

§ 1-509. Civil liabilities

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 of this act [Section 1-301 of this 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, subsection A of Section 19, or Section 34 of this act [Section 1-401, 1-402, or 1-506 of this 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, subsection A of Section 21, or Section 34 of this act [Section 1-403, 1-404, or 1-506 of this 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 of this act [Section 1-301 of this 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 of this act [Section 1-301 of this 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.

§ 1-510. Rescission offers

A purchaser, seller, or recipient of investment advice may not maintain an action under Section 37 of this act [Section 1-509 of this title] if:

1. The purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted:

- a. an offer stating the respect in which liability under Section 37 of this act [Section 1-509 of this title] may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misstatements or omissions in the information that was required by this act to be furnished to that person at the time of the purchase, sale, or investment advice,

- b. if the basis for relief under this section may have been a violation of subsection B of Section 37 of this act [Section 1-509 of this title], an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the legal rate of interest per year from the date of purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an 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 in cash equal to the damages computed in the manner provided in this subsection,

- c. if the basis for relief under this section may have been a violation of subsection C of

Section 37 of this act [Section 1-509 of this title], an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser, and interest at the legal rate of interest from the date of the sale, or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the legal rate of interest per year from the date of the sale,

d. if the basis for relief under this section may have been a violation of subsection D of Section 37 of this act [Section 1-509 of this title], and if the customer is a purchaser, an offer to pay as specified in subparagraph b of this paragraph; or, if the customer is a seller, an offer to tender or to pay as specified in subparagraph c of this paragraph,

e. if the basis for relief under this section may have been a violation of subsection E of Section 37 of this act [Section 1-509 of this title], an offer to reimburse in cash the consideration paid for the advice and interest at the legal rate of interest per year from the date of payment, or

f. if the basis for relief under this section may have been a violation of subsection F of Section 37 of this act [Section 1-509 of this title], an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the legal rate of interest per year from the date of the violation causing the loss;

2. An offer under paragraph 1 of this subsection states that it must be accepted by the purchaser, seller, or recipient of investment advice within thirty (30) days after the date of its receipt by the purchaser, seller, or recipient of investment advice, or any shorter period, of not less than three (3) days, that the Administrator, by order, specifies;

3. The offeror has the present ability to pay the amount offered or to tender the security under paragraph 1 of this subsection;

4. The offer under paragraph 1 of this subsection is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and

5. The purchaser, seller, or recipient of investment advice that accepts the offer under paragraph 1 of this subsection, in a record within the period specified under paragraph 2 of this subsection is paid in accordance with the terms of the offer.

ARTICLE 6

ADMINISTRATION AND JUDICIAL REVIEW

§ 1-601. Administration

A. The Administrator shall administer this act.

B. There are hereby created the Oklahoma Securities Commission and the Department of Securities. The Commission shall be the policy making and governing authority of the Department, shall appoint the Administrator and shall be responsible for the enforcement of this act.

C. 1. The Commission shall consist of four (4) members to be appointed by the Governor by and with the advice and consent of the Senate. One member will be a member of the Oklahoma

Bar Association appointed from a list of five nominees submitted by the Oklahoma Bar Association; one member shall be an active officer of a bank or trust company operating in the State of Oklahoma appointed from a list of five nominees submitted by the Oklahoma Bankers Association; and one member shall be a certified public accountant appointed from a list of five nominees submitted by the Oklahoma Society of Certified Public Accountants; and one member shall be engaged in the securities industry and shall be appointed for a six-year initial term from a list of five nominees submitted by the Oklahoma Securities Industry Association; provided, that the State Bank Commissioner of Oklahoma shall be and he is hereby made an ex officio member of said Commission.

2. Except for appointment of the member engaged in the securities industry as provided for in subsection C of this section, no person may be appointed to or by the Commission while he is registered as a broker-dealer, agent, investment adviser, or investment adviser representative under this act, or while he is an officer, director, or partner of any person so registered, or while he is an officer, director, or partner of an issuer which has a registration statement effective under this act, or while he is occupying a similar status or performing similar functions.

3. It is unlawful for any member of the Commission, the Administrator, or any other officer or employee of the Department to use for personal benefit any information which is filed with or obtained by the Administrator and which is not made public. No provision of this act authorizes any member of the Commission, the Administrator or any other officer or employee of the Department to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this act or in connection with a proceeding or investigation conducted by any state, federal or foreign law enforcement agency, securities agency or self-regulatory organization. No provision of this act either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to any member of the Commission, the Administrator or any other officer or employee of the Department.

4. Except on proof of corruption, no Commissioner shall for his acts or his failure to act be civilly liable to any investor, applicant for registration, or any other person.

D. The Governor shall biennially appoint Commission members to serve for a staggered term of six (6) years. Upon the expiration of initial terms, the term of each member shall be six (6) years from the date of his appointment and qualification, and until his successor shall qualify. Vacancies shall be filled by the Governor for the unexpired term. Members shall be eligible for reappointment.

E. The Commission shall select a chair and is hereby authorized to adopt rules for conducting its proceedings. Any three members shall constitute a quorum for transacting Commission business. The Commission shall meet bimonthly on such date as it may designate and may meet at such other times as it may deem necessary, or when called by the chair or by any two members. Complete minutes of each meeting shall be kept and filed in the Department and shall be available for public inspection during reasonable office hours. The Commission shall report annually to the Governor, to the Speaker of the House of Representatives and to the President Pro Tempore of the Senate. The report shall contain the minutes of each meeting held during the year, legislative recommendations, a summary of violations of this act and action taken thereon, a list of securities registered under this act and such other data and information as may be deemed necessary or appropriate. The Commission is hereby authorized to publish such report, and the Administrator may sell copies of such report at such price as is reasonably sufficient to defray the expenses of the Department in preparing, publishing, and disseminating the same. Each member of the Commission shall have unrestricted access to all offices and records under the jurisdiction of the Department. The Commission, or a majority thereof, may exercise any power or perform any act authorized for the Administrator under the provisions of this act.

F. The Commission shall appoint a full-time Administrator, who shall serve at the pleasure of the Commission. He shall administer the act under the supervision of the Commission and in accordance with its policies.

G. The Administrator shall be a person of good moral character, at least thirty (30) years of age, a resident taxpayer of Oklahoma, and thoroughly familiar with corporate organization, investment banking, investment trusts, the sale of securities, and the statistical details of the manufacturing industries and commerce of this state. In addition, the Administrator shall:

1. Be a graduate of an accredited law school and a member of the Oklahoma Bar Association, or shall have had ten (10) years' experience as a certified public accountant; and
2. Have at least three (3) years' work experience involving some aspect of the securities industry. The Commission may also require additional qualifications. The salary of the Administrator shall be fixed by the Commission.

H. The Administrator, with the approval of the Commission, may designate a Deputy Securities Administrator, who shall possess the same qualifications, including bond, required for the Administrator and who shall perform all the duties required to be performed by the Administrator when the Administrator is absent or unable to act for any reason.

I. Before assuming office, the Administrator shall give a bond in the sum of Fifty Thousand Dollars (\$50,000.00) payable to the State of Oklahoma, to be approved by the Attorney General of the State of Oklahoma, conditioned that he will faithfully execute the duties of his office. The Administrator may by rule or order require any employee of the Department to be bonded on the same condition and in the same or such lesser amount as he determines. The expense of all such bonds shall be paid from funds available to the Department.

J. 1. The internal administrative organization of the Department shall be determined by the Commission in such manner as to promote the efficient and effective enforcement of this act. The Department shall include, but not be limited to, divisions relating to:

- a. registration of broker-dealers, agents, investment advisers, and investment adviser representatives,
- b. registration of securities,
- c. investigation and enforcement, and
- d. investor education.

2. Within the division of investor education, the Department may provide the following services at the discretion of the Administrator:

- a. informing investors of all rights and remedies available under this act,
- b. informing investors of the availability of private dispute resolution, including arbitration and mediation, as an alternative to other courses of action,
- c. acting as a liaison between investors and the other divisions of the Department, and
- d. acting as a liaison between investors and issuers of securities, broker-dealers or investment advisers subject to the jurisdiction of the Department under this act.

Nothing in this subsection shall authorize any employee of the Department to represent the interests of, or to serve as counsel for, investors in any proceeding or action to include an administrative or civil proceeding brought by the Department or the Securities and Exchange Commission, a proceeding brought by the National Association of Securities Dealers, Inc., or an arbitration or mediation proceeding. Further, no employee of the

Department may advise any person about the value of securities or as to the advisability of investing in, purchasing or selling securities, or as to the value or merits of pursuing a particular course of action.

3. Employees of the division of investor education shall not be exempt from the provisions of the Open Records Act and Section 45 of this act [Section 1-607 of this title].

K. The Administrator shall prepare in writing a manual of necessary employee positions for the Department, including job classifications, personnel qualifications, duties, maximum and minimum salary schedules, and other personnel information, which shall be approved by the Commission. The Administrator may select, appoint, and employ such accountants, auditors, examiners, clerks, stenographers, and other personnel as he deems necessary for the proper administration of this act, and may fix their compensation and the salary of the Deputy Administrator. The Deputy Administrator and other employees of the Department shall serve at the pleasure of the Administrator.

L. The Commission and the Securities Department shall be assigned offices in Oklahoma City, Oklahoma, by the Office of Management and Enterprise Services, and all records of the Commission and Department shall be kept in those offices, unless and until transferred to the Records Management Division of the Oklahoma Department of Libraries.

M. The Department of Securities' attorney, paralegal, legal secretary, accountant, investigator, examiner, chief financial officer, network administrator, business manager, and investor education coordinator positions shall be in the unclassified service and are in no way subject to any of the provisions of the Merit System of Personnel Administration or of the rules promulgated by the Office of Management and Enterprise Services except those relating to leave regulations.

N. 1. Neither the Administrator nor any employee of the Department, during their respective terms of employment, shall serve as a director, officer, shareholder, member, partner, agent or employee of any person who, during the period of such Administrator's or employee's employment with the Department:

a. was licensed or applied for registration as a broker-dealer, agent, investment adviser or investment adviser representative under this act, or

b. applied for or secured the registration of securities under this act.

2. Nothing in paragraph 1 of this subsection shall prohibit the holding, purchasing or selling of any securities by the Administrator or any employee of the Department in accordance with regulations adopted by the Commission for the purpose of protecting the public interest and avoiding conflicts of interest.

3. Nothing contained in paragraph 1 of this subsection shall prohibit the holding, purchasing or selling of any securities of any issuer described in subparagraph b of paragraph 1 of this subsection of this section by the Administrator if either:

a. the Administrator together with his or her spouse, or minor children, owns less than one percent (1%) of any class of outstanding securities of any such issuer so long as such securities are not purchased in an initial public offering, or

b. such securities are held or purchased through a management account or trust administered by a bank or trust company authorized to do business in this state that has sole investment discretion regarding the holding, purchasing or selling of such securities and the Administrator or employee did not, directly or indirectly, advise, counsel or command the holding, purchasing or selling of any securities or furnish any information relating to any such securities to such bank or trust company and further, such account

or trust does not at any time have more than ten percent (10%) of its total assets invested in the securities of any one issuer or hold more than five percent (5%) of the outstanding securities of any class of securities of any one issuer.

O. This act does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

P. The Administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the Administrator may collaborate with public and nonprofit organizations with an interest in investor education. The Administrator may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the Administrator to require participation or monetary contributions of a registrant in an investor education program.

§ 1-602. Investigations and subpoenas

A. The Administrator may:

1. Conduct public or private investigations within or outside of this state which the Administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this act or a rule adopted or order issued under this act, or to aid in the enforcement of this act or in the adoption of rules and forms under this act;
2. Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the Administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and
3. Publish a record concerning an action, proceeding, or an investigation under, or a violation of, this act or a rule adopted or order issued under this act if the Administrator determines it is necessary or appropriate in the public interest and for the protection of investors.

B. For the purpose of an investigation or proceeding under this act, the Administrator or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the Administrator considers relevant or material to the investigation or proceeding.

C. If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the Administrator under this act, the Administrator may apply to the district court of Oklahoma County or the district court in any other county where service can be obtained or a court of another state to enforce compliance. The court may:

1. Hold the person in contempt;
2. Order the person to appear before the Administrator or an officer designated by the Administrator;
3. Order the person to testify about the matter under investigation or in question;
4. Order the production of records;
5. Grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;

6. Impose a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or Two Hundred Fifty Thousand Dollars (\$250,000.00) for multiple violations in a single proceeding or a series of related proceedings; and

7. Grant any other necessary or appropriate relief.

D. This section does not preclude a person from applying to the district court of Oklahoma County or a court of another state for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

E. An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the Administrator or a designated officer under this act or in an action or proceeding instituted by the Administrator under this act on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the Administrator may apply to the district court of Oklahoma County to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

F. At the request of a law enforcement or another governmental or regulatory agency or a self-regulatory organization, the Administrator may provide assistance if the requesting entity states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting entity administers or enforces. The Administrator may provide the assistance by using the authority to investigate and the powers conferred by this section as the Administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this act or other law of this state if occurring in this state. In deciding whether to provide the assistance, the Administrator may consider whether the requesting entity is permitted and has agreed to provide assistance reciprocally within its state, federal or foreign jurisdiction to the Administrator on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this state; and the availability of resources and employees of the Administrator to carry out the request for assistance.

§ 1-603. Civil enforcement

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 this act 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 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.

§ 1-604. Administrative enforcement

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 this act or a rule adopted or order issued under this act 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 of this act [Section 1-401 of this title] or an investment adviser under subparagraph c of paragraph 2 of subsection B of Section 20 of this act [Section 1-403 of this title]; or

3. Issue an order under Section 9 of this act [Section 1-204 of this 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 of this act [Section 1-609 of this 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.

§ 1-605. Rules, forms, orders, interpretative opinions, and hearings

A. The Administrator may:

1. Issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this act and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;
2. By rule, define terms, whether or not used in this act, but those definitions may not be inconsistent with this act; and
3. By rule, classify securities, persons, and transactions and adopt different requirements for different classes.

B. Under this act, a rule or form may not be adopted or amended, or an order issued or amended, unless the Administrator finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this act. In adopting, amending, and repealing rules and forms, Section 46 of this act [Section 1-608 of this title] applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

C. Subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisers Act of 1940, the Administrator may require that a financial statement filed under this act be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this act. A rule adopted or order issued under this act may establish:

1. Subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisers Act of 1940, the form and content of financial statements required under this act;
2. Whether unconsolidated financial statements must be filed; and
3. Whether required financial statements must be audited by an independent certified public accountant.

D. The Administrator may provide interpretative opinions or issue determinations that the Administrator will not institute a proceeding or an action under this act against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this act. The charge for interpretative opinions or determinations that the Administrator will not institute an action or a proceeding under this act shall be specified in Section 50 of this act [Section 1-612 of this title].

E. A penalty under this act may not be imposed for, and liability does not arise from, conduct that is engaged in or omitted in good faith believing it conforms to a rule, form, or order of the Administrator under this act.

F. A hearing in an administrative proceeding under this act shall be conducted in public.

§ 1-606. Administrative files and opinions

A. The Administrator shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this act or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this act or the predecessor act; and interpretative opinions or no action determinations issued under this act.

B. The Administrator shall make all rules, forms, interpretative opinions, and orders available to the public.

C. The Administrator shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person who so requests. The charge for furnishing the record or certification shall be specified in Section 50 of this act [Section 1-612 of this title]. A copy of the record certified or a certificate by the Administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence.

§ 1-607. Public records -- Confidentiality

A. Except as otherwise provided in subsection B of this section, records obtained by the Administrator or filed under this act, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.

B. The following records are not public records and are not available for public examination under subsection A of this section:

1. A record obtained by the Administrator or created by a representative of the Administrator in connection with an audit or inspection under subsection K of Section 14 or subsection D of Section 27 of this act [Section 1-305 or 1-410 of this title] or an investigation under Section 40 of this act [Section 1-602 of this title];

2. A part of a record filed in connection with a registration statement under Sections 10 and 12 through 14 of this act [Sections 1-301 and 1-303 through 1-305 of this title] or a record obtained under subsection K of Section 14 or subsection D of Section 27 of this act [Section 1-305 or 1-410 of this title] that contains trade secrets or confidential information if the person filing the registration statement or providing the record has asserted a claim of confidentiality or privilege that is authorized by law;

3. A record that is not required to be provided to the Administrator or filed under this act and is provided to the Administrator only on the condition that the record will not be subject to public examination or disclosure;

4. A record in a litigation file;

5. A nonpublic record received from a person specified in subsection A of Section 46 of this act [Section 1-608 of this title];
6. A record obtained by the Administrator through a designee of the Administrator that a rule or order under this act determines has been:
 - a. expunged from the Administrator's records by the designee, or
 - b. determined to be nonpublic or nondisclosable by that designee if the Administrator finds the determination to be in the public interest and necessary for the protection of investors; and
7. Any social security number, residential address unless used as a business address, and residential telephone number contained in a record that is filed.

C. If disclosure is for the purpose of a civil or administrative investigation, action, or proceeding brought by the Administrator or a criminal referral made by the Administrator or to a person specified in subsection A of Section 46 of this act [Section 1-608 of this title], the Administrator may disclose a record obtained in connection with an audit or inspection under subsection K of Section 14 of this act [Section 1-305 of this title] or subsection D of Section 27 of this act [Section 1-410 of this title] or a record obtained or created in connection with an investigation under Section 40 of this act [Section 1-602 of this title] so long as the receiving person specified in subsection A of Section 46 of this act [Section 1-608 of this title] provides assurances to undertake such safeguards as are necessary and appropriate to protect the confidentiality of files to which access is granted and information derived therefrom.

§ 1-608. Uniformity and cooperation with other agencies

A. The Administrator shall, in its discretion, cooperate, coordinate, consult, and, subject to Section 45 of this act [Section 1-607 of this title], share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, and a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.

B. In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this act, the Administrator shall, in its discretion, take into consideration in carrying out the public interest the following general policies:

1. Maximizing effectiveness of regulation for the protection of investors;
2. Maximizing uniformity in federal and state regulatory standards; and
3. Minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

C. The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes:

1. Establishing or employing one or more designees as a central depository for registration and notice filings under this act and for records required or allowed to be maintained under this act;
2. Developing and maintaining uniform forms;
3. Conducting a joint examination or investigation;

4. Holding a joint administrative hearing;
5. Instituting and prosecuting a joint civil or administrative proceeding;
6. Sharing and exchanging personnel;
7. Coordinating registrations under Sections 10 and 18 through 21 of this act [Sections 1-301 and 1-401 through 1-404 of this title] and exemptions under Section 8 of this act [Section 1-203 of this title];
8. Sharing and exchanging records, subject to Section 45 of this act [Section 1-607 of this title];
9. Formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases;
10. Formulating common systems and procedures;
11. Notifying the public of proposed rules, forms, statements of policy, and guidelines;
12. Attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity; and
13. Developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.

§ 1-609. Commission review of order -- Judicial review

A. Any person aggrieved by final order of the Administrator may obtain a review by the Commission by filing with the Administrator, within fifteen (15) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part and stating the person's specific grounds therefor. The petition, the record upon which the final order was issued, and written briefs submitted by the appealing parties and the Administrator shall be reviewed by the Commission. The cost of preparing the record of the administrative hearing shall be borne by the appealing parties. Oral argument by all parties may be heard by the Commission en banc if requested by an appealing party. Other than newly discovered evidence, additional evidence may only be presented by the appealing party and/or the Administrator on the request of the Commission. Upon the written request of the party on whose behalf the appeal is brought, or upon the party's own motion, the Administrator shall cause complete stenographic notes to be taken of the proceeding before the Commission. If requested by the appealing party, the cost of taking and transcribing such notes shall be borne by the said appealing party. If such notes are taken upon the motion of the Administrator, the cost shall be borne by the Department. The Commission or a majority thereof shall make such order as is deemed proper, just, and equitable within sixty (60) days of receipt by the Administrator of the written petition of the appealing party or at such later time as agreed to by all parties.

B. Appeals by any person aggrieved by a final order of the Commission, except a final order of the Commission to cease and desist, shall be taken to the Supreme Court of this state within thirty (30) days of the date that a copy of the order is mailed to such person, as shown by the certificate of mailing attached to the order. Any person aggrieved by a final order of the Commission to cease and desist shall be taken to the district court of Oklahoma County within thirty (30) days of the date that a copy of the order is mailed to such person, as shown by the certificate of mailing attached to the order. The proceedings for review shall be as now prescribed by law and by rules of the reviewing court, subject to the power of the reviewing court to make other and further rules with reference thereto.

C. The commencement of proceedings under this section before the Commission shall not operate

as a stay of the Administrator's order, unless so ordered by the Commission. The commencement of proceedings under this section before the Supreme Court shall not operate as a stay of the Commission's order, unless so ordered by the Court.

§ 1-610. Jurisdiction

A. Sections 10 and 11, subsection A of Section 18, subsection A of Section 19, subsection A of Section 20, subsection A of Section 21, and Sections 29, 34, 37, and 38 of this act [Sections 1-301 and 1-302, 1-401, 1-402, 1-403, 1-404, 1-501, 1-506, 1-509, and 1-510 of this title] do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this state or the offer to purchase or the purchase is made and accepted in this state.

B. Subsection A of Section 18, subsection A of Section 19, subsection A of Section 20, subsection A of Section 21, and Sections 29, 34, 37, and 38 of this act [Sections 1-401, 1-402, 1-403, 1-404, 1-501, 1-506, 1-509, and 1-510 of this title] do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in this state or the offer to sell or the sale is made and accepted in this state.

C. For the purpose of this section, an offer to sell or to purchase a security is made in this state, whether or not either party is then present in this state, if the offer:

1. Originates from within this state; or
2. Is directed by the offeror to a place in this state and received at the place to which it is directed.

D. For the purpose of this section, an offer to purchase or to sell is accepted in this state, whether or not either party is then present in this state, if the acceptance:

1. Is communicated to the offeror in this state and the offeree reasonably believes the offeror to be present in this state and the acceptance is received at the place in this state to which it is directed; and
2. Has not previously been communicated to the offeror, orally or in a record, outside this state.

E. An offer to sell or to purchase is not made in this state when a publisher circulates or there is circulated on the publisher's behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this state, or that is published in this state but has had more than two thirds of its circulation outside this state during the previous twelve (12) months or when a radio or television program or other electronic communication originating outside this state is received in this state. A radio or television program, or other electronic communication is considered as having originated in this state if either the broadcast studio or the originating source of transmission is located in this state, unless:

1. The program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state;
2. The program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state;
3. The program or communication is an electronic communication that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system; or
4. The program or communication consists of an electronic communication that originates in this state, but which is not intended for distribution to the general public in this state.

F. Subsection A of Section 20, subsection A of Section 21, subsection A of Section 22, and Sections 30, 33, and 34 of this act [Sections 1-403, 1-404, 1-405, 1-502, 1-505 and 1-506 of this title] apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

§ 1-611. Service of process

A. A consent to service of process required by this act must be signed and filed in the form required by a rule adopted or order issued under this act. A consent appointing the Administrator the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative under this act or a rule adopted or order issued under this act after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

B. If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this act or a rule adopted or order issued under this act and the person has not filed a consent to service of process under subsection A of this section, the act, practice, or course of business constitutes the appointment of the Administrator as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative and has the same force and validity as if the service were made personally on the person.

C. Service under subsection A or B of this section may be made by providing a copy of the process to the office of the Administrator, but it is not effective unless:

1. The plaintiff, which may be the Administrator, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and
2. The plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the Administrator in a proceeding before the Administrator, allows.

D. Service pursuant to subsection C of this section may be used in a proceeding before the Administrator or by the Administrator in a civil action in which the Administrator is the moving party. Service by mail shall be effective on the date of receipt by the defendant or respondent or if refused, on the date of refusal by the defendant or respondent. Acceptance or refusal of service by mail by a person who is fifteen (15) years of age or older shall constitute acceptance or refusal by the party addressed. Acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. A return receipt signed at such registered office or principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail. Refusal by any person to accept delivery of the certified mail provided for in this section, or the refusal to sign the return receipt, or the lack of knowledge of the Administrator of any address to which process may have been mailed shall not in any manner affect the legality of the service, and the person shall be presumed to have had knowledge of the contents of the process.

E. If process is served under subsection C of this section, the court, or the Administrator in a proceeding before the Administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

§ 1-612. Fees

A. Unless otherwise provided for by law, the following shall be the fees charged pursuant to the provisions of this act:

1. Broker-dealer registration fee or renewal fee \$300.00
2. Broker-dealer or issuer agent or broker-dealer principal registration fee or renewal fee \$50.00
3. Broker-dealer agent on an inactive basis, renewal fee \$10.00
4. Investment adviser registration fee or renewal fee \$300.00
5. Investment adviser annual notice filing fee \$300.00
6. Investment adviser representative registration fee or renewal fee \$50.00
7. Mass transfer fee per transferee \$10.00
8. Mailing list fee \$30.00 per year
9. Review of sales literature package \$50.00
10. Broker-dealer or investment adviser financial or operating \$50.00 reports
11. Issuer sales reports \$50.00
12. Notice of exemption filing or request for order of exemption \$250.00
13. Interpretive opinion or no-action request \$250.00
14. Affidavit request \$10.00
15. Service of process upon the Administrator \$10.00
16. Amendments to registration statements or notice filings pursuant to Section 11 of this act [Section 1-302 of this title] involving changes to the issuer's application or notice filing form:
 - a. examination fee \$50.00, and
 - b. a filing fee computed in the same manner as the filing fee required pursuant to of subsection B of this section for any additional securities being registered.
17. Copying fee.
 - a. 8 1/2" by 14" or smaller \$.25 per page
 - b. Larger than 8 1/2" by 14" \$1.00 per page
 - c. Certified copy 8 1/2" by 14" or smaller \$1.00 per page
 - d. Certified copy larger than 8 1/2" by 14" \$2.00 per page
18. Document search fee for commercial purpose \$20.00 per hour
19. Notice filing fee for a federal covered security \$250.00 under Section 18(b)(4) of the Securities Act of 1933

B. For the purpose of registering securities under this act, any person filing a registration statement

shall pay an examination fee of Two Hundred Dollars (\$200.00) and a filing fee computed upon the aggregate offering price of the securities sought to be registered in Oklahoma as follows:

a fee equal to one-tenth of one percent (1/10 of 1%) of said price; provided, in no event shall the filing fee be less than Two Hundred Dollars (\$200.00) or more than Two Thousand Five Hundred Dollars (\$2,500.00).

C. Any person making a notice filing pursuant to subsection A of Section 1-302 of this title, or renewing such a filing, shall pay a filing fee of Five Hundred Dollars (\$500.00) with each such notice or renewal filed.

D. A person required to pay a filing or notice fee under this section may transmit the fee through or to a person designated by rule adopted or order issued under this act. All fees and other charges collected by the Administrator shall be deposited in the General Revenue Fund with the State Treasurer, except for the fees deposited in the Oklahoma Department of Securities Revolving Fund and the amounts deposited in the Oklahoma Department of Securities Investor Education Revolving Fund.

E. There is hereby created in the State Treasury a revolving fund for the Oklahoma Department of Securities to be designated the "Oklahoma Department of Securities Revolving Fund." The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of fees and other charges collected by the Administrator as follows:

1. The fees collected pursuant to paragraphs 1, 4, 5, 8, 14, 15, 17, and 18 of subsection A of this section;
2. The fees collected pursuant to the provisions of Section 1-504 of this title as provided in paragraph 9 of subsection A of this section;
3. The examination fees designated in paragraph 16 of subsection A and in subsection B of this section;
4. The amounts collected pursuant to subsection D of Section 1-605 of this title set forth in paragraph 13 of subsection A of this section; and
5. One Hundred Fifty Dollars (\$150.00) of each filing fee collected pursuant to subsection C of this section.

The Oklahoma Department of Securities Revolving Fund shall be a continuing fund, not subject to fiscal year limitations. Expenditures from the Oklahoma Department of Securities Revolving Fund shall be made pursuant to the laws of this state and the statutes relating to the Oklahoma Department of Securities, and without legislative appropriation. Expenditures from the Oklahoma Department of Securities Revolving Fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

F. There is hereby created in the State Treasury a revolving fund for the Oklahoma Department of Securities to be designated the "Oklahoma Department of Securities Investor Education Revolving Fund." The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all amounts collected pursuant to court order or judgment in actions brought by the Administrator, and amounts received in multistate settlements participated in by the Department, and interest attributable to the investment of the fund that shall be deposited in the Oklahoma Department of Securities Investor Education Revolving Fund. The Fund may be invested in any investment instrument allowed by Oklahoma Statutes to the State Treasurer for the investment of state funds. Any amounts received from any court settlement in excess of One Million Dollars (\$1,000,000.00) shall be transferred to the General Fund. The Administrator shall use the moneys in this fund exclusively for the specific purposes of research for education and education of Oklahoma residents in matters concerning securities laws and general investor protection. The Oklahoma Department of Securities Investor Education Revolving Fund shall be a continuing fund,

not subject to fiscal year limitations. Expenditures from the Oklahoma Department of Securities Investor Education Revolving Fund shall be made pursuant to the laws of this state and the statutes relating to the Oklahoma Department of Securities, and without legislative appropriation. Expenditures from the Oklahoma Department of Securities Investor Education Revolving Fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

G. There is hereby created a petty cash fund for the Oklahoma Department of Securities. The Director of the Office of Management and Enterprise Services and the Administrator are hereby authorized and it shall be their duty to fix the maximum amount of the petty cash fund, not to exceed Five Hundred Dollars (\$500.00). The Director of the Office of Management and Enterprise Services shall prescribe all forms, systems, and procedures for administering the petty cash fund. The fund shall be used solely to pay:

1. Examination, investigation and litigation expenses of the Department, including, but not limited to, court costs, filing fees, copying fees, and witness fees; and
2. Incidental operating expenses of the Department not to exceed One Hundred Dollars (\$100.00) per transaction.

H. Once paid, fees shall be nonrefundable.

I. Section 211 of Title 62 of the Oklahoma Statutes shall not apply to the Oklahoma Department of Securities or the Oklahoma Securities Commission.

§ 1-613. Availability of data for supervision of personnel -- Sharing of data -- Confidentiality

A. A supervisory agency shall make available to a requesting agency any data obtained or generated by, and in the possession of, the supervisory agency and that the requesting agency deems necessary for review in connection with the supervision of any person over which the requesting agency has direct supervisory authority. However, the requested data must relate to the person, or an affiliate of the person, over which the requesting agency has direct supervisory authority. An agency has direct supervisory authority over a person if such authority is specifically provided by statute, or the agency granted the person's charter, license, or registration, or otherwise granted permission for the person to conduct its business in this state.

B. When a requesting agency and a federal regulatory agency or self-regulatory association have concurrent jurisdiction over a person, a requesting agency may share with such agency or association data received from a supervisory agency. However, the federal regulatory agency or self-regulatory association must return such shared data to the requesting agency unless the federal regulatory agency or self-regulatory association has obtained approval from the supervisory agency to retain the data. The term "federal regulatory agency" shall not include law enforcement agencies.

C. 1. Notwithstanding any other statute, rule, or policy governing or relating to records of the requesting agency, all data received by a requesting agency from a supervisory agency shall be and remain confidential and not open to public inspection, subpoena, or any other form of disclosure while in the possession of the requesting agency. Any request for inspection, subpoena, or other form of disclosure shall be directed at the supervisory agency from which the data originated and disclosure thereof shall be subject to the laws, rules, and policies governing or relating to records of the supervisory agency.

2. The provisions of data by a supervisory agency to a requesting agency under this section shall not constitute a waiver of, or otherwise affect, any privilege or claim of confidentiality that a supervisory agency may claim with respect to such data under any federal laws or laws of this state.

D. A supervisory agency is not required to share original documents with a requesting agency. A requesting agency shall reimburse the supervisory agency for costs associated with providing

copies of data to the requesting agency.

E. Nothing in the Oklahoma Financial Privacy Act shall prohibit the sharing of data as described in this section. Additionally, neither a supervisory agency nor requesting agency shall be required to follow any procedure described in the Oklahoma Financial Privacy Act when sharing data as described in this section.

F. As used in this section:

1. "Affiliate" shall mean any person that controls, is controlled by, or is under common control with another person. A person shall be deemed to have "control" over any person if the person:

a. directly or indirectly or acting through one or more other persons owns, controls, or has power to vote ten percent (10%) or more of any class of voting securities of the other person, or

b. the person controls in any manner the election, appointment, or designation of a majority of the directors, trustees, or other managing officers of the person;

2. "Data" shall mean copies of any documents, reports, examination reports, letters, correspondence, orders, stipulations, memorandums of understanding, agreements, or any other records not open for public inspection generated by a supervisory agency or obtained by a supervisory agency from the person it supervises, whether in paper or electronic format. However, "data" shall not include records that a requesting agency receives from a supervisory agency pursuant to this section;

3. "Requesting agency" means, as applicable, the Oklahoma State Banking Department, the Oklahoma Insurance Department, or the Oklahoma Department of Securities, that requests from a supervisory agency data relating to a person over which the requesting agency does not have direct supervisory authority;

4. "Supervision" shall mean any examination, assessment, order, stipulation, agreement, report, memorandum of understanding, or other regulatory matter or process that a requesting agency is authorized to perform in relation to a person; and

5. "Supervisory agency" shall mean, as applicable, the Oklahoma State Banking Department, the Oklahoma Insurance Department, or the Oklahoma Department of Securities, that maintains data relating to a person over which the agency has direct supervisory authority.

ARTICLE 7

TRANSITION

§ 1-701. Application of act to existing proceedings and rights

A. The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of this act or may be instituted on the basis of conduct occurring before the effective date of this act, but a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within five (5) years after the effective date of this act, whichever is earlier.

B. All effective registrations under the predecessor act, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no action

determinations, and conditions imposed on the registrations under the predecessor act remain in effect while they would have remained in effect if this act had not been enacted. They are considered to have been filed, issued, or imposed under this act, but are exclusively governed by the predecessor act.

C. The predecessor act exclusively applies to an offer or sale made within one (1) year after the effective date of this act pursuant to an offering made in good faith before the effective date of this act on the basis of an exemption available under the predecessor act.