

By: Leach

H.B. No. 4171

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the nonsubstantive revision of The Securities Act,
3 including conforming amendments.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 ARTICLE 1. NONSUBSTANTIVE REVISION OF THE SECURITIES ACT

6 SECTION 1.01. The Government Code is amended by adding
7 Title 12 to read as follows:

8 TITLE 12. SECURITIES ACT

9 CHAPTER 4001. GENERAL PROVISIONS

10 SUBCHAPTER A. SHORT TITLE; PURPOSES; CONSTRUCTION

11 Sec. 4001.001. SHORT TITLE

12 Sec. 4001.002. PURPOSES; CONSTRUCTION

13 Sec. 4001.003. SEVERABILITY

14 SUBCHAPTER B. DEFINITIONS

15 Sec. 4001.051. APPLICABILITY OF DEFINITIONS;

16 CONSTRUCTION OF CERTAIN CONJUNCTIONS

17 Sec. 4001.052. AGENT

18 Sec. 4001.053. BOARD

19 Sec. 4001.054. BROKER

20 Sec. 4001.055. COMMISSIONER

21 Sec. 4001.056. DEALER

22 Sec. 4001.057. FEDERAL COVERED INVESTMENT ADVISER

23 Sec. 4001.058. FRAUD; FRAUDULENT PRACTICE

24 Sec. 4001.059. INVESTMENT ADVISER

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- 2 Sec. 4001.061. ISSUER
- 3 Sec. 4001.062. MORTGAGE
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- 11 Sec. 4001.101. SUFFICIENCY OF NOTICE
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- 14 Sec. 4001.151. PROSECUTION UNDER CERTAIN OTHER LAW
- 15 Sec. 4001.152. GOOD FAITH
- 16 Sec. 4001.153. BURDEN OF PROOF ON EXEMPTION
- 17 Sec. 4001.154. CERTIFIED COPIES OF CERTAIN DOCUMENTS
- 18 OR INSTRUMENTS AS EVIDENCE
- 19 Sec. 4001.155. PROOF OF CERTAIN RECORDS
- 20 TITLE 12. SECURITIES ACT
- 21 CHAPTER 4001. GENERAL PROVISIONS
- 22 SUBCHAPTER A. SHORT TITLE; PURPOSES; CONSTRUCTION
- 23 Sec. 4001.001. SHORT TITLE. This title may be cited as The
- 24 Securities Act. (V.A.C.S. Art. 581-1.)
- 25 Sec. 4001.002. PURPOSES; CONSTRUCTION. (a) The general
- 26 purposes of this title are to:
- 27 (1) protect investors and, consistent with that

1 purpose, encourage capital formation, job formation, and free and
2 competitive securities markets;

3 (2) maximize coordination with federal and other
4 states' laws and administration, particularly with respect to
5 procedure, reports, forms, and exemptions; and

6 (3) minimize regulatory burdens on issuers and other
7 persons subject to this title, especially small businesses.

8 (b) This title may be construed and implemented to
9 effectuate the title's general purposes. (V.A.C.S. Art. 581-10-1.)

10 Sec. 4001.003. SEVERABILITY. The provisions of this title
11 are severable. If any provision of this title is declared void or
12 unconstitutional, the remaining provisions of this title would have
13 been enacted notwithstanding such judicial determination of the
14 invalidity of the provision, and the remaining provisions shall
15 remain in effect. (V.A.C.S. Art. 581-38.)

16 SUBCHAPTER B. DEFINITIONS

17 Sec. 4001.051. APPLICABILITY OF DEFINITIONS; CONSTRUCTION
18 OF CERTAIN CONJUNCTIONS. (a) The definition for a term provided by
19 this chapter applies in this title unless the context in which the
20 term is used indicates a different meaning.

21 (b) The term "and" may be construed to mean "or," and the
22 term "or" may be construed to mean "and." (V.A.C.S. Art. 581-4
23 (part); Art. 581-4, Subsec. J (part).)

24 Sec. 4001.052. AGENT. (a) Except as provided by Subsection
25 (b), "agent" includes a person or company employed, appointed, or
26 authorized by a dealer to sell, offer for sale or delivery, solicit
27 subscriptions to or orders for, or deal in any other manner in,

1 securities in this state directly or through a subagent.

2 (b) If a corporation or partnership is registered as a
3 dealer under this title, an officer of the corporation or partner of
4 the partnership is not deemed an agent solely because of the
5 officer's or partner's status as an officer or partner of that
6 entity. (V.A.C.S. Art. 581-4, Subsec. D.)

7 Sec. 4001.053. BOARD. "Board" means the State Securities
8 Board. (New.)

9 Sec. 4001.054. BROKER. "Broker" means "dealer" as defined
10 in this title. (V.A.C.S. Art. 581-4, Subsec. H.)

11 Sec. 4001.055. COMMISSIONER. "Commissioner" means the
12 securities commissioner. (New.)

13 Sec. 4001.056. DEALER. (a) "Dealer" includes:

14 (1) a person or company, other than an agent, who for
15 all or part of the person's or company's time engages in this state,
16 directly or through an agent, in selling, offering for sale or
17 delivery, soliciting subscriptions to or orders for, undertaking to
18 dispose of, or inviting offers for any security; and

19 (2) a person or company who deals in any other manner
20 in any security in this state.

21 (b) Except as provided by Subsection (c), an issuer, other
22 than a registered dealer, who directly or through any person or
23 company, other than a registered dealer, offers for sale, sells, or
24 makes sales of the issuer's own securities is deemed a dealer and
25 shall comply with this title.

26 (c) An issuer is not deemed a dealer under Subsection (b)
27 if:

1 (1) the issuer sells or offers for sale securities to a
2 registered dealer or only by or through a registered dealer acting
3 as fiscal agent for the issuer; or

4 (2) the transaction is exempt as provided by
5 Subchapter A, Chapter 4005.

6 (d) Except as expressly provided otherwise in this title, a
7 person or company engaged in the sale of, offer for sale of,
8 solicitation of, subscription to, dealing in, or delivery of a
9 security made in a transaction or under a condition specified in
10 Subchapter A, Chapter 4005, is not deemed a dealer within the
11 meaning of this title. (V.A.C.S. Art. 581-4, Subsec. C; Art. 581-5
12 (part).)

13 Sec. 4001.057. FEDERAL COVERED INVESTMENT ADVISER.
14 "Federal covered investment adviser" means an investment adviser
15 who is registered under the Investment Advisers Act of 1940 (15
16 U.S.C. Section 80b-1 et seq.). (V.A.C.S. Art. 581-4, Subsec. O.)

17 Sec. 4001.058. FRAUD; FRAUDULENT PRACTICE. (a) "Fraud"
18 and "fraudulent practice" include:

19 (1) a misrepresentation of a relevant fact made in any
20 manner;

21 (2) a promise, representation, or predication as to
22 the future not made honestly and in good faith;

23 (3) an intentional failure to disclose a material
24 fact;

25 (4) a direct or indirect gain, through the sale of a
26 security, of an underwriting or promotion fee or profit, or of a
27 selling or managing commission or profit, that is so gross or

1 exorbitant as to be unconscionable; and

2 (5) a scheme, device, or other artifice to obtain a
3 profit, fee, or commission described by Subdivision (4).

4 (b) Nothing in this section limits the full meaning of
5 "fraud," "fraudulent," or "fraudulent practice" as applied or
6 accepted in courts. (V.A.C.S. Art. 581-4, Subsec. F.)

7 Sec. 4001.059. INVESTMENT ADVISER. "Investment adviser"
8 includes a person who, for compensation, engages in the business of
9 advising another, either directly or through publications or
10 writings, with respect to the value of securities or to the
11 advisability of investing in, purchasing, or selling securities or
12 a person who, for compensation and as part of a regular business,
13 issues or adopts analyses or a report concerning securities, as may
14 be further defined by board rule. The term does not include:

15 (1) a bank or a bank holding company, as defined by the
16 Bank Holding Company Act of 1956 (12 U.S.C. Section 1841 et seq.),
17 that is not an investment company;

18 (2) a lawyer, accountant, engineer, teacher, or
19 geologist whose performance of the services is solely incidental to
20 the practice of the person's profession;

21 (3) a dealer or agent who receives no special
22 compensation for those services and whose performance of those
23 services is solely incidental to transacting business as a dealer
24 or agent;

25 (4) the publisher of a bona fide newspaper, news
26 magazine, or business or financial publication of general and
27 regular circulation; or

1 (5) a person whose advice, analyses, or report does
2 not concern a security other than a security that is:

3 (A) a direct obligation of or an obligation the
4 principal or interest of which is guaranteed by the United States
5 government; or

6 (B) issued or guaranteed by a corporation in
7 which the United States has a direct or indirect interest and
8 designated by the United States Secretary of the Treasury under
9 Section 3(a)(12), Securities Exchange Act of 1934 (15 U.S.C.
10 Section 78c(a)(12)), as an exempt security for purposes of that
11 Act. (V.A.C.S. Art. 581-4, Subsec. N.)

12 Sec. 4001.060. INVESTMENT ADVISER REPRESENTATIVE. (a)
13 Except as provided by Subsection (b), "investment adviser
14 representative" includes a person or company who, for compensation,
15 is employed, appointed, or authorized by an investment adviser to
16 solicit clients for the investment adviser or who provides
17 investment advice, directly or through subagents, as defined by
18 board rule, to an investment adviser's clients on behalf of the
19 investment adviser.

20 (b) "Investment adviser representative" does not include a
21 partner of a partnership or officer of a corporation or other entity
22 that is registered as an investment adviser under this title solely
23 because of the person's status as a partner or officer of that
24 entity. (V.A.C.S. Art. 581-4, Subsec. P.)

25 Sec. 4001.061. ISSUER. "Issuer" means and includes a
26 person or company who has issued, proposes to issue, or issues any
27 security. (V.A.C.S. Art. 581-4, Subsec. G.)

1 Sec. 4001.062. MORTGAGE. "Mortgage" includes a deed of
2 trust to secure a debt. (V.A.C.S. Art. 581-4, Subsec. I.)

3 Sec. 4001.063. NO PAR VALUE; PAR VALUE. (a) "No par value"
4 as applied to shares of stock or other securities means the
5 securities are without a given or specified par value.

6 (b) For purposes of classifying or computing the par value
7 of shares of stock or other securities of no par value, the amount
8 for which the securities are sold or offered for sale to the public
9 is used as a basis. (V.A.C.S. Art. 581-4, Subsec. K.)

10 Sec. 4001.064. PERSON; COMPANY. (a) The terms "person" and
11 "company" include:

12 (1) any of the following formed under the laws of this
13 or another state, country, sovereignty, or political subdivision of
14 a state, country, or sovereignty, and regardless of whether
15 incorporated or unincorporated:

- 16 (A) a corporation;
- 17 (B) a person;
- 18 (C) a company, including a joint stock company;
- 19 (D) a partnership, including a limited
20 partnership;
- 21 (E) an association;
- 22 (F) a firm;
- 23 (G) a syndicate; or
- 24 (H) a trust; and

25 (2) a government or a political subdivision or agency
26 of a government.

27 (b) As used in Subsection (a), "trust":

1 (1) is deemed to include a common law trust; and

2 (2) does not include a trust created or appointed
3 under or by virtue of a last will and testament or by a court.

4 (c) The definition of "person" assigned by Section 311.005
5 does not apply to any provision in this title. (V.A.C.S. Art.
6 581-4, Subsec. B; New.)

7 Sec. 4001.065. REGISTERED DEALER. "Registered dealer"
8 means a dealer the commissioner has registered under Sections
9 4004.054 and 4004.055, or Section 4004.056. (V.A.C.S. Art. 581-4,
10 Subsec. M.)

11 Sec. 4001.066. REGISTERED INVESTMENT ADVISER. "Registered
12 investment adviser" means an investment adviser to whom the
13 commissioner has issued a registration certificate under Sections
14 4004.054 and 4004.055, or Section 4004.056. (V.A.C.S. Art. 581-4,
15 Subsec. Q.)

16 Sec. 4001.067. SALE; OFFER FOR SALE; SELL. (a) "Sale,"
17 "offer for sale," and "sell" include every disposition or attempted
18 disposition of a security for value.

19 (b) "Sale" means and includes:

20 (1) a contract or agreement in which a security is
21 sold, traded, or exchanged for money, property, or another thing of
22 value; or

23 (2) a transfer of or agreement to transfer a security,
24 in trust or otherwise.

25 (c) "Sale" or "offer for sale" includes a subscription, an
26 option for sale, a solicitation of sale, a solicitation of an offer
27 to buy, an attempt to sell, or an offer to sell, directly or by an

1 agent, by a circular, letter, or advertisement or otherwise,
2 including the deposit in any manner in the United States mail within
3 this state of a circular, letter, or other advertising matter.

4 (d) "Sell" means any act by which a sale is made.

5 (e) A security given or delivered with or as a bonus on
6 account of a purchase of securities or other thing of value is
7 conclusively presumed to:

8 (1) constitute a part of the subject of the purchase;
9 and

10 (2) have been sold for value.

11 (f) The sale of a security under conditions that entitle the
12 purchaser or subsequent holder to exchange the security for another
13 security or to purchase another security is not deemed a sale or
14 offer for sale of the other security.

15 (g) This section does not limit the meaning of the terms
16 "sale," "offer for sale," or "sell" as used by or accepted in
17 courts. (V.A.C.S. Art. 581-4, Subsec. E (part).)

18 Sec. 4001.068. SECURITY. (a) The term "security":

19 (1) includes:

20 (A) a limited partner interest in a limited
21 partnership;

22 (B) a share;

23 (C) a stock;

24 (D) a treasury stock;

25 (E) a stock certificate under a voting trust
26 agreement;

27 (F) a collateral trust certificate;

1 (G) an equipment trust certificate;

2 (H) a preorganization certificate or receipt;

3 (I) a subscription or reorganization
4 certificate;

5 (J) a note, bond, debenture, mortgage
6 certificate, or other evidence of indebtedness;

7 (K) any form of commercial paper;

8 (L) a certificate in or under a profit sharing or
9 participation agreement;

10 (M) a certificate or instrument representing an
11 interest in or under an oil, gas, or mining lease, fee, or title;

12 (N) a certificate or instrument representing or
13 secured by an interest in any of the capital, property, assets,
14 profits, or earnings of a company;

15 (O) an investment contract; and

16 (P) any other instrument commonly known as a
17 security, regardless of whether the instrument is similar to
18 another instrument listed in this subsection; and

19 (2) applies regardless of whether the security is
20 evidenced by a written instrument.

21 (b) "Security" does not include an insurance policy,
22 endowment policy, annuity contract, or optional annuity contract,
23 or any contract or agreement in relation to and in consequence of
24 any such policy or contract, issued by an insurance company subject
25 to the supervision or control of the Texas Department of Insurance
26 when the form of such policy or contract has been filed with the
27 department as required by law. (V.A.C.S. Art. 581-4, Subsec. A.)

1 SUBCHAPTER C. GENERAL ADMINISTRATIVE PROVISIONS

2 Sec. 4001.101. SUFFICIENCY OF NOTICE. In this title unless
3 otherwise specified, a notice required by this title is sufficient
4 if sent by registered or certified mail addressed to a person at:

5 (1) the address designated in any filing the person
6 submitted to the commissioner; or

7 (2) the person's last known address. (V.A.C.S. Art.
8 581-26 (part).)

9 Sec. 4001.102. CONSENT FOR SERVICE OF PROCESS. (a) This
10 section applies only to an issuer, dealer, or investment adviser
11 that is:

12 (1) organized under the laws of any other state,
13 territory, or government; or

14 (2) domiciled in any other state.

15 (b) Unless a board rule specifies otherwise, an issuer,
16 dealer, or investment adviser subject to this section must include
17 in an application filed with or notice filing submitted to the
18 commissioner a provision that appoints the commissioner as the
19 attorney of the issuer, dealer, or investment adviser who may be
20 served with process in any action or proceeding against the issuer,
21 dealer, or investment adviser that arises out of any transaction
22 subject to this title.

23 (c) The provision required by Subsection (b) must be
24 executed by an authorized agent of the issuer, dealer, or
25 investment adviser filing the application or submitting the notice
26 filing.

27 (d) Service of process on the commissioner in accordance

1 with a provision executed under this section has the same effect as
2 if the issuer, dealer, or investment adviser was created or formed
3 under the laws of this state and served with process in this state.

4 (e) If the commissioner is served with process in accordance
5 with a provision executed under this section, the commissioner
6 shall forward the process by United States mail to the last known
7 address of the issuer, dealer, or investment adviser. (V.A.C.S.
8 Art. 581-8.)

9 SUBCHAPTER D. OTHER GENERAL PROVISIONS

10 Sec. 4001.151. PROSECUTION UNDER CERTAIN OTHER LAW.
11 Nothing in Chapter 269 (S.B. 294), Acts of the 55th Legislature,
12 Regular Session, 1957 (Article 581-1 et seq., Vernon's Texas Civil
13 Statutes), limits the liability of a person or company, or of its
14 officers or agents, imposed by law as of August 22, 1957, so as to
15 prevent the prosecution of the person or company, or of its officers
16 or agents, for violating another statute. (V.A.C.S. Art. 581-31.)

17 Sec. 4001.152. GOOD FAITH. (a) A provision of this title
18 that imposes liability or a penalty does not apply to an act or
19 omission made in good faith in conformity with a board rule.

20 (b) This section applies regardless of whether the rule is
21 subsequently amended, rescinded, or determined by judicial or other
22 authority to be invalid for any reason. (V.A.C.S. Art. 581-28-1,
23 Subsec. E.)

24 Sec. 4001.153. BURDEN OF PROOF ON EXEMPTION. (a) A
25 complaint, information or indictment, or a writ or proceeding
26 brought under this title is not required to negate an exemption
27 under this title.

1 (b) A party claiming an exemption under this title has the
2 burden of proof on the exemption. (V.A.C.S. Art. 581-37.)

3 Sec. 4001.154. CERTIFIED COPIES OF CERTAIN DOCUMENTS OR
4 INSTRUMENTS AS EVIDENCE. (a) Except as provided by Subsection (b),
5 a copy of a paper, document, or instrument filed in the office of
6 the commissioner and certified by the commissioner must be admitted
7 in evidence in a court and elsewhere in this state in any case in
8 which the original would be admitted in evidence.

9 (b) In any proceeding in a court, the court may, on cause
10 shown, require the production of the original paper, document, or
11 instrument.

12 (c) In a prosecution, suit, or other action or proceeding in
13 a court of this state that arises under this title, a certificate
14 showing compliance or noncompliance with a provision of this title
15 by a dealer, agent, investment adviser, or investment adviser
16 representative constitutes prima facie evidence of the person's
17 compliance or noncompliance with that provision if the certificate:

18 (1) is under the state seal; and

19 (2) is signed by the commissioner.

20 (d) A certificate described by Subsection (c) is admissible
21 in evidence in an action to enforce this title. (V.A.C.S. Art.
22 581-30 (part).)

23 Sec. 4001.155. PROOF OF CERTAIN RECORDS. All records of the
24 former securities divisions of the offices of the secretary of
25 state and the former Board of Insurance Commissioners for which
26 custody was assumed by the commissioner under Chapter 269, Acts of
27 the 55th Legislature, Regular Session, 1957, shall be proven under

1 the commissioner's certificate. (V.A.C.S. Art. 581-30 (part).)

2 CHAPTER 4002. STATE SECURITIES BOARD AND SECURITIES COMMISSIONER

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 4002.001. APPLICABILITY OF OTHER LAW

5 Sec. 4002.002. SUNSET PROVISION

6 SUBCHAPTER B. STATE SECURITIES BOARD

7 Sec. 4002.051. APPOINTMENT OF BOARD

8 Sec. 4002.052. MEMBERSHIP ELIGIBILITY

9 Sec. 4002.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS

10 Sec. 4002.054. TERMS; VACANCY

11 Sec. 4002.055. PRESIDING OFFICER

12 Sec. 4002.056. GROUNDS FOR REMOVAL

13 Sec. 4002.057. PER DIEM

14 Sec. 4002.058. BOARD MEMBER TRAINING

15 SUBCHAPTER C. SECURITIES COMMISSIONER AND EMPLOYEES OF BOARD

16 Sec. 4002.101. SECURITIES COMMISSIONER

17 Sec. 4002.102. DEPUTY SECURITIES COMMISSIONER;

18 SECURITIES COMMISSIONER APPOINTEES

19 Sec. 4002.103. DIVISION OF RESPONSIBILITIES

20 Sec. 4002.104. STANDARDS OF CONDUCT INFORMATION

21 Sec. 4002.105. CAREER LADDER PROGRAM; PERFORMANCE

22 EVALUATIONS

23 Sec. 4002.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY

24 Sec. 4002.107. WRITTEN EMPLOYEE COMPLAINT PROCEDURE

25 SUBCHAPTER D. POWERS AND DUTIES OF BOARD AND COMMISSIONER

26 Sec. 4002.151. RULES

1 Sec. 4002.152. RULES REGARDING COMPETITIVE BIDDING OR
2 ADVERTISING
3 Sec. 4002.153. BOARD DELEGATION OF RULEMAKING
4 AUTHORITY
5 Sec. 4002.154. COMMISSIONER DISCRETION REGARDING RULES
6 Sec. 4002.155. DEPOSIT OF RECEIPTS TO GENERAL REVENUE
7 FUND
8 Sec. 4002.156. BOARD AUTHORITY TO EXERCISE
9 COMMISSIONER'S POWERS
10 Sec. 4002.157. LIST OF SECURITIES OFFERED
11 Sec. 4002.158. RECORD OF PROCEEDINGS
12 Sec. 4002.159. RECORD OF CERTAIN FILINGS AND ORDERS
13 Sec. 4002.160. COMMISSIONER'S ACCESS TO RECORDS AND
14 REPORTS OF OTHER STATE AGENCIES
15 Sec. 4002.161. CONFIDENTIALITY OF CERTAIN INFORMATION
16 Sec. 4002.162. BOARD ACCESS TO OFFICES AND RECORDS
17 Sec. 4002.163. ANNUAL REPORT
18 SUBCHAPTER E. CONSUMER INTEREST AND OTHER PUBLIC INTEREST
19 INFORMATION
20 Sec. 4002.201. CONSUMER INTEREST INFORMATION
21 Sec. 4002.202. PUBLIC PARTICIPATION
22 Sec. 4002.203. DOCUMENTS AND OTHER INFORMATION FILED
23 WITH COMMISSIONER; PUBLIC RECORDS
24 CHAPTER 4002. STATE SECURITIES BOARD AND SECURITIES COMMISSIONER
25 SUBCHAPTER A. GENERAL PROVISIONS
26 Sec. 4002.001. APPLICABILITY OF OTHER LAW. The board and
27 commissioner are subject to Chapters 551, 2001, and 2002.

1 (V.A.C.S. Art. 581-2, Subsec. N.)

2 Sec. 4002.002. SUNSET PROVISION. The State Securities
3 Board is subject to Chapter 325 (Texas Sunset Act). Unless
4 continued in existence as provided by that chapter, the board is
5 abolished and this title expires September 1, 2019. (V.A.C.S. Art.
6 581-2, Subsec. O.)

7 SUBCHAPTER B. STATE SECURITIES BOARD

8 Sec. 4002.051. APPOINTMENT OF BOARD. (a) The State
9 Securities Board consists of five citizens of this state appointed
10 by the governor with the advice and consent of the senate.

11 (b) Members of the board must be members of the general
12 public.

13 (c) Appointments to the board shall be made without regard
14 to the race, color, disability, sex, religion, age, or national
15 origin of the appointee.

16 (d) A member of the board is eligible for reappointment.
17 (V.A.C.S. Art. 581-2, Subsecs. A (part), B (part).)

18 Sec. 4002.052. MEMBERSHIP ELIGIBILITY. A person is not
19 eligible for appointment to the board if the person or the person's
20 spouse:

21 (1) is registered as a dealer, agent, investment
22 adviser, or investment adviser representative;

23 (2) has an active notice filing under this title to
24 engage in business in this state as an investment adviser or
25 investment adviser representative;

26 (3) is employed by or participates in the management
27 of a business entity engaged in business as a securities dealer or

1 investment adviser; or

2 (4) has, other than as a consumer, a financial
3 interest in a business entity engaged in business as a securities
4 dealer or investment adviser. (V.A.C.S. Art. 581-2, Subsec. B
5 (part).)

6 Sec. 4002.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)
7 In this section, "Texas trade association" means a cooperative and
8 voluntarily joined association of business or professional
9 competitors in this state designed to assist its members and its
10 industry or profession in dealing with mutual business or
11 professional problems and in promoting their common interest.

12 (b) A person may not be a member of the board or an employee
13 of the board employed in a "bona fide executive, administrative, or
14 professional capacity," as that phrase is used for purposes of
15 establishing an exemption to the overtime provisions of the federal
16 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.),
17 if:

18 (1) the person is an officer, employee, or paid
19 consultant of a Texas trade association in a field regulated by the
20 board; or

21 (2) the person's spouse is an officer, manager, or paid
22 consultant of a Texas trade association in a field regulated by the
23 board.

24 (c) A person may not be a member of the board or act as the
25 general counsel to the board if the person is required to register
26 as a lobbyist under Chapter 305 because of the person's activities
27 for compensation on behalf of a profession related to the operation

1 of the board. (V.A.C.S. Art. 581-2-1.)

2 Sec. 4002.054. TERMS; VACANCY. (a) Members of the board
3 serve staggered six-year terms, with as near as possible to
4 one-third of the members' terms expiring January 20 of each
5 odd-numbered year.

6 (b) The governor shall fill a vacancy on the board for the
7 unexpired term. (V.A.C.S. Art. 581-2, Subsec. A (part).)

8 Sec. 4002.055. PRESIDING OFFICER. The governor shall
9 designate a member of the board as the board's presiding officer to
10 serve in that capacity at the will of the governor. (V.A.C.S. Art.
11 581-2, Subsec. D (part).)

12 Sec. 4002.056. GROUNDS FOR REMOVAL. (a) It is a ground for
13 removal from the board that a member:

14 (1) does not have at the time of taking office the
15 qualifications required by Section 4002.051;

16 (2) does not maintain during service on the board the
17 qualifications required by Section 4002.051;

18 (3) is ineligible for membership under Section
19 4002.052 or 4002.053;

20 (4) cannot, because of illness or disability,
21 discharge the member's duties for a substantial part of the member's
22 term; or

23 (5) is absent from more than half of the regularly
24 scheduled board meetings that the member is eligible to attend
25 during a calendar year without an excuse approved by a majority vote
26 of the board.

27 (b) The validity of an action of the board is not affected by

1 the fact that it is taken when a ground for removal of a board member
2 exists.

3 (c) If the commissioner has knowledge that a potential
4 ground for removal exists, the commissioner shall notify the
5 board's presiding officer of the potential ground. The presiding
6 officer shall then notify the governor and the attorney general
7 that a potential ground for removal exists. If the potential ground
8 for removal involves the presiding officer, the commissioner shall
9 notify the board's next highest ranking officer, who shall then
10 notify the governor and the attorney general that a potential
11 ground for removal exists. (V.A.C.S. Art. 581-2, Subsecs. E, F.)

12 Sec. 4002.057. PER DIEM. A member of the board is entitled
13 to a per diem as set by legislative appropriation for each day the
14 member engages in the business of the board. (V.A.C.S. Art. 581-2,
15 Subsec. D (part).)

16 Sec. 4002.058. BOARD MEMBER TRAINING. (a) A person who is
17 appointed to and qualifies for office as a member of the board may
18 not vote, deliberate, or be counted as a member in attendance at a
19 meeting of the board until the person completes a training program
20 that complies with this section.

21 (b) The training program must provide the person with
22 information regarding:

- 23 (1) the legislation that created the board;
24 (2) the programs operated by the board;
25 (3) the role and functions of the board;
26 (4) the rules of the board, with an emphasis on the
27 rules that relate to disciplinary and investigatory authority;

- 1 (5) the current budget for the board;
- 2 (6) the results of the most recent formal audit of the
3 board;
- 4 (7) the requirements of:
- 5 (A) the open meetings law, Chapter 551;
- 6 (B) the public information law, Chapter 552;
- 7 (C) the administrative procedure law, Chapter
8 2001; and
- 9 (D) other laws relating to public officials,
10 including conflict-of-interest laws; and
- 11 (8) any applicable ethics policies adopted by the
12 board or the Texas Ethics Commission.

13 (c) A person appointed to the board is entitled to
14 reimbursement, as provided by the General Appropriations Act, for
15 travel expenses incurred in attending the training program
16 regardless of whether the attendance at the program occurs before
17 or after the person qualifies for office. (V.A.C.S. Art. 581-2-3.)

18 SUBCHAPTER C. SECURITIES COMMISSIONER AND EMPLOYEES OF BOARD

19 Sec. 4002.101. SECURITIES COMMISSIONER. The board shall
20 appoint a securities commissioner who serves at the pleasure of the
21 board and who, under the board's supervision, shall administer this
22 title. (V.A.C.S. Art. 581-2, Subsec. G (part).)

23 Sec. 4002.102. DEPUTY SECURITIES COMMISSIONER; SECURITIES
24 COMMISSIONER APPOINTEES. (a) The commissioner, with the consent
25 of the board, may designate a deputy securities commissioner who
26 shall perform all of the duties of the commissioner required by law
27 to be performed by the commissioner when the commissioner is absent

1 or unable to act for any reason.

2 (b) The commissioner shall appoint other persons as
3 necessary to carry out the powers and duties of the commissioner
4 under this title and under other laws granting jurisdiction to or
5 applicable to the board or the commissioner.

6 (c) The commissioner may delegate to a person appointed
7 under Subsection (b) powers and duties of the commissioner as the
8 commissioner considers necessary. (V.A.C.S. Art. 581-2, Subsec.
9 H.)

10 Sec. 4002.103. DIVISION OF RESPONSIBILITIES. The board
11 shall develop and implement policies that clearly separate the
12 policy-making responsibilities of the board and the management
13 responsibilities of the commissioner and board employees.
14 (V.A.C.S. Art. 581-2-4.)

15 Sec. 4002.104. STANDARDS OF CONDUCT INFORMATION. The
16 commissioner or the commissioner's designee shall provide to
17 members of the board and to board employees, as often as necessary,
18 information regarding the requirements for office or employment
19 under this title, including information regarding a person's
20 responsibilities under applicable laws relating to standards of
21 conduct for state officers or employees. (V.A.C.S. Art. 581-2-2.)

22 Sec. 4002.105. CAREER LADDER PROGRAM; PERFORMANCE
23 EVALUATIONS. (a) The commissioner or the commissioner's designee
24 shall develop an intra-agency career ladder program. The program
25 must require intra-agency posting of each nonentry level position
26 at least 10 days before the date of any public posting.

27 (b) The commissioner or the commissioner's designee shall

1 develop a system of annual performance evaluations based on
2 measurable job tasks. All merit pay for board employees must be
3 based on the system established under this subsection. (V.A.C.S.
4 Art. 581-2, Subsec. K.)

5 Sec. 4002.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)
6 The commissioner or the commissioner's designee shall prepare and
7 maintain a written policy statement that implements a program of
8 equal employment opportunity to ensure that all personnel decisions
9 are made without regard to race, color, disability, sex, religion,
10 age, or national origin.

11 (b) The policy statement must include:

12 (1) personnel policies, including policies relating
13 to recruitment, evaluation, selection, training, and promotion of
14 personnel, that show the intent of the board to avoid the unlawful
15 employment practices described by Chapter 21, Labor Code; and

16 (2) an analysis of the extent to which the composition
17 of the board's personnel is in accordance with state and federal law
18 and a description of reasonable methods to achieve compliance with
19 state and federal law.

20 (c) The policy statement must be:

21 (1) updated annually;

22 (2) reviewed by the Texas Workforce Commission civil
23 rights division for compliance with Subsection (b)(1); and

24 (3) filed with the governor's office. (V.A.C.S. Art.
25 581-2-7.)

26 Sec. 4002.107. WRITTEN EMPLOYEE COMPLAINT PROCEDURE. (a)
27 The commissioner or the commissioner's designee shall maintain a

1 file on each written complaint filed with the commissioner or board
2 concerning an employee or former employee. The file must include
3 the information listed in Section 4007.051 for files maintained
4 under that section for complaints against persons registered under
5 this title.

6 (b) The commissioner or the commissioner's designee shall
7 provide to the person filing the complaint and to each person who is
8 a subject of the complaint a copy of the board's policies and
9 procedures relating to complaint investigation and resolution.

10 (c) The commissioner or the commissioner's designee, at
11 least quarterly until final disposition of the complaint, shall
12 notify the person filing the complaint and each person who is a
13 subject of the complaint of the status of the investigation unless
14 the notice would jeopardize an undercover investigation. (V.A.C.S.
15 Art. 581-2-6, Subsecs. A (part), B, C; New.)

16 SUBCHAPTER D. POWERS AND DUTIES OF BOARD AND COMMISSIONER

17 Sec. 4002.151. RULES. (a) Subject to Subsection (b), the
18 board may adopt rules as necessary to implement this title,
19 including rules:

20 (1) governing registration statements, applications,
21 notices, and reports; and

22 (2) defining terms, regardless of whether used in this
23 title, provided that the definitions are not inconsistent with the
24 purposes fairly intended by the policy and provisions of this
25 title.

26 (b) The board may not adopt a rule unless, after notice and
27 opportunity for comment, the board finds that the action is:

1 (1) necessary or appropriate in the public interest or
2 for the protection of investors; and

3 (2) consistent with the purposes fairly intended by
4 the policy and provisions of this title.

5 (c) For the purpose of adopting rules, the board may
6 classify securities, persons, and matters within the board's
7 jurisdiction and prescribe different requirements for different
8 classes.

9 (d) The board, in the board's discretion, may waive a
10 requirement of a rule in a situation in which, in the board's
11 opinion, the requirement is not necessary in the public interest or
12 for the protection of investors. (V.A.C.S. Art. 581-28-1, Subsecs.
13 B, C.)

14 Sec. 4002.152. RULES REGARDING COMPETITIVE BIDDING OR
15 ADVERTISING. (a) The board may not adopt rules restricting
16 competitive bidding or advertising by a person registered under
17 this title except to prohibit false, misleading, or deceptive
18 practices by the person.

19 (b) The board may not include in the board's rules to
20 prohibit false, misleading, or deceptive practices by a person
21 regulated by the board a rule that:

22 (1) restricts the person's use of any advertising
23 medium;

24 (2) restricts the person's personal appearance or use
25 of the person's voice in an advertisement;

26 (3) relates to the size or duration of an
27 advertisement by the person; or

1 (4) restricts the person's advertisement under a trade
2 name.

3 (c) This section does not affect limitations on advertising
4 in Section 4005.012, 4005.013, or 4005.021 or in rules adopted by
5 the board under Section 4005.024. (V.A.C.S. Art. 581-28-1, Subsec.
6 F.)

7 Sec. 4002.153. BOARD DELEGATION OF RULEMAKING AUTHORITY.

8 (a) The board by rule may delegate to the commissioner or the
9 deputy securities commissioner the authority granted to the board
10 under Section 4002.151 or 4002.152 to adopt rules or to waive the
11 requirements of rules as the board considers appropriate.

12 (b) Any rule adopted by the commissioner or the deputy
13 securities commissioner based on the authority delegated under this
14 section must be adopted in accordance with Sections 4002.151 and
15 4002.152. (V.A.C.S. Art. 581-28-1, Subsec. D.)

16 Sec. 4002.154. COMMISSIONER DISCRETION REGARDING RULES. In
17 applying the standards of this title, the commissioner may waive or
18 relax any restriction or requirement in a board rule that, in the
19 commissioner's opinion, is unnecessary for the protection of
20 investors in a particular case. (V.A.C.S. Art. 581-10, Subsec. D.)

21 Sec. 4002.155. DEPOSIT OF RECEIPTS TO GENERAL REVENUE FUND.
22 The commissioner or board shall deposit money received from
23 assessments or charges under this title to the credit of the general
24 revenue fund. (V.A.C.S. Art. 581-36 (part).)

25 Sec. 4002.156. BOARD AUTHORITY TO EXERCISE COMMISSIONER'S
26 POWERS. The board may exercise any power or perform any act the
27 commissioner is authorized to exercise or perform under this title.

1 (V.A.C.S. Art. 581-2, Subsec. G (part).)

2 Sec. 4002.157. LIST OF SECURITIES OFFERED. At any time, the
3 commissioner may, in the exercise of reasonable discretion under
4 this title, require a dealer to file with the commissioner a partial
5 or complete list of securities that the dealer:

6 (1) is offering or advertising for sale in this state
7 at the time of the request; or

8 (2) has offered or advertised for sale in this state
9 during the six-month period preceding the date of the request.

10 (V.A.C.S. Art. 581-23, Subsec. D.)

11 Sec. 4002.158. RECORD OF PROCEEDINGS. A complete record
12 shall be kept of all proceedings held before the commissioner on any
13 hearing or investigation. (V.A.C.S. Art. 581-26 (part).)

14 Sec. 4002.159. RECORD OF CERTAIN FILINGS AND ORDERS. (a)
15 The commissioner shall maintain a record of:

16 (1) the names and addresses of all registered dealers,
17 registered agents, registered investment advisers, registered
18 investment adviser representatives, and persons who have submitted
19 a notice filing under this title; and

20 (2) all orders of the commissioner denying,
21 suspending, or revoking a registration.

22 (b) A record maintained under Subsection (a) must be open
23 for public inspection.

24 (c) This section does not apply to information made
25 confidential by Section 4002.161, 4007.052, or 4007.056 or other
26 law. (V.A.C.S. Art. 581-11 (part).)

27 Sec. 4002.160. COMMISSIONER'S ACCESS TO RECORDS AND REPORTS

1 OF OTHER STATE AGENCIES. (a) During an investigation for the
2 purpose of enforcing this title or in connection with the
3 application of a person or company for registration or for a permit
4 qualifying securities for sale, the commissioner or deputy
5 securities commissioner shall have free access to all records of,
6 all reports of, and all reports made to an agency or department of
7 this state.

8 (b) If the commissioner or deputy securities commissioner
9 discloses any information made confidential by law, the affected
10 person or company has a right of action on the official bond of the
11 commissioner or deputy securities commissioner for the person's or
12 company's injuries in a suit brought in the name of the state at the
13 relation of the person or company.

14 (c) This section may not be interpreted to prohibit or limit
15 the publication of rulings or decisions of the commissioner.
16 (V.A.C.S. Art. 581-28, Subsec. A (part).)

17 Sec. 4002.161. CONFIDENTIALITY OF CERTAIN INFORMATION. (a)
18 To the extent not otherwise provided by this title, any
19 intra-agency or interagency notes, memoranda, reports, or other
20 communications consisting of advice, analyses, opinions, or
21 recommendations are confidential.

22 (b) Except as provided by Subsection (c) or Section
23 4007.056(b) or (c), the commissioner may not disclose a document or
24 other information made confidential by Subsection (a) unless the
25 disclosure is made to the public under court order for good cause
26 shown.

27 (c) The commissioner, at the commissioner's discretion, may

1 disclose confidential information in the commissioner's possession
2 to:

3 (1) a governmental or regulatory authority or any
4 association of governmental or regulatory authorities approved by
5 board rule; or

6 (2) any receiver appointed under Section 4007.151.

7 (d) Disclosure of information under Subsection (c) does not
8 violate any other provision of this title or Chapter 552.

9 (e) This section may not be interpreted to prohibit or limit
10 the publication of rulings or decisions of the commissioner.
11 (V.A.C.S. Art. 581-28, Subsecs. A (part), B; New.)

12 Sec. 4002.162. BOARD ACCESS TO OFFICES AND RECORDS. Each
13 member of the board shall have access to all of the offices and
14 records under the commissioner's supervision. (V.A.C.S. Art.
15 581-2, Subsec. G (part).)

16 Sec. 4002.163. ANNUAL REPORT. On or before January 1 of
17 each year, the board, with the advice of the commissioner, shall
18 report to the governor and the presiding officer of each house of
19 the legislature about the administration of this title and plans
20 and needs for future securities regulation. The report must
21 include a detailed accounting of all funds received and disbursed
22 by the board during the preceding year. (V.A.C.S. Art. 581-2,
23 Subsec. J.)

24 SUBCHAPTER E. CONSUMER INTEREST AND OTHER PUBLIC INTEREST
25 INFORMATION

26 Sec. 4002.201. CONSUMER INTEREST INFORMATION. (a) The
27 board shall prepare information of consumer interest describing:

1 (1) the regulatory functions of the board and
2 commissioner; and

3 (2) the procedures by which consumer complaints are
4 filed with and resolved by the board or commissioner.

5 (b) The board shall make the information available to the
6 public and appropriate state agencies. (V.A.C.S. Art. 581-2,
7 Subsec. L (part).)

8 Sec. 4002.202. PUBLIC PARTICIPATION. The board by rule
9 shall develop and implement policies that provide the public with a
10 reasonable opportunity to appear before the board and to speak on
11 any issue under the board's jurisdiction. (V.A.C.S. Art. 581-2-5.)

12 Sec. 4002.203. DOCUMENTS AND OTHER INFORMATION FILED WITH
13 COMMISSIONER; PUBLIC RECORDS. (a) All information, papers,
14 documents, instruments, and affidavits required by this title to be
15 filed with the commissioner are public records.

16 (b) All information, papers, documents, instruments, and
17 affidavits required by this title to be filed with the commissioner
18 must be open to inspection and examination by a purchaser or
19 prospective purchaser of securities, or by the agent or
20 representative of a purchaser or prospective purchaser of
21 securities. The commissioner shall:

22 (1) provide to a purchaser or prospective purchaser of
23 securities, or an agent or representative of those persons, any
24 information required to be filed with the commissioner under this
25 title; and

26 (2) on request by a person described by Subdivision
27 (1), provide a certified copy of any paper, document, instrument,

1 or affidavit filed with the commissioner under this title.

2 (c) This section does not apply to information made
3 confidential by Section 4002.161, 4007.052, or 4007.056 or other
4 law. (V.A.C.S. Art. 581-11 (part).)

5 CHAPTER 4003. SECURITIES

6 SUBCHAPTER A. PERMIT QUALIFYING SECURITIES FOR SALE

7 Sec. 4003.001. PERMIT REQUIRED; EXCEPTIONS

8 Sec. 4003.002. PERMIT APPLICATION TO QUALIFY

9 SECURITIES FOR SALE

10 Sec. 4003.003. STATEMENT OF FINANCIAL CONDITION AND

11 INCOME STATEMENT

12 Sec. 4003.004. EXCEPTIONS TO CERTIFICATION REQUIREMENT

13 FOR FINANCIAL STATEMENTS

14 Sec. 4003.005. PERMIT FEE

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16 PERMIT APPLICATION

17 Sec. 4003.007. FORM AND CONTENTS OF PERMIT

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22 SUBCHAPTER B. REGISTRATION BY NOTIFICATION

23 Sec. 4003.051. ELIGIBILITY FOR REGISTRATION BY

24 NOTIFICATION

25 Sec. 4003.052. REGISTRATION STATEMENT REQUIRED

26 Sec. 4003.053. EXCEPTION TO CERTIFICATION REQUIREMENT

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- 14 REGISTRATION STATEMENT
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- 19 SUBCHAPTER E. REGULATION OF OFFERS
- 20 Sec. 4003.201. DEFINITION
- 21 Sec. 4003.202. APPLICABILITY
- 22 Sec. 4003.203. AUTHORIZED WRITTEN, PRINTED, OR
- 23 BROADCAST OFFERS
- 24 Sec. 4003.204. AUTHORIZED ORAL OFFERS
- 25 Sec. 4003.205. DEALER NAMED IN OFFER
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1 SUBCHAPTER F. CROWDFUNDING

2 Sec. 4003.251. DEFINITION

3 Sec. 4003.252. CROWDFUNDING

4 SUBCHAPTER G. PROTECTION FOR PURCHASERS OF SECURITIES

5 Sec. 4003.301. DEPOSIT IN TRUST ACCOUNT

6 Sec. 4003.302. MARKETING EXPENSES

7 Sec. 4003.303. PROSPECTUS REQUIRED FOR CERTAIN OFFERS

8 Sec. 4003.304. INVESTOR EDUCATION

9 CHAPTER 4003. SECURITIES

10 SUBCHAPTER A. PERMIT QUALIFYING SECURITIES FOR SALE

11 Sec. 4003.001. PERMIT REQUIRED; EXCEPTIONS. (a) A dealer
12 or agent may not sell or offer for sale any securities issued after
13 September 6, 1955, unless the commissioner has issued a permit
14 qualifying securities for sale for those securities to the issuer
15 of the securities or a registered dealer.

16 (b) This section does not apply to:

17 (1) securities that have been registered by
18 notification under Subchapter B or by coordination under Subchapter
19 C; or

20 (2) transactions or securities that are exempt under
21 Chapter 4005. (V.A.C.S. Art. 581-7, Subsec. A, Subdiv. (1) (part);
22 Art. 581-10, Subsec. B (part).)

23 Sec. 4003.002. PERMIT APPLICATION TO QUALIFY SECURITIES FOR
24 SALE. (a) The commissioner may not issue a permit qualifying
25 securities for sale required by Section 4003.001 until the issuer
26 of the securities or a registered dealer files with the
27 commissioner an application for the permit in the form of a

1 statement containing the following information:

2 (1) the name, residence, and post office address of
3 each of the company's officers and directors;

4 (2) the location of the company's principal office and
5 each branch office in this state;

6 (3) a copy of the company's certificate of formation or
7 articles of incorporation or partnership or association and any
8 amendments to those documents;

9 (4) if the company is a corporation, a copy of:

10 (A) all minutes of any proceedings of the
11 company's directors, stockholders, or members relating to or
12 affecting the issuance of the securities; and

13 (B) the company's bylaws and any amendments to
14 the bylaws;

15 (5) if the company is a trustee, a copy of all
16 instruments by which the trust is created and in which the trust is
17 accepted, acknowledged, or declared;

18 (6) a statement showing:

19 (A) the amount of capital stock and, if there is
20 no capital stock, the amount of capital of the issuer that is
21 contemplated to be employed;

22 (B) the number of shares into which the stock is
23 divided or, if not divided into shares, what division is to be made
24 or is contemplated;

25 (C) the par value of each share or, if there are
26 shares with no par value, the price at which the security is
27 proposed to be sold; and

1 (D) the promotional fees or commissions to be
2 paid for the sale of the securities, including:

3 (i) all compensation of every nature
4 allowed to be paid to the promoters or allowed for the sale of the
5 securities;

6 (ii) how the compensation is to be paid,
7 whether in cash, securities, service or otherwise, or partly of
8 either or both;

9 (iii) the amount of cash to be paid or
10 securities to be issued, given, transferred, or sold to promoters
11 for promotion or organization services and expenses; and

12 (iv) the amount of promotion or
13 organization services and expenses that the issuer will assume or
14 pay in any way;

15 (7) a copy of:

16 (A) certificates of the stock and all other
17 securities to be sold or offered for sale, together with
18 application blanks for the stock and securities;

19 (B) any contract the company proposes to make
20 concerning the securities; and

21 (C) any prospectus or advertisement or other
22 description of security prepared by or for the company for
23 distribution or publication; and

24 (8) the statement of financial condition and income
25 statement described by Section 4003.003.

26 (b) The statement in an application under this section must
27 be:

1 (1) verified under oath by an executive officer or
2 partner of the issuer or registered dealer filing the application;
3 and

4 (2) attested by the secretary or partner of the issuer
5 or registered dealer filing the application. (V.A.C.S. Art. 581-7,
6 Subsec. A, Subdiv. (1) (part).)

7 Sec. 4003.003. STATEMENT OF FINANCIAL CONDITION AND INCOME
8 STATEMENT. (a) In this section, "current liabilities" means all
9 liabilities that will mature and become due not later than the first
10 anniversary of the date the application listing the liabilities is
11 filed under this subchapter.

12 (b) A statement of financial condition required in the
13 application under this subchapter must:

14 (1) be detailed;

15 (2) be prepared in accordance with generally accepted
16 auditing standards and procedures and generally accepted
17 accounting principles;

18 (3) reflect the financial condition of the issuer of
19 the securities to be qualified for sale on a date not earlier than
20 the 90th day before the date the issuer or registered dealer files
21 the application;

22 (4) show all of the issuer's liabilities by listing all
23 current liabilities and, separately from current liabilities, all
24 other liabilities, including contingent liabilities, showing the
25 amount of those liabilities that are secured by mortgage or
26 otherwise, the issuer's assets that are subject to the mortgage,
27 and the dates of maturity of the mortgage indebtedness;

1 (5) list all of the issuer's assets in detail and show
2 how the value of the assets was determined;

3 (6) show whether the value of the assets represents:

4 (A) the assets' actual cost in money;

5 (B) the assets' present market value; or

6 (C) some other value of the assets;

7 (7) show the present actual value of the assets; and

8 (8) state whether the value listed in the statement is
9 greater or less than the assets':

10 (A) actual cost value in money; and

11 (B) present market value.

12 (c) The statement under Subsection (b) must show the amount
13 for which any real property listed as an asset is rendered for state
14 and county taxation or assessed for taxation.

15 (d) The statement under Subsection (b) must describe any
16 assets consisting of anything other than cash or real property in
17 detail to give the commissioner the fullest possible information.
18 The commissioner may require the filing of additional information
19 as the commissioner considers necessary to determine whether the
20 true value of those assets is reflected in the statement.

21 (e) A statement under Subsection (b) that lists assets
22 subject to a repurchase agreement or similar agreement under the
23 terms of which the absolute ownership of or title to the assets is
24 qualified or limited must fully state:

25 (1) the terms of the agreement; and

26 (2) the amount and character of the assets subject to
27 the agreement.

1 (f) Subject to Subsection (g), the income statement
2 required in an application under this subchapter must:

3 (1) be detailed;

4 (2) be prepared in accordance with generally accepted
5 auditing standards and procedures and generally accepted
6 accounting principles; and

7 (3) cover the lesser of:

8 (A) the preceding three years of the issuer's
9 operations; or

10 (B) the period the issuer has been operating.

11 (g) If the issuer has not been operating but is taking over a
12 concern of any kind that was previously operating, the income
13 statement required in an application under this subchapter must:

14 (1) show the operations of the concern taken over for
15 the three years preceding the taking over of the concern; and

16 (2) clearly reflect the amount of net income or net
17 loss incurred during each year shown. (V.A.C.S. Art. 581-7,
18 Subsec. A, Subdiv. (1) (part), Subsec. D (part).)

19 Sec. 4003.004. EXCEPTIONS TO CERTIFICATION REQUIREMENT FOR
20 FINANCIAL STATEMENTS. (a) Financial statements filed as required
21 by this subchapter are not required to be certified by an
22 independent certified public accountant or independent public
23 accountant if:

24 (1) the fiscal year of the issuer of the securities to
25 be qualified for sale ended on a date earlier than the 90th day
26 before the date of the filing; and

27 (2) financial statements in addition to those required

1 by this subchapter are filed that:

2 (A) contain the information required by Section
3 4003.003; and

4 (B) are certified by an independent certified
5 public accountant or independent public accountant as of the end of
6 the issuer's preceding fiscal year.

7 (b) Instead of being audited and certified, the financial
8 statements described by Section 4003.003 of a small business
9 issuer, as defined by board rule, that meets all other requirements
10 the board by rule or order prescribes, conditionally or
11 unconditionally, may be reviewed by an independent certified public
12 accountant in accordance with the Statements on Standards for
13 Accounting and Review Services promulgated by the American
14 Institute of Certified Public Accountants. (V.A.C.S. Art. 581-7,
15 Subsec. A, Subdiv. (1) (part), Subsec. D (part).)

16 Sec. 4003.005. PERMIT FEE. The commissioner shall charge
17 the fees provided by Chapter 4006 for the issuance of a permit
18 qualifying securities for sale. (V.A.C.S. Art. 581-10, Subsec. B
19 (part).)

20 Sec. 4003.006. EXAMINATION OF AND DETERMINATION ON PERMIT
21 APPLICATION. (a) On the filing of an application for a permit
22 qualifying securities for sale under this subchapter, the
23 commissioner shall examine the application and the papers and
24 documents filed with the application.

25 (b) After the examination, the commissioner shall:

26 (1) issue a permit to the applicant authorizing the
27 applicant to issue and dispose of the securities if the

1 commissioner determines that:

2 (A) the applicant's proposed plan of business
3 appears to be fair, just, and equitable;

4 (B) any consideration paid or to be paid by
5 promoters for the securities is fair, just, and equitable if that
6 consideration is less than the proposed offering price to the
7 public; and

8 (C) the securities the applicant proposes to
9 issue and the methods to be used by the applicant in issuing and
10 disposing of the securities will not work a fraud upon the purchaser
11 of the securities; or

12 (2) deny the application for a permit and notify the
13 applicant in writing of the commissioner's decision if the
14 commissioner determines that the applicant's proposed plan of
15 business appears to be unfair, unjust, or inequitable. (V.A.C.S.
16 Art. 581-10, Subsec. A.)

17 Sec. 4003.007. FORM AND CONTENTS OF PERMIT. A permit
18 qualifying securities for sale must:

19 (1) be in the form the commissioner prescribes; and

20 (2) state in bold type that the issuance of the permit
21 is permissive only and does not constitute a recommendation or
22 endorsement of the securities permitted to be issued. (V.A.C.S.
23 Art. 581-10, Subsec. B (part).)

24 Sec. 4003.008. TERM OF PERMIT. A permit qualifying
25 securities for sale that is issued under this subchapter is valid
26 for one year. (V.A.C.S. Art. 581-10, Subsec. B (part).)

27 Sec. 4003.009. RENEWAL OF PERMIT. (a) An issuer or

1 registered dealer may file a renewal application with the
2 commissioner if the securities authorized to be sold under a permit
3 qualifying securities for sale that is issued under this subchapter
4 are not sold before the permit expires.

5 (b) The renewal application must:

6 (1) state:

7 (A) the total number of shares sold in this
8 state;

9 (B) the total number of shares sold outside this
10 state; and

11 (C) the total number of shares outstanding;

12 (2) contain a detailed balance sheet;

13 (3) contain an operating statement; and

14 (4) provide any other information the commissioner may
15 require.

16 (c) The commissioner shall examine a renewal application
17 and issue a renewal permit or deny the application using the
18 standards stated in Section 4003.006 applicable to an original
19 application.

20 (d) If issued, a renewal permit:

21 (1) is valid for one year; and

22 (2) must be in the form the commissioner prescribes.

23 (V.A.C.S. Art. 581-10, Subsec. B (part).)

24 Sec. 4003.010. USE OF PERMIT FOR CERTAIN PURPOSES
25 PROHIBITED. A dealer, issuer, or agent may not use a permit
26 qualifying securities for sale in connection with a sale or effort
27 to sell a security. (V.A.C.S. Art. 581-10, Subsec. C.)

SUBCHAPTER B. REGISTRATION BY NOTIFICATION

Sec. 4003.051. ELIGIBILITY FOR REGISTRATION BY NOTIFICATION. (a) Securities may be registered by notification under this subchapter if the securities are issued by an issuer that:

(1) has been in continuous operation for at least three years; and

(2) has shown, during at least the three years preceding the date of registration under this subchapter, average annual net earnings after deducting all prior charges, including income taxes but not including charges on securities to be retired out of the proceeds of sale, as follows:

(A) for interest-bearing securities, not less than one and one-half times the annual interest charges on those securities and on all other outstanding interest-bearing securities of equal rank;

(B) for securities with a specified dividend rate, not less than one and one-half times the annual dividend requirements on those securities and on all other outstanding securities of equal rank; and

(C) for securities with no specified dividend rate, not less than five percent on all outstanding securities of equal rank, together with the amount of those securities then offered for sale, based on the maximum price at which the securities are to be offered for sale.

(b) For purposes of calculating average annual net earnings under Subsection (a)(2)(C), an issuer's ownership of more than 50

1 percent of the outstanding voting stock of a corporation:

2 (1) is construed as the issuer's proportionate
3 ownership of that corporation; and

4 (2) permits the inclusion of that corporation's
5 earnings applicable to the payment of dividends on the stock owned
6 in the earnings of the issuer of the securities being registered by
7 notification. (V.A.C.S. Art. 581-7, Subsec. B, Subdiv. (1).)

8 Sec. 4003.052. REGISTRATION STATEMENT REQUIRED. (a) To
9 register securities by notification that are entitled to that
10 registration, an issuer of the securities or a registered dealer
11 must file with the commissioner a registration statement that
12 complies with this section.

13 (b) A registration statement filed under this section must:

14 (1) be in the form the commissioner prescribes;

15 (2) be signed by the applicant filing the statement;

16 and

17 (3) contain the following information:

18 (A) the name and business address of the main
19 office of the issuer of the securities to be registered and the
20 address of the issuer's principal office, if any, in this state;

21 (B) the title of the securities to be registered
22 and the total amount of securities to be offered;

23 (C) the price at which the securities are to be
24 offered for sale to the public, the amount of securities to be
25 offered in this state, and the amount of the registration fee,
26 computed as provided by Chapter 4006;

27 (D) a brief statement of the facts showing that

1 the securities are entitled to be registered by notification;

2 (E) the name and business address of the
3 applicant filing the statement;

4 (F) subject to Subsection (c) and except as
5 provided by Section 4003.053, financial statements that include,
6 for at least the three years preceding the date of registration:

7 (i) a certified income statement;

8 (ii) a certified balance sheet; and

9 (iii) a certified statement of
10 stockholders' equity;

11 (G) a copy of any prospectus describing the
12 securities; and

13 (H) a filing of a consent to service of process
14 conforming to the requirements of Section 4001.102, if the issuer:

15 (i) is registering the securities; and

16 (ii) is not a resident of this state or
17 incorporated or formed under the laws of this state.

18 (c) The financial statements described by Subsection
19 (b)(3)(F) must reflect the financial condition of the issuer of the
20 securities to be registered on a date not earlier than the 90th day
21 before the date the issuer or registered dealer files the
22 registration statement.

23 (d) Filing a registration statement that complies with this
24 section constitutes the registration of the securities by
25 notification, subject to Section 4003.055. (V.A.C.S. Art. 581-7,
26 Subsec. B, Subdiv. (2) (part), Subsec. D (part).)

27 Sec. 4003.053. EXCEPTION TO CERTIFICATION REQUIREMENT FOR

1 FINANCIAL STATEMENTS. Financial statements filed as required by
2 this subchapter are not required to be certified by an independent
3 certified public accountant or independent public accountant if:

4 (1) the fiscal year of the issuer of the securities to
5 be registered ended on a date earlier than the 90th day before the
6 date of the filing; and

7 (2) financial statements in addition to those required
8 by this subchapter are filed that:

9 (A) contain the information required by Section
10 4003.052; and

11 (B) are certified by an independent certified
12 public accountant or independent public accountant as of the end of
13 the issuer's preceding fiscal year. (V.A.C.S. Art. 581-7, Subsec.
14 D (part).)

15 Sec. 4003.054. REGISTRATION PROCEDURES. (a) The
16 commissioner shall complete the procedures specified by this
17 section to register securities entitled to registration by
18 notification.

19 (b) The commissioner shall:

20 (1) examine the registration statement filed under
21 Section 4003.052 and the accompanying papers to determine their
22 sufficiency under the requirements of this subchapter; and

23 (2) record the registration by notification of the
24 securities described on receipt of:

25 (A) the registration statement;

26 (B) any prospectus;

27 (C) payment of the filing fee and registration

1 fee; and

2 (D) a consent to service of process, if required.
3 (V.A.C.S. Art. 581-7, Subsec. B, Subdiv. (2) (part); Art. 581-10,
4 Subsec. B (part).)

5 Sec. 4003.055. EFFECTIVE DATE OF REGISTRATION BY
6 NOTIFICATION. (a) Except as provided by Subsection (b), the
7 registration of securities by notification takes effect five days
8 after the date the commissioner receives the registration statement
9 filed under Section 4003.052 and all accompanying papers.

10 (b) The commissioner may waive or reduce the five-day
11 waiting period if the commissioner determines that the public will
12 not be injured by the waiver or reduction of the waiting period.
13 (V.A.C.S. Art. 581-7, Subsec. B, Subdiv. (2) (part).)

14 Sec. 4003.056. EFFECT OF REGISTRATION BY NOTIFICATION. On
15 registration of securities by notification, the securities may be
16 sold in this state by a registered dealer or a registered agent.
17 (V.A.C.S. Art. 581-7, Subsec. B, Subdiv. (2) (part).)

18 Sec. 4003.057. TERM OF REGISTRATION. A registration of
19 securities by notification is effective for one year. (V.A.C.S.
20 Art. 581-7, Subsec. B, Subdiv. (2) (part).)

21 Sec. 4003.058. RENEWAL OF REGISTRATION. A registration of
22 securities by notification may be renewed for additional periods of
23 one year if:

24 (1) the securities are entitled to registration under
25 this subchapter at the time of renewal; and

26 (2) a new filing is made under this subchapter
27 together with the payment of the renewal fee of \$10. (V.A.C.S. Art.

1 581-7, Subsec. B, Subdiv. (2) (part).)

2 Sec. 4003.059. INSUFFICIENT OR FRAUDULENT REGISTRATION
3 STATEMENT. (a) If at any time, in the commissioner's opinion, the
4 information in a registration statement filed under this subchapter
5 is insufficient to establish that the securities described in the
6 statement are or were entitled to registration by notification
7 under this subchapter, or that the registration information
8 contains or contained false, misleading, or fraudulent facts, the
9 commissioner may order the applicant who filed the statement to
10 cease and desist from selling or offering for sale the securities
11 registered or proposed to be registered by notification under this
12 subchapter until additional information is filed with the
13 commissioner that in the commissioner's judgment is necessary to
14 establish that those securities are or were entitled to
15 registration by notification under this subchapter.

16 (b) The provisions of Section 4007.107 relating to hearings
17 apply to an order entered under this section. (V.A.C.S. Art. 581-7,
18 Subsec. B, Subdiv. (2) (part).)

19 SUBCHAPTER C. REGISTRATION BY COORDINATION

20 Sec. 4003.101. ELIGIBILITY FOR REGISTRATION BY
21 COORDINATION. A security may be registered by coordination if a
22 registration statement has been filed under the Securities Act of
23 1933 (15 U.S.C. Section 77a et seq.) in connection with the same
24 offering. (V.A.C.S. Art. 581-7, Subsec. C, Subdiv. (1) (part).)

25 Sec. 4003.102. REGISTRATION STATEMENT REQUIRED. To
26 register securities by coordination, an issuer of the securities or
27 a registered dealer must file with the commissioner a registration

1 statement that contains:

2 (1) the following information:

3 (A) the amount of securities to be offered in
4 this state;

5 (B) the states in which a registration statement
6 or similar document in connection with the offering has been or is
7 expected to be filed; and

8 (C) any adverse order, judgment, or decree
9 previously entered in connection with the offering by a court or the
10 Securities and Exchange Commission;

11 (2) one copy of the prospectus filed under the
12 Securities Act of 1933 (15 U.S.C. Section 77a et seq.) together with
13 all amendments to the prospectus;

14 (3) a copy of:

15 (A) the articles of incorporation and bylaws, or
16 their substantial equivalents, currently in effect;

17 (B) any agreements with or among underwriters;
18 and

19 (C) any indenture or other instrument governing
20 the issuance of the securities to be registered;

21 (4) a specimen or copy of the security;

22 (5) any other information or copies of any other
23 documents filed under the Securities Act of 1933 (15 U.S.C. Section
24 77a et seq.) the commissioner requests;

25 (6) an undertaking to promptly forward all amendments
26 to the federal registration statement other than an amendment that
27 delays the effective date only; and

1 (7) a consent to service of process conforming to the
2 requirements of Section 4001.102 if:

3 (A) the registration statement is filed by the
4 issuer or by a dealer that will offer the securities for sale as the
5 issuer's agent; and

6 (B) the issuer is not a resident of this state or
7 incorporated or formed under the laws of this state. (V.A.C.S. Art.
8 581-7, Subsec. C, Subdiv. (1) (part).)

9 Sec. 4003.103. EXAMINATION OF AND DETERMINATION ON
10 REGISTRATION STATEMENT. (a) In this section, "price amendment"
11 means the final federal amendment that includes a statement of the
12 offering price, underwriting and selling discounts or commissions,
13 amount of proceeds, conversion rates, call prices, and other
14 matters dependent on the offering price.

15 (b) The commissioner shall examine a registration statement
16 filed under Section 4003.102 and the accompanying documents on
17 receipt.

18 (c) The commissioner may enter an order denying
19 registration of the securities to be registered under the
20 registration statement if after the examination the commissioner
21 determines that the registrant has not proven that:

22 (1) the proposed plan of business of the issuer of the
23 securities is fair, just, and equitable;

24 (2) any consideration paid or to be paid by promoters
25 for the securities is fair, just, and equitable if that
26 consideration is less than the proposed offering price to the
27 public; and

1 (3) the securities the registrant proposes to issue
2 and the methods to be used by the registrant in issuing and
3 disposing of the securities will not work a fraud upon the purchaser
4 of the securities.

5 (d) If the commissioner enters an order denying the
6 registration of securities under this subchapter, the commissioner
7 shall notify the registrant immediately.

8 (e) A registration statement under this subchapter becomes
9 effective automatically at the moment the federal registration
10 statement becomes effective if all of the following conditions are
11 satisfied:

12 (1) the commissioner has not entered an order denying
13 registration of the securities;

14 (2) the registration statement has been on file with
15 the commissioner for at least 10 days; and

16 (3) a statement of the maximum and minimum proposed
17 offering prices and the maximum underwriting discounts and
18 commissions has been on file for two full business days or a shorter
19 period as the commissioner expressly permits and the offering is
20 made within those limitations.

21 (f) The commissioner may waive either or both of the
22 conditions specified in Subsections (e)(2) and (3).

23 (g) The registrant shall promptly:

24 (1) notify the commissioner by telephone or telegram
25 of the date and time when the federal registration statement became
26 effective and the content of any price amendment; and

27 (2) file a post-effective amendment containing the

1 information and documents in the price amendment.

2 (h) The commissioner may enter a stop order, without notice
3 or hearing, retroactively denying effectiveness to or suspending
4 effectiveness of the registration statement until the registrant
5 complies with this subchapter if the commissioner:

6 (1) does not receive the notification and
7 post-effective amendment required under Subsection (g); and

8 (2) promptly notifies the registrant by telephone or
9 telegram of the issuance of the stop order, and promptly confirms by
10 letter or telegram if the commissioner notifies by telephone.

11 (i) A stop order entered under Subsection (h) is void from
12 the time of the order's entry if the registrant proves compliance
13 with the notice and post-effective amendment requirements of this
14 section.

15 (j) If the federal registration statement becomes effective
16 before all conditions under this section are satisfied and the
17 conditions are not waived, the registration statement becomes
18 effective automatically when all the conditions are satisfied.

19 (k) If the registrant advises the commissioner of the date
20 the federal registration statement is expected to become effective,
21 the commissioner shall promptly advise the registrant by telephone
22 or telegram, at the registrant's expense, whether all the
23 conditions are satisfied and whether the commissioner then
24 contemplates the issuance of an order denying registration. This
25 advice by the commissioner does not preclude the issuance of the
26 order at any time. (V.A.C.S. Art. 581-7, Subsec. C, Subdiv. (2)
27 (part); Art. 581-10, Subsec. B (part).)

1 Sec. 4003.104. TERM OF REGISTRATION. (a) Except as
2 provided by this section, a registration by coordination of
3 securities under this subchapter is effective until the first
4 anniversary of the date the commissioner declares the registration
5 to be effective.

6 (b) The initial registration by coordination of securities
7 of an open-end investment company, as defined by the Investment
8 Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), is effective
9 until two months after the end of the issuer's fiscal year.

10 (c) The registration by coordination of securities of a unit
11 investment trust, as defined by the Investment Company Act of 1940
12 (15 U.S.C. Section 80a-1 et seq.), is effective until the first
13 anniversary of the date of effectiveness granted by the Securities
14 and Exchange Commission. (V.A.C.S. Art. 581-7, Subsec. C, Subdiv.
15 (3) (part).)

16 Sec. 4003.105. RENEWAL OF REGISTRATION. (a) Except as
17 provided by Subsection (b) and subject to Subsection (c), a
18 registration of securities under Section 4003.104 may be renewed
19 for additional periods of one year if the appropriate registration
20 forms and renewal fees are received before the expiration date of
21 the registration to be renewed.

22 (b) Subject to Subsection (c), for renewal of the initial
23 registration of securities described by Section 4003.104(b), the
24 issuer or the issuer's agent may renew the registration by
25 submitting the appropriate registration forms and renewal fees not
26 later than two months after the end of the issuer's fiscal year.

27 (c) The same standards of fairness, justice, and equity

1 prescribed by this subchapter for original approval of a
2 registration apply to the renewal of the registration. (V.A.C.S.
3 Art. 581-7, Subsec. C, Subdivs. (3) (part), (4).)

4 SUBCHAPTER D. PROHIBITED SALES

5 Sec. 4003.151. CERTAIN SALES PROHIBITED. If the sale of a
6 security entitles the purchaser or subsequent holder to exchange
7 that security for another, or to purchase another security, the
8 sale of, including an exchange for, the other security may not be
9 made unless the sale is authorized under this title, if not exempt
10 under this title, or by another provision of law. (V.A.C.S. Art.
11 581-4, Subsec. E (part).)

12 SUBCHAPTER E. REGULATION OF OFFERS

13 Sec. 4003.201. DEFINITION. In this subchapter, "broadcast
14 offer" means an offer disseminated by radio, television, recorded
15 telephone presentation, or other mass media. (V.A.C.S. Art. 581-22,
16 Subsecs. A (part), B (part).)

17 Sec. 4003.202. APPLICABILITY. This subchapter does not
18 apply to transactions or securities exempt under Chapter 4005.
19 (V.A.C.S. Art. 581-22, Subsec. E.)

20 Sec. 4003.203. AUTHORIZED WRITTEN, PRINTED, OR BROADCAST
21 OFFERS. A person may make in this state a written or printed offer,
22 including a pictorial demonstration with any accompanying script,
23 or broadcast offer to sell a security if:

24 (1) a copy of the offer is filed with the commissioner
25 not later than the 10th day after the date of the offer's first use
26 in this state;

27 (2) the person making or distributing the offer is a

1 registered dealer or registered agent of a registered dealer;

2 (3) either:

3 (A) the security is registered under Subchapter B
4 or C or the commissioner has issued a permit qualifying securities
5 for sale for the security under Subchapter A; or

6 (B) an application for registration under
7 Subchapter B or C or for a permit under Subchapter A has been filed
8 with the commissioner;

9 (4) for a registration for the security that has not
10 become effective under Subchapter B or C or for a permit that has
11 not been issued under Subchapter A, the offer prominently states on
12 the first page of a written or printed offer or as a preface to any
13 pictorial or broadcast offer either:

14 (A) "INFORMATIONAL ADVERTISING ONLY.
15 THE SECURITIES HEREIN DESCRIBED HAVE NOT BEEN QUALIFIED OR
16 REGISTERED FOR SALE IN TEXAS. ANY REPRESENTATION TO THE CONTRARY OR
17 CONSUMMATION OF SALE OF THESE SECURITIES IN TEXAS PRIOR TO
18 QUALIFICATION OR REGISTRATION THEREOF IS A CRIMINAL OFFENSE."; or

19 (B) other language required by the Securities and
20 Exchange Commission that in the commissioner's opinion will inform
21 investors that the securities may not yet be sold;

22 (5) the person making or distributing the offer in
23 this state:

24 (A) has not received written notice of an order
25 prohibiting the offer under Section 4007.101 or 4007.102; or

26 (B) has received notice of an order described by
27 Paragraph (A) but the order is no longer in effect; and

1 (6) payment is not accepted from the offeree and no
2 contract of sale is made before registration of the security is
3 effective under Subchapter B or C or a permit is issued under
4 Subchapter A. (V.A.C.S. Art. 581-22, Subsec. A (part).)

5 Sec. 4003.204. AUTHORIZED ORAL OFFERS. (a) In this
6 section, "oral offer" means an offer that is not a broadcast offer.

7 (b) A person may make in this state an oral offer to sell a
8 security in person, by telephone, or by other direct individual
9 communication if:

10 (1) the person making the offer is a registered dealer
11 or registered agent of a registered dealer;

12 (2) either:

13 (A) the security is registered under Subchapter B
14 or C or the commissioner has issued a permit qualifying securities
15 for sale for the security under Subchapter A; or

16 (B) an application for registration under
17 Subchapter B or C or for a permit under Subchapter A has been filed
18 with the commissioner;

19 (3) the person making or distributing the offer:

20 (A) has not received written notice of an order
21 prohibiting the offer under Section 4007.101 or 4007.102; or

22 (B) has received notice of an order described by
23 Paragraph (A) but the order is no longer in effect; and

24 (4) payment is not accepted from the offeree and no
25 contract of sale is made before registration of the security is
26 effective under Subchapter B or C or a permit is issued under
27 Subchapter A. (V.A.C.S. Art. 581-22, Subsec. B (part).)

1 Sec. 4003.205. DEALER NAMED IN OFFER. A dealer whose name
2 is included in a written, printed, or broadcast offer along with the
3 name of a registered dealer is not deemed, on that fact alone, to
4 have made an offer in this state to sell a security. (V.A.C.S. Art.
5 581-22, Subsec. F.)

6 Sec. 4003.206. EFFECT OF COMPLIANCE OR NONCOMPLIANCE. (a)
7 An offer to sell a security that complies with Section 4003.203 or
8 4003.204 does not violate Subchapter A, B, or C.

9 (b) An offer to sell a security that does not comply with
10 Section 4003.203 or 4003.204 violates this title. (V.A.C.S. Art.
11 581-22, Subsecs. C, D.)

12 SUBCHAPTER F. CROWDFUNDING

13 Sec. 4003.251. DEFINITION. In this subchapter, "authorized
14 small business development entity" means:

15 (1) a Type A corporation authorized under Chapter 504,
16 Local Government Code;

17 (2) a Type B corporation authorized under Chapter 505,
18 Local Government Code;

19 (3) a nonprofit organization authorized by an agency
20 or authority of the federal government to distribute housing and
21 community development block grants;

22 (4) a municipal corporation;

23 (5) the Texas Veterans Commission; or

24 (6) a nonprofit community development financial
25 institution certified by the Community Development Financial
26 Institutions Fund. (V.A.C.S. Art. 581-44, Subsec. (c).)

27 Sec. 4003.252. CROWDFUNDING. (a) The board shall adopt

1 rules to regulate and facilitate online intrastate crowdfunding
2 applicable to authorized small business development entities. The
3 board may create other requirements necessary to carry out this
4 subchapter.

5 (b) The rules must:

6 (1) allow an authorized small business development
7 entity to list on the entity's web portal offerings of securities by
8 issuers in which the entity is financially interested;

9 (2) allow an authorized small business development
10 entity and the entity's web portal to list offerings of securities
11 without offering investment advice;

12 (3) allow an authorized small business development
13 entity to subcontract the operations of a crowdfunding web portal
14 to a third party as permitted by board rule; and

15 (4) limit the offerings of securities on an authorized
16 small business development entity's web portal to securities of
17 issuers located within the service area of the entity. (V.A.C.S.
18 Art. 581-44, Subsecs. (a), (b).)

19 SUBCHAPTER G. PROTECTION FOR PURCHASERS OF SECURITIES

20 Sec. 4003.301. DEPOSIT IN TRUST ACCOUNT. (a) If the
21 commissioner considers it necessary to protect the interests of
22 prospective purchasers of securities a company sells or offers for
23 sale, the commissioner may require the company to deposit in a trust
24 account at a bank or trust company approved by the commissioner and
25 doing business in this state:

26 (1) all or part of the proposed securities; or

27 (2) subject to Subsection (b), all or part of the money

1 and other funds received from the sale of those securities.

2 (b) A company is not required to deposit funds received from
3 the sale of securities in a trust account to the extent the
4 commissioner considers the funds necessary to be used, provided
5 that the amount of the funds the company is not required to deposit
6 does not exceed the amount allowed as expenses and commissions for
7 the sale of the securities.

8 (c) The funds must remain on deposit until the proposed or
9 existing company sells a specified monetary amount or number of
10 shares of the securities that in the commissioner's opinion will
11 reasonably assure the public's protection.

12 (d) When the commissioner makes a written determination
13 that the terms of the escrow agreement have been fully met, the bank
14 or trust company in which the funds of a proposed or existing
15 corporation are deposited in a trust account as provided by this
16 section shall transfer to the corporation and the corporation's
17 executive officers the funds to allow the corporation to use the
18 securities or money in the corporation's business.

19 (e) If a proposed or existing company that deposits funds in
20 a trust account as provided by this section does not sell the
21 minimum amount of capital necessary under the escrow agreement
22 within two years, the commissioner may authorize the bank or trust
23 company at which the funds are deposited to return to the
24 subscribers the portion of the funds that were deposited or
25 escrowed under the escrow agreement. The bank or trust company
26 shall return the funds to the subscribers on receipt of
27 authorization from the commissioner under this subsection. If the

1 bank or trust company holds securities under the escrow agreement,
2 the bank or trust company may return the securities to the
3 corporation only after the bank or trust company receives from the
4 issuer evidence of cancellation thereof.

5 (f) A dealer or issuer of securities shall provide to the
6 commissioner and the bank or trust company at the time the dealer or
7 issuer makes the deposit required by this section:

8 (1) the names of the purchasers of or subscribers for
9 the securities; and

10 (2) the amount of money paid by each. (V.A.C.S. Art.
11 581-9, Subsec. A.)

12 Sec. 4003.302. MARKETING EXPENSES. (a) Total expenses for
13 marketing securities, including all commissions for the sale of the
14 securities, and all other incidental selling expenses, may not in
15 the aggregate exceed 20 percent of the price at which the stock or
16 other securities of a proposed or existing company are to be sold or
17 offered for sale to the public of this state.

18 (b) The commissioner may reduce the percentage listed in
19 Subsection (a) to a percentage that in the commissioner's opinion
20 is fair, just, and equitable under the facts of the particular case.
21 (V.A.C.S. Art. 581-9, Subsec. B.)

22 Sec. 4003.303. PROSPECTUS REQUIRED FOR CERTAIN OFFERS. (a)
23 Except as provided by Subsection (b), the commissioner shall
24 require that, in connection with a permit qualifying securities for
25 sale, all offers for the sale of the securities be made through a
26 prospectus that:

27 (1) fairly discloses the material facts about the plan

1 of finance and business; and

2 (2) must be filed with and approved by the
3 commissioner.

4 (b) The prospectus requirements of this section are
5 satisfied if the applicant files a prospectus or offering circular
6 with the commissioner that is also filed with the Securities and
7 Exchange Commission under the Securities Act of 1933 (15 U.S.C.
8 Section 77a et seq.) or the regulations under that law.

9 (c) Failure to comply with the prospectus requirements of
10 this section violates this title. (V.A.C.S. Art. 581-9, Subsec. C.)

11 Sec. 4003.304. INVESTOR EDUCATION. (a) The commissioner,
12 with board approval, shall develop and implement investor education
13 initiatives to inform the public about the basics of investing in
14 securities. The initiatives must place a special emphasis on the
15 prevention and detection of securities fraud. Materials developed
16 for and distributed as part of the initiatives must be published in
17 both English and Spanish.

18 (b) In developing and implementing the initiatives, the
19 commissioner shall use the commissioner's best efforts to
20 collaborate with public or nonprofit entities with an interest in
21 investor education.

22 (c) For use in providing investor education initiatives and
23 subject to Chapter 575, the commissioner may accept grants and
24 donations from:

25 (1) a person who is not affiliated with the securities
26 industry; or

27 (2) a nonprofit association, regardless of whether the

1 entity is affiliated with the securities industry. (V.A.C.S. Art.
2 581-43.)

3 CHAPTER 4004. REGULATION OF DEALERS, INVESTMENT ADVISERS, DEALERS'
4 AGENTS, AND INVESTMENT ADVISER REPRESENTATIVES

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22 CHAPTER 4004. REGULATION OF DEALERS, INVESTMENT ADVISERS, DEALERS'
23 AGENTS, AND INVESTMENT ADVISER REPRESENTATIVES

24 SUBCHAPTER A. GENERAL PROVISIONS

- 25 Sec. 4004.001. RULES FOR EXEMPTION FROM REGISTRATION
26 REQUIREMENTS. The board may adopt rules that exempt certain
27 classes of persons from the dealer, agent, investment adviser, and

1 investment adviser representative registration requirements, or
2 provide conditional exemptions from registration, if the board
3 determines that the rules are consistent with the purposes of this
4 title. (V.A.C.S. Art. 581-12, Subsec. C.)

5 Sec. 4004.002. CERTAIN DISPLAYS OR ADVERTISEMENT OF
6 REGISTRATION PROHIBITED. Except as expressly provided by this
7 title, a dealer, agent, investment adviser, or investment adviser
8 representative may not by public display or advertisement use the
9 fact that the person is registered under this title, the person's
10 registration certificate or evidence of registration, or a
11 certified copy of the certificate or evidence of registration in
12 connection with any sale or effort to sell any security or any
13 rendering of services as an investment adviser. (V.A.C.S. Art.
14 581-20.)

15 Sec. 4004.003. DISPLAY OF INFORMATION REGARDING
16 COMPLAINTS. A dealer, agent, investment adviser, or investment
17 adviser representative regulated under this title shall
18 prominently display at all times in the person's place of business:

19 (1) a sign containing the name, mailing address, and
20 telephone number of the board; and

21 (2) a statement informing consumers that complaints
22 against a dealer, agent, investment adviser, or investment adviser
23 representative may be directed to the board. (V.A.C.S. Art. 581-2,
24 Subsec. L (part).)

25 SUBCHAPTER B. REGISTRATION OF DEALERS AND INVESTMENT ADVISERS

26 Sec. 4004.051. REGISTRATION OF DEALERS REQUIRED. Except as
27 provided by Section 4001.056(d) or Subchapter A, Chapter 4005, a

1 dealer or other person or company, including a corporation or firm,
2 may not, directly or through the dealer's or other person's or
3 company's agents, offer for sale, sell, or make a sale of any
4 securities in this state unless the dealer or other person or
5 company is first registered as provided by this chapter. (V.A.C.S.
6 Art. 581-12, Subsec. A (part).)

7 Sec. 4004.052. REGISTRATION OF INVESTMENT ADVISERS
8 REQUIRED. Except as provided by Subchapter A, Chapter 4005, a
9 person may not, directly or through the person's investment adviser
10 representative, render services as an investment adviser in this
11 state unless the person:

- 12 (1) is registered under this chapter;
13 (2) submits a notice filing as provided by Subchapter
14 G; or
15 (3) is otherwise exempt under this title. (V.A.C.S.
16 Art. 581-12, Subsec. B (part).)

17 Sec. 4004.053. APPLICATION FOR REGISTRATION. (a) To be
18 registered, a dealer or investment adviser must submit to the
19 commissioner a sworn application that must be in the form the
20 commissioner prescribes and must state:

- 21 (1) the applicant's principal place of business;
22 (2) the location of the applicant's principal place of
23 business and all branch offices of the applicant in this state;
24 (3) the name or style of doing business and the address
25 of the applicant;
26 (4) the name, residence, and business address of each
27 person interested in the business as a principal, officer,

1 director, or managing agent of the applicant's business, specified
2 by capacity and title;

3 (5) the general plan and character of the applicant's
4 business;

5 (6) the period the applicant has been engaged in the
6 business; and

7 (7) the places at which the applicant has engaged in
8 the business.

9 (b) An application filed under this section must contain
10 additional information relating to the previous history, record,
11 associations, and present financial condition of the applicant as
12 the commissioner may require or as necessary to enable the
13 commissioner to determine whether the sale of any securities the
14 applicant proposes to issue or deal in would result in fraud.

15 (c) An application must be accompanied by a certificate or
16 other evidence satisfactory to the commissioner that establishes
17 the good reputation of:

18 (1) the applicant; and

19 (2) the directors, officers, copartners, or
20 principals of the applicant.

21 (d) For an applicant that is a corporation organized under
22 the laws of another state, territory, or government or that will
23 have the applicant's principal place of business therein, the
24 application must be accompanied by a copy of the corporation's:

25 (1) articles of incorporation or similar
26 organizational instrument, and all amendments to the document or
27 instrument, as applicable, certified by the appropriate officer of

1 the corporation or of the state or other jurisdiction in which the
2 corporation is organized;

3 (2) regulations; and

4 (3) bylaws.

5 (e) For an applicant that is a limited partnership, the
6 application must be accompanied by either:

7 (1) a copy of the articles of copartnership or similar
8 organizational instrument of the partnership; or

9 (2) a verified statement of the partnership's plan of
10 doing business.

11 (f) For an applicant that is an unincorporated association
12 or organization under the laws of another state, territory, or
13 government or is an unincorporated association or organization that
14 has its principal place of business therein, the application must
15 be accompanied by a copy of the association's or organization's
16 articles of association, trust agreement, or other form of
17 organization.

18 (g) The commissioner shall:

19 (1) prescribe the application form to be used by an
20 applicant under this section; and

21 (2) provide copies of the application form for
22 registration to all persons who seek to submit an application to
23 register as a dealer or investment adviser. (V.A.C.S. Art. 581-13,
24 Subsecs. A, B, C, G, H, I, J.)

25 Sec. 4004.054. ISSUANCE OF REGISTRATION CERTIFICATE. The
26 commissioner shall issue a certificate of registration to an
27 applicant for registration as a dealer or investment adviser if:

1 (1) the commissioner is satisfied that the applicant
2 has complied with the requirements of this chapter; and

3 (2) the applicant:

4 (A) if applicable, has filed a written consent to
5 service that complies with Section 4001.102; and

6 (B) has paid the fees required by Chapter 4006.
7 (V.A.C.S. Art. 581-15 (part).)

8 Sec. 4004.055. FORM AND CONTENTS OF REGISTRATION
9 CERTIFICATE. The registration certificate must be in the form the
10 commissioner prescribes and must state:

11 (1) the principal place of business and address of the
12 dealer or investment adviser;

13 (2) the name and business address of each person
14 interested in the business as a principal, officer, director, or
15 managing agent of the dealer or investment adviser; and

16 (3) that the dealer or investment adviser has been
17 registered for a current calendar year as a dealer in securities or
18 as an investment adviser, as appropriate. (V.A.C.S. Arts. 581-15
19 (part), 581-17 (part).)

20 Sec. 4004.056. TEMPORARY PERMISSION TO ENGAGE IN BUSINESS
21 AS DEALER OR INVESTMENT ADVISER. (a) Pending final disposition of
22 an application under this subchapter, the commissioner may, for
23 special cause shown, grant an applicant temporary permission to
24 engage in business as a dealer or investment adviser under this
25 title, subject to any terms and conditions that the commissioner
26 prescribes.

27 (b) Temporary permission granted by the commissioner under

1 this section may be revoked at any time.

2 (c) A dealer or investment adviser acting under temporary
3 permission granted under this section is considered to be a
4 registered dealer or registered investment adviser for any purpose
5 of this title. (V.A.C.S. Art. 581-15 (part).)

6 Sec. 4004.057. AMENDMENT OF REGISTRATION CERTIFICATE. (a)
7 A dealer or investment adviser shall immediately certify under oath
8 to the commissioner any change in the personnel of a partnership or
9 in the principals, officers, directors, or managing agents of the
10 dealer or investment adviser.

11 (b) A change in the registration certificate required as the
12 result of a change described by Subsection (a) may be made at any
13 time by submitting to the commissioner a written application that
14 specifies the reason for the change.

15 (c) On the issuance of an amended registration certificate,
16 the dealer or investment adviser shall promptly surrender the
17 original certificate and any outstanding certified copies of the
18 original certificate to the commissioner. (V.A.C.S. Art. 581-17
19 (part).)

20 Sec. 4004.058. POSTING REGISTRATION CERTIFICATES. On
21 receipt of a registration certificate issued under this chapter,
22 the dealer or investment adviser named in the certificate shall
23 immediately post and conspicuously display the certificate at all
24 times in the dealer's or investment adviser's principal place of
25 business, if the dealer's or investment adviser's principal place
26 of business is maintained in this state. The dealer or investment
27 adviser shall similarly post and conspicuously display a duplicate

1 copy of the dealer's or investment adviser's certificate in each
2 branch office located in this state. (V.A.C.S. Art. 581-21.)

3 SUBCHAPTER C. REGISTRATION OF AGENTS AND INVESTMENT ADVISER

4 REPRESENTATIVES

5 Sec. 4004.101. REGISTRATION OF AGENTS. (a) An agent may
6 not, on behalf of a registered dealer, sell, offer for sale, or make
7 a sale of any securities in this state unless the agent is
8 registered as an agent for that particular registered dealer under
9 this chapter.

10 (b) On written application by a registered dealer, and on
11 satisfactory compliance with the requirements of this title, the
12 commissioner shall register a person as an agent of the registered
13 dealer. (V.A.C.S. Art. 581-12, Subsec. A (part); Art. 581-18
14 (part).)

15 Sec. 4004.102. REGISTRATION OF INVESTMENT ADVISER
16 REPRESENTATIVES. (a) A person may not act or render services as an
17 investment adviser representative for an investment adviser in this
18 state unless the person is registered or submits a notice filing as
19 an investment adviser representative for that particular
20 investment adviser as provided by this subchapter and Subchapter G.

21 (b) On written application by an investment adviser and on
22 satisfactory compliance with the requirements of this title, the
23 commissioner shall register a person as an investment adviser
24 representative of that investment adviser. (V.A.C.S. Art. 581-12,
25 Subsec. B (part); Art. 581-18 (part).)

26 Sec. 4004.103. APPLICATION FOR REGISTRATION. The
27 application described by Sections 4004.101 and 4004.102 must:

1 (1) be in the form the commissioner prescribes;

2 (2) state:

3 (A) the residence and address of the person whose
4 registration as an agent or investment adviser representative is
5 requested through the application; and

6 (B) any other information relating to that
7 person's previous history, record, and associations that the
8 commissioner may require; and

9 (3) be signed and sworn to by the person whose
10 registration as an agent or investment adviser representative is
11 requested through the application. (V.A.C.S. Art. 581-18 (part).)

12 Sec. 4004.104. ISSUANCE OF EVIDENCE OF REGISTRATION. For
13 each person registered under this subchapter, the commissioner
14 shall issue evidence of registration of the agent or investment
15 adviser representative to the registered dealer or investment
16 adviser who requested the person's registration, as appropriate.
17 The registered dealer or investment adviser who requested the
18 person's registration shall retain the evidence of registration for
19 the dealer's agents or investment adviser's representatives, as
20 appropriate. (V.A.C.S. Art. 581-18 (part).)

21 Sec. 4004.105. FORM AND CONTENTS OF EVIDENCE OF
22 REGISTRATION. The evidence of registration described by Section
23 4004.104 must:

24 (1) be in the form the commissioner prescribes; and

25 (2) state:

26 (A) the name of the agent or investment adviser
27 representative;

1 (B) the address of the registered dealer or
2 investment adviser, as appropriate; and

3 (C) that the person is registered for the current
4 calendar year as an agent of the dealer or as an investment adviser
5 representative of the investment adviser, as appropriate.
6 (V.A.C.S. Art. 581-18 (part).)

7 Sec. 4004.106. CANCELLATION OF REGISTRATION. On
8 application by a registered dealer or investment adviser, the
9 commissioner shall cancel the registration of the registered
10 dealer's agent or the investment adviser's representative.
11 (V.A.C.S. Art. 581-18 (part).)

12 SUBCHAPTER D. EXAMINATION REQUIREMENTS

13 Sec. 4004.151. EXAMINATION REQUIREMENTS. (a) Except as
14 provided by Subsection (c), the commissioner shall require that, to
15 be registered under this chapter, each applicant must pass a
16 written examination to determine whether the applicant possesses
17 the qualifications and competency to engage in the business of
18 dealing in and selling securities as a dealer or agent, or rendering
19 services as an investment adviser or investment adviser
20 representative. If the applicant is a corporation or partnership,
21 the officers, directors, or partners to be licensed by the
22 corporation or partnership must pass the written examination
23 described by this section.

24 (b) The commissioner may accept some or all of the
25 examinations administered by securities self-regulatory
26 organizations to fulfill the examination requirements of this
27 section.

1 (c) The board may waive the examination requirement under
2 Subsection (a) for any applicant or class of applicants. (V.A.C.S.
3 Art. 581-13, Subsecs. D, K.)

4 Sec. 4004.152. EXAMINATION RESULTS. (a) Except as
5 provided by Subsection (b), the board shall notify each examinee of
6 the results of a registration examination required by this
7 subchapter not later than the 30th day after the date the examinee
8 takes the examination.

9 (b) If an examination is graded or reviewed by a testing
10 service:

11 (1) the board shall notify each examinee of the
12 results of the examination not later than the 14th day after the
13 date the board receives the results from the testing service; and

14 (2) if notice of the examination results will be
15 delayed for longer than 90 days after the examination date, the
16 board shall notify each examinee of the reason for the delay before
17 the 90th day.

18 (c) The board may require a testing service to notify an
19 examinee of the results of the examination.

20 (d) If requested in writing by an examinee who fails an
21 examination administered under this subchapter, the board shall
22 provide the examinee with an analysis of the examinee's performance
23 on the examination. (V.A.C.S. Art. 581-13, Subsecs. E, F.)

24 SUBCHAPTER E. DENIAL OR REVOCATION OF REGISTRATION

25 Sec. 4004.201. DENIAL OF REGISTRATION. The commissioner
26 may deny an application for registration under this chapter in
27 accordance with Section 4007.105. (New.)

1 Sec. 4004.202. AUTOMATIC REVOCATION OF REGISTRATION OF
2 AGENTS AND INVESTMENT ADVISER REPRESENTATIVES AFTER REVOCATION OF
3 REGISTRATION OF DEALER OR INVESTMENT ADVISER. (a) The revocation
4 of the registration of a dealer or an investment adviser under
5 Section 4007.105 constitutes a revocation of the registration of
6 any agent of the dealer or of any investment adviser representative
7 of the investment adviser, as appropriate.

8 (b) The commissioner shall promptly send notice of the
9 revocation of the registration of a dealer or of an investment
10 adviser to each applicable agent or investment adviser
11 representative.

12 (c) All evidences of registration that have been revoked
13 shall be immediately surrendered to the commissioner on request.
14 (V.A.C.S. Art. 581-25 (part).)

15 SUBCHAPTER F. EXPIRATION AND RENEWAL OF REGISTRATION

16 Sec. 4004.251. EXPIRATION OF REGISTRATION. Except as
17 provided by Sections 4004.252(a) and 4004.253, all registrations
18 expire at the end of the calendar year. (V.A.C.S. Art. 581-19,
19 Subsec. A (part).)

20 Sec. 4004.252. RENEWAL OF REGISTRATION. (a) A person may
21 renew an unexpired registration by filing a renewal application in
22 the form the commissioner prescribes and by paying the required
23 renewal fee to the board before the registration's expiration date.

24 (b) New registrations for the year succeeding the
25 expiration of registrations shall be issued on the filing of a
26 written application and payment of the fee as provided by this
27 subchapter. If an applicant registers after December 1 of any year,

1 the applicant may immediately apply for a renewal of the
2 applicant's registration for the ensuing year.

3 (c) The filing of additional statements or the provision of
4 additional information is not required for renewal unless
5 specifically requested by the commissioner. (V.A.C.S. Art. 581-19,
6 Subsecs. A (part), C, Subdiv. (1).)

7 Sec. 4004.253. STAGGERED RENEWAL; PRORATION OF
8 REGISTRATION RENEWAL FEE. (a) The board by rule may adopt a system
9 under which registrations expire on various dates during the year.

10 (b) For the year in which the registration expiration date
11 is changed, registration fees payable after the 60th day and before
12 the 30th day before January 1 of the next year shall be prorated on a
13 monthly basis so that each person pays only that portion of the
14 registration fee that is allocable to the number of months during
15 which the registration is valid. On renewal of the registration on
16 the new expiration date, the total registration renewal fee is
17 payable. (V.A.C.S. Art. 581-19, Subsec. B.)

18 Sec. 4004.254. NOTICE OF EXPIRATION REQUIRED. Not later
19 than the 30th day before the date a person's registration is
20 scheduled to expire, the commissioner shall send written notice of
21 the impending expiration to the person at the person's last known
22 address according to the board's records. (V.A.C.S. Art. 581-19,
23 Subsec. C, Subdiv. (5).)

24 Sec. 4004.255. RENEWAL OF EXPIRED REGISTRATION. (a) A
25 person whose registration has been expired for 90 days or less may
26 renew the registration by:

27 (1) filing a renewal application with the

1 commissioner; and

2 (2) paying to the board:

3 (A) the required renewal fee; and

4 (B) a fee that is equal to one-half of the
5 original registration application fee.

6 (b) A person whose registration has been expired for more
7 than 90 days but less than two years may renew the registration by:

8 (1) filing a renewal application with the
9 commissioner; and

10 (2) paying to the board:

11 (A) all unpaid renewal fees; and

12 (B) a fee that is equal to the original
13 registration application fee.

14 (c) A person whose registration has been expired for two
15 years or more may not renew the registration. The person may obtain
16 a new registration by complying with the requirements and
17 procedures, including the examination requirements, for obtaining
18 an original registration. The person must pay to the board a fee
19 that is equal to the original registration application fee.
20 (V.A.C.S. Art. 581-19, Subsec. C, Subdivs. (2), (3), (4).)

21 Sec. 4004.256. EFFECT OF EXPIRED REGISTRATION. A person
22 who sells securities or who renders investment advising services
23 after the person's registration has expired but before the
24 registration is renewed is subject to the sanctions provided by
25 this title for selling securities or rendering investment advice
26 without being registered. (V.A.C.S. Art. 581-19, Subsec. C,
27 Subdiv. (6).)

1 OF VULNERABLE ADULTS. (a) If a securities professional or a person
2 serving in a legal capacity for a dealer or investment adviser has
3 cause to believe that financial exploitation of a vulnerable adult
4 who is an account holder with the dealer or investment adviser has
5 occurred, is occurring, or has been attempted, the securities
6 professional or person serving in a legal capacity for the dealer or
7 investment adviser shall notify the dealer or investment adviser of
8 the suspected financial exploitation.

9 (b) If a dealer or investment adviser is notified of
10 suspected financial exploitation under Subsection (a) or otherwise
11 has cause to believe that financial exploitation of a vulnerable
12 adult who is an account holder with the dealer or investment adviser
13 has occurred, is occurring, or has been attempted, the dealer or
14 investment adviser shall assess the suspected financial
15 exploitation and submit a report to the commissioner, in accordance
16 with rules adopted under Section 4004.353, and the department in
17 the same manner as and containing the same information required to
18 be included in a report under Section 48.051, Human Resources Code.
19 The dealer or investment adviser shall submit the reports required
20 by this subsection not later than the earlier of:

21 (1) the date the dealer or investment adviser
22 completes the dealer's or investment adviser's assessment of the
23 suspected financial exploitation; or

24 (2) the fifth business day after the date the dealer or
25 investment adviser is notified of the suspected financial
26 exploitation under Subsection (a) or otherwise has cause to believe
27 that the suspected financial exploitation has occurred, is

1 occurring, or has been attempted.

2 (c) A dealer or investment adviser who submits a report to
3 the department of suspected financial exploitation of a vulnerable
4 adult under Subsection (b) is not required to make an additional
5 report of suspected abuse, neglect, or exploitation under Section
6 48.051, Human Resources Code, for the same conduct constituting the
7 reported suspected financial exploitation.

8 (d) Each dealer and investment adviser shall adopt internal
9 policies, programs, plans, or procedures for:

10 (1) the securities professionals or persons serving in
11 a legal capacity for the dealer or investment adviser to make the
12 notification required under Subsection (a); and

13 (2) the dealer or investment adviser to conduct the
14 assessment and submit the reports required under Subsection (b).

15 (e) The policies, programs, plans, or procedures adopted
16 under Subsection (d) may authorize the dealer or investment adviser
17 to report the suspected financial exploitation to other appropriate
18 agencies and entities in addition to the commissioner and the
19 department, including the attorney general, the Federal Trade
20 Commission, and the appropriate law enforcement agency. (V.A.C.S.
21 Art. 581-45, Subsecs. B, C, D, E.)

22 Sec. 4004.353. FORM AND CONTENT OF REPORT. The board by
23 rule shall prescribe the form and content of the report required to
24 be submitted by a dealer or investment adviser to the commissioner
25 under Section 4004.352(b). (V.A.C.S. Art. 581-45, Subsec. N.)

26 Sec. 4004.354. NOTIFYING THIRD PARTIES OF SUSPECTED
27 FINANCIAL EXPLOITATION OF VULNERABLE ADULTS. If a dealer or

1 investment adviser submits reports of suspected financial
2 exploitation of a vulnerable adult to the commissioner and the
3 department under Section 4004.352(b), the dealer or investment
4 adviser may at the time the dealer or investment adviser submits the
5 reports also notify a third party reasonably associated with the
6 vulnerable adult of the suspected financial exploitation, unless
7 the dealer or investment adviser suspects the third party of
8 financial exploitation of the vulnerable adult. (V.A.C.S. Art.
9 581-45, Subsec. F.)

10 Sec. 4004.355. TEMPORARY HOLD ON TRANSACTIONS IN CERTAIN
11 CASES OF SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS.

12 (a) Notwithstanding any other law, if a dealer or investment
13 adviser submits reports of suspected financial exploitation of a
14 vulnerable adult to the commissioner and the department under
15 Section 4004.352(b), the dealer or investment adviser:

16 (1) may place a hold on any transaction that:

17 (A) involves an account of the vulnerable adult;
18 and

19 (B) the dealer or investment adviser has cause to
20 believe is related to the suspected financial exploitation; and

21 (2) must place a hold on any transaction involving an
22 account of the vulnerable adult if the hold is requested by the
23 commissioner, the department, or a law enforcement agency.

24 (b) Subject to Subsection (c), a hold placed on any
25 transaction under Subsection (a) expires on the 10th business day
26 after the date the dealer or investment adviser submits the reports
27 under Section 4004.352(b).

1 (c) A dealer or investment adviser may extend a hold placed
2 on any transaction under Subsection (a) for a period not to exceed
3 30 business days after the expiration of the period prescribed by
4 Subsection (b) if requested by a state or federal agency or a law
5 enforcement agency investigating the suspected financial
6 exploitation. The dealer or investment adviser may also petition a
7 court to extend a hold placed on any transaction under Subsection
8 (a) beyond the period prescribed by Subsection (b). A court may
9 enter an order extending or shortening a hold or providing other
10 relief.

11 (d) Each dealer and investment adviser shall adopt internal
12 policies, programs, plans, or procedures for placing a hold on a
13 transaction involving an account of a vulnerable adult under
14 Subsection (a). (V.A.C.S. Art. 581-45, Subsecs. G, H, I, J.)

15 Sec. 4004.356. IMMUNITY. (a) A securities professional or
16 person serving in a legal capacity for a dealer or investment
17 adviser who makes a notification under Section 4004.352(a), a
18 dealer or investment adviser that submits a report under Section
19 4004.352(b) or makes a notification to a third party under Section
20 4004.354, or a securities professional or person serving in a legal
21 capacity who or dealer or investment adviser that testifies or
22 otherwise participates in a judicial proceeding arising from a
23 notification or report is immune from any civil or criminal
24 liability arising from the notification, report, testimony, or
25 participation in the judicial proceeding, unless the securities
26 professional, person serving in a legal capacity for the dealer or
27 investment adviser, or dealer or investment adviser acted in bad

1 faith or with a malicious purpose.

2 (b) A dealer or investment adviser that in good faith and
3 with the exercise of reasonable care places or does not place a hold
4 on any transaction under Section 4004.355(a)(1) is immune from
5 civil or criminal liability or disciplinary action resulting from
6 the action or failure to act. (V.A.C.S. Art. 581-45, Subsecs. K,
7 L.)

8 Sec. 4004.357. RECORDS. To the extent permitted by state or
9 federal law, a dealer or investment adviser, on request, shall
10 provide access to or copies of records relevant to the suspected
11 financial exploitation of a vulnerable adult to the commissioner,
12 the department, a law enforcement agency, or a prosecuting
13 attorney's office, either as part of a report to the commissioner,
14 department, law enforcement agency, or prosecuting attorney's
15 office or at the request of the commissioner, department, law
16 enforcement agency, or prosecuting attorney's office in accordance
17 with an investigation. (V.A.C.S. Art. 581-45, Subsec. M.)

18 CHAPTER 4005. EXEMPTIONS

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7 CHAPTER 4005. EXEMPTIONS

8 SUBCHAPTER A. EXEMPT TRANSACTIONS

9 Sec. 4005.001. SCOPE OF EXEMPTION. Except as expressly
10 provided otherwise in this title, this title does not apply to any
11 sale of, offer for sale of, solicitation of, subscription to,
12 dealing in, or delivery of a security made in a transaction or under
13 a condition specified in this subchapter. (V.A.C.S. Art. 581-5
14 (part).)

15 Sec. 4005.002. COURT SUPERVISED SALES. The exemption
16 provided by Section 4005.001 applies to the sale of a security made:

17 (1) at a judicial, executor's, administrator's,
18 guardian's, or conservator's sale; or

19 (2) by a receiver or trustee in insolvency or
20 bankruptcy. (V.A.C.S. Art. 581-5, Subsec. A.)

21 Sec. 4005.003. PLEDGED SECURITIES. The exemption provided
22 by Section 4005.001 applies to the sale of a security pledged in
23 good faith as security for a bona fide debt that is made by or for
24 the account of a pledge holder or mortgagee that is selling the
25 security or offering the security for sale or delivery in the
26 ordinary course of business to liquidate the debt. (V.A.C.S. Art.
27 581-5, Subsec. B.)

1 Sec. 4005.004. ISOLATED TRANSACTIONS. (a) The exemption
2 provided by Section 4005.001 applies to the sale of a security that
3 is made by a vendor or on a vendor's behalf by a dealer or other
4 agent and is made in the ordinary course of a bona fide personal
5 investment of the vendor's personal holdings or a change in the
6 investment if:

7 (1) the vendor is not engaged in the business of
8 selling securities; and

9 (2) the sale is an isolated transaction not made in the
10 course of repeated and consecutive transactions of a like
11 character.

12 (b) A sale or offer for sale under Subsection (a) is not
13 exempt from this title if the sale or offer is made or intended to be
14 made by the vendor or the vendor's agent for the direct or indirect
15 benefit of a company other than the individual vendor. The usual
16 commission of a vendor's agent is not a benefit for the purposes of
17 this subsection.

18 (c) A person acting as an agent for a vendor in any sale or
19 offer for sale under Subsection (a) must be registered under this
20 title. (V.A.C.S. Art. 581-5, Subsec. C (part).)

21 Sec. 4005.005. INSURANCE COMPANY SALES. (a) The exemption
22 provided by Section 4005.001 applies to the sale of a security made
23 by or on behalf of an insurance company that:

24 (1) is subject to the supervision or control of the
25 Texas Department of Insurance; and

26 (2) owns the security as a legal and bona fide
27 investment.

1 (b) A sale or offer for sale under Subsection (a) is not
2 exempt from this title if the sale or offer is made or intended to be
3 made directly or indirectly for the benefit of another company.
4 (V.A.C.S. Art. 581-5, Subsec. C (part).)

5 Sec. 4005.006. STOCK DIVIDENDS. The exemption provided by
6 Section 4005.001 applies to a distribution of securities by a
7 corporation directly to the corporation's stockholders as a stock
8 dividend or other distribution paid out of earnings or surplus.
9 (V.A.C.S. Art. 581-5, Subsec. D.)

10 Sec. 4005.007. EXISTING SECURITY HOLDERS. (a) In this
11 section, "existing security holder" includes a person who is a
12 holder of a convertible security or nontransferable warrant at the
13 time of the transaction.

14 (b) The exemption provided by Section 4005.001 applies to an
15 offer by the issuer of its securities to the issuer's existing
16 security holders and to any transaction pursuant to the offer if no
17 commission or other remuneration, other than a stand-by commission,
18 is paid or given directly or indirectly for soliciting any security
19 holder in this state. (V.A.C.S. Art. 581-5, Subsec. E.)

20 Sec. 4005.008. FINANCIAL DISTRESS. (a) The exemption
21 provided by Section 4005.001 applies to the issuance in good faith
22 of securities by a company:

23 (1) to the company's security holders or creditors in
24 the process of a bona fide reorganization of the company made in
25 good faith; or

26 (2) to the security holders or creditors of a
27 predecessor company if the issuing company is organized solely for

1 the purpose of taking over the assets and continuing the business of
2 the predecessor company.

3 (b) The exemption provided by Section 4005.001 applies to an
4 issuance of securities described by Subsection (a) only if:

5 (1) the securities are issued in exchange for
6 securities of the security holders, claims of the creditors, or
7 both; and

8 (2) the security holders or creditors do not pay,
9 give, or promise any consideration, and are not obligated to pay or
10 give any consideration, for the securities issued other than the
11 securities of or claims against the company or the company's
12 predecessor held or owned by the security holders or creditors at
13 the time of the issuance. (V.A.C.S. Art. 581-5, Subsec. F.)

14 Sec. 4005.009. MERGER, CONSOLIDATION, AND ASSET SALES.

15 (a) The exemption provided by Section 4005.001 applies to the
16 issuance or sale of securities by one corporation to another
17 corporation or to the security holders of the corporation pursuant
18 to a vote by one or more classes of those security holders, as
19 required by the certificate of formation, certificate of
20 incorporation, or applicable corporation statute, in connection
21 with:

- 22 (1) a merger;
23 (2) a consolidation; or
24 (3) a sale of corporate assets.

25 (b) The exemption provided by Section 4005.001 applies to an
26 issuance or sale described by Subsection (a) only if the security
27 holders do not pay, give, or promise any consideration, and are not

1 obligated to pay or give any consideration, for the securities
2 issued or sold other than the corporation's securities held by the
3 security holders at the time of the issuance or sale. (V.A.C.S.
4 Art. 581-5, Subsec. G (part).)

5 Sec. 4005.010. EXCHANGE OF SHARES. (a) The exemption
6 provided by Section 4005.001 applies to the issuance or sale of
7 securities by one corporation to the corporation's stockholders in
8 connection with:

9 (1) the change of par value stock to no par value stock
10 or vice versa; or

11 (2) the exchange of outstanding shares for the same or
12 a greater or smaller number of shares.

13 (b) The exemption provided by Section 4005.001 applies to an
14 issuance or sale described by Subsection (a) only if the security
15 holders do not pay, give, or promise any consideration, and are not
16 obligated to pay or give any consideration, for the securities
17 issued or sold other than the corporation's securities held by the
18 security holders at the time of the issuance or sale. (V.A.C.S.
19 Art. 581-5, Subsec. G (part).)

20 Sec. 4005.011. INSTITUTIONAL INVESTORS. The exemption
21 provided by Section 4005.001 applies to the sale of a security to:

- 22 (1) a bank;
- 23 (2) a trust company;
- 24 (3) a building and loan association;
- 25 (4) a savings and loan association;
- 26 (5) an insurance company;
- 27 (6) a surety or guaranty company;

1 (7) a savings institution;

2 (8) an investment company as defined by the Investment
3 Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.);

4 (9) a small business investment company as defined by
5 the Small Business Investment Act of 1958 (15 U.S.C. Section 661 et
6 seq.); or

7 (10) a registered dealer actually engaged in buying
8 and selling securities. (V.A.C.S. Art. 581-5, Subsec. H.)

9 Sec. 4005.012. PRIVATE LIMITED OFFERINGS. (a) The
10 exemption provided by Section 4005.001 applies to the following
11 sales made without any public solicitation or advertisement:

12 (1) the sale of a security by the issuer of the
13 security if the total number of security holders of the issuer does
14 not exceed 35 persons after the sale; or

15 (2) the sale by an issuer of the issuer's securities to
16 not more than 15 persons during the 12-month period ending with the
17 date of the sale if the persons purchased the securities for their
18 own account and not for distribution.

19 (b) For the purpose of determining the number of persons
20 under Subsection (a)(2), the following persons are not included:

21 (1) a purchaser of a security in a transaction exempt
22 under another provision of this subchapter;

23 (2) a purchaser of a security exempt under Subchapter
24 B; and

25 (3) a purchaser of a security that is part of an
26 offering registered under Subchapter A, B, or C, Chapter 4003.
27 (V.A.C.S. Art. 581-5, Subsec. I (part).)

1 Sec. 4005.013. COMPENSATION PLANS AND CONTRACTS. The
2 exemption provided by Section 4005.001 applies to the sale or
3 distribution of a security without any public solicitation or
4 advertisement if the sale or distribution is made:

5 (1) by an issuer of the security or any participating
6 subsidiary of the issuer; and

7 (2) under a bona fide thrift, savings, stock purchase,
8 retirement, pension, profit-sharing, option, bonus, appreciation
9 right, incentive, or similar written compensation plan or written
10 compensation contract established by the issuer or the issuer's
11 subsidiary for the benefit of:

12 (A) employees, directors, general partners,
13 managers, or officers of the issuer or subsidiary;

14 (B) the issuer's or subsidiary's trustees, if the
15 issuer or subsidiary is a business trust; or

16 (C) consultants or advisers who provide to the
17 issuer or subsidiary bona fide services unrelated to the offer or
18 sale of securities in a capital-raising transaction. (V.A.C.S.
19 Art. 581-5, Subsec. I (part).)

20 Sec. 4005.014. MORTGAGES AND LIENS. The exemption provided
21 by Section 4005.001 applies to a single transaction in which:

22 (1) the securities disposed of consist exclusively of
23 notes or bonds secured by a mortgage or vendor's lien on real
24 property or tangible personal property; and

25 (2) the entire mortgage or lien is sold or transferred
26 with all of the notes or bonds secured by the mortgage or lien.
27 (V.A.C.S. Art. 581-5, Subsec. J.)

1 Sec. 4005.015. NONPROFITS. The exemption provided by
2 Section 4005.001 applies to the disposition of a security or
3 membership:

4 (1) issued by a corporation or association:

5 (A) that is organized exclusively for a
6 religious, educational, benevolent, fraternal, charitable, or
7 reformatory purpose;

8 (B) that is not organized for pecuniary profit;
9 and

10 (C) for which no part of the net earnings inures
11 to the benefit of any stockholder, shareholder, or individual
12 member of the corporation or association; and

13 (2) for which no commission or remuneration is paid or
14 given or is to be paid or given. (V.A.C.S. Art. 581-5, Subsec. K.)

15 Sec. 4005.016. FINANCIAL INSTITUTIONS. The exemption
16 provided by Section 4005.001 applies to:

17 (1) the sale, by the issuer itself or by a registered
18 dealer, of any security issued or guaranteed by:

19 (A) a bank organized and subject to regulation
20 under the laws of:

21 (i) the United States; or

22 (ii) a state, territory, or insular
23 possession of the United States; or

24 (B) a savings and loan association organized and
25 subject to regulation under the laws of this state; or

26 (2) the sale, by the issuer itself, of any security
27 issued by a federal savings and loan association. (V.A.C.S. Art.

1 581-5, Subsec. L.)

2 Sec. 4005.017. GOVERNMENT ISSUANCE OR GUARANTEE. The
3 exemption provided by Section 4005.001 applies to the sale, by the
4 issuer itself or by a registered dealer, of any security either
5 issued or guaranteed by:

6 (1) the United States;

7 (2) the District of Columbia, a state, territory, or
8 insular possession of the United States;

9 (3) a political subdivision of a state of the United
10 States, including a county, city, municipal corporation, district,
11 and authority; or

12 (4) a public or governmental agency or instrumentality
13 of an entity described by Subdivisions (1)-(3). (V.A.C.S. Art.
14 581-5, Subsec. M.)

15 Sec. 4005.018. COOPERATIVES. (a) The exemption provided
16 by Section 4005.001 applies to:

17 (1) the sale and issuance of:

18 (A) any securities issued by a farmers'
19 cooperative marketing association organized under Chapter 52,
20 Agriculture Code, or the predecessor of that law (Article 5737 et
21 seq., Revised Statutes);

22 (B) any securities issued by a mutual loan
23 corporation organized under Chapter 54, Agriculture Code, or the
24 predecessor of that law (Article 2500 et seq., Revised Statutes);
25 or

26 (C) any equity securities issued by a cooperative
27 association organized under the Texas Cooperative Association Law

1 as described by Section 1.008(i), Business Organizations Code, or
2 the predecessor of that law (Article 1396-50.01, Vernon's Texas
3 Civil Statutes); or

4 (2) the sale of any securities issued by a farmers'
5 cooperative society organized under Chapter 51, Agriculture Code,
6 or the predecessor of that law (Article 2514 et seq., Revised
7 Statutes).

8 (b) The exemption provided by Section 4005.001 does not
9 apply to an agent of a farmers' cooperative marketing association,
10 mutual loan corporation, cooperative association, or farmers'
11 cooperative society if the sale of the securities is made to:

12 (1) nonmembers; or

13 (2) members and a commission is paid or contracted to
14 be paid to the agent. (V.A.C.S. Art. 581-5, Subsec. N.)

15 Sec. 4005.019. SECONDARY MARKET SALES. (a) In this
16 section, "recognized securities manual" means a nationally
17 distributed manual of securities that is approved by the board for
18 use under this section.

19 (b) The exemption provided by Section 4005.001 applies to
20 the sale of outstanding securities by a registered dealer if:

21 (1) the securities do not form part of an unsold
22 allotment to or subscription by the dealer as a participant in the
23 securities' distribution by the issuer of the securities;

24 (2) the securities are of the same class and the same
25 issuer and are outstanding in the hands of the public;

26 (3) the securities are offered for sale, in good
27 faith, at prices reasonably related to the current market price of

1 the securities at the time of the sale;

2 (4) none of the sale proceeds are paid directly or
3 indirectly to the issuer of the securities;

4 (5) the sale is not directly or indirectly for the
5 purposes of providing or furthering a scheme to violate or evade
6 this title;

7 (6) the right to sell or resell the securities has not
8 been enjoined by a court in this state by a proceeding instituted by
9 an officer or agency of this state charged with enforcement of this
10 title;

11 (7) the commissioner has not revoked or suspended the
12 right to sell the securities under this title or, if the
13 commissioner has revoked or suspended the right to sell the
14 securities, the revocation or suspension is not in effect;

15 (8) at the time of the sale, the issuer of the
16 securities is:

17 (A) a going concern actually engaged in business;
18 and

19 (B) not in an organization stage or in
20 receivership or bankruptcy; and

21 (9) either:

22 (A) the securities or other securities of the
23 issuer of the same class have been:

24 (i) qualified for sale by a permit issued
25 under Subchapter A, Chapter 4003;

26 (ii) registered by notification under
27 Subchapter B, Chapter 4003; or

1 (iii) registered by coordination under
2 Subchapter C, Chapter 4003; or

3 (B) a recognized securities manual or a
4 statement, in form and extent acceptable to the commissioner and
5 filed with the commissioner by the issuer or a registered dealer, is
6 provided at the time of the sale containing at least the following
7 information about the issuer:

8 (i) a statement of the issuer's principal
9 business;

10 (ii) a balance sheet as of a date not
11 earlier than 18 months before the date of the sale; and

12 (iii) profit and loss statements and a
13 record of any dividends paid for:

14 (a) a period of at least three years
15 before the date of the balance sheet; or

16 (b) the period of the issuer's
17 existence, if the issuer has been in existence less than three
18 years.

19 (c) The commissioner may issue a stop order or by order may
20 prohibit, revoke, or suspend the exemption under this section with
21 respect to any security if the commissioner has reasonable cause to
22 believe that the plan of business of the issuer of the security, the
23 security, or the sale of the security would tend to work a fraud or
24 deceit on any purchaser of the security. The order is subject to
25 review in the manner provided by Section 4007.107.

26 (d) Notice of any court injunction enjoining the sale or
27 resale of a security described by this section, or of an order

1 revoking or suspending the exemption under Subsection (c) with
2 respect to a security, shall be mailed by certified or registered
3 mail with return receipt requested or otherwise delivered to any
4 dealer believed to be selling or offering for sale the type of
5 securities referred to in the notice. Subsections (b)(6) and (7) do
6 not apply to a dealer until the dealer has received from the
7 commissioner actual notice of the revocation or suspension.

8 (e) The board, for cause shown, may revoke or suspend the
9 recognition under this section of any manual previously approved
10 under this section only after notice and an opportunity for a
11 hearing is provided as required by law.

12 (f) A judgment sustaining the board in the board action
13 complained about does not bar an application by the plaintiff for
14 approval of the manual as provided by this section after the first
15 anniversary of the date of the action.

16 (g) A judgment in favor of the plaintiff does not prevent
17 the board from revoking the recognition of a manual previously
18 approved under this section for any proper cause that may accrue or
19 be discovered. (V.A.C.S. Art. 581-5, Subsec. O.)

20 Sec. 4005.020. UNSOLICITED ORDERS. The exemption provided
21 by Section 4005.001 applies to a dealer's execution of an
22 unsolicited order for the purchase of securities for which the
23 initial offering of the securities has been completed if the
24 dealer:

25 (1) acts solely as an agent for the purchaser;

26 (2) does not have a direct or indirect interest in the
27 sale or distribution of securities ordered; and

1 (3) does not receive a commission, profit, or other
2 compensation from any source other than the purchaser. (V.A.C.S.
3 Art. 581-5, Subsec. P.)

4 Sec. 4005.021. OIL, GAS, OR MINING INTERESTS. (a) Subject
5 to Subsection (b), the exemption provided by Section 4005.001
6 applies to the sales of interests in and under oil, gas, or mining
7 leases, fees, or titles, or contracts relating to those interests
8 in which:

9 (1) the total number of sales by any one owner of
10 interests, whether whole, fractional, segregated, or undivided in
11 any single oil, gas, or mineral lease, fee, or title, or contract
12 relating to those interests, is not more than 35 during a 12
13 consecutive month period; and

14 (2) no use is made of advertisement or public
15 solicitation.

16 (b) If a sale of an interest described by Subsection (a) is
17 made for an owner of the interest by an agent of the owner, the
18 exemption under that subsection applies only if the agent is
19 registered under this title.

20 (c) An oil, gas, or mineral unitization or pooling agreement
21 may not be considered a sale under this title. (V.A.C.S. Art.
22 581-5, Subsec. Q.)

23 Sec. 4005.022. ISSUER SALES OF EXEMPT SECURITIES. (a) The
24 exemption provided by Section 4005.001 applies to the sale by the
25 issuer itself or by a subsidiary of the issuer of any securities
26 that would be exempt under Subchapter B if sold by a registered
27 dealer.

1 (b) This section does not apply to securities that would be
2 exempt under Section 4005.053. (V.A.C.S. Art. 581-5, Subsec. R.)

3 Sec. 4005.023. OPTIONS. (a) In this section, "option"
4 means and includes a put, call, straddle, or other option or
5 privilege of buying from another person or selling to another
6 person a specified number of securities at a specified price,
7 without being obligated to do so, on or before a specified date. The
8 term does not include an option or privilege that by its terms may
9 terminate before the specified date on the occurrence of a
10 specified event.

11 (b) The exemption provided by Section 4005.001 applies to a
12 sale of an option by or through a registered dealer if, at the time
13 of the sale:

14 (1) the performance of the terms of the option is
15 guaranteed by a broker-dealer registered under the Securities
16 Exchange Act of 1934 (15 U.S.C. Section 78a et seq.);

17 (2) the guaranty and broker-dealer described by
18 Subdivision (1) are in compliance with any requirements or rules
19 adopted or approved by the board;

20 (3) the option is not sold by or for the benefit of the
21 issuer of the security that may be purchased or sold on exercise of
22 the option;

23 (4) the security that may be purchased or sold on
24 exercise of the option is either:

25 (A) exempted under Section 4005.054; or

26 (B) quoted on the NASDAQ stock market and meets
27 the requirements of Sections 4005.019(b)(1), (6), (7), and (8); and

1 (5) the sale is not directly or indirectly for the
2 purposes of providing or furthering a scheme to violate or evade
3 this title. (V.A.C.S. Art. 581-5, Subsec. S.)

4 Sec. 4005.024. EXEMPTIONS BY RULE OR ORDER. The exemption
5 provided by Section 4005.001 applies to the sale of a security made
6 in other transactions or under other conditions not specified in
7 this subchapter as the board by rule or order may define or
8 prescribe, conditionally or unconditionally. (V.A.C.S. Art.
9 581-5, Subsec. T.)

10 Sec. 4005.025. ISSUANCE OR TRANSFER TO NONPROFITS. The
11 exemption provided by Section 4005.001 applies to the issuance or
12 transfer of securities by the issuer of its securities to a
13 corporation or association organized exclusively for a religious,
14 educational, benevolent, fraternal, charitable, or reformatory
15 purpose and not for pecuniary profit, only if:

16 (1) the corporation or association does not provide
17 anything of value for the securities other than, for a security that
18 is an option, payment of the exercise price of the option to acquire
19 the securities at a price not to exceed the fair market value of the
20 underlying securities on the date the option was granted;

21 (2) the issuance or transfer is not made for the
22 purpose of raising capital for the issuer;

23 (3) a commission or other form of consideration is not
24 paid or provided to a third party with respect to the issuance or
25 transfer; and

26 (4) the issuance or transfer is not directly or
27 indirectly for the purposes of providing or furthering a scheme to

1 violate or evade this title. (V.A.C.S. Art. 581-5, Subsec. U.)

2 SUBCHAPTER B. EXEMPT SECURITIES

3 Sec. 4005.051. SCOPE OF EXEMPTION. Except as expressly
4 provided otherwise in this title, this title does not apply to a
5 security described by this subchapter when offered for sale, sold,
6 or dealt in by a registered dealer or a registered dealer's agent.
7 (V.A.C.S. Art. 581-6 (part).)

8 Sec. 4005.052. RAILROADS OR UTILITIES. The exemption
9 provided by Section 4005.051 applies to:

10 (1) a security issued or guaranteed either as to
11 principal, interest, or dividend by a corporation that owns or
12 operates a railroad or any other public service utility if the
13 corporation is subject to regulation or supervision either as to
14 the corporation's rates and charges or as to the issuance of the
15 corporation's own securities by:

16 (A) the Texas Department of Transportation; or

17 (B) a public commission, an agency, a board, or
18 officers of:

19 (i) the government of the United States;

20 (ii) the District of Columbia, a state,
21 territory, or insular possession of the United States, or a
22 municipal corporation; or

23 (iii) Canada or a province of Canada; or

24 (2) equipment trust certificates or equipment notes or
25 bonds:

26 (A) that are based on chattel mortgages, leases
27 or agreements for conditional sale of cars, motive power or other

1 rolling stock mortgages, leased or sold to or provided for the use
2 of or on a railroad or other public service utility corporation if
3 the corporation is subject to regulation or supervision as
4 described by Subdivision (1); or

5 (B) for which the ownership or title of the
6 equipment is pledged or retained to secure the payment of the
7 equipment trust certificates, bonds, or notes, in accordance with
8 the laws of:

9 (i) the United States;

10 (ii) the District of Columbia or a state,
11 territory, or insular possession of the United States; or

12 (iii) Canada or a province of Canada.

13 (V.A.C.S. Art. 581-6, Subsec. D.)

14 Sec. 4005.053. NONPROFIT CORPORATIONS. The exemption
15 provided by Section 4005.051 applies to a security issued and sold
16 by a domestic corporation that:

17 (1) is not organized and engaged in business for
18 profit; and

19 (2) does not have capital stock. (V.A.C.S. Art. 581-6,
20 Subsec. E.)

21 Sec. 4005.054. LISTED SECURITIES. (a) The exemption
22 provided by Section 4005.051 applies to securities that at the time
23 of sale:

24 (1) are fully listed on:

25 (A) the American Stock Exchange;

26 (B) the Boston Stock Exchange;

27 (C) the Chicago Stock Exchange;

1 (D) the New York Stock Exchange; or

2 (E) a recognized and responsible stock exchange
3 approved by the commissioner, as provided by Subchapter C;

4 (2) are designated or approved for designation on
5 notice of issuance on the national market system of the NASDAQ stock
6 market; or

7 (3) are senior to, or if of the same issue, on a parity
8 with, any securities listed or designated as described by
9 Subdivision (1) or (2) or represented by subscription rights that
10 are listed or designated as described by Subdivision (1) or (2), or
11 evidence of indebtedness guaranteed by a company, any stock of
12 which is listed or designated as described by Subdivision (1) or
13 (2).

14 (b) Securities described by Subsection (a) are exempt only
15 so long as the exchange on which the securities are listed remains
16 approved under this section or Subchapter C. (V.A.C.S. Art. 581-6,
17 Subsec. F (part).)

18 Sec. 4005.055. COMMERCIAL PAPER. The exemption provided by
19 Section 4005.051 applies to:

20 (1) commercial paper that:

21 (A) arises out of a current transaction or the
22 proceeds of which have been or are to be used for current
23 transactions; and

24 (B) evidences an obligation to pay cash not later
25 than the ninth month after the issuance date of the commercial
26 paper, not including days of grace;

27 (2) a renewal of commercial paper described by

1 Subdivision (1) that is similarly limited; or

2 (3) a guarantee of commercial paper described by
3 Subdivision (1) or of a renewal described by Subdivision (2).
4 (V.A.C.S. Art. 581-6, Subsec. H.)

5 Sec. 4005.056. SECURED DEBT. The exemption provided by
6 Section 4005.051 applies to notes, bonds, or other evidence of
7 indebtedness or certificates of ownership that:

8 (1) are equally and proportionately secured without
9 reference of priority of one over another; and

10 (2) by the terms of the instrument creating the lien,
11 continue to be secured by the deposit with a trustee of recognized
12 responsibility approved by the commissioner of any of the
13 securities specified in:

14 (A) Section 4005.017, if the deposited
15 securities have an aggregate par value of not less than 110 percent
16 of the par value of the securities being secured; or

17 (B) Section 4005.052, if the deposited
18 securities have an aggregate par value of not less than 125 percent
19 of the par value of the securities being secured. (V.A.C.S. Art.
20 581-6, Subsec. I.)

21 Sec. 4005.057. NONPROFIT DEBT. The exemption provided by
22 Section 4005.051 applies to notes, bonds, or other evidence of
23 indebtedness of a religious, charitable, or benevolent
24 corporation. (V.A.C.S. Art. 581-6, Subsec. J.)

25 Sec. 4005.058. SUSPENSION OF EXEMPT STATUS OF TRADING
26 SYSTEM. (a) The commissioner, by the same procedures described by
27 Section 4005.105, may at any time suspend the exempt status of any

1 trading system exempted by the legislature on or after January 1,
2 1989, if at the time of the hearing the trading system does not meet
3 the applicable standards for approval of exchanges provided by this
4 title.

5 (b) The suspension of a trading system under Subsection (a)
6 has the same effect as the withdrawal of approval of a stock
7 exchange under Section 4005.105.

8 (c) The suspension under Subsection (a) remains in effect
9 until the commissioner by order determines that the trading system:

10 (1) has corrected each deficiency on which the
11 suspension was based; and

12 (2) maintains standards and procedures that provide
13 reasonable protection to the public. (V.A.C.S. Art. 581-6, Subsec.
14 F (part).)

15 SUBCHAPTER C. PROCEDURES FOR APPROVAL OF STOCK EXCHANGE

16 Sec. 4005.101. APPLICATION FOR APPROVAL. An organized
17 stock exchange may apply to the commissioner for approval in the
18 manner and on the forms the commissioner prescribes. (V.A.C.S. Art.
19 581-6, Subsec. F (part).)

20 Sec. 4005.102. APPROVAL OF STOCK EXCHANGE. The
21 commissioner may approve a stock exchange only if the commissioner
22 finds that the facts and data provided with the application
23 establish that:

24 (1) the requirements for the listing of securities on
25 the exchange seeking approval provide reasonable protection to the
26 public; and

27 (2) the governing constitution, bylaws, or

1 regulations of the exchange require:

2 (A) an adequate examination into the affairs of
3 the issuer of the securities to be listed on the exchange before
4 permitting trading on the exchange;

5 (B) that the issuer of the securities, while the
6 securities are listed on the exchange, shall periodically prepare,
7 make public, and provide promptly to the exchange appropriate
8 income, profit and loss, and other financial statements;

9 (C) that securities listed and traded on the
10 exchange be restricted to securities of ascertained, sound asset or
11 income value; and

12 (D) a reasonable surveillance of the exchange's
13 members, including a requirement for periodical financial
14 statements, a determination of the members' financial
15 responsibility, and the right and obligation of the exchange's
16 governing body to suspend or expel any member found:

17 (i) to be financially embarrassed or
18 irresponsible; or

19 (ii) guilty of misconduct in the member's
20 business dealings or of conduct prejudicial to the rights and
21 interests of the member's customers. (V.A.C.S. Art. 581-6, Subsec.
22 F (part).)

23 Sec. 4005.103. INVESTIGATION AND HEARING. The commissioner
24 may approve a stock exchange only after a reasonable investigation
25 and hearing. (V.A.C.S. Art. 581-6, Subsec. F (part).)

26 Sec. 4005.104. ORDER OF APPROVAL. The commissioner's
27 approval of a stock exchange must be made by a written order based

1 on a finding of fact substantially in accordance with the
2 requirements of Sections 4005.101 and 4005.102. (V.A.C.S. Art.
3 581-6, Subsec. F (part).)

4 Sec. 4005.105. WITHDRAWAL OF APPROVAL. At any time, the
5 commissioner, on 10 days' notice and hearing, may withdraw approval
6 of a stock exchange that at the time of the hearing does not meet the
7 standards for approval under this title. On the withdrawal of
8 approval, securities listed on the exchange are not exempt from
9 this title until the commissioner issues an order approving the
10 exchange. (V.A.C.S. Art. 581-6, Subsec. F (part).)

11 CHAPTER 4006. FEES

12 SUBCHAPTER A. CERTAIN REGISTRATION AND NOTICE FILING FEES

13 Sec. 4006.001. CERTAIN REGISTRATION AND NOTICE FILING
14 FEES

15 SUBCHAPTER B. EXEMPTION FEES AND OTHER FEES

16 Sec. 4006.051. NOTICE FOR SECONDARY TRADING EXEMPTION

17 Sec. 4006.052. NOTICE FOR LIMITED OFFERING EXEMPTION

18 Sec. 4006.053. APPLICATION FOR APPROVAL OF STOCK

19 EXCHANGE

20 Sec. 4006.054. AMENDMENT OR DUPLICATE OF REGISTRATION

21 CERTIFICATE OR EVIDENCE OF

22 REGISTRATION; REGISTRATION OF BRANCH

23 OFFICE

24 Sec. 4006.055. EXAMINATION OF CERTAIN APPLICATIONS OR

25 REGISTRATION STATEMENTS

26 Sec. 4006.056. CERTIFIED COPIES

27 Sec. 4006.057. REQUEST TO TAKE EXAMINATION

1 Sec. 4006.058. INTERPRETATION BY GENERAL COUNSEL

2 SUBCHAPTER C. PROVISIONS APPLICABLE TO CERTAIN FEES

3 Sec. 4006.101. REASONABLE AND NECESSARY REQUIREMENT

4 Sec. 4006.102. REDUCED FEES

5 Sec. 4006.103. PAYMENT OF CERTAIN COSTS

6 Sec. 4006.104. REFUND OF REGISTRATION FEE

7 SUBCHAPTER D. FEES FOR CERTAIN SALES OR OFFERS OF SECURITIES

8 Sec. 4006.151. FEE FOR SALE OF EXCESS SECURITIES

9 Sec. 4006.152. FEE FOR EXCEEDING LIMITED OFFERING

10 EXEMPTION

11 Sec. 4006.153. FEE FOR SALES OF UNREGISTERED

12 SECURITIES

13 SUBCHAPTER E. MISCELLANEOUS FEES

14 Sec. 4006.201. RENEWAL OF REGISTRATION BY NOTIFICATION

15 SUBCHAPTER F. DEPOSIT OF FEES

16 Sec. 4006.251. DEPOSIT OF FEES TO GENERAL REVENUE FUND

17 Sec. 4006.252. DAILY DEPOSIT OF CERTAIN FEES

18 CHAPTER 4006. FEES

19 SUBCHAPTER A. CERTAIN REGISTRATION AND NOTICE FILING FEES

20 Sec. 4006.001. CERTAIN REGISTRATION AND NOTICE FILING FEES.

21 The board shall establish the following fees in amounts so that the
22 aggregate amount that exceeds the amount of the fees on September 1,
23 2002, produces sufficient revenue to cover the costs of
24 administering and enforcing this title:

25 (1) for filing an original, amended, or renewal
26 application or registration statement to sell or dispose of
27 securities, an amount not to exceed \$100;

1 (2) for filing an original application of a dealer or
2 investment adviser or submitting a notice filing for a federal
3 covered investment adviser, an amount not to exceed \$100;

4 (3) for filing a renewal application of a dealer or
5 investment adviser or submitting a renewal notice filing for a
6 federal covered investment adviser, an amount not to exceed \$100;

7 (4) for filing an original application for each agent,
8 officer, or investment adviser representative or submitting a
9 notice filing for each representative of a federal covered
10 investment adviser, an amount not to exceed \$100; and

11 (5) for filing a renewal application for each agent,
12 officer, or investment adviser representative or submitting a
13 renewal notice filing for each representative of a federal covered
14 investment adviser, an amount not to exceed \$100. (V.A.C.S. Art.
15 581-35, Subsec. A.)

16 SUBCHAPTER B. EXEMPTION FEES AND OTHER FEES

17 Sec. 4006.051. NOTICE FOR SECONDARY TRADING EXEMPTION. The
18 commissioner or board shall charge and collect:

19 (1) a fee of \$500 for filing an initial notice required
20 by the commissioner to claim a secondary trading exemption; and

21 (2) a fee of \$500 for filing a secondary trading
22 exemption renewal notice. (V.A.C.S. Art. 581-35, Subsec. B
23 (part).)

24 Sec. 4006.052. NOTICE FOR LIMITED OFFERING EXEMPTION. (a)
25 Subject to Subsection (b), for filing an initial notice required by
26 the commissioner to claim a limited offering exemption, the
27 commissioner or board shall charge and collect a fee of one-tenth of

1 one percent of the aggregate amount of securities described as
2 being offered for sale.

3 (b) A fee charged under this section may not exceed \$500.
4 (V.A.C.S. Art. 581-35, Subsec. B (part).)

5 Sec. 4006.053. APPLICATION FOR APPROVAL OF STOCK EXCHANGE.
6 The commissioner or board shall charge and collect a fee of \$10,000
7 for filing an application for approval of a stock exchange.
8 (V.A.C.S. Art. 581-35, Subsec. B (part).)

9 Sec. 4006.054. AMENDMENT OR DUPLICATE OF REGISTRATION
10 CERTIFICATE OR EVIDENCE OF REGISTRATION; REGISTRATION OF BRANCH
11 OFFICE. The commissioner or board shall charge and collect a fee of
12 \$25 for a filing to:

13 (1) amend the registration certificate of a dealer or
14 investment adviser or the evidence of registration of an agent or
15 investment adviser representative;

16 (2) issue a duplicate certificate or evidence of
17 registration; or

18 (3) register a branch office. (V.A.C.S. Art. 581-35,
19 Subsec. B (part).)

20 Sec. 4006.055. EXAMINATION OF CERTAIN APPLICATIONS OR
21 REGISTRATION STATEMENTS. (a) For the examination of an original or
22 amended application or registration statement filed under
23 Subchapter A, B, or C, Chapter 4003, the commissioner or board shall
24 charge and collect a fee of one-tenth of one percent of the
25 aggregate amount of securities described and proposed to be sold to
26 persons located in this state based on the price at which the
27 securities will be offered to the public.

1 (b) A fee under this section applies regardless of whether
2 the application or registration statement is denied, abandoned,
3 withdrawn, or approved. (V.A.C.S. Art. 581-35, Subsec. B (part).)

4 Sec. 4006.056. CERTIFIED COPIES. (a) For a certified copy
5 of any papers filed in the office of the commissioner, the
6 commissioner shall charge and collect a fee that is reasonably
7 related to the costs of producing the certified copy.

8 (b) A fee charged under this section may not be more than a
9 fee that the secretary of state is authorized to charge for a
10 similar service. (V.A.C.S. Art. 581-35, Subsec. B (part).)

11 Sec. 4006.057. REQUEST TO TAKE EXAMINATION. The
12 commissioner or board shall charge and collect a fee of \$35 for
13 filing a request to take the Texas Securities Law Examination.
14 (V.A.C.S. Art. 581-35, Subsec. B (part).)

15 Sec. 4006.058. INTERPRETATION BY GENERAL COUNSEL. (a)
16 Except as provided by Subsection (b), the commissioner or board
17 shall charge and collect a fee of \$100 for an interpretation by the
18 board's general counsel of this title or a rule adopted under this
19 title.

20 (b) An officer or employee of a governmental entity and the
21 entity that the officer or employee represents are exempt from the
22 fee under this section if the officer or employee is conducting
23 official business of the entity. (V.A.C.S. Art. 581-35, Subsec. B
24 (part).)

25 SUBCHAPTER C. PROVISIONS APPLICABLE TO CERTAIN FEES

26 Sec. 4006.101. REASONABLE AND NECESSARY REQUIREMENT.
27 Subject to Subchapter A, the board shall set a fee under Subchapters

1 A and B in an amount that is reasonable and necessary to defray
2 costs. (V.A.C.S. Art. 581-35, Subsec. C.)

3 Sec. 4006.102. REDUCED FEES. (a) The board by rule may
4 adopt reduced fees under Section 4006.001 for original and renewal
5 applications of dealers, agents, officers, investment advisers, or
6 investment adviser representatives who have assumed inactive
7 status as defined by the board.

8 (b) The board by rule may adopt reduced fees under Section
9 4006.001 as appropriate to accommodate a small business required by
10 this title to register in two or more of the following capacities:

- 11 (1) dealer;
- 12 (2) agent;
- 13 (3) investment adviser;
- 14 (4) investment adviser representative; or
- 15 (5) officer.

16 (c) A person is not required to pay more than one fee
17 required under Section 4006.001 to engage in business in this state
18 concurrently for the same person or company as:

- 19 (1) a dealer and an investment adviser; or
- 20 (2) an agent and investment adviser representative.

21 (V.A.C.S. Art. 581-42.)

22 Sec. 4006.103. PAYMENT OF CERTAIN COSTS. A cost incurred by
23 the board in administering this title may be paid only from a fee
24 collected under Section 4006.001. (V.A.C.S. Art. 581-35,
25 Subsec. D.)

26 Sec. 4006.104. REFUND OF REGISTRATION FEE. If the
27 commissioner or board determines that all or part of a registration

1 fee should be refunded, the commissioner may make the refund by
2 warrant on the state treasury from money appropriated from the
3 general revenue fund for that purpose. (V.A.C.S. Art. 581-36
4 (part).)

5 SUBCHAPTER D. FEES FOR CERTAIN SALES OR OFFERS OF SECURITIES

6 Sec. 4006.151. FEE FOR SALE OF EXCESS SECURITIES. (a) An
7 offeror who sells securities in this state in excess of the
8 aggregate amount of securities registered for the offering may
9 apply to register the excess securities by paying:

10 (1) three times the difference between the initial fee
11 paid and the fee required under Section 4006.055 for the securities
12 sold to persons in this state;

13 (2) if the registration is no longer in effect,
14 interest on that amount computed at the rate provided by Section
15 302.002, Finance Code, from the date the registration was no longer
16 in effect until the date the subsequent application is filed; and

17 (3) the amendment fee prescribed by Section
18 4006.001(1).

19 (b) If an application to register excess securities is
20 granted under Subsection (a), the registration of the excess
21 securities is effective retroactively to the effective date of the
22 initial registration for the offering. (V.A.C.S. Art. 581-35-1,
23 Subsec. A.)

24 Sec. 4006.152. FEE FOR EXCEEDING LIMITED OFFERING
25 EXEMPTION. (a) This section applies only to an offeror who:

26 (1) has filed a notice to claim a limited offering
27 exemption;

1 (2) paid less than the maximum fee prescribed by
2 Section 4006.052; and

3 (3) offered a greater amount of securities in the
4 offering than authorized pursuant to the formula prescribed by
5 Section 4006.052.

6 (b) An offeror may:

7 (1) file an amended notice disclosing the amount of
8 securities offered; and

9 (2) pay:

10 (A) three times the difference between the fee
11 initially paid and the fee that should have been paid; and

12 (B) interest on that amount computed at the rate
13 provided by Section 302.002, Finance Code, from the date the
14 commissioner received the original notice until the date the
15 commissioner received the amended notice.

16 (c) An amended notice filed under Subsection (b) is
17 retroactive to the date of the initial filing of the notice to claim
18 the exemption. (V.A.C.S. Art. 581-35-1, Subsec. B.)

19 Sec. 4006.153. FEE FOR SALES OF UNREGISTERED SECURITIES.

20 (a) If, after notice and hearing, the commissioner or a court finds
21 that an offeror has sold securities in this state pursuant to an
22 offering no part of which has been registered under Chapter 4003 and
23 for which the transactions or securities are not exempt under
24 Chapter 4005, the commissioner or court may impose a fee equal to:

25 (1) six times the amount that would have been paid if
26 the issuer had filed an application or registration statement to
27 register the securities and paid the fee required under Section

1 4006.055 based on the aggregate amount of sales made in this state
2 in the preceding three years; and

3 (2) interest on that amount at the rate provided by
4 Section 302.002, Finance Code, from the date of the first such sale
5 made in this state until the date the fee is paid.

6 (b) Payment of the fee prescribed by this section does not
7 effect registration of the securities or affect the application of
8 any other provision of this title.

9 (c) Payment of the fee prescribed by this section is not an
10 admission that the transactions or securities were not exempt and
11 is not admissible as evidence in a suit or proceeding for failure to
12 register the securities. (V.A.C.S. Art. 581-35-2.)

13 SUBCHAPTER E. MISCELLANEOUS FEES

14 Sec. 4006.201. RENEWAL OF REGISTRATION BY NOTIFICATION. A
15 registration of securities by notification may be renewed as
16 provided by Section 4003.058, which includes the payment of the
17 renewal fee in the amount prescribed by that section. (New.)

18 SUBCHAPTER F. DEPOSIT OF FEES

19 Sec. 4006.251. DEPOSIT OF FEES TO GENERAL REVENUE FUND. The
20 commissioner or board shall deposit money received from fees under
21 this title to the credit of the general revenue fund. (V.A.C.S.
22 Art. 581-36 (part).)

23 Sec. 4006.252. DAILY DEPOSIT OF CERTAIN FEES. The
24 commissioner or board shall deposit daily all fees received under
25 Subchapter B to the credit of the general revenue fund. (V.A.C.S.
26 Art. 581-35, Subsec. B (part).)

1 CHAPTER 4007. ENFORCEMENT

2 SUBCHAPTER A. AUTHORITY TO ENFORCE TITLE

3 Sec. 4007.001. ENFORCEMENT BY COMMISSIONER, ATTORNEY
4 GENERAL, AND DISTRICT OR COUNTY
5 ATTORNEY

6 Sec. 4007.002. MEANS OF ENFORCEMENT NOT EXCLUSIVE

7 SUBCHAPTER B. INSPECTIONS AND INVESTIGATIONS

8 Sec. 4007.051. COMPLAINTS FILED WITH COMMISSIONER OR
9 BOARD

10 Sec. 4007.052. INSPECTIONS

11 Sec. 4007.053. INVESTIGATIVE AUTHORITY

12 Sec. 4007.054. SERVICE OF SUBPOENA, SUMMONS, OR OTHER
13 PROCESS

14 Sec. 4007.055. ENFORCEMENT OF SUBPOENA; CONTEMPT

15 Sec. 4007.056. CONFIDENTIALITY OF INVESTIGATIVE
16 INFORMATION

17 Sec. 4007.057. COMPENSATION OF WITNESSES

18 Sec. 4007.058. IMPOSITION OF COSTS ON PARTIES

19 Sec. 4007.059. ASSISTANCE TO SECURITIES REGULATORS IN
20 OTHER JURISDICTIONS

21 SUBCHAPTER C. ADMINISTRATIVE ACTIONS

22 Sec. 4007.101. CEASE AND DESIST ORDER: OFFER OR SALE
23 OF SECURITIES

24 Sec. 4007.102. CEASE AND DESIST ORDER: INVESTMENT
25 ADVISER OR INVESTMENT ADVISER
26 REPRESENTATIVE

27 Sec. 4007.103. CEASE PUBLICATION ORDER

- 1 Sec. 4007.104. EMERGENCY CEASE AND DESIST ORDER
- 2 Sec. 4007.105. DENIAL, SUSPENSION, OR REVOCATION OF
- 3 REGISTRATION
- 4 Sec. 4007.106. ASSESSMENT OF ADMINISTRATIVE FINE
- 5 Sec. 4007.107. HEARINGS ON CERTAIN MATTERS
- 6 SUBCHAPTER D. CIVIL PROCEEDINGS
- 7 Sec. 4007.151. RECEIVERSHIP
- 8 Sec. 4007.152. INJUNCTIVE RELIEF
- 9 Sec. 4007.153. EQUITABLE RELIEF AND RESTITUTION
- 10 Sec. 4007.154. CIVIL PENALTY
- 11 Sec. 4007.155. RECOVERY OF COSTS
- 12 SUBCHAPTER E. CRIMINAL PROVISIONS
- 13 Sec. 4007.201. UNAUTHORIZED SALE OF SECURITIES;
- 14 OFFENSE
- 15 Sec. 4007.202. UNAUTHORIZED RENDERING OF SERVICES AS
- 16 INVESTMENT ADVISER OR INVESTMENT
- 17 ADVISER REPRESENTATIVE; OFFENSE
- 18 Sec. 4007.203. FRAUDULENT CONDUCT; OFFENSE
- 19 Sec. 4007.204. MATERIALLY FALSE STATEMENT IN DOCUMENT
- 20 OR PROCEEDING; OFFENSE
- 21 Sec. 4007.205. FALSE STATEMENT OR REPRESENTATION
- 22 CONCERNING REGISTRATION; OFFENSE
- 23 Sec. 4007.206. VIOLATION OF CEASE AND DESIST ORDER;
- 24 OFFENSE
- 25 Sec. 4007.207. NONCOMPLIANT OFFER OR OFFER PROHIBITED
- 26 BY CEASE PUBLICATION ORDER; OFFENSE
- 27 Sec. 4007.208. AGGREGATION OF AMOUNTS

1 Sec. 4007.209. LIABILITY OF CORPORATION

2 CHAPTER 4007. ENFORCEMENT

3 SUBCHAPTER A. AUTHORITY TO ENFORCE TITLE

4 Sec. 4007.001. ENFORCEMENT BY COMMISSIONER, ATTORNEY
5 GENERAL, AND DISTRICT OR COUNTY ATTORNEY. (a) The administration
6 of the provisions of this title is vested in the commissioner.

7 (b) The commissioner and the attorney general shall:

8 (1) ensure that the provisions of this title are
9 obeyed; and

10 (2) conduct investigations and take measures to
11 prevent or detect a violation of this title.

12 (c) The commissioner shall at once submit any evidence of a
13 criminal violation of this title to the district or county attorney
14 of the appropriate county after the evidence comes to the
15 commissioner's knowledge.

16 (d) If the district or county attorney neglects or refuses
17 to prosecute the alleged criminal violation, the commissioner shall
18 submit the evidence of the alleged violation to the attorney
19 general. The attorney general may proceed with the criminal
20 prosecution of the alleged violation and has all the rights,
21 privileges, and powers conferred by law on a district or county
22 attorney, including the authority to appear before a grand jury and
23 to interrogate witnesses before a grand jury. (V.A.C.S. Art.
24 581-3.)

25 Sec. 4007.002. MEANS OF ENFORCEMENT NOT EXCLUSIVE. The
26 commissioner may use any or all penalties, sanctions, remedies, or
27 relief that the commissioner considers necessary. (V.A.C.S. Art.

1 581-3-1.)

2 SUBCHAPTER B. INSPECTIONS AND INVESTIGATIONS

3 Sec. 4007.051. COMPLAINTS FILED WITH COMMISSIONER OR BOARD.

4 (a) The commissioner or the commissioner's designee shall maintain
5 a file on each written complaint filed with the commissioner or
6 board concerning a person registered under this title. The file
7 must include:

8 (1) the name of the person who filed the complaint;

9 (2) the date the complaint was received by the
10 commissioner or board;

11 (3) the subject matter of the complaint;

12 (4) the name of each person contacted in relation to
13 the complaint;

14 (5) a summary of the results of the review or
15 investigation of the complaint; and

16 (6) an explanation of the reason the file was closed,
17 if the commissioner closed the file without taking action other
18 than the investigation of the complaint.

19 (b) The commissioner or the commissioner's designee shall
20 provide to the person filing the complaint and to each person who is
21 a subject of the complaint a copy of the board's policies and
22 procedures relating to complaint investigation and resolution.

23 (c) The commissioner or the commissioner's designee, at
24 least quarterly until final disposition of the complaint, shall
25 notify the person filing the complaint and each person who is a
26 subject of the complaint of the status of the investigation, unless
27 the notice would jeopardize an undercover investigation. (V.A.C.S.

1 Art. 581-2-6, Subsecs. A (part), B, C.)

2 Sec. 4007.052. INSPECTIONS. (a) The commissioner without
3 notice may inspect a registered dealer or registered investment
4 adviser as necessary to ensure compliance with this title and board
5 rules.

6 (b) The commissioner, during regular business hours, may
7 enter the business premises of a registered dealer or registered
8 investment adviser and examine and copy books and records pertinent
9 to the inspection.

10 (c) During the inspection, the registered dealer or
11 registered investment adviser shall:

12 (1) provide to the commissioner or the commissioner's
13 authorized representative immediate and complete access to the
14 registered dealer's or registered investment adviser's office,
15 place of business, files, safe, and any other location at which
16 books and records pertinent to the inspection are located; and

17 (2) allow the commissioner or the commissioner's
18 authorized representative to make photostatic or electronic copies
19 of books or records subject to inspection.

20 (d) A registered dealer or registered investment adviser
21 may not charge a fee for copying information under this section.

22 (e) Information obtained under this section and any
23 intra-agency or interagency notes, memoranda, reports, or other
24 communications consisting of advice, analyses, opinions, or
25 recommendations that are made in connection with the inspection are
26 confidential. The commissioner may not disclose to the public or
27 release documents or other information made confidential by this

1 subsection except to the same extent provided for the release or
2 disclosure of confidential documents or other information made or
3 obtained in connection with an investigation under Section
4 4007.053. (V.A.C.S. Art. 581-13-1.)

5 Sec. 4007.053. INVESTIGATIVE AUTHORITY. (a) The
6 commissioner shall conduct investigations as the commissioner
7 considers necessary to prevent or detect a violation of this title
8 or a board rule or order.

9 (b) For the purpose of conducting an investigation under
10 this section, the commissioner may:

11 (1) administer oaths;

12 (2) sign subpoenas;

13 (3) issue subpoenas or summons to compel the
14 attendance and testimony of witnesses and the production of all
15 records, electronic or otherwise, relating to any matter that the
16 commissioner has the authority under this title to consider or
17 investigate;

18 (4) examine witnesses; and

19 (5) receive evidence.

20 (c) During an investigation, the commissioner may cause the
21 deposition of witnesses residing inside or outside this state to be
22 taken in the manner prescribed by the laws of this state for taking
23 a deposition in a civil action. (V.A.C.S. Art. 581-28, Subsec. A
24 (part).)

25 Sec. 4007.054. SERVICE OF SUBPOENA, SUMMONS, OR OTHER
26 PROCESS. (a) The commissioner may serve a subpoena, summons, or
27 other process issued by the commissioner or have the subpoena,

1 summons, or other process served by an authorized agent of the
2 commissioner, a sheriff, or a constable.

3 (b) The sheriff's or constable's fee for serving the
4 subpoena is the same as the fee paid the sheriff or constable for
5 similar services. (V.A.C.S. Art. 581-28, Subsec. A (part).)

6 Sec. 4007.055. ENFORCEMENT OF SUBPOENA; CONTEMPT. (a) If a
7 person disobeys a subpoena or if a witness appearing before the
8 commissioner refuses to give evidence, the commissioner may
9 petition the district court of a jurisdiction in which the person or
10 witness may be found, and the court on this petition may issue an
11 order requiring the person or witness to, as applicable, obey the
12 subpoena, testify, or produce a book, an account, a record, a paper,
13 and correspondence relating to the matter in question.

14 (b) The district court may punish as contempt the failure to
15 obey an order under Subsection (a). (V.A.C.S. Art. 581-28, Subsec.
16 A (part).)

17 Sec. 4007.056. CONFIDENTIALITY OF INVESTIGATIVE
18 INFORMATION. (a) All information received in connection with an
19 investigation under Section 4007.053 and all internal notes,
20 memoranda, reports, or communications made in connection with an
21 investigation under that section are confidential.

22 (b) The commissioner may not disclose a document or other
23 information made confidential by Subsection (a) unless the
24 disclosure is made:

25 (1) to the public under court order for good cause
26 shown; or

27 (2) at the commissioner's discretion, as part of an

1 administrative proceeding or a civil or criminal action to enforce
2 this title.

3 (c) The commissioner, at the commissioner's discretion, may
4 disclose confidential information in the commissioner's possession
5 to:

6 (1) a governmental or regulatory authority or any
7 association of governmental or regulatory authorities approved by
8 board rule; or

9 (2) any receiver appointed under Section 4007.151.

10 (d) Disclosure of information under Subsection (c) does not
11 violate any other provision of this title or Chapter 552.

12 (e) This section may not be interpreted to prohibit or limit
13 the publication of rulings or decisions of the commissioner.
14 (V.A.C.S. Art. 581-28, Subsec. A (part).)

15 Sec. 4007.057. COMPENSATION OF WITNESSES. (a) A witness
16 required to attend a hearing before the commissioner shall receive
17 for each day's attendance a fee in an amount set by board rule.

18 (b) A disbursement made in payment of a fee under this
19 section shall be:

20 (1) made in accordance with board rule; and

21 (2) included in, and paid in the same manner that is
22 provided for, the payment of other expenses incurred in the
23 administration and enforcement of this title. (V.A.C.S. Art.
24 581-28, Subsec. A (part).)

25 Sec. 4007.058. IMPOSITION OF COSTS ON PARTIES. The
26 commissioner may impose on a party of record fees, expenses, or
27 costs incurred in connection with a hearing or may divide the fee,

1 expense, or cost among any or all parties of record as determined by
2 the commissioner. (V.A.C.S. Art. 581-28, Subsec. A (part).)

3 Sec. 4007.059. ASSISTANCE TO SECURITIES REGULATORS IN OTHER
4 JURISDICTIONS. (a) On request from a securities regulator of
5 another state or of a foreign jurisdiction, the commissioner may
6 provide assistance to the regulator in conducting an investigation
7 to determine whether a person has violated, is violating, or is
8 about to violate a law or rule of the other state or foreign
9 jurisdiction relating to a securities matter that the regulator is
10 authorized to administer or enforce.

11 (b) The commissioner may provide assistance under this
12 section through the use of the authority to investigate and any
13 other power conferred by this section or Section 4007.054,
14 4007.055, 4007.056, or 4007.057, as the commissioner determines to
15 be necessary and appropriate.

16 (c) In determining whether to provide assistance under this
17 section, the commissioner may consider whether:

18 (1) the securities regulator is permitted and has
19 agreed to provide assistance within the regulator's jurisdiction to
20 the commissioner reciprocally and at the commissioner's request
21 concerning securities matters;

22 (2) compliance with the request for assistance would
23 violate or otherwise prejudice the public policy of this state;

24 (3) the conduct described in the request would also
25 constitute a violation of this title or another law of this state
26 had the conduct occurred in this state; and

27 (4) board employees and board or commissioner

1 resources necessary to carry out the request for assistance are
2 available. (V.A.C.S. Art. 581-28, Subsec. C.)

3 SUBCHAPTER C. ADMINISTRATIVE ACTIONS

4 Sec. 4007.101. CEASE AND DESIST ORDER: OFFER OR SALE OF
5 SECURITIES. (a) The commissioner may hold a hearing as provided by
6 this section if at any time it appears to the commissioner that the
7 sale, proposed sale, or method of sale of securities, regardless of
8 whether exempt:

- 9 (1) is a fraudulent practice;
- 10 (2) does not comply with this title;
- 11 (3) would tend to work a fraud on any purchaser of the
12 securities; or
- 13 (4) would not be fair, just, or equitable to any
14 purchaser of the securities.

15 (b) The commissioner may hold a hearing under this section
16 on a date set by the commissioner that is not later than the 30th day
17 after the date the issuer or registrant of the securities, the
18 person on whose behalf the securities are being or will be offered,
19 or any person that is acting as a dealer or agent in violation of
20 this title, as applicable:

- 21 (1) receives actual notice; or
- 22 (2) is provided notice by registered or certified mail
23 to the person's last known address.

24 (c) If the commissioner determines at the hearing that the
25 sale, proposed sale, or method of sale of the securities is a
26 fraudulent practice, does not comply with this title, would tend to
27 work a fraud on any purchaser of the securities, or would not be

1 fair, just, or equitable to any purchaser of the securities, the
2 commissioner may issue a written cease and desist order:

3 (1) prohibiting or suspending the sale of the
4 securities;

5 (2) denying or revoking the registration of the
6 securities;

7 (3) prohibiting an unregistered person from acting as
8 a dealer or agent; or

9 (4) prohibiting the fraudulent conduct.

10 (d) After the issuance of a cease and desist order under
11 Subsection (c), a dealer or agent may not knowingly sell or offer
12 for sale any security named in the order. (V.A.C.S. Art. 581-23,
13 Subsec. A.)

14 Sec. 4007.102. CEASE AND DESIST ORDER: INVESTMENT ADVISER
15 OR INVESTMENT ADVISER REPRESENTATIVE. (a) Notwithstanding any
16 provision of this title to the contrary, the commissioner may hold a
17 hearing as provided by this section if at any time it appears to the
18 commissioner that:

19 (1) an investment adviser or investment adviser
20 representative is engaging or is likely to engage in fraud or a
21 fraudulent practice with respect to rendering services as an
22 investment adviser or investment adviser representative; or

23 (2) a person is acting as an investment adviser or
24 investment adviser representative in violation of this title.

25 (b) A hearing under this section must be held not later than
26 the 30th day after the date the person described by Subsection (a):

27 (1) receives actual notice; or

1 (2) is provided notice by registered or certified
2 mail, return receipt requested, to the person's last known address.

3 (c) After the hearing, the commissioner shall issue or
4 decline to issue a cease and desist order. An order issued under
5 this subsection must:

6 (1) require the investment adviser or investment
7 adviser representative to immediately cease and desist from the
8 fraudulent conduct; or

9 (2) prohibit an unregistered or other unauthorized
10 person who is not exempt from the registration or notice filing
11 requirements of this title from acting as an investment adviser or
12 investment adviser representative in violation of this title.
13 (V.A.C.S. Art. 581-23, Subsec. B.)

14 Sec. 4007.103. CEASE PUBLICATION ORDER. (a)
15 Notwithstanding any provision of this title to the contrary, the
16 commissioner may issue a cease publication order if at any time it
17 appears to the commissioner that an offer contains any statement
18 that is materially false or misleading or is otherwise likely to
19 deceive the public.

20 (b) A person may not make an offer that is prohibited by an
21 order issued under Subsection (a). (V.A.C.S. Art. 581-23, Subsec.
22 C.)

23 Sec. 4007.104. EMERGENCY CEASE AND DESIST ORDER. (a) On the
24 commissioner's determination that the conduct, act, or practice
25 threatens immediate and irreparable public harm, the commissioner
26 may issue an emergency cease and desist order to a person who the
27 commissioner reasonably believes:

1 (1) is engaging in or is about to engage in fraud or a
2 fraudulent practice in connection with:

3 (A) the offer for sale or sale of a security; or

4 (B) the rendering of services as an investment
5 adviser or investment adviser representative;

6 (2) has made an offer containing a statement that is
7 materially misleading or is otherwise likely to deceive the public;
8 or

9 (3) is engaging or is about to engage in an act or
10 practice that violates this title or a board rule.

11 (b) The emergency order must:

12 (1) be sent on issuance to each person affected by the
13 order by personal delivery or registered or certified mail, return
14 receipt requested, to the person's last known address;

15 (2) state the specific charges and require the person
16 to immediately cease and desist from the unauthorized activity; and

17 (3) contain a notice that a request for a hearing may
18 be filed under this section.

19 (c) Unless a person against whom the emergency order is
20 directed requests a hearing in writing before the 31st day after the
21 date the order is served on the person, the emergency order is final
22 and nonappealable as to that person. A request for a hearing must:

23 (1) be in writing and directed to the commissioner;
24 and

25 (2) state the grounds for the request to set aside or
26 modify the order.

27 (d) On receiving a request for a hearing, the commissioner

1 shall serve notice of the time and place of the hearing by personal
2 delivery or registered or certified mail, return receipt requested.
3 The hearing must be held not later than the 10th day after the date
4 the commissioner receives the request for a hearing unless the
5 parties agree to a later hearing date. At the hearing, the
6 commissioner has the burden of proof and must present evidence in
7 support of the emergency order.

8 (e) After the hearing, the commissioner shall affirm,
9 modify, or set aside, wholly or partly, the emergency order. An
10 order affirming or modifying the emergency order is immediately
11 final for purposes of enforcement and appeal.

12 (f) An emergency order continues in effect unless the order
13 is stayed by the commissioner. The commissioner may impose any
14 condition before granting a stay of the order. (V.A.C.S. Art.
15 581-23-2.)

16 Sec. 4007.105. DENIAL, SUSPENSION, OR REVOCATION OF
17 REGISTRATION. (a) The commissioner may deny an application for
18 registration under this title, suspend or revoke a registration
19 issued under this title, place on probation a dealer, agent,
20 investment adviser, or investment adviser representative whose
21 registration has been suspended under this title, or reprimand a
22 person registered under this title if the person:

23 (1) has been convicted of a felony;

24 (2) has been convicted of a misdemeanor that directly
25 relates to the person's securities-related duties and
26 responsibilities;

27 (3) has engaged in:

1 (A) an inequitable practice in the sale of
2 securities or in rendering services as an investment adviser; or

3 (B) a fraudulent business practice;

4 (4) is an insolvent dealer or investment adviser;

5 (5) is a dealer and is selling or sold securities in
6 this state through an agent other than a registered agent;

7 (6) is an investment adviser and is engaging or
8 engaged in rendering services as an investment adviser in this
9 state through a representative who is not registered to perform
10 services for that investment adviser;

11 (7) is an agent and is selling or sold securities in
12 this state for a dealer, issuer, or controlling person with
13 knowledge that the dealer, issuer, or controlling person has not
14 complied with this title;

15 (8) is an investment adviser representative and is
16 rendering or rendered services as an investment adviser for an
17 investment adviser in this state whom the representative is not or
18 was not registered to represent;

19 (9) has:

20 (A) made a material misrepresentation to the
21 commissioner or board in connection with information considered
22 necessary by the commissioner or board to determine:

23 (i) a dealer's or investment adviser's
24 financial responsibility; or

25 (ii) a dealer's, agent's, investment
26 adviser's, or investment adviser representative's business repute
27 or qualifications; or

1 (B) refused to provide information described by
2 Paragraph (A) that the commissioner or board has requested;

3 (10) is registered as a dealer, agent, investment
4 adviser, or investment adviser representative and has not complied
5 with an applicable requirement under Section 4004.151(a);

6 (11) is the subject of any of the following orders
7 issued within the preceding five years that remain effective:

8 (A) an order by the securities agency or
9 administrator of any state, the financial regulatory authority of a
10 foreign country, or the Securities and Exchange Commission, entered
11 after notice and opportunity for hearing, denying, suspending, or
12 revoking the person's license as a dealer, agent, investment
13 adviser, or investment adviser representative or the substantial
14 equivalent of those terms;

15 (B) an order suspending or expelling from
16 membership in or association with a member of a self-regulatory
17 organization;

18 (C) a United States Postal Service fraud order;

19 (D) an order by the securities agency or
20 administrator of any state, the financial regulatory authority of a
21 foreign country, the Securities and Exchange Commission, or the
22 Commodity Futures Trading Commission, finding, after notice and
23 opportunity for hearing, that the person engaged in acts involving
24 fraud, deceit, false statements or omissions, or wrongful taking of
25 property; or

26 (E) an order by the Commodity Futures Trading
27 Commission denying, suspending, or revoking registration under the

1 Commodity Exchange Act (7 U.S.C. Section 1 et seq.);

2 (12) is subject to any order, judgment, or decree
3 entered by a court that permanently restrains or enjoins the person
4 from engaging in or continuing any conduct, action, or practice in
5 connection with any aspect of the purchase or sale of securities or
6 the rendering of investment advice; or

7 (13) has violated:

8 (A) any provision of this title;

9 (B) a board rule;

10 (C) any order issued by the commissioner; or

11 (D) any undertaking or agreement with the
12 commissioner.

13 (b) If the commissioner proposes the suspension or
14 revocation of a person's registration, the person is entitled to a
15 hearing before the commissioner or a hearings officer as required
16 by law.

17 (c) All registration certificates that have been revoked
18 shall be immediately surrendered to the commissioner on request.

19 (d) This section does not affect the confidentiality of
20 investigative records maintained by the commissioner or board.
21 (V.A.C.S. Arts. 581-14, 581-25 (part).)

22 Sec. 4007.106. ASSESSMENT OF ADMINISTRATIVE FINE. (a) In
23 addition to any other remedies, the commissioner, after giving
24 notice and opportunity for a hearing, may issue an order that
25 assesses an administrative fine against a person or company found
26 to have:

27 (1) engaged in fraud or a fraudulent practice in

1 connection with:

2 (A) the offer for sale or sale of a security; or

3 (B) the rendering of services as an investment
4 adviser or investment adviser representative;

5 (2) made an offer containing a statement that is
6 materially misleading or is otherwise likely to deceive the public;

7 (3) engaged in an act or practice that violates this
8 title or a board rule or order; or

9 (4) with intent to deceive or defraud or with reckless
10 disregard for the truth or the law, materially aided any person in
11 engaging in an act or practice described by Subdivision (1), (2), or
12 (3).

13 (b) An administrative fine assessed under this section when
14 added to the amount of any civil penalty previously awarded under
15 Section 4007.154 must be in an amount that does not exceed:

16 (1) the greater of:

17 (A) \$20,000 per violation; or

18 (B) the gross amount of any economic benefit
19 gained by the person or company as a result of the act or practice
20 for which the fine was assessed; and

21 (2) if the act or practice was committed against a
22 person 65 years of age or older, an additional amount of not more
23 than \$250,000.

24 (c) For purposes of determining the amount of an
25 administrative fine assessed under this section, the commissioner
26 shall consider factors set out in guidelines established by the
27 board.

1 (d) For purposes of private civil litigation, the payment of
2 a fine assessed in an agreed order under this title does not
3 constitute an admission of any misconduct described in the order.

4 (e) A proceeding for the assessment of an administrative
5 fine must be commenced within five years after the violation
6 occurs. (V.A.C.S. Art. 581-23-1.)

7 Sec. 4007.107. HEARINGS ON CERTAIN MATTERS. (a) A person
8 or company may request a hearing to dispute the commissioner's:

9 (1) failure or refusal to:

10 (A) register and issue a certificate of
11 registration for a dealer or investment adviser under Section
12 4004.054; or

13 (B) register and issue evidence of registration
14 for an agent or investment adviser representative under Section
15 4004.104;

16 (2) issuance of an order under Section 4007.101,
17 4007.102, 4007.103, or 4007.104; or

18 (3) taking of an action in any other particular matter
19 for which no other procedure is specified by this title.

20 (b) A hearing under Subsection (a) must be held before the
21 commissioner or a hearings officer as required by law.

22 (c) On complaint by a person aggrieved by the denial of a
23 permit qualifying securities for sale under Subchapter A, Chapter
24 4003, or by the failure or refusal to register securities under
25 Subchapter B or C, Chapter 4003, the board or a hearings officer, as
26 required by law, shall conduct a hearing.

27 (d) A hearing under this section is subject to Chapter 2001.

1 (V.A.C.S. Art. 581-24.)

2 SUBCHAPTER D. CIVIL PROCEEDINGS

3 Sec. 4007.151. RECEIVERSHIP. (a) This section applies
4 only to a person or company acting as a dealer, agent, investment
5 adviser, investment adviser representative, or issuer or as an
6 affiliate of a dealer, agent, investment adviser, investment
7 adviser representative, or issuer, regardless of whether the person
8 or company is required to be registered as provided in this title.

9 (b) The commissioner may request the attorney general to
10 bring an action as provided by this section for the appointment of a
11 receiver for a person or company to which this section applies or
12 the assets of the person or company if it appears to the
13 commissioner, on complaint or otherwise, that:

14 (1) the person or company has:

15 (A) engaged in an act, transaction, practice, or
16 course of business declared as a fraudulent practice under Section
17 4007.152 or 4007.153; and

18 (B) acted as a dealer, agent, investment adviser,
19 investment adviser representative, or issuer or as an affiliate of
20 a dealer, agent, investment adviser, investment adviser
21 representative, or issuer in connection with the fraudulent
22 practice; and

23 (2) the appointment of a receiver for the person or
24 company or the assets of the person or company is necessary to
25 conserve and protect the assets for the benefit of customers,
26 security holders, and other claimants and potential claimants of
27 the person or company.

1 (c) On the commissioner's request under Subsection (b), the
2 attorney general may bring an action against a person or company in
3 the name and on behalf of the state if it appears to the attorney
4 general that the facts described by that subsection exist with
5 respect to the person or company. The facts contained in the
6 petition for the appointment of a receiver must be verified by the
7 commissioner on information and belief.

8 (d) An action under this section may be brought in a
9 district court of any county in which the fraudulent practice that
10 is the subject of the petition was wholly or partly committed or in
11 a county in which any defendant for whom the appointment of a
12 receiver is sought has the defendant's principal place of business.
13 A district court described by this subsection has jurisdiction and
14 venue of the action. This subsection is superior to any other
15 provision of law establishing jurisdiction or venue with regard to
16 an action for receivership.

17 (e) The attorney general may apply for and, on proper
18 showing, is entitled to have a subpoena issued by the court that
19 requires:

20 (1) the appearance, without delay, of a defendant or
21 any employee, investment adviser representative, or agent of the
22 defendant to testify and give evidence concerning a matter relevant
23 to the appointment of a receiver; and

24 (2) the production of documents, books, and records
25 that may be necessary for a hearing on the action.

26 (f) The court may appoint a receiver for the person or
27 company or the person's or company's assets on the attorney

1 general's proper showing of the existence of the facts described by
2 Subsection (b) with respect to the person or company.

3 (g) If the court appoints a receiver without providing the
4 person or company with notice and an opportunity for hearing, the
5 person or company may file with the court a written application for
6 an order dissolving the receivership. If the application is filed
7 not later than the 30th day after the date the person or company is
8 served with the order appointing the receiver, the person or
9 company is entitled to a hearing on the application not later than
10 the 10th day after the date written notice is provided to the
11 attorney general.

12 (h) A person may not be appointed as a receiver under this
13 section unless the court finds that the person is qualified to
14 discharge the duties of receiver after:

- 15 (1) hearing the views of:
- 16 (A) the attorney general;
 - 17 (B) the commissioner; and
 - 18 (C) the defendant against whom the appointment of
- 19 a receiver is sought, if the court considers it practicable; and
- 20 (2) considering the probable nature and magnitude of
21 the receiver's duties in the particular case.

22 (i) The commissioner or attorney general may not be required
23 to give a bond for receivership in an action brought under this
24 section. The court shall require a person appointed as a receiver
25 to give a bond that is:

- 26 (1) in an amount found by the court to be sufficient
27 after considering the probable nature and magnitude of the

1 receiver's duties in the particular case; and

2 (2) conditioned on the faithful discharge of the
3 receiver's duties.

4 (j) The remedy provided by this section is in addition to
5 any other remedy made available to the commissioner or the attorney
6 general by statutory laws or case law of this state, including any
7 provision authorizing receiverships. (V.A.C.S. Art. 581-25-1.)

8 Sec. 4007.152. INJUNCTIVE RELIEF. (a) The commissioner
9 may request the attorney general to bring an action as provided by
10 this section against a person or company if it appears to the
11 commissioner, on complaint or otherwise, that the person or
12 company:

13 (1) has engaged, is engaging, or is about to engage in
14 fraud or a fraudulent practice in connection with the sale of a
15 security;

16 (2) has engaged, is engaging, or is about to engage in
17 fraud or a fraudulent practice in rendering services as an
18 investment adviser or investment adviser representative;

19 (3) has made an offer containing a statement that is
20 materially misleading or is otherwise likely to deceive the public;
21 or

22 (4) has engaged, is engaging, or is about to engage in
23 an act or practice that violates this title or a board rule or
24 order.

25 (b) On the commissioner's request under Subsection (a), the
26 attorney general, in addition to other remedies, may bring an
27 action in the name and on behalf of the state:

1 (1) against:

2 (A) a person or company described by Subsection
3 (a);

4 (B) any person who, with intent to deceive or
5 defraud or with reckless disregard for the truth or the law, has
6 materially aided, is materially aiding, or is about to materially
7 aid the person or company; and

8 (C) any other person concerned with or in any
9 manner participating in or about to participate in the acts or
10 practices described by Subsection (a); and

11 (2) to enjoin the person or company and any other
12 person described by Subdivision (1) from continuing the acts or
13 practices that are the subject of the action for injunctive relief
14 or from doing any act to further the acts or practices.

15 (c) The facts contained in an application for injunctive
16 relief must be verified by the commissioner on information and
17 belief.

18 (d) The attorney general may apply for and, on proper
19 showing, is entitled to have a subpoena issued by the court that
20 requires:

21 (1) the appearance, without delay, of a defendant and
22 any employee or agent of the defendant to testify and give evidence
23 concerning the acts, conduct, or other matters complained about in
24 the application for injunctive relief; and

25 (2) the production of documents, books, and records
26 that may be necessary for the hearing on the action.

27 (e) A district court in any county in which it is shown that

1 the acts that are the subject of the application for injunctive
2 relief have been or are about to be committed or a district court in
3 Travis County has jurisdiction and venue of an action brought under
4 this section. This subsection is superior to any provision
5 establishing jurisdiction or venue with regard to an action for an
6 injunction.

7 (f) The commissioner or attorney general shall not be
8 required to give a bond for injunction in an action brought under
9 this section. (V.A.C.S. Art. 581-32, Subsec. A.)

10 Sec. 4007.153. EQUITABLE RELIEF AND RESTITUTION. (a) On
11 the commissioner's request, the attorney general may, in addition
12 to other remedies, seek:

13 (1) equitable relief, including restitution, for a
14 victim of a fraudulent practice; and

15 (2) the disgorgement of any economic benefit gained by
16 a defendant through an act or practice that violates this title or
17 for which this title provides the commissioner and attorney general
18 with a remedy.

19 (b) The attorney general may seek the remedies described by
20 Subsection (a) either in:

21 (1) an action under Section 4007.152; or

22 (2) a separate action brought in district court.

23 (c) The court may:

24 (1) grant any equitable relief the court considers
25 appropriate; and

26 (2) order the defendant to deliver to each victim of an
27 act or practice that violates this title, or for which this title

1 provides the commissioner or the attorney general with a remedy,
2 the amount of money or the property the defendant obtained from the
3 victim, including any bonus, fee, commission, option, proceeds, or
4 profit from or loss avoided through the sale of the security or
5 through the rendering of services as an investment adviser or
6 investment adviser representative, or any other tangible benefit.
7 (V.A.C.S. Art. 581-32, Subsec. B.)

8 Sec. 4007.154. CIVIL PENALTY. (a) On the commissioner's
9 request, the attorney general may, in addition to other remedies,
10 seek a civil penalty to be paid to the state in an amount that, when
11 added to the amount of any administrative fine previously assessed
12 under Section 4007.106(b), does not exceed:

13 (1) the greater of:
14 (A) \$20,000 per violation; or
15 (B) the gross amount of any economic benefit
16 gained by the person or company as a result of the commission of the
17 act or practice; and

18 (2) if the act or practice was committed against a
19 person 65 years of age or older, an additional amount of not more
20 than \$250,000.

21 (b) The attorney general may seek a civil penalty under this
22 section either in:

23 (1) an action under Section 4007.152; or
24 (2) a separate action in district court. (V.A.C.S.
25 Art. 581-32, Subsec. C.)

26 Sec. 4007.155. RECOVERY OF COSTS. In an action brought
27 under Section 4007.152, 4007.153, or 4007.154, the attorney general

1 may recover reasonable costs and expenses incurred by the attorney
2 general in bringing the action. (V.A.C.S. Art. 581-32, Subsec. D.)

3 SUBCHAPTER E. CRIMINAL PROVISIONS

4 Sec. 4007.201. UNAUTHORIZED SALE OF SECURITIES; OFFENSE.

5 (a) A person commits an offense if the person sells, offers for
6 sale or delivery, solicits subscriptions to or orders for, disposes
7 of, invites orders for, or deals in any other manner in a security
8 issued after September 6, 1955, unless:

9 (1) the security has been registered under Subchapter
10 B or C, Chapter 4003; or

11 (2) a permit qualifying securities for sale has been
12 issued under Subchapter A, Chapter 4003, with respect to the
13 security.

14 (b) A person commits an offense if the person sells, offers
15 for sale or delivery, solicits subscriptions to or orders for,
16 disposes of, invites offers for, or deals in any other manner in a
17 security without being a registered dealer or registered agent as
18 provided in this title.

19 (c) An offense under this section is a felony of the third
20 degree. (V.A.C.S. Art. 581-29 (part).)

21 Sec. 4007.202. UNAUTHORIZED RENDERING OF SERVICES AS
22 INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE; OFFENSE.

23 (a) A person commits an offense if the person:

24 (1) renders services as an investment adviser or
25 investment adviser representative; and

26 (2) is not registered as an investment adviser or
27 investment adviser representative as required by this title.

1 (b) An offense under this section is a felony of the third
2 degree. (V.A.C.S. Art. 581-29 (part).)

3 Sec. 4007.203. FRAUDULENT CONDUCT; OFFENSE. (a) A person
4 commits an offense if:

5 (1) the person directly or indirectly:

6 (A) engages in any fraud or fraudulent practice;

7 (B) employs any device, scheme, or artifice to
8 defraud;

9 (C) knowingly makes an untrue statement of a
10 material fact or omits to state a material fact necessary in order
11 to make the statements made, in light of the circumstances under
12 which they are made, not misleading; or

13 (D) engages in any act, practice, or course of
14 business that operates or will operate as a fraud or deceit on any
15 person; and

16 (2) the applicable conduct is committed in connection
17 with:

18 (A) the sale of, the offering for sale or
19 delivery of, the purchase of, the offer to purchase, invitation of
20 offers to purchase, invitations of offers to sell, or dealing in any
21 other manner in any security, regardless of whether the transaction
22 or security is exempt under Chapter 4005; or

23 (B) the rendering of services as an investment
24 adviser or an investment adviser representative.

25 (b) An offense under this section is:

26 (1) a felony of the third degree, if the amount
27 involved in the offense is less than \$10,000;

1 (2) a felony of the second degree, if the amount
2 involved in the offense is \$10,000 or more but less than \$100,000;
3 or

4 (3) a felony of the first degree, if the amount
5 involved is \$100,000 or more.

6 (c) An indictment for an offense under this section may be
7 brought only before the fifth anniversary of the date the offense
8 was committed. (V.A.C.S. Art. 581-29 (part); Art. 581-29-1.)

9 Sec. 4007.204. MATERIALLY FALSE STATEMENT IN DOCUMENT OR
10 PROCEEDING; OFFENSE. (a) A person commits an offense if the person
11 knowingly makes or causes to be made any statement in a document
12 filed with the commissioner or in a proceeding under this title that
13 is, at the time and in light of the circumstances under which the
14 statement is made, false or misleading in any material respect.

15 (b) An offense is established under this section regardless
16 of whether the document or proceeding relates to a transaction or
17 security that is exempt under Chapter 4005.

18 (c) An offense under this section is a felony of the third
19 degree. (V.A.C.S. Art. 581-29 (part).)

20 Sec. 4007.205. FALSE STATEMENT OR REPRESENTATION
21 CONCERNING REGISTRATION; OFFENSE. (a) A person commits an offense
22 if the person knowingly makes a false statement or representation
23 concerning a registration made or an exemption claimed under this
24 title.

25 (b) An offense under this section is a state jail felony.
26 (V.A.C.S. Art. 581-29 (part).)

27 Sec. 4007.206. VIOLATION OF CEASE AND DESIST ORDER;

1 OFFENSE. (a) A person commits an offense if the person knowingly
2 violates a cease and desist order issued by the commissioner under
3 Section 4007.101, 4007.102, or 4007.104.

4 (b) An offense under this section is a felony of the third
5 degree. (V.A.C.S. Art. 581-29 (part).)

6 Sec. 4007.207. NONCOMPLIANT OFFER OR OFFER PROHIBITED BY
7 CEASE PUBLICATION ORDER; OFFENSE. (a) A person commits an offense
8 if the person:

9 (1) makes an offer of a security in this state that
10 does not comply with the requirements governing offers specified in
11 Subchapter E, Chapter 4003; or

12 (2) knowingly makes an offer of a security in this
13 state that is prohibited by a cease publication order issued by the
14 commissioner under Section 4007.103.

15 (b) An offense under this section is a state jail felony.
16 (V.A.C.S. Art. 581-29 (part).)

17 Sec. 4007.208. AGGREGATION OF AMOUNTS. When amounts are
18 obtained in violation of this title pursuant to one scheme or
19 continuing course of conduct, whether from the same or several
20 sources, the conduct may be considered as one offense and the
21 amounts aggregated in determining the grade of the offense.
22 (V.A.C.S. Art. 581-29-2.)

23 Sec. 4007.209. LIABILITY OF CORPORATION. (a) In this
24 section:

25 (1) "Association" and "corporation" have the meanings
26 assigned by Section 1.07, Penal Code.

27 (2) "High managerial agent" has the meaning assigned

1 by Section 7.21, Penal Code.

2 (b) If conduct constituting an offense under this
3 subchapter is performed by an agent acting on behalf of a
4 corporation or association and within the scope of the agent's
5 office or employment, the corporation or association is criminally
6 responsible for the offense only if the commission of the offense
7 was authorized, requested, commanded, performed, or recklessly
8 tolerated by:

9 (1) a majority of the governing board acting on behalf
10 of the corporation or association; or

11 (2) a high managerial agent acting on behalf of the
12 corporation or association and within the scope of the high
13 managerial agent's office or employment.

14 (c) It is an affirmative defense to prosecution of a
15 corporation or association under Subsection (b) that the high
16 managerial agent having supervisory responsibility over the
17 subject matter of the offense employed due diligence to prevent the
18 commission of the offense. (V.A.C.S. Art. 581-29-3.)

19 CHAPTER 4008. PRIVATE RIGHTS OF ACTION

20 SUBCHAPTER A. GENERAL PROVISIONS

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22 Sec. 4008.002. CERTAIN WAIVERS VOID

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- 21 INVESTMENT ADVISER REPRESENTATIVES
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- 27 Sec. 4008.105. REMEDY NOT EXCLUSIVE

1 CHAPTER 4008. PRIVATE RIGHTS OF ACTION

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Sec. 4008.001. UNENFORCEABILITY OF ILLEGAL CONTRACTS. A
4 person may not base a suit on a contract if the person:

5 (1) made or engaged in the performance of the contract
6 in violation of this title or a rule, order, or requirement under
7 this title; or

8 (2) acquired any purported right under the contract
9 with knowledge of the facts by reason of which the contract's making
10 or performance was in violation of this title or a rule, order, or
11 requirement under this title. (V.A.C.S. Art. 581-33, Subsec. K.)

12 Sec. 4008.002. CERTAIN WAIVERS VOID. A condition,
13 stipulation, or provision is void if it binds a buyer or seller of a
14 security or a purchaser of services rendered by an investment
15 adviser or investment adviser representative to waive compliance
16 with this title or a rule, order, or requirement under this title.
17 (V.A.C.S. Art. 581-33, Subsec. L.)

18 Sec. 4008.003. ACTION FOR COLLECTION OF COMMISSION OR
19 COMPENSATION. (a) This section does not apply to a person or
20 company that rendered services in connection with a transaction
21 that is exempt under Subchapter A, Chapter 4005, or under a rule
22 adopted by the board under Section 4005.024 if the person or company
23 was not required to be registered by the terms of the exemption.

24 (b) A person or company may not bring or maintain any action
25 in a court of this state for collection of a commission or
26 compensation for services rendered in the sale or purchase of
27 securities unless the person or company alleges and proves that:

1 (1) the person or company was:

2 (A) registered under this title; or

3 (B) exempt from registration under rules adopted
4 under Section 4004.001; and

5 (2) the securities sold were registered under this
6 title at the time the alleged cause of action arose. (V.A.C.S. Art.
7 581-34.)

8 Sec. 4008.004. STAY OF RECOGNITION OR ENFORCEMENT OF
9 FOREIGN-COUNTRY JUDGMENT. (a) Before a court's recognition or
10 enforcement of a foreign-country judgment under Chapter 36A, Civil
11 Practice and Remedies Code, or otherwise, a party against whom
12 recognition or enforcement of the foreign-country judgment is
13 sought is entitled to de novo review by a court in this state to
14 determine whether a party, or the party's successors, assigns,
15 agents, or representatives seeking recognition or enforcement of
16 the foreign-country judgment have violated this title or Chapter
17 17, Business & Commerce Code.

18 (b) A party seeking de novo review under this section must
19 file with the court a verified pleading asserting a violation of
20 this title or Chapter 17, Business & Commerce Code, not later than
21 the 30th day after the date of service of the notice of filing of the
22 foreign-country judgment with the court for recognition or
23 enforcement.

24 (c) A pleading filed in accordance with Subsection (b)
25 operates as a stay of the commencement or continuation of a
26 proceeding to recognize or enforce the foreign-country judgment
27 until the court completes its de novo review under this section and

1 renders a final judgment.

2 (d) A finding by a court of a violation of this title or
3 Chapter 17, Business & Commerce Code, is a sufficient ground for
4 nonrecognition of a foreign-country judgment.

5 (e) This section applies to a foreign-country judgment
6 involving a contract or agreement for a sale, offer for sale, or
7 sell as defined by this title, or investment, that imposes an
8 obligation of indemnification or liquidated damages on a resident
9 of this state. (V.A.C.S. Art. 581-33-2.)

10 Sec. 4008.005. SURVIVABILITY OF ACTION. A cause of action
11 under this title survives the death of a person who might have been
12 a plaintiff or defendant. (V.A.C.S. Art. 581-33, Subsec. G.)

13 Sec. 4008.006. SAVING OF EXISTING RIGHTS AND REMEDIES. The
14 rights and remedies provided by this title are in addition to any
15 other rights, including exemplary damages, or remedies that exist.
16 (V.A.C.S. Art. 581-33, Subsec. M.)

17 SUBCHAPTER B. CIVIL LIABILITY FOR ISSUANCE, SALE, OR PURCHASE OF
18 SECURITIES

19 Sec. 4008.051. OFFEROR OR SELLER LIABILITY: REGISTRATION
20 AND RELATED VIOLATIONS. (a) A person who offers or sells a
21 security in violation of the following is liable to a person who
22 buys the security from the offeror or seller:

23 (1) Section 4003.001(a), 4003.002, 4003.003, or
24 4003.004; Subchapter B, Chapter 4003, other than Section
25 4003.054(b)(1); Subchapter C, Chapter 4003, other than Section
26 4003.103(b); Section 4004.001, 4004.051, 4004.052, 4004.101(a), or
27 4004.102(a); or Section 4007.103;

1 (2) Subchapter G, Chapter 4003, other than Section
2 4003.304, or a requirement of the commissioner under Subchapter G,
3 Chapter 4003, other than Section 4003.304; or

4 (3) an order under Section 4007.101 or 4007.104.

5 (b) The buyer of the security may sue for:

6 (1) rescission; or

7 (2) damages if the buyer no longer owns the security.

8 (V.A.C.S. Art. 581-33, Subsec. A, Subdiv. (1).)

9 Sec. 4008.052. OFFEROR OR SELLER LIABILITY: UNTRUTH OR
10 OMISSION. (a) Except as provided by Subsection (c), a person who
11 offers or sells a security and from whom another person buys the
12 security is liable to the buyer of the security, regardless of
13 whether the security or transaction is exempt under Chapter 4005,
14 if the person offers or sells the security by means of an untrue
15 statement of a material fact or an omission to state a material fact
16 necessary in order to make the statements made, in light of the
17 circumstances under which they are made, not misleading.

18 (b) The buyer may sue for:

19 (1) rescission; or

20 (2) damages if the buyer no longer owns the security.

21 (c) Except as provided by Subsection (d), a person offering
22 or selling a security is not liable under Subsection (a) if the
23 person sustains the burden of proof that either:

24 (1) the buyer knew of the untruth or omission; or

25 (2) the offeror or seller did not know, and in the
26 exercise of reasonable care could not have known, of the untruth or
27 omission.

1 (d) The issuer of the security, other than a government
2 issuer identified in Section 4005.017, is not entitled to the
3 defense in Subsection (c)(2) regarding an untruth or omission:

4 (1) in a prospectus required in connection with an
5 application or registration statement under Subchapter A, B, or C,
6 Chapter 4003; or

7 (2) in a writing prepared and delivered by the issuer
8 in the sale of the security. (V.A.C.S. Art. 581-33, Subsec. A,
9 Subdiv. (2).)

10 Sec. 4008.053. BUYER LIABILITY. (a) Except as provided by
11 Subsection (c), a person who offers to buy or buys a security and to
12 whom another person sells the security is liable to the seller,
13 regardless of whether the security or transaction is exempt under
14 Chapter 4005, if the person offers to buy or buys the security by
15 means of an untrue statement of a material fact or an omission to
16 state a material fact necessary in order to make the statements
17 made, in light of the circumstances under which they are made, not
18 misleading.

19 (b) The seller may sue for:

20 (1) rescission; or

21 (2) damages if the buyer no longer owns the security.

22 (c) A person who offers to buy or buys a security is not
23 liable under Subsection (a) if the offeror or buyer sustains the
24 burden of proof that either:

25 (1) the seller knew of the untruth or omission; or

26 (2) the offeror or buyer did not know, and in the
27 exercise of reasonable care could not have known, of the untruth or

1 omission. (V.A.C.S. Art. 581-33, Subsec. B.)

2 Sec. 4008.054. NONSELLING ISSUER LIABILITY. (a) This
3 section applies only to an issuer that registers under Subchapter
4 A, B, or C, Chapter 4003, or under Section 6, Securities Act of 1933
5 (15 U.S.C. Section 77f), the issuer's outstanding securities for
6 offer and sale by or for the owner of the securities.

7 (b) Except as provided by Subsection (d), the issuer is
8 liable to a person buying the registered security if the prospectus
9 required in connection with the registration contains, as of its
10 effective date, an untrue statement of a material fact or an
11 omission to state a material fact necessary in order to make the
12 statements made, in light of the circumstances under which they are
13 made, not misleading.

14 (c) The buyer of the registered security may sue for:

15 (1) rescission; or

16 (2) damages if the buyer no longer owns the security.

17 (d) The issuer is not liable under Subsection (b) if the
18 issuer sustains the burden of proof that the buyer knew of the
19 untruth or omission. (V.A.C.S. Art. 581-33, Subsec. C.)

20 Sec. 4008.055. CONTROLLING PERSON OR AIDER LIABILITY. (a)
21 Except as provided by Subsection (b), a person who directly or
22 indirectly controls a seller, buyer, or issuer of a security is
23 liable under Section 4008.051, 4008.052, 4008.053, or 4008.054
24 jointly and severally with the seller, buyer, or issuer and to the
25 same extent as the seller, buyer, or issuer.

26 (b) The controlling person is not liable under Subsection
27 (a) if the controlling person sustains the burden of proof that the

1 controlling person did not know, and in the exercise of reasonable
2 care could not have known, of the existence of the facts by reason
3 of which the liability is alleged to exist.

4 (c) A person who directly or indirectly with intent to
5 deceive or defraud or with reckless disregard for the truth or the
6 law materially aids a seller, buyer, or issuer of a security is
7 liable under Section 4008.051, 4008.052, 4008.053, or 4008.054
8 jointly and severally with the seller, buyer, or issuer and to the
9 same extent as the seller, buyer, or issuer.

10 (d) There is contribution under this section as in cases of
11 contract among the several persons who are liable. (V.A.C.S. Art.
12 581-33, Subsec. F.)

13 Sec. 4008.056. RESCISSION. (a) On rescission under this
14 subchapter, a buyer of a security shall, on tender of the security
15 or a security of the same class and series, recover the
16 consideration the buyer paid for the security plus interest on the
17 consideration at the legal rate from the date the buyer made the
18 payment, less the amount of any income the buyer received on the
19 security.

20 (b) On rescission under this subchapter, a seller of a
21 security shall recover the security or a security of the same class
22 and series, on tender of the consideration the seller received for
23 the security plus interest on the consideration at the legal rate
24 from the date the seller received the payment, less the amount of
25 any income the buyer received on the security.

26 (c) For a buyer suing under Section 4008.054, the
27 consideration the buyer paid for the security is deemed to be the

1 lesser of:

2 (1) the price the buyer paid; or

3 (2) the price at which the security was offered to the
4 public.

5 (d) A tender specified in this section may be made at any
6 time before a judgment is entered. (V.A.C.S. Art. 581-33, Subsec.
7 D, Subdivs. (1), (2), (5), Subsec. E.)

8 Sec. 4008.057. DAMAGES. (a) In damages under this
9 subchapter, a buyer of a security shall recover the consideration
10 the buyer paid for the security plus interest on the consideration
11 at the legal rate from the date the buyer made the payment, less the
12 greater of:

13 (1) the value of the security at the time the buyer
14 disposed of the security plus the amount of any income the buyer
15 received on the security; or

16 (2) the actual consideration received for the security
17 at the time the buyer disposed of the security plus the amount of
18 any income the buyer received on the security.

19 (b) In damages under this subchapter, a seller of a security
20 shall recover the value of the security at the time of sale plus the
21 amount of any income the buyer received on the security, less the
22 consideration paid to the seller for the security plus interest on
23 the consideration at the legal rate from the date of payment to the
24 seller.

25 (c) For a buyer suing under Section 4008.054, the
26 consideration the buyer paid for the security is deemed to be the
27 lesser of:

1 (1) the price the buyer paid; or

2 (2) the price at which the security was offered to the
3 public. (V.A.C.S. Art. 581-33, Subsec. D, Subdivs. (3), (4), (5).)

4 Sec. 4008.058. REQUIREMENTS OF RESCISSION OFFER TO BUYERS.

5 (a) A rescission offer is sufficient for purposes of Section
6 4008.062(a) or (b) only if the offer meets the requirements of this
7 section.

8 (b) The offer must include financial and other information
9 material to the offeree's decision whether to accept the offer. The
10 offer may not contain an untrue statement of a material fact or an
11 omission to state a material fact necessary in order to make the
12 statements made, in light of the circumstances under which they are
13 made, not misleading.

14 (c) The offeror shall:

15 (1) deposit funds in escrow in a state or national bank
16 doing business in this state, or in another bank approved by the
17 commissioner; or

18 (2) receive an unqualified commitment from a bank
19 described by Subdivision (1) to provide funds sufficient to pay the
20 amount offered.

21 (d) The amount of the offer to a buyer who still owns the
22 security must be the amount, excluding costs and attorney's fees,
23 the buyer would recover on rescission under Section 4008.056(a).

24 (e) The amount of the offer to a buyer who no longer owns the
25 security must be the amount, excluding costs and attorney's fees,
26 the buyer would recover in damages under Section 4008.057(a).

27 (f) The offer must state:

1 (1) the amount of the offer, as determined under
2 Subsection (d) or (e), which must be given:

3 (A) to the extent practicable, in terms of a
4 specified number of dollars and a specified rate of interest for a
5 period starting at a specified date; and

6 (B) to the extent necessary, in terms of
7 specified elements, such as the value of the security when the
8 offeree disposed of the security, that are known to the offeree but
9 not to the offeror, subject to the provision of reasonable evidence
10 by the offeree;

11 (2) the name and address of the bank at which the
12 amount of the offer will be paid;

13 (3) that the offeree will receive the amount of the
14 offer within a specified number of days that is not more than 30
15 days after the date the bank receives, in form reasonably
16 acceptable to the offeror and in compliance with the instructions
17 in the offer:

18 (A) the security, if the offeree still owns the
19 security, or evidence of the fact and date of disposition if the
20 offeree no longer owns the security; and

21 (B) evidence, if necessary, of elements
22 described by Subdivision (1)(B);

23 (4) in a conspicuous manner that the offeree may not
24 sue on the offeree's purchase under this subchapter unless:

25 (A) the offeree accepts the offer but does not
26 receive the amount of the offer, in which case the offeree may sue
27 within the time allowed by Section 4008.062(a)(1), (b)(1), or

1 (b)(2), as applicable; or

2 (B) the offeree rejects the offer in writing
3 within 30 days of the date the offeree receives the offer and
4 expressly reserves in the rejection the right to sue, in which case
5 the offeree may sue not later than one year after the date of the
6 rejection;

7 (5) in reasonable detail, the nature of the violation
8 of this title that occurred or may have occurred; and

9 (6) any other information the offeror wants to
10 include. (V.A.C.S. Art. 581-33, Subsec. I.)

11 Sec. 4008.059. REQUIREMENTS OF RESCISSION OFFER TO SELLERS.

12 (a) A rescission offer is sufficient for purposes of Section
13 4008.062(c) only if the offer meets the requirements of this
14 section.

15 (b) The offer must include financial and other information
16 material to the offeree's decision whether to accept the offer. The
17 offer may not contain an untrue statement of a material fact or an
18 omission to state a material fact necessary in order to make the
19 statements made, in light of the circumstances under which they are
20 made, not misleading.

21 (c) The offeror shall deposit the securities in escrow in a
22 state or national bank doing business in this state, or in another
23 bank approved by the commissioner.

24 (d) The terms of the offer must be the same, excluding costs
25 and attorney's fees, as the seller would recover on rescission
26 under Section 4008.056(b).

27 (e) The offer must state:

1 (1) the terms of the offer, as determined under
2 Subsection (d), which must be given:

3 (A) to the extent practicable, in terms of a
4 specified number and kind of securities and a specified rate of
5 interest for a period starting at a specified date; and

6 (B) to the extent necessary, in terms of
7 specified elements that are known to the offeree but not to the
8 offeror, subject to the provision of reasonable evidence by the
9 offeree;

10 (2) the name and address of the bank at which the terms
11 of the offer will be carried out;

12 (3) that the offeree will receive the securities
13 within a specified number of days that is not more than 30 days
14 after the date the bank receives, in form reasonably acceptable to
15 the offeror and in compliance with the instructions in the offer:

16 (A) the amount required by the terms of the
17 offer; and

18 (B) evidence, if necessary, of elements
19 described by Subdivision (1)(B);

20 (4) in a conspicuous manner that the offeree may not
21 sue on the offeree's sale under this subchapter unless:

22 (A) the offeree accepts the offer but does not
23 receive the securities, in which case the offeree may sue within the
24 time allowed by Section 4008.062(c)(1) or (2), as applicable; or

25 (B) the offeree rejects the offer in writing
26 within 30 days of the date the offeree receives the offer and
27 expressly reserves in the rejection the right to sue, in which case

1 the offeree may sue not later than one year after the date of the
2 rejection;

3 (5) in reasonable detail, the nature of the violation
4 of this title that occurred or may have occurred; and

5 (6) any other information the offeror wants to
6 include. (V.A.C.S. Art. 581-33, Subsec. J.)

7 Sec. 4008.060. COSTS; ATTORNEY'S FEES. (a) On rescission
8 or as a part of damages under this subchapter, a buyer or a seller of
9 a security shall also recover costs.

10 (b) On rescission or as a part of damages under this
11 subchapter, a buyer or a seller of a security may also recover
12 reasonable attorney's fees if the court finds that the recovery is
13 equitable under the circumstances. (V.A.C.S. Art. 581-33, Subsec.
14 D, Subdivs. (6), (7).)

15 Sec. 4008.061. LIMITATION OF LIABILITY IN SMALL BUSINESS
16 ISSUANCES. (a) In this section, "small business issuer" means an
17 issuer that, at the time of an offer to which this section applies:

18 (1) has annual gross revenues in an amount that does
19 not exceed \$25 million; and

20 (2) does not have a class of equity securities
21 registered, or required to be registered, with the Securities and
22 Exchange Commission under Section 12, Securities Exchange Act of
23 1934 (15 U.S.C. Section 781).

24 (b) This section applies only to:

25 (1) an offer of securities in an aggregate amount that
26 does not exceed \$5 million made by a small business issuer or by the
27 seller of securities of a small business issuer; and

1 (2) a person who has been engaged to provide services
2 relating to an offer of securities described by Subdivision (1),
3 including an attorney, an accountant, a consultant, or the firm of
4 the attorney, accountant, or consultant.

5 (c) In an action or series of actions under this subchapter
6 relating to an offer of securities to which this section applies,
7 the maximum amount that may be recovered against a person to whom
8 this section applies is three times the fee paid by the small
9 business issuer or other seller to the person for the services
10 related to the offer of securities, unless the trier of fact finds
11 the person engaged in intentional wrongdoing in providing the
12 services.

13 (d) A small business issuer making an offer of securities
14 shall:

15 (1) provide to the prospective buyer a written
16 disclosure of the limitation of liability created by this section;
17 and

18 (2) receive a signed acknowledgment that the
19 disclosure was provided. (V.A.C.S. Art. 581-33, Subsec. N.)

20 Sec. 4008.062. STATUTE OF LIMITATIONS. (a) A person may
21 not sue under Section 4008.051 or 4008.055 to the extent that
22 section relates to Section 4008.051:

23 (1) more than three years after the date of the sale;

24 (2) if the person received a rescission offer meeting
25 the requirements of Section 4008.058 before suit, unless the
26 person:

27 (A) rejected the offer in writing within 30 days

1 of the date the person received the offer; and

2 (B) expressly reserved in the rejection the right
3 to sue; or

4 (3) more than one year after the date the person so
5 rejected a rescission offer meeting the requirements of Section
6 4008.058.

7 (b) A person may not sue under Section 4008.052, 4008.054,
8 or 4008.055 to the extent that section relates to Section 4008.052
9 or 4008.054:

10 (1) more than three years after the date of discovery
11 of the untruth or omission, or after the date discovery should have
12 been made by the exercise of reasonable diligence;

13 (2) more than five years after the date of the sale;

14 (3) if the person received a rescission offer meeting
15 the requirements of Section 4008.058 before suit, unless the
16 person:

17 (A) rejected the offer in writing within 30 days
18 of the date the person received the offer; and

19 (B) expressly reserved in the rejection the right
20 to sue; or

21 (4) more than one year after the date the person so
22 rejected a rescission offer meeting the requirements of Section
23 4008.058.

24 (c) A person may not sue under Section 4008.053 or 4008.055
25 to the extent that section relates to Section 4008.053:

26 (1) more than three years after the date of discovery
27 of the untruth or omission, or after the date discovery should have

1 been made by the exercise of reasonable diligence;

2 (2) more than five years after the date of the
3 purchase;

4 (3) if the person received a rescission offer meeting
5 the requirements of Section 4008.059 before suit, unless the
6 person:

7 (A) rejected the offer in writing within 30 days
8 of the date the person received the offer; and

9 (B) expressly reserved in the rejection the right
10 to sue; or

11 (4) more than one year after the date the person so
12 rejected a rescission offer meeting the requirements of Section
13 4008.059. (V.A.C.S. Art. 581-33, Subsec. H.)

14 SUBCHAPTER C. CIVIL LIABILITY OF INVESTMENT ADVISERS AND
15 INVESTMENT ADVISER REPRESENTATIVES

16 Sec. 4008.101. INVESTMENT ADVISER OR INVESTMENT ADVISER
17 REPRESENTATIVE LIABILITY. (a) An investment adviser or investment
18 adviser representative who renders services as an investment
19 adviser in violation of Section 4004.052 or 4004.102(a) or an order
20 under Section 4007.102 or 4007.104 is liable to the purchaser, who
21 may sue for damages in the amount of any consideration paid for the
22 services.

23 (b) Except as provided by Subsection (c), an investment
24 adviser or investment adviser representative who commits fraud or
25 engages in a fraudulent practice in rendering services as an
26 investment adviser is liable to the purchaser, who may sue for
27 damages.

1 (c) An investment adviser or investment adviser
2 representative who in rendering services as an investment adviser
3 makes an untrue statement of a material fact or omits to state a
4 material fact necessary in order to make the statement made, in
5 light of the circumstances under which the statement is made, not
6 misleading is not liable under Subsection (b) if the adviser or
7 representative proves:

8 (1) the purchaser knew of the truth or omission; or

9 (2) the adviser or representative did not know, and in
10 the exercise of reasonable care could not have known, of the untruth
11 or omission. (V.A.C.S. Art. 581-33-1, Subsecs. A, C.)

12 Sec. 4008.102. CONTROLLING PERSON OR AIDER LIABILITY. (a)
13 Except as provided by Subsection (b), a person who directly or
14 indirectly controls an investment adviser is jointly and severally
15 liable with the investment adviser under this subchapter and to the
16 same extent as the investment adviser.

17 (b) The controlling person is not liable under Subsection
18 (a) if the controlling person sustains the burden of proof that the
19 controlling person did not know, and in the exercise of reasonable
20 care could not have known, of the existence of the facts by reason
21 of which liability is alleged to exist.

22 (c) A person who directly or indirectly with intent to
23 deceive or defraud or with reckless disregard for the truth or the
24 law materially aids an investment adviser in conduct for which a
25 cause of action is authorized by this subchapter is jointly and
26 severally liable with the investment adviser in an action to
27 recover damages under this subchapter. (V.A.C.S. Art. 581-33-1,

1 Subsec. E.)

2 Sec. 4008.103. DAMAGES. In damages under Section
3 4008.101(b), the purchaser is entitled to recover:

4 (1) the amount of any consideration paid for the
5 services, less the amount of any income the purchaser received from
6 acting on the services;

7 (2) any loss incurred by the purchaser in acting on the
8 services provided by the investment adviser or investment adviser
9 representative;

10 (3) interest at the legal rate for judgments accruing
11 from the date the purchaser paid the consideration; and

12 (4) to the extent the court considers equitable, court
13 costs and reasonable attorney's fees. (V.A.C.S. Art. 581-33-1,
14 Subsec. B.)

15 Sec. 4008.104. STATUTE OF LIMITATIONS. (a) A person may
16 not sue under Section 4008.101(a) more than three years after the
17 date the violation occurs.

18 (b) A person may not sue under Section 4008.101(b) more
19 than:

20 (1) five years after the date the violation occurs; or

21 (2) three years after the date the person knew or
22 should have known, by the exercise of reasonable diligence, of the
23 occurrence of the violation. (V.A.C.S. Art. 581-33-1, Subsec. D.)

24 Sec. 4008.105. REMEDY NOT EXCLUSIVE. A remedy provided by
25 this subchapter is not exclusive of any other applicable remedy
26 provided by law. (V.A.C.S. Art. 581-33-1, Subsec. F.)

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. Section 52.063(c), Agriculture Code, is amended to read as follows:

(c) A marketing association may not sell and issue shares of preferred stock to a person who is not a member of the association unless the association first complies with The Securities Act (Title 12, Government Code) [~~as amended (Article 581-1 et seq., Vernon's Texas Civil Statutes)~~].

SECTION 2.02. Section 58.034(b), Agriculture Code, is amended to read as follows:

(b) The bonds issued under this chapter and interest coupons, if any, are investment securities under the terms of Chapter 8, Business & Commerce Code. The bonds are exempt securities under The Securities Act (Title 12, Government Code) [~~(Article 581-1 et seq., Vernon's Texas Civil Statutes)~~], and unless specifically provided otherwise, under any subsequently enacted securities act. Any contract, guaranty, or any other document executed in connection with the issuance of bonds pursuant to this chapter is not a security under The Securities Act (Title 12, Government Code) [~~(Article 581-1 et seq., Vernon's Texas Civil Statutes)~~], and, unless specifically provided otherwise, any subsequently enacted securities act. The board is authorized to do all things necessary to qualify the bonds for offer and sale under the securities laws and regulations of the United States and of the states and other jurisdictions in the United States as the board shall determine.

SECTION 2.03. Section 302.053, Business & Commerce Code, is

1 amended to read as follows:

2 Sec. 302.053. EXEMPTION: PERSONS REGULATED BY OTHER LAW.

3 This chapter does not apply to:

4 (1) a person offering or selling a security that has
5 been qualified for sale under Chapter 4003, Government Code
6 [~~Section 7, The Securities Act (Article 581-7, Vernon's Texas Civil~~
7 ~~Statutes)~~], or that is subject to an exemption under Chapter 4005,
8 Government Code [~~Section 5 or 6 of that Act~~];

9 (2) a publicly traded corporation registered with the
10 Securities and Exchange Commission or the State Securities Board,
11 or a subsidiary or agent of the corporation;

12 (3) a person who holds a license issued under the
13 Insurance Code if the solicited transaction is governed by that
14 code;

15 (4) a supervised financial institution or a parent, a
16 subsidiary, or an affiliate of a supervised financial institution;

17 (5) a person whose business is regulated by the Public
18 Utility Commission of Texas or an affiliate of that person, except
19 that this chapter applies to such a person or affiliate only with
20 respect to one or more automated dial announcing devices;

21 (6) a person subject to the control or licensing
22 regulations of the Federal Communications Commission;

23 (7) a person selling a contractual plan regulated by
24 the Federal Trade Commission trade regulation on use of negative
25 option plans by sellers in commerce under 16 C.F.R. Part 425;

26 (8) a person subject to filing requirements under
27 Chapter 1803, Occupations Code; or

1 (9) a person who:

2 (A) is soliciting a transaction regulated by the
3 Commodity Futures Trading Commission; and

4 (B) is registered or holds a temporary license
5 for the activity described by Paragraph (A) with the Commodity
6 Futures Trading Commission under the Commodity Exchange Act (7
7 U.S.C. Section 1 et seq.), if the registration or license has not
8 expired or been suspended or revoked.

9 SECTION 2.04. Section 304.002(3), Business & Commerce Code,
10 is amended to read as follows:

11 (3) "Consumer good or service" means property of any
12 kind that is normally used for personal, family, or household
13 purposes. The term does not include a security, as defined by
14 Section 4001.068, Government Code [~~4, The Securities Act (Article~~
15 ~~581-4, Vernon's Texas Civil Statutes)~~].

16 SECTION 2.05. Section 23.052, Business Organizations Code,
17 is amended to read as follows:

18 Sec. 23.052. ORGANIZERS. Subject to The Securities Act
19 (Title 12, Government Code) [~~(Article 581-1 et seq., Vernon's Texas~~
20 ~~Civil Statutes)~~], 25 or more persons, the majority of whom must be
21 residents of this state, may form a business development
22 corporation to promote, develop, and advance the prosperity and
23 economic welfare of this state.

24 SECTION 2.06. Article 59.01(2), Code of Criminal Procedure,
25 is amended to read as follows:

26 (2) "Contraband" means property of any nature,
27 including real, personal, tangible, or intangible, that is:

- 1 (A) used in the commission of:
- 2 (i) any first or second degree felony under
- 3 the Penal Code;
- 4 (ii) any felony under Section 15.031(b),
- 5 20.05, 20.06, 21.11, 38.04, or Chapter 43, 20A, 29, 30, 31, 32, 33,
- 6 33A, or 35, Penal Code;
- 7 (iii) any felony under The Securities Act
- 8 (Title 12, Government Code) [~~Article 581-1 et seq., Vernon's Texas~~
- 9 ~~Civil Statutes~~]; or
- 10 (iv) any offense under Chapter 49, Penal
- 11 Code, that is punishable as a felony of the third degree or state
- 12 jail felony, if the defendant has been previously convicted three
- 13 times of an offense under that chapter;
- 14 (B) used or intended to be used in the commission
- 15 of:
- 16 (i) any felony under Chapter 481, Health
- 17 and Safety Code (Texas Controlled Substances Act);
- 18 (ii) any felony under Chapter 483, Health
- 19 and Safety Code;
- 20 (iii) a felony under Chapter 151, Finance
- 21 Code;
- 22 (iv) any felony under Chapter 34, Penal
- 23 Code;
- 24 (v) a Class A misdemeanor under Subchapter
- 25 B, Chapter 365, Health and Safety Code, if the defendant has been
- 26 previously convicted twice of an offense under that subchapter;
- 27 (vi) any felony under Chapter 32, Human

1 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that
2 involves the state Medicaid program;

3 (vii) a Class B misdemeanor under Chapter
4 522, Business & Commerce Code;

5 (viii) a Class A misdemeanor under Section
6 306.051, Business & Commerce Code;

7 (ix) any offense under Section 42.10, Penal
8 Code;

9 (x) any offense under Section 46.06(a)(1)
10 or 46.14, Penal Code;

11 (xi) any offense under Chapter 71, Penal
12 Code;

13 (xii) any offense under Section 20.05 or
14 20.06, Penal Code; or

15 (xiii) an offense under Section 326.002,
16 Business & Commerce Code;

17 (C) the proceeds gained from the commission of a
18 felony listed in Paragraph (A) or (B) of this subdivision, a
19 misdemeanor listed in Paragraph (B)(vii), (ix), (x), or (xi) of
20 this subdivision, or a crime of violence;

21 (D) acquired with proceeds gained from the
22 commission of a felony listed in Paragraph (A) or (B) of this
23 subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x),
24 or (xi) of this subdivision, or a crime of violence;

25 (E) used to facilitate or intended to be used to
26 facilitate the commission of a felony under Section 15.031 or
27 43.25, Penal Code; or

1 (F) used to facilitate or intended to be used to
2 facilitate the commission of a felony under Section 20A.02 or
3 Chapter 43, Penal Code.

4 SECTION 2.07. Section 54.6385, Education Code, is amended
5 to read as follows:

6 Sec. 54.6385. EXEMPTION FROM SECURITIES LAWS. The
7 registration requirements of The Securities Act (Title 12,
8 Government Code) [~~(Article 581-1 et seq., Vernon's Texas Civil~~
9 ~~Statutes)~~] do not apply to the sale of a prepaid tuition contract by
10 the board or by a registered securities dealer or registered
11 investment adviser.

12 SECTION 2.08. Section 54.768, Education Code, is amended to
13 read as follows:

14 Sec. 54.768. EXEMPTION FROM SECURITIES LAWS. The
15 registration requirements of The Securities Act (Title 12,
16 Government Code) [~~(Article 581-1 et seq., Vernon's Texas Civil~~
17 ~~Statutes)~~] do not apply to the sale of a prepaid tuition contract by
18 the board or by a registered securities dealer or registered
19 investment adviser.

20 SECTION 2.09. Section 54.907, Education Code, is amended to
21 read as follows:

22 Sec. 54.907. EXEMPTION FROM SECURITIES LAWS. An ABLE
23 account is not a security within the meaning of the term as defined
24 by Section 4001.068, Government Code [~~4, The Securities Act~~
25 ~~(Article 581-4, Vernon's Texas Civil Statutes)~~], and is exempt from
26 the provisions of The Securities Act (Title 12, Government Code)
27 [~~(Article 581-1 et seq., Vernon's Texas Civil Statutes)~~].

1 SECTION 2.10. Section 255.251(1), Estates Code, is amended
2 to read as follows:

3 (1) "Securities" has the meaning assigned by Section
4 4001.068, Government Code [~~4, The Securities Act (Article 581-4,~~
5 ~~Vernon's Texas Civil Statutes)~~].

6 SECTION 2.11. Section 31.007(a), Finance Code, is amended
7 to read as follows:

8 (a) An officer, director, or employee of a bank that has its
9 main office or a branch located in this state with fewer than 500
10 shareholders or of a bank holding company with fewer than 500
11 shareholders that controls a bank that has its main office or a
12 branch located in this state is exempt from the registration and
13 licensing provisions of The Securities Act (Title 12, Government
14 Code) [~~(Article 581-1 et seq., Vernon's Texas Civil Statutes)~~] with
15 respect to that person's participation in a transaction, including
16 a sale, involving securities issued by:

17 (1) the bank or bank holding company of which that
18 person is an officer, director, or employee;

19 (2) a bank holding company that controls the bank of
20 which that person is an officer, director, or employee; or

21 (3) a bank controlled by the bank holding company of
22 which that person is an officer, director, or employee.

23 SECTION 2.12. Section 89.005, Finance Code, is amended to
24 read as follows:

25 Sec. 89.005. EXEMPTION FROM SECURITIES LAWS. A savings
26 account, certificate, or other evidence of an interest in the
27 savings liability of an association or federal association is not

1 considered a security under The Securities Act (Title 12,
2 Government Code) [~~(Article 581-1 et seq., Vernon's Texas Civil~~
3 ~~Statutes)~~]. A security of these associations, other than an
4 interest in the savings liability of an association, is not subject
5 to the registration requirements of that act. A person whose
6 principal occupation is being an officer of an association is
7 exempt from the registration and licensing provisions of that act
8 with respect to that person's participation in a sale or other
9 transaction involving securities of the association of which the
10 person is an officer.

11 SECTION 2.13. Section 119.007, Finance Code, is amended to
12 read as follows:

13 Sec. 119.007. EXEMPTION FROM SECURITIES LAWS. A deposit
14 account, certificate, or other evidence of an interest in the
15 deposit liability of a savings bank or federal savings bank is not
16 considered a security under The Securities Act (Title 12,
17 Government Code) [~~(Article 581-1 et seq., Vernon's Texas Civil~~
18 ~~Statutes)~~]. A security of these savings banks, other than an
19 interest in the deposit liability of a savings bank, is not subject
20 to the registration requirements of that Act. A person whose
21 principal occupation is being an officer of a savings bank is exempt
22 from the registration and licensing provisions of that Act with
23 respect to that person's participation in a sale or other
24 transaction involving securities of the savings bank of which the
25 person is an officer.

26 SECTION 2.14. Section 149.002(c), Finance Code, is amended
27 to read as follows:

1 (c) In this section, "security" has the meaning assigned by
2 Section 4001.068, Government Code [~~4, The Securities Act (Article~~
3 ~~581-4, Vernon's Texas Civil Statutes)~~].

4 SECTION 2.15. Section 181.006, Finance Code, is amended to
5 read as follows:

6 Sec. 181.006. EXEMPTION OF TRUST INSTITUTION DIRECTORS AND
7 PERSONNEL FROM SECURITIES LAW. An officer, director, manager,
8 managing participant, or employee of a trust institution with fewer
9 than 500 shareholders or participants, including a state trust
10 company or a trust institution organized under the laws of another
11 state that lawfully maintains an office in this state, or a holding
12 company with fewer than 500 shareholders or participants that
13 controls a trust institution is exempt from the registration and
14 licensing provisions of The Securities Act (Title 12, Government
15 Code) [~~(Article 581-1 et seq., Vernon's Texas Civil Statutes)~~] with
16 respect to that person's participation in a transaction, including
17 a sale, involving securities issued by the trust institution or the
18 holding company of which that person is an officer, director,
19 manager, managing participant, or employee if the person is not
20 compensated for the person's participation in the transaction.

21 SECTION 2.16. Section 273.004, Finance Code, is amended to
22 read as follows:

23 Sec. 273.004. EXEMPTION FROM SECURITIES ACT. (a) A
24 security issued by the corporation under this chapter is not
25 considered a "security" under The Securities Act (Title 12,
26 Government Code) [~~(Article 581-1 et seq., Vernon's Texas Civil~~
27 ~~Statutes)~~].

1 (b) A person authorized by and acting on behalf of the
2 corporation is exempt from the registration and licensing
3 provisions of The Securities Act (Title 12, Government Code)
4 [~~Article 581-1 et seq., Vernon's Texas Civil Statutes~~] with
5 respect to that person's participation in a sale or other
6 transaction involving a security of the corporation.

7 SECTION 2.17. Section 103.033, Government Code, is amended
8 to read as follows:

9 Sec. 103.033. MISCELLANEOUS FEES AND COSTS: THE
10 SECURITIES ACT. A fee shall be collected for the sale of
11 securities under an offering that has not been registered, if the
12 transaction or securities are not exempt under Section 4006.153
13 [~~35-2, The Securities Act (Article 581-35-2, Vernon's Texas Civil~~
14 ~~Statutes)~~], in an amount set by the securities commissioner or
15 court, but not to exceed six times the amount that would have been
16 paid if the issuer had filed an application to register the
17 securities and paid the fee prescribed based on the amount of sales
18 made in this state within the prior three years, plus interest on
19 that amount from the date of the first sale made in this state until
20 the date the fee is paid.

21 SECTION 2.18. Section 411.139, Government Code, is amended
22 to read as follows:

23 Sec. 411.139. ACCESS TO CRIMINAL HISTORY RECORD
24 INFORMATION: STATE SECURITIES BOARD. (a) The securities
25 commissioner is entitled to obtain from the department criminal
26 history record information maintained by the department that
27 relates to a person who is:

1 (1) an applicant for a certificate of registration
2 under The Securities Act (Title 12, Government Code) [~~Article~~
3 ~~581-1 et seq., Vernon's Texas Civil Statutes~~];

4 (2) a holder of a certificate of registration under
5 The Securities Act (Title 12, Government Code) [~~Article 581-1 et~~
6 ~~seq., Vernon's Texas Civil Statutes~~];

7 (3) an applicant for employment by the State
8 Securities Board; or

9 (4) an employee of the State Securities Board.

10 (b) Criminal history record information obtained by the
11 securities commissioner under this section may not be released by
12 any person or agency except on court order or with the consent of
13 the person who is the subject of the criminal history record
14 information, unless the information is entered into evidence by the
15 State Securities Board or a court at an administrative proceeding
16 or a civil or criminal action under The Securities Act (Title 12,
17 Government Code) [~~Article 581-1 et seq., Vernon's Texas Civil~~
18 ~~Statutes~~].

19 SECTION 2.19. Section 552.112(b), Government Code, is
20 amended to read as follows:

21 (b) In this section, "securities" has the meaning assigned
22 by The Securities Act (Title 12, Government Code) [~~Article 581-1~~
23 ~~et seq., Vernon's Texas Civil Statutes~~].

24 SECTION 2.20. Section 815.301(f), Government Code, is
25 amended to read as follows:

26 (f) For purposes of the investment authority of the board of
27 trustees under Section 67, Article XVI, Texas Constitution,

1 "securities" means any investment instrument within the meaning of
2 the term as defined by Section 4001.068 [~~4, The Securities Act~~
3 ~~(Article 581-4, Vernon's Texas Civil Statutes)~~], 15 U.S.C. Section
4 77b(a)(1), or 15 U.S.C. Section 78c(a)(10).

5 SECTION 2.21. Section 825.301(a), Government Code, is
6 amended to read as follows:

7 (a) The board of trustees shall invest and reinvest assets
8 of the retirement system without distinction as to their source in
9 accordance with Section 67, Article XVI, Texas Constitution. For
10 purposes of the investment authority of the board of trustees under
11 Section 67, Article XVI, Texas Constitution, "securities" includes
12 any investment instrument within the meaning of the term as defined
13 by Section 4001.068 [~~4, The Securities Act (Article 581-4, Vernon's~~
14 ~~Texas Civil Statutes)~~], 15 U.S.C. Section 77b(a)(1), or 15 U.S.C.
15 Section 78c(a)(10), any derivative instrument, and any other
16 instrument commonly used by institutional investors to manage
17 institutional investment portfolios. An interest in a limited
18 partnership or investment contract is considered a security without
19 regard to the number of investors or the control, access to
20 information, or rights granted to or retained by the retirement
21 system. Any instrument or contract intended to manage transaction
22 or currency exchange risk in purchasing, selling, or holding
23 securities is considered to be a security. Investment decisions
24 are subject to the standard provided in the Texas Trust Code by
25 Section 117.004(b), Property Code.

26 SECTION 2.22. Section 840.301(c), Government Code, is
27 amended to read as follows:

1 (c) For purposes of the investment authority of the board of
2 trustees under Section 67, Article XVI, Texas Constitution,
3 "securities" means any investment instrument within the meaning of
4 the term as defined by Section 4001.068 [~~4, The Securities Act~~
5 ~~(Article 581-4, Vernon's Texas Civil Statutes)~~], 15 U.S.C. Section
6 77b(a)(1), or 15 U.S.C. Section 78c(a)(10).

7 SECTION 2.23. Section 845.301(a), Government Code, is
8 amended to read as follows:

9 (a) The assets of the retirement system shall be invested
10 and reinvested without distinction as to their source in accordance
11 with Section 67, Article XVI, Texas Constitution. For purposes of
12 the investment authority of the board of trustees under Section 67,
13 Article XVI, Texas Constitution, "securities" means any investment
14 instrument within the meaning of the term as defined by Section
15 4001.068 [~~4, The Securities Act (Article 581-4, Vernon's Texas~~
16 ~~Civil Statutes)~~], 15 U.S.C. Section 77b(a)(1), or 15 U.S.C. Section
17 78c(a)(10). An interest in a limited partnership or investment
18 contract is considered a security without regard to the number of
19 investors or the control, access to information, or rights granted
20 to or retained by the retirement system. Any instrument or
21 contract intended to manage transaction, currency exchange, or
22 interest rate risk in purchasing, selling, or holding securities,
23 or that derives all or substantially all of its value from the value
24 or performance of one or more securities, including an index or
25 group of securities, is considered to be a security. Investment
26 decisions are subject to the standard provided in the Texas Trust
27 Code by Section 117.004(b), Property Code.

1 SECTION 2.24. Section [855.301\(a\)](#), Government Code, is
2 amended to read as follows:

3 (a) The board of trustees shall invest and reinvest the
4 assets of the retirement system without distinction as to their
5 source in accordance with Section [67](#), Article XVI, Texas
6 Constitution. For purposes of the investment authority of the
7 board of trustees under Section [67](#), Article XVI, Texas
8 Constitution, "security" means any investment instrument within
9 the meaning of the term as defined by Section [4001.068](#) [~~4, The~~
10 ~~Securities Act (Article 581-4, Vernon's Texas Civil Statutes)~~], 15
11 U.S.C. Section 77b(a)(1), or 15 U.S.C. Section 78c(a)(10).

12 SECTION 2.25. Section [1371.154\(b\)](#), Government Code, is
13 amended to read as follows:

14 (b) To be eligible to be a financial adviser or an
15 investment adviser under this subchapter, the adviser must:

16 (1) be registered:

17 (A) as a dealer or investment adviser in
18 accordance with [Section 4004.051, 4004.052, or 4004.302](#) [~~Section 12~~
19 ~~or 12-1, The Securities Act (Article 581-12 or 581-12-1, Vernon's~~
20 ~~Texas Civil Statutes)~~];

21 (B) with the United States Securities and
22 Exchange Commission under the Investment Advisers Act of 1940 (15
23 U.S.C. Section 80b-1 et seq.), if the adviser is providing advice on
24 the investment of bond proceeds and not on the issuance of a public
25 security or an interest rate management agreement; or

26 (C) with the United States Securities and
27 Exchange Commission as a municipal advisor under Section 15B,

1 Securities Exchange Act of 1934 (15 U.S.C. Section 78o-4);

2 (2) have relevant experience in providing advice to
3 issuers in connection with:

4 (A) the issuance of public securities;

5 (B) the valuation of interest rate management
6 agreements; or

7 (C) the investment of public security proceeds;
8 and

9 (3) acknowledge in writing to the issuer that in
10 connection with the transaction for which the adviser is providing
11 advice the adviser:

12 (A) is acting as the issuer's agent; and

13 (B) has complied with the requirements of this
14 subchapter.

15 SECTION 2.26. Sections [1433.069](#)(b) and (c), Government
16 Code, are amended to read as follows:

17 (b) A bond issued under this chapter and any coupon
18 representing interest on the bond are exempt securities under The
19 Securities Act (Title 12, Government Code) [~~Article [581-1](#) et seq.,~~
20 ~~Vernon's Texas Civil Statutes~~].

21 (c) A lease agreement under this chapter is not a security
22 under The Securities Act (Title 12, Government Code) [~~Article~~
23 ~~[581-1](#) et seq., Vernon's Texas Civil Statutes~~].

24 SECTION 2.27. Section [2306.556](#)(b), Government Code, is
25 amended to read as follows:

26 (b) A bond or other obligation issued by the corporation is
27 an exempt security under The Securities Act (Title 12, Government

1 Code) [~~(Article 581-1 et seq., Vernon's Texas Civil Statutes)~~], and
2 unless specifically provided otherwise, under any subsequently
3 enacted securities act. Any contract, guaranty, or other document
4 executed in connection with the issuance of the bond or other
5 obligation is not an exempt security under that Act, and unless
6 specifically provided otherwise, under any subsequently enacted
7 securities act.

8 SECTION 2.28. Section 221.067, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 221.067. EXEMPT SECURITIES. (a) Bonds issued under
11 this chapter and any interest coupons are exempt securities under
12 The Securities Act (Title 12, Government Code) [~~(Article 581-1 et~~
13 ~~seq., Vernon's Texas Civil Statutes)~~].

14 (b) If the bonds are secured by an agreement by a user to pay
15 to the development corporation amounts sufficient to pay the
16 principal of and interest and any redemption premium on the bonds,
17 the agreement, for the purposes of The Securities Act (Title 12,
18 Government Code) [~~(Article 581-1 et seq., Vernon's Texas Civil~~
19 ~~Statutes)~~], is a separate security issued to purchasers of the
20 bonds by the user, and not by the corporation. The agreement is
21 exempt from that Act only if:

- 22 (1) that Act exempts the agreement; or
23 (2) the bonds or the payments to be made under the
24 agreement are guaranteed by any person and the guarantee is an
25 exempt security under that Act.

26 SECTION 2.29. Section 223.036(a), Health and Safety Code,
27 is amended to read as follows:

1 (a) Bonds issued under this chapter and any interest coupons
2 are investment securities under Chapter 8, Business & Commerce
3 Code, and are exempt securities under The Securities Act (Title 12,
4 Government Code) [~~(Article 581-1 et seq., Vernon's Texas Civil~~
5 ~~Statutes)~~].

6 SECTION 2.30. Section 826.204(b), Insurance Code, is
7 amended to read as follows:

8 (b) A membership interest in a mutual holding company does
9 not constitute a security as defined by Section 4001.068,
10 Government Code [~~4, The Securities Act (Article 581-4, Vernon's~~
11 ~~Texas Civil Statutes)~~].

12 SECTION 2.31. Section 829.007, Insurance Code, is amended
13 to read as follows:

14 Sec. 829.007. SALE OF SECURITIES. (a) A sale, issuance, or
15 offering of securities under this chapter is exempt from the
16 registration and licensing provisions of The Securities Act (Title
17 12, Government Code) [~~(Article 581-1 et seq., Vernon's Texas Civil~~
18 ~~Statutes)~~].

19 (b) An officer, director, or employee of an exchange, an
20 intermediate holding company, a mutual holding company, or a
21 resulting company who participates in a conversion under this
22 chapter is exempt from the registration and licensing provisions of
23 The Securities Act (Title 12, Government Code) [~~(Article 581-1 et~~
24 ~~seq., Vernon's Texas Civil Statutes)~~]. A person may not receive
25 compensation, other than that person's usual salary or
26 compensation, for services performed under the exemption provided
27 by this subsection.

1 SECTION 2.32. Section 829.152(b), Insurance Code, is
2 amended to read as follows:

3 (b) A membership interest in a mutual holding company does
4 not constitute a security as defined by Section 4001.068,
5 Government Code [~~4, The Securities Act (Article 581-4, Vernon's~~
6 ~~Texas Civil Statutes)~~].

7 SECTION 2.33. Section 882.756, Insurance Code, is amended
8 to read as follows:

9 Sec. 882.756. SALE OF SECURITIES. (a) A sale, issuance, or
10 offering of securities under this subchapter is exempt from the
11 registration and licensing provisions of The Securities Act (Title
12 12, Government Code) [~~(Article 581-1 et seq., Vernon's Texas Civil~~
13 ~~Statutes)~~].

14 (b) An officer, director, or employee of a mutual life
15 insurance company or a mutual insurance holding company or stock
16 life insurance company resulting from a conversion under this
17 subchapter who participates in the conversion is exempt from the
18 registration and licensing provisions of The Securities Act (Title
19 12, Government Code) [~~(Article 581-1 et seq., Vernon's Texas Civil~~
20 ~~Statutes)~~]. A person may not receive compensation, other than that
21 person's usual salary or compensation, for services performed under
22 the exemption provided by this subsection.

23 SECTION 2.34. Section 884.002(d), Insurance Code, is
24 amended to read as follows:

25 (d) The Securities Act (Title 12, Government Code)
26 [~~(Article 581-1 et seq., Vernon's Texas Civil Statutes)~~] applies to
27 a stipulated premium company.

1 SECTION 2.35. Section 884.203, Insurance Code, is amended
2 to read as follows:

3 Sec. 884.203. PUBLIC OFFERING OF CAPITAL STOCK. A
4 stipulated premium company may not make to the public an offering
5 that is subject to The Securities Act (Title 12, Government Code)
6 [~~Article 581-1 et seq., Vernon's Texas Civil Statutes~~], of any of
7 its capital stock before the company possesses:

- 8 (1) capital in an amount of at least \$100,000; and
9 (2) unencumbered surplus in an amount of at least
10 \$100,000.

11 SECTION 2.36. Section 394.056(a), Local Government Code, is
12 amended to read as follows:

13 (a) A bond issued under this chapter or a coupon
14 representing interest on the bond is, when delivered, a security as
15 that term is defined under Chapter 8 of the Uniform Commercial Code
16 (Chapter 8, Title 1, Business & Commerce Code) and is an exempt
17 security under The Securities Act (Title 12, Government Code)
18 [~~Article 581-1 et seq., Vernon's Texas Civil Statutes~~].

19 SECTION 2.37. Section 501.203, Local Government Code, is
20 amended to read as follows:

21 Sec. 501.203. SECURITIES COMMISSIONER PERMIT TO SELL
22 SECURITIES REQUIRED. A corporation may not sell or offer for sale
23 bonds or other securities until the securities commissioner grants
24 a permit authorizing the corporation to offer and sell the bonds or
25 other securities under the registration provisions of The
26 Securities Act (Title 12, Government Code) [~~Article 581-1 et seq.,~~
27 ~~Vernon's Texas Civil Statutes~~], except as exempted from

1 registration by rule or order of the State Securities
2 Board. Appeal from an adverse decision of the securities
3 commissioner or the State Securities Board is under the
4 administrative procedure law, Chapter 2001, Government Code. The
5 substantial evidence rule applies in an appeal under this
6 subsection.

7 SECTION 2.38. Section 901.457(b), Occupations Code, is
8 amended to read as follows:

9 (b) This section does not prohibit a license holder from
10 disclosing information that is required to be disclosed:

11 (1) by the professional standards for reporting on the
12 examination of a financial statement;

13 (2) under a summons or subpoena under the provisions
14 of the Internal Revenue Code of 1986 and its subsequent amendments,
15 the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) and its
16 subsequent amendments, the Securities Exchange Act of 1934 (15
17 U.S.C. Section 78a et seq.) and its subsequent amendments, or The
18 Securities Act (Title 12, Government Code) [~~Article 581-1 et seq.,~~
19 ~~Vernon's Texas Civil Statutes~~];

20 (3) under a court order signed by a judge if the order:

21 (A) is addressed to the license holder;

22 (B) mentions the client by name; and

23 (C) requests specific information concerning the
24 client;

25 (4) in an investigation or proceeding conducted by the
26 board;

27 (5) in an ethical investigation conducted by a

1 professional organization of certified public accountants;

2 (6) in the course of a peer review under Section
3 901.159 or in accordance with the requirements of the Public
4 Company Accounting Oversight Board or its successor; or

5 (7) in the course of a practice review by another
6 certified public accountant or certified public accountancy firm
7 for a potential acquisition or merger of one firm with another, if
8 both firms enter into a nondisclosure agreement with regard to all
9 client information shared between the firms.

10 SECTION 2.39. Section 221.025(a), Property Code, is amended
11 to read as follows:

12 (a) A developer's compliance with this chapter exempts the
13 developer's offer and disposition of timeshare interests subject to
14 this chapter from securities and dealer registration under The
15 Securities Act (Title 12, Government Code) [~~(Article 581-1 et seq.,~~
16 ~~Vernon's Texas Civil Statutes)~~].

17 SECTION 2.40. Section 222.013, Property Code, is amended to
18 read as follows:

19 Sec. 222.013. EXEMPT FROM SECURITIES ACT. The filing of a
20 registration under this chapter exempts the sale of a membership
21 interest or membership right in a membership camping resort subject
22 to this chapter from registration under The Securities Act (Title
23 12, Government Code) [~~(Article 581-1 et seq., Vernon's Texas Civil~~
24 ~~Statutes)~~].

25 SECTION 2.41. Section 171.055, Tax Code, is amended to read
26 as follows:

27 Sec. 171.055. EXEMPTION--OPEN-END INVESTMENT COMPANY. An

1 open-end investment company, as defined by the Investment Company
2 Act of 1940 (15 U.S.C. Section 80a-1 et seq.~~[, 15 U.S.C.]~~), that is
3 subject to that Act and that is registered under The Securities Act
4 (Title 12, Government Code) [~~(Article 581-1 et seq., Vernon's Texas~~
5 ~~Civil Statutes)~~] is exempted from the franchise tax.

6 SECTION 2.42. Section 161.063, Utilities Code, is amended
7 to read as follows:

8 Sec. 161.063. EXEMPTION FROM APPLICATION OF SECURITIES ACT.
9 The Securities Act (Title 12, Government Code) [~~(Article 581-1 et~~
10 ~~seq., Vernon's Texas Civil Statutes)~~] does not apply to:

11 (1) an obligation issued to secure a debt of an
12 electric cooperative to the United States; or

13 (2) the issuance of a membership certificate by an
14 electric cooperative.

15 SECTION 2.43. Section 162.063, Utilities Code, is amended
16 to read as follows:

17 Sec. 162.063. EXEMPTION FROM APPLICATION OF SECURITIES ACT.
18 The Securities Act (Title 12, Government Code) [~~(Article 581-1 et~~
19 ~~seq., Vernon's Texas Civil Statutes)~~] does not apply to:

20 (1) a note, bond, or other evidence of indebtedness
21 issued by a telephone cooperative doing business in this state to
22 the United States;

23 (2) an instrument executed to secure a debt of a
24 telephone cooperative to the United States; or

25 (3) the issuance of a membership certificate by a
26 telephone cooperative or a foreign corporation doing business in
27 this state under this chapter.

1 SECTION 2.44. Section 67.015, Water Code, is amended to
2 read as follows:

3 Sec. 67.015. EXEMPTION FROM SECURITIES ACT. The Securities
4 Act (Title 12, Government Code) [~~Article 581-1 et seq., Vernon's~~
5 ~~Texas Civil Statutes~~] does not apply to:

6 (1) a note, bond, or other evidence of indebtedness
7 issued by a corporation doing business in this state to the United
8 States;

9 (2) an instrument executed to secure a debt of a
10 corporation to the United States; or

11 (3) the issuance of a membership certificate or stock
12 certificate of a corporation.

13 ARTICLE 3. REPEALER

14 SECTION 3.01. The Securities Act (Article 581-1 et seq.,
15 Vernon's Texas Civil Statutes) is repealed.

16 ARTICLE 4. GENERAL MATTERS

17 SECTION 4.01. This Act is enacted under Section 43, Article
18 III, Texas Constitution. This Act is intended as a recodification
19 only, and no substantive change in law is intended by this Act.

20 SECTION 4.02. This Act takes effect January 1, 2022.