RULES AND REGULATIONS
OF THE
TEXAS STATE SECURITIES BOARD

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STATUTORY UPDATE
RECENT CHANGES TO THE TEXAS SECURITIES ACT

This information supplements the orange 2011 booklet edition of the Texas Securities Act. Italic type indicates amendments to the Act by the Texas Legislature.

Text as changed by the 84th Texas Legislature, Regular Session

Repeal of Section 41 contained in House Bill 7, that became effective on September 1, 2015.

Sec. 41. Repealed. House Bill 7, Chapter 448, Acts of the 84th Legislature, Regular Session, 2015.

Addition of Section 44 contained in House Bill 1629 that became effective on September 1, 2015:

Sec. 44. Crowdfunding.

(a) The Board shall adopt rules to regulate and facilitate online intrastate crowdfunding applicable to authorized small business development entities. The Board may create other requirements necessary to carry out this section.

(b) The rules for authorized small business development entities must:

(1) allow authorized small business development entities to list on their web portals offerings of securities by issuers in which they are financially interested;

(2) allow authorized small business development entities and their portals to list offerings of securities without offering investment advice;

(3) allow authorized small business development entities to subcontract the operations of a crowdfunding web portal to a third party as permitted by Board rule; and

(4) limit the offerings of securities on an authorized small business development entity's web portal to securities of issuers located within the service area of the authorized small business development entity.

(c) In this section, "authorized small business development entity" means:

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

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

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

(4) a municipal corporation;

(5) the Texas Veterans Commission; or

(6) a nonprofit community development financial institution certified by the Community Development Financial Institutions Fund.

Text as changed by the 83rd Texas Legislature, Regular Session

Amendment to Section 2 contained in House Bill 1675 that became effective on June 14, 2013:

Sec. 2. Creating the State Securities Board and Providing for Appointment of Securities Commissioner.

O. The State Securities Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this Act expires September 1, *2019*.

The full text of the bills listed here may be obtained on the Texas Legislature Online website located at www.capitol.state.tx.us.

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SECURITIES REGISTRATION, NOTICE FILING, AND EXEMPTION FEES	
Action	**Fee**[+]
Filing an original, amended, or renewal application to sell or dispose of securities	$100 Act Section 35.A(1)[1]
Examination of an original or amended application filed under Section 7.A, 7.B, or 7.C	1/10 of 1% of the aggregate amount of securities described and proposed to be sold to persons located within this state based upon the price at which such securities are to be offered to the public Act Section 35.B(2)
A notice filing for federal covered securities	Varies Act Sections 35.A(1)[1], 35.B(2), 35.B(7), and/or 35.B(6); Board Rule 114.4
Filing of an initial notice required by the Commissioner to claim a limited offering exemption	1/10 of 1% of the aggregate amount of securities described as being offered for sale, but in no case more than $500 Act Section 35.B(7); Board Rule 109.13
Filing an initial notice required by the Commissioner to claim a secondary trading exemption	$500 Act Section 35.B(6)
Filing a secondary trading exemption renewal notice	$500 Act Section 35.B(6)
[+] *Checks should be made payable to the "State Securities Board."*	

[1] This fee was set by the Board at its July 24, 2009 meeting so that effective September 1, 2009, this fee was increased by $60. Previously, at its June 24, 2003 meeting, the Board had increased this fee by $30. These fee increases were not mandated by the Texas Legislature. This notification is made pursuant to the General Appropriations Act, Article IX, Section 6.16.

DEALER / AGENT, INVESTMENT ADVISER / INVESTMENT ADVISER REPRESENTATIVE REGISTRATION AND NOTICE FILING FEES	
Action	**Fee**[+]
Filing an original application for dealer or investment adviser registration	$75 Act Section 35.A(2)
Filing a renewal application for dealer or investment adviser registration	$40 Act Section 35.A(3)[2]
Notice filing for a federal covered investment adviser	$75 Act Section 35.A(2)
Renewal notice filing for a federal covered investment adviser	$40 Act Section 35.A(3)[2]
Filing an original application for each agent, officer, or investment adviser representative	$35 Act Section 35.A(4)[3]
Filing a renewal application for each agent, officer, or investment adviser representative	$20 Act Section 35.A(5)[4]
Notice filing for each representative of a federal covered investment adviser	$35 Act Section 35.A(4)[3]
Renewal notice filing for a representative of a federal covered investment adviser	$20 Act Section 35.A(5)[4]
Amendment to a registration certificate of a dealer or investment adviser or evidence of registration of an agent or investment adviser representative	$25 Act Section 35.B(1)
Issuance of a duplicate certificate or evidence of registration	$25 Act Section 35.B(1)

[2] At its June 24, 2003 meeting, the Board increased this fee by $30. This fee increase is not mandated by the Texas Legislature. This notification is made pursuant to the General Appropriations Act, Article IX, Section 6.16. At its August 25, 2015 meeting, the Board reduced this fee by $30.

[3] This fee was set by the Board at its July 24, 2009 meeting so that effective September 1, 2009, this fee was increased by $50. This fee increase was not mandated by the Texas Legislature. This notification is made pursuant to the General Appropriations Act, Article IX, Section 6.16. At its August 25, 2015 meeting, the Board reduced this fee by $50.

[4] This fee was set by the Board at its July 24, 2009 meeting so that effective September 1, 2009, this fee was increased by $25. Previously, at its June 24, 2003 meeting, the Board had increased this fee by $30. These fee increases are not mandated by the Texas Legislature. This notification is made pursuant to the General Appropriations Act, Article IX, Section 6.16. At its August 25, 2015 meeting, the Board decreased this fee by $55.

DEALER / AGENT, INVESTMENT ADVISER / INVESTMENT ADVISER REPRESENTATIVE REGISTRATION AND NOTICE FILING FEES	
Action	**Fee**[+]
Filing a branch office registration	$25 Act Section 35.B(1)
Filing a request to take the Texas Securities Law Examination	$35 Act Section 35.B(5)
[+] *Checks should be made payable to the "State Securities Board."*	

MISCELLANEOUS FEES	
Action	**Fee**[+]
Copies of a public record of the Agency	Varies Board Rule 101.5
Certified copies of any papers filed in the office of the Commissioner	$1 per page plus a $15 certification fee Act Section 35.B(3)[5]; Board Rule 101.5
Filing for an interpretation by the Board's General Counsel of the Texas Securities Act or a rule adopted under the Act	$100 Act Section 35.B(8)
Filing an application for approval of a stock exchange	$10,000 Act Section 35.B(4)
[+] *Checks should be made payable to the "State Securities Board."*	

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[5] This fee was set by the Board at its April 27, 2011 meeting so that effective June 21, 2011, this fee was increased by $5. Previously at its June 24, 2003 meeting, the Board had increased this fee by $5. These fee increases were not mandated by the Texas Legislature. This notification is made pursuant to the General Appropriations Act, Article IX, Section 6.16.

TEXAS ADMINISTRATIVE CODE
TITLE 7 BANKING AND SECURITIES
PART 7 STATE SECURITIES BOARD

CHAPTER 101. GENERAL ADMINISTRATION.

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§101.2. Classification of Regulatory Standards.
§101.3. Application.
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§101.5. Charges for Copies of Public Records.
§101.6. Historically Underutilized Business Program.

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§101.1. Authority.

(a) **Introduction.** Pursuant to the authority granted by the Texas Securities Act and the Administrative Procedure Act, Texas Government Code, Chapter 2001, the State Securities Board prescribes the following sections regarding the administration and implementation of the Texas Securities Act, and the procedure and practice before the Texas Securities Commissioner.

(b) **Objective.** The intent of the board is to supplant unwritten policies and guidelines with written rules, and to revise existing sections to better reflect the realities of current financial, commercial, and regulatory principles and practices.

(c) **Responsibilities of the Board.** The Board is the governing body of the Agency. The Board formulates policy objectives, oversees implementation of these objectives, and is responsible for the proposal, adoption, amendment and repeal of Board rules. The Board appoints the Securities Commissioner, who serves at the pleasure of the Board, to implement the policies of the Board, administer the provisions of the Texas Securities Act, and to manage the day-to-day operations of the Agency.

(d) **Responsibilities of the Securities Commissioner.** The Securities Commissioner implements the policies of the Board, administers the provisions of the Texas Securities Act, and manages the day-to-day operations of the Agency. It is the duty of the Securities Commissioner to see that the provisions of the Texas Securities Act are at all times obeyed and to take such measures and to make such investigations as will prevent or detect the violation of any provision thereof. The Commissioner appoints other persons as necessary to carry out the powers and duties of the Commissioner under the Texas Securities Act and other laws granting jurisdiction or applicable to the Board or the Commissioner. The Commissioner may delegate to the other persons appointed such powers and duties of the Commissioner as the Commissioner considers necessary.

(e) **Delegated authority.** The Board hereby delegates to the Commissioner the authority to waive requirements contained in the Board's rules, as the Commissioner may, from time to time, deem appropriate.

(f) Severability. If any provision of these sections be held invalid, such invalidity shall not affect other provisions that can be given effect without the invalid provision, and to this end the provisions of these sections are declared to be severable.

Source Note: The provisions of this §101.1 adopted to be effective January 1, 1976; amended to be effective March 14, 1999, 24 TexReg 1768; amended to be effective June 12, 2002, 27 TexReg 4933; amended to be effective August 10, 2003, 28 TexReg 5991.

§101.2. Classification of Regulatory Standards.

(a) Rules. Rules are regulatory standards adopted and promulgated as herein required and shall be considered the highest level of policy applied by the Board.

(b) Written administrative guidelines. Written administrative guidelines are of the same level of policy as rules and will be adopted in the same manner and have the same effect as rules.

(c) Forms. Forms are regulatory standards adopted for the purpose of implementing the Texas Securities Act by prescribing initial basic requirements for completing various applications and reports filed with the Commissioner. The forms required by the Commissioner are set forth in Chapter 133 of this title (relating to Forms) and have the same force and effect as rules.

(d) Preliminary administrative suggestions. The commissioner may also adopt preliminary administrative suggestions which will represent those standards which are newly developed, only recently reduced to writing, in the process of being modified, or otherwise considered by the commissioner to be not yet suitable for general application and promulgation and publication as rules or written administrative guidelines. Such preliminary administrative suggestions may be implemented at any time without publication or other notice and may be immediately applied by the commissioner in the public interest or for the protection of investors.

(e) Opinions. Statements made and opinions expressed orally or in writing by personnel of the Securities Board in response to inquiries or otherwise, and not specifically identified and promulgated as rules shall not be considered regulatory standards of the board and shall not be considered binding upon the commissioner in connection with specific adjudications undertaken by the commissioner thereafter. The commissioner may refuse to answer any question based upon a hypothetical fact situation.

(f) Interpretations by General Counsel.

(1) The Board's General Counsel may respond to inquiries concerning interpretations of the Texas Securities Act or these sections, provided sufficient relevant facts are given and the situation is not hypothetical. A nonrefundable fee of $100 must accompany each inquiry. The General Counsel may refuse to respond to any inquiry. Responses to inquiries may take the following forms:

(A) an opinion that no exemption appears available in the specific fact situation;

(B) an opinion that the availability of specific exemption(s) is questionable or doubtful in the specific fact situation;

(C) an opinion that, under the facts as stated by the inquiring party, a specific exemption appears to be available; this opinion must be followed by a caveat that:

(i) the agency does not grant nor confer the exemption in question;

(ii) the exemption's availability depends entirely upon the full compliance with the language of the exemption;

(iii) the Texas Securities Act, Section 37, places the burden of proof on the party claiming the exemption; and

(iv) opinions expressed are not binding upon civil litigants in future proceedings;

(D) an explanation of relevant provisions of the Texas Securities Act or Board rules;

(E) a statement that no interpretation will be expressed with regard to a given fact situation;

(F) a statement that the staff of the State Securities Board will recommend no action to require registration in the specific fact situation.

Source Note: The provisions of this §101.2 adopted to be effective January 1, 1976; amended to be effective October 30, 1985, 10 TexReg 4080; amended to be effective March 14, 1999, 24 TexReg 1768.

§101.3. Application.

(a) **Generally.** All rules shall be applied collectively, to the extent relevant, in connection with specific adjudications made by the Commissioner in the course of his or her regulatory functions. The Commissioner will make his or her determination on the basis of specific characteristics and circumstances of the individual adjudications under consideration and in light of the basic statutory purposes for regulation in the particular area. The Commissioner may, in his or her discretion, waive any requirement of any rule in situations where, in his or her opinion, such requirement is not necessary in the public interest or for the protection of investors. The captions of the various rules are for convenience only. Should there be a conflict between the caption of a rule and the text of the rule, the text will be controlling. Material denoted by a cross reference caption is not a rule or part of a rule.

(b) **Investor protection standard.** Within the confines of statutory authority, conflicts between the industry and the best interest of the investing public will be resolved in favor of the investing public.

Likewise, conflicts between existing securities holders and the best interest of the prospective investor will be resolved in favor of the prospective investor.

(c) Precedent. Because rules cannot adequately anticipate all potential application requirements, the failure to satisfy all regulatory standards of the Board will not necessarily foreclose the possibility of a favorable disposition of the matter pending before the Commissioner, and, similarly, the satisfaction of all such regulatory standards will not necessarily preclude an unfavorable disposition if the specific characteristics and circumstances so warrant. For this reason, the nature of the disposition of any particular matter pending before the Commissioner is not necessarily of meaningful precedential value, and the Commissioner shall not be bound by the precedent of any previous adjudication in the subsequent disposition of any pending matter.

Source Note: The provisions of this §101.3 adopted to be effective January 1, 1976; amended to be effective May 17, 1976, 1 TexReg 1179; amended to be effective November 7, 1999, 24 TexReg 9607.

§101.4. Open Records Requests. Requests for agency records will be handled pursuant to the open records provisions of the Public Information Act, Texas Government Code, Title 5, Chapter 552. The requesting party shall indicate in writing the specific nature of the documents requested for examination or duplication.

Source Note: The provisions of this §101.4 adopted to be effective January 1, 1976; amended to be effective February 19, 1992, 17 TexReg 1087; amended to be effective March 17, 1994, 19 TexReg 1542; amended to be effective June 9, 2015, 40 TexReg 3563.

§101.5. Charges for Copies of Public Records.

(a) The cost to any person requesting copies of any public record of the State Securities Board pursuant to the open records provisions of the Texas Government Code, Title 5, Chapter 552, will be the applicable charge established by the Office of the Attorney General in Title 1, Part 3, Chapter 70, of the Texas Administrative Code, which is reflected in Form 133.2.

(b) For certified copies the charge shall be $1.00 per page plus a $15.00 certification fee.

Source Note: The provisions of this §101.5 adopted to be effective February 19, 1992, 17 TexReg 1087; amended to be effective December 20, 1993, 18 TexReg 9093; amended to be effective September 14, 1994, 19 TexReg 6841; amended to be effective April 21, 1995, 20 TexReg 2619; amended to be effective March 14, 1999, 24 TexReg 1768; amended to be effective August 10, 2003, 28 TexReg 5991; amended to be effective April 19, 2007, 32 TexReg 2135; amended to be effective June 21, 2011, 36 TexReg 3713.

§101.6. Historically Underutilized Business Program.

The State Securities Board adopts by reference the rules of the Comptroller of Public Accounts relating to the Historically Underutilized Business Program, contained in Title 34, Part 1, Chapter 20, Subchapter B, of the Texas Administrative Code.

Source Note: The provisions of this §101.6 adopted to be effective August 12, 2001, 26 TexReg 5786; amended to be effective August 10, 2003, 28 TexReg 5991; amended to be effective June 21, 2011, 36 TexReg 3713.

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TITLE 7 BANKING AND SECURITIES
PART 7 STATE SECURITIES BOARD

CHAPTER 103. RULEMAKING PROCEDURE.

§103.1. How Initiated.
§103.2. Notice.
§103.3. Opportunity To Be Heard.
§103.4. Compliance.
§103.5. Petitions.

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§103.1. How Initiated. Proceedings for the promulgation, adoption, repeal, or revision of rules shall be initiated by the securities commissioner.

Source Note: The provisions of this §103.1 adopted to be effective January 1, 1976.

§103.2. Notice. General notice of the adoption, amendment, or repeal of any rule shall be given as required by law and shall be sent by U.S. mail, or by email if the requestor has provided an email address, to all persons who have made timely written requests for advanced notice of rulemaking proceedings. However, failure to send such notice will not invalidate any actions taken or rules adopted.

Source Note: The provisions of this §103.2 adopted to be effective January 1, 1976; amended to be effective June 9, 2015, 40 TexReg 3563.

§103.3. Opportunity To Be Heard. Reasonable opportunity will be afforded all interested persons to submit data, views, or arguments, orally or in writing. The commissioner may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons.

Source Note: The provisions of this §103.3 adopted to be effective January 1, 1976.

§103.4. Compliance. No rule hereafter adopted will be valid unless adopted in substantial compliance with the rulemaking provisions of the Texas Government Code, Title 10, Chapter 2001.

Source Note: The provisions of this §103.4 adopted to be effective January 1, 1976; amended to be effective June 9, 2015, 40 TexReg 3563.

§103.5. Petitions. Any interested person may petition the Commissioner requesting the adoption of a rule, and within 60 days the Commissioner will initiate rulemaking proceedings, or deny the petition in writing, stating his or her reasons therefor. The petition must set forth the following:

(1) The text of the proposed rule and a brief explanation thereof.

(2) A statement of the statutory or other authority under which the rule is proposed.

(3) A statement of the particular statute or statutes and sections thereof to which the proposed rule relates.

(4) A concise statement of the principal reasons for adoption of the rule; and the date submitted and by whom.

Source Note: The provisions of this §103.5 adopted to be effective January 1, 1976; amended to be effective March 14, 1999, 24 TexReg 1768.

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TEXAS ADMINISTRATIVE CODE
TITLE 7 BANKING AND SECURITIES
PART 7 STATE SECURITIES BOARD

CHAPTER 104. PROCEDURE FOR REVIEW OF APPLICATIONS.

§104.1. Scope.
§104.2. Purpose.
§104.3. Definition of Days.
§104.4. Registration of Securities--Review of Applications.
§104.5. Registration of Dealers and Investment Advisers--Review of Applications.
§104.6. Exceeding the Time Periods.
§104.7. Preliminary Evaluation of License Eligibility.

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§104.1. Scope. These rules of procedure are generally applicable to the review of applications and the agency's decision whether to grant, deny, or allow withdrawal of applications.

Source Note: The provisions of this §104.1 adopted to be effective May 17, 1988, 13 TexReg 2160; amended to be effective August 10, 2003, 28 TexReg 5991.

§104.2. Purpose. These sections are intended to implement the provisions of Texas Government Code, Chapter 2005. They are not intended to supersede any substantive requirement of the Texas Securities Act or Board rules. If a provision under one of these sections would cause such a conflict, the provision will not be given effect under the particular circumstances giving rise to the conflict.

Source Note: The provisions of this §104.2 adopted to be effective May 17, 1988, 13 TexReg 2160; amended to be effective March 14, 1999, 24 TexReg 1769; amended to be effective August 10, 2003, 28 TexReg 5991.

§104.3. Definition of Days. For purposes of these sections "days" means each calendar day without any exclusions.

Source Note: The provisions of this §104.3 adopted to be effective May 17, 1988, 13 TexReg 2160.

§104.4. Registration of Securities--Review of Applications.

(a) Within seven days of receipt by the Agency of an application to register securities, if the application does not contain all required information, the Registration Division will send a written deficiency letter to the applicant setting forth a list of items or exhibits that have not been filed and that, pursuant to requirements of the Texas Securities Act or Board rules, must be filed with the Agency.

(b) Within 45 days of receipt by the Agency of all requested items and exhibits necessary in order to analyze the offering, the Registration Division shall review the application and shall send a written initial

comment letter setting forth deviations from the substantive requirements of the Act or Board rules relating to the registration of securities. This process may be repeated if the applicant suggests that alternatives be considered, or the applicant's response does not resolve substantive issues.

(c) Written communications between the Registration Division and the applicant may be transmitted by facsimile, email, U.S. mail, or other more timely means of communication.

(d) An application is complete and accepted for filing upon receipt by the Agency of the following:

(1) all items and exhibits required to be filed with the Agency as set forth in paragraphs (a)-(c) of this section; and

(2) complete responses to all comments raised by the division staff pursuant to subsections (b) and (c) of this section.

(e) Within 21 days of receipt by the Agency of a complete application, the division staff shall review the applicant's responses to initial and subsequent comments, if any, and make a recommendation to either grant, deny, or allow withdrawal of the application.

(f) Within 14 days of the division staff's recommendation the application shall be reviewed by the Director (or Assistant Director) of the Registration Division and the Deputy Commissioner and/or Securities Commissioner. Additional comments, if any, raised at these stages of review must be communicated to the applicant immediately.

(g) The final decision to grant, deny, or allow withdrawal of the application must be made and communicated to the applicant within 14 days of the latter of:

(1) the division staff's recommendation, or

(2) the receipt by the Agency of complete responses to any additional comments raised pursuant to subsection (f) of this section.

Source Note: The provisions of this §104.4 adopted to be effective May 17, 1988, 13 TexReg 2160; amended to be effective March 14, 1999, 24 TexReg 1769; amended to be effective August 10, 2003, 28 TexReg 5991; amended to be effective October 6, 2015, 40 TexReg 6888.

§104.5. Registration of Dealers and Investment Advisers--Review of Applications.

(a) Within 14 days of receipt by the Agency of an application and a fee that is sufficient for registration as a dealer or investment adviser, the Registration Division shall send a written deficiency letter to the applicant setting forth a list of items or exhibits that either have not been filed or that contain errors or omissions. If the applicant is filing through the Central Registration Depository (CRD) or the Investment Adviser Registration Depository (IARD), deficiency corrections of a procedural, non-disciplinary nature will be handled by the CRD or IARD.

(1) If an insufficient fee is submitted with the application, the fee will be returned to the applicant along with immediate notification as to the correct amount owed.

(2) The application will be held in abeyance until the correct fee is received by the Agency.

(b) Within 14 days of receipt by the Agency of all requested items and exhibits, the division staff shall review the file and, if necessary, shall send a written comment letter setting forth any deviations from the substantive requirements of the Texas Securities Act or Board rules relating to the registration of dealers or investment advisers. This process may be repeated to raise subsequent comments.

(c) An application is complete and accepted for filing upon receipt by the agency of the following:

(1) all items required to be filed with the Agency as set forth in the deficiency letter referred to in subsection (a) of this section; and

(2) complete responses to all comments raised by the division during review of the application.

(d) Within 14 days of receipt by the Agency of a complete application, the division staff shall review the application and the applicant's responses to initial comments and make a recommendation to grant, deny, or allow withdrawal of the application.

(e) Within 14 days of the division staff's recommendation, any remaining issues shall be addressed by the Director of the Registration Division. Additional comments, if any, raised at this stage of review must be communicated to the applicant immediately.

(f) The final decision to grant, deny, or allow withdrawal of the application must be made and communicated to the applicant within 14 days of the latter of:

(1) the division's recommendation, or

(2) receipt by the Agency of complete responses to any remaining comments.

(g) Written communications between the Registration Division and the applicant may be transmitted by facsimile, email, U.S. mail, or other more timely means of communication.

Source Note: The provisions of this §104.5 adopted to be effective May 17, 1988, 13 TexReg 2160; amended to be effective March 14, 1999, 24 TexReg 1769; amended to be effective August 10, 2003, 28 TexReg 5991; amended to be effective October 6, 2015, 40 TexReg 6888.

§104.6. Exceeding the Time Periods.

(a) The Agency may exceed the time periods set forth in these sections if:

(1) the number of permits and registration authorizations exceeds by 15% or more the number processed in the same calendar quarter of the preceding year;

(2) the Securities and Exchange Commission, CRD, IARD, or another public or private entity, including the applicant itself, causes the delay;

(3) the applicant requests delay; or

(4) other conditions exist that give the Agency good cause for exceeding the established time periods.

(b) If it appears to the applicant that for reasons other than those set forth in subsection (a)(2) of this section, the Agency exceeded the time periods set forth in these sections, the applicant may appeal by filing a complaint in writing with the deputy commissioner who shall provide the staff with a copy of the complaint immediately.

(c) If the Agency's staff believes that the time periods were not exceeded for the reasons alleged in the complaint, the staff may file with the deputy commissioner a written response to the complaint within five days of receipt by the Agency of the complaint.

(d) The deputy commissioner shall render a decision and communicate it to the applicant within 10 days of receipt of the applicant's complaint, whether or not a response is filed by the staff.

(e) If the complaint is decided in favor of the applicant, the applicant shall receive full reimbursement of all filing fees paid by the applicant.

(f) If the complaint is decided in favor of the staff, the applicant may appeal the decision by requesting a hearing before the Commissioner pursuant to the Texas Securities Act, Section 24.A.

Source Note: The provisions of this §104.6 adopted to be effective May 17, 1988, 13 TexReg 2160; amended to be effective March 14, 1999, 24 TexReg 1769; amended to be effective August 10, 2003, 28 TexReg 5991; amended to be effective June 21, 2011, 36 TexReg 3713.

§104.7. Preliminary Evaluation of License Eligibility.

(a) Request for criminal history evaluation letter.

(1) A person may request the Agency issue a criminal history evaluation letter regarding the person's eligibility for a license issued by the Agency if the person:

(A) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and

(B) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(2) The request must state the basis for the person's potential ineligibility, provide the information set out in subsection (b) of this section, include all pertinent court documentation including certified copies of all court indictments and/or judgments, and orders, and an explanation of the circumstances and events of the criminal action that led to the conviction or sentence.

(3) The fee for a preliminary evaluation of license eligibility shall be $100.

(4) To be considered complete, the request must include the appropriate fee and state the circumstances establishing the requestor's eligibility under paragraph (1) of this subsection.

(5) The Agency may require additional documentation including fingerprint cards before issuing a criminal history evaluation letter.

(6) If a requestor does not provide all required and requested documentation within one year of submitting the original request, the requestor must submit a new request along with the appropriate fee.

(b) Factors considered. The Agency considers the following evidence in determining the present fitness of an applicant who has been convicted of a crime. Accordingly, the requestor should provide information on the following:

(1) The extent and nature of the person's past criminal activity.

(2) The age of the requestor at the time of the commission of the crime.

(3) The amount of time that has elapsed since the requestor's last criminal activity.

(4) The conduct and work activity of the requestor prior to and following the criminal activity.

(5) Evidence of the requestor's rehabilitation or rehabilitative effort while incarcerated or following release.

(6) Other evidence of the requestor's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the requestor; the sheriff and chief of police in the community where the requestor resides; and any other persons in contact with the requestor.

(7) It shall be the responsibility of the requestor to the extent possible to secure and provide to the Agency the recommendation of the prosecution, law enforcement, and correctional authorities as required under this section. The requestor shall also furnish proof to the Agency that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

(c) Investigation of request. The Agency has the same authority to investigate a request submitted under this section as it has to investigate a person applying for a license.

(d) Determination of eligibility; letter.

(1) If the Agency determines that a ground for ineligibility does not exist, the Agency shall notify the requestor in writing of the Agency's determination on each ground of potential ineligibility.

(2) If the Agency determines that the requestor is ineligible for a license, the Agency shall issue a letter setting out each basis for potential ineligibility and the Agency's determination as to eligibility.

(3) In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the Agency at the time the letter is issued, the Agency's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

(4) The notice under paragraph (1) of this subsection or the letter under paragraph (2) of this subsection shall be issued by the Agency within 90 days of the requestor satisfying all of the Agency's requests for information to complete the criminal history evaluation letter request.

Source Note: The provisions of this §104.7 adopted to be effective March 28, 2010, 35 TexReg 2548.

The next page is 105-1.

TEXAS ADMINISTRATIVE CODE
TITLE 7 BANKING AND SECURITIES
PART 7 STATE SECURITIES BOARD

CHAPTER 105. RULES OF PRACTICE IN CONTESTED CASES.

§105.1. Scope.
§105.2. Definitions.
§105.3. Computation of Time.
§105.4. Opportunity for Hearing.
§105.5. Contents of Notice of Hearing.
§105.6. Service.
§105.7. Written Response to Notice of Hearing.
§105.8. Copies to Securities Commissioner's Representative.
§105.9. Informal Disposition.
§105.10. Default.
§105.11. Burden of Proof.
§105.12. Subpoenas and Depositions.
§105.13. Assessment of Hearing Costs.
§105.14. Proposal for Decision.
§105.15. Orders Issued by Securities Commissioner.
§105.16. Decisions; When Final.
§105.17. Motion for Rehearing.
§105.18. Board Action on Motion for Rehearing.
§105.19. Record.
§105.20. Ex Parte Communications.

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§105.1. Scope. This chapter is applicable to contested cases under the Texas Securities Act.

Source Note: The provisions of this §105.1 adopted to be effective April 3, 2012, 37 TexReg 2165.

§105.2. Definitions.

(a) The following words and terms, when used in this chapter, shall have the same meaning as set forth in the Administrative Procedure Act, Government Code, Chapter 2001 (the "APA"), unless the context clearly indicates otherwise:

(1) Contested case;

(2) License;

(3) Licensing;

(4) Party;

(5) Person; and

(6) State agency.

(b) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act or Securities Act or Texas Securities Act--The Securities Act, Texas Revised Civil Statutes, Article 581-1 et seq., as amended.

(2) APA--The Administrative Procedure Act, Texas Government Code, Title 10, Chapter 2001, as amended.

(3) Commissioner or Securities Commissioner--The State Securities Commissioner for the State of Texas.

(4) SOAH--The State Office of Administrative Hearings.

(5) SOAH Rules of Procedure--The procedural rules of the State Office of Administrative Hearings, described in 1 TAC Chapter 155, as amended.

(6) Staff--Personnel of the Securities Board, excluding the members of the Board, the Securities Commissioner, the Deputy Commissioner, and the Commissioner's Representative or any designee thereof responsible for assisting or advising members of the Board, the Securities Commissioner or the Deputy Commissioner.

Source Note: The provisions of this §105.2 adopted to be effective April 3, 2012, 37 TexReg 2165.

§105.3. Computation of Time. The method for computing any period of time prescribed or allowed by this chapter shall be in accordance with the SOAH Rules of Procedure.

Source Note: The provisions of this §105.3 adopted to be effective April 3, 2012, 37 TexReg 2165.

§105.4. Opportunity for Hearing.

(a) An applicant taking exception to the failure or refusal of the Securities Commissioner to register the applicant as a dealer, agent, investment adviser, or investment adviser representative under the Act, Section 14, Section 15, or Section 18, or to the failure or refusal of the Commissioner to register securities of the applicant or to issue a permit to the applicant under the Act, Section 7 or Section 10, may request a hearing pursuant to the Act, Section 24, by filing a written request with the Commissioner.

(b) Except when an emergency order has been issued pursuant to the Act, Section 23-2, each party in a contested case is entitled to an opportunity for hearing after reasonable notice of not less than 10 days and to respond and present evidence and argument on each issue involved in the case.

(c) Such hearings shall be open to the public in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, except as may be required by this chapter.

(d) In a contested case filed at SOAH, SOAH Rules of Procedure, the APA, and the Board rules shall apply.

(e) Procedure in a contested case is governed by the law in effect on the date of the filing of the Notice of Hearing.

Source Note: The provisions of this §105.4 adopted to be effective April 3, 2012, 37 TexReg 2165.

§105.5. Contents of Notice of Hearing.

(a) The contents of a notice of hearing shall comport with the requirements of the APA, the SOAH Rules of Procedure, and Board rules.

(1) If the notice of hearing provides for at least 30 days notice to a party prior to the hearing in a contested case, such a notice of hearing shall include the following disclosure language set forth in capital letters and 12-point boldface type: "IF YOU DO NOT FILE A WRITTEN ANSWER OR OTHER WRITTEN RESPONSIVE PLEADING TO THIS NOTICE OF HEARING ON OR BEFORE THE 20TH DAY AFTER THE DATE ON WHICH THIS NOTICE WAS MAILED TO YOU OR PERSONALLY SERVED ON YOU, THE FACTUAL ALLEGATIONS IN THIS NOTICE COULD BE DEEMED ADMITTED, AND THE SECURITIES COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT A HEARING AND MAY GRANT THE RELIEF SOUGHT IN THIS NOTICE. THE RESPONSE MUST BE FILED IN AUSTIN, TEXAS WITH THE SECURITIES COMMISSIONER AND THE STATE OFFICE OF ADMINISTRATIVE HEARINGS, AND ALSO SERVED ON THE STAFF OF THE STATE SECURITIES BOARD. IF YOU FAIL TO ATTEND THE HEARING, EVEN IF A WRITTEN ANSWER OR OTHER RESPONSIVE PLEADING HAS BEEN FILED AND SERVED, THE FACTUAL ALLEGATIONS IN THIS NOTICE COULD BE DEEMED ADMITTED, AND THE SECURITIES COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT A HEARING AND MAY GRANT THE RELIEF SOUGHT IN THIS NOTICE."

(2) In all other circumstances, the notice of hearing shall include the following disclosure language set forth in capital letters and 12-point boldface type: "IF YOU FAIL TO ATTEND THE HEARING, THE FACTUAL ALLEGATIONS IN THIS NOTICE COULD BE DEEMED ADMITTED, AND THE SECURITIES COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT A HEARING AND MAY GRANT THE RELIEF SOUGHT IN THIS NOTICE."

(b) The notice of hearing shall also include:

(1) the mailing address where the response may be filed with the Securities Commissioner, including the identity and contact information of the Commissioner's Representative;

(2) the mailing address where the response may be filed with SOAH; and

(3) the mailing address where the response may be served on the Staff.

(c) A notice of hearing may be signed by the Director of the Enforcement Division, the Director of the Inspections and Compliance Division, or the Director of the Registration Division.

Source Note: The provisions of this §105.5 adopted to be effective April 3, 2012, 37 TexReg 2165; amended to be effective April 7, 2013, 38 TexReg 2097.

§105.6. Service.

(a) **Service of notice of hearing.** A notice of hearing shall be served by personal delivery or by registered or certified mail, return receipt requested, to the person's last known address.

(b) **Service of orders.**

(1) All emergency orders issued pursuant to the Act, Section 23-2, shall be sent in the manner prescribed therein.

(2) All other orders shall be served in the manner prescribed by the APA.

(c) **Service of all other documents.** Unless otherwise required by the Act, the APA, SOAH Rules of Procedure, or Board rules, all documents, other than a notice of hearing or an order, may be served on each party or the party's representative by:

(1) hand-delivery;

(2) regular, certified, or registered mail;

(3) electronic mail, upon agreement of the parties; or

(4) facsimile transmission.

Source Note: The provisions of this §105.6 adopted to be effective April 3, 2012, 37 TexReg 2165.

§105.7. Written Response to Notice of Hearing.

(a) If the notice of hearing was mailed to or personally served on a party at least 30 days prior to the hearing in a contested case, the respondent shall file with both the Securities Commissioner and SOAH, and also serve the Staff with, a written answer or other responsive pleading to the matters asserted in the notice of hearing no later than the 20th day after the date the notice was mailed to or personally served on the respondent.

(b) In all other circumstances, no answer need be filed, and all allegations will be deemed to be denied by the party if the party attends the hearing. At the time of such hearing the Administrative Law Judge shall, on motion of the Staff or on its own motion, inquire of a party which, if any, of the matters pled in the notice are contested by the party.

(c) A general denial of matters pled by the Staff shall be sufficient to put the same in issue. When the respondent has pled a general denial, and the Staff afterward amends its pleadings, the general denial shall be presumed to extend to all matters subsequently alleged by the Staff.

Source Note: The provisions of this §105.7 adopted to be effective April 3, 2012, 37 TexReg 2165.

§105.8. Copies to Securities Commissioner's Representative. Upon the filing of a notice of hearing, the parties shall file with the Securities Commissioner, by delivering same to the Commissioner's Representative, a copy of all documents, other than business records and transcripts, filed with SOAH contemporaneously with such filing. SOAH shall likewise provide the Commissioner's Representative with copies of all documents issued by the Administrative Law Judge.

Source Note: The provisions of this §105.8 adopted to be effective April 3, 2012, 37 TexReg 2165.

§105.9. Informal Disposition. An informal disposition of a contested case may be made by the Securities Commissioner by stipulation of the parties, agreed settlement, consent order, or default, without further proceedings by SOAH.

Source Note: The provisions of this §105.9 adopted to be effective April 3, 2012, 37 TexReg 2165.

§105.10. Default.

(a) The Securities Commissioner may make an informal disposition of the contested case by default by issuing an order in which the relief requested in the notice of hearing is granted and the matters set forth in the notice are deemed admitted as true upon proof to the Commissioner that the notice was mailed to or personally served on a respondent in accordance with §105.6 of this title (relating to Service) and that such respondent has failed to:

(1) file a written response as provided in §105.7 of this title (relating to Written Response to Notice of Hearing); or

(2) appear in person or through an authorized representative on the day and at the time set for the hearing of the case, whether or not a written response has been filed.

(b) Upon the motion of a respondent, the Commissioner may, for good cause shown, set aside a default order and reschedule a hearing with SOAH.

(1) A motion by a respondent to set aside a default order shall be filed with the Commissioner not later than the 20th day after the date on which the respondent or the respondent's attorney of record is notified of the default order in the manner prescribed by the APA.

(2) A reply by the Staff to the motion by a respondent to set aside a default order must be filed with the Commissioner not later than the 30th day after the date on which the respondent or the respondent's attorney of record is notified of the default order in the manner prescribed by the APA.

(3) The Commissioner shall act on a motion for rehearing not later than the 45th day after the date on which the respondent or the respondent's attorney of record is notified of the default order in the manner prescribed by the APA or the motion for rehearing is overruled by operation of law.

Source Note: The provisions of this §105.10 adopted to be effective April 3, 2012, 37 TexReg 2165.

§105.11. Burden of Proof. The Staff will assume the burden of proving a prima facie case by a preponderance of the evidence based upon reasonable inferences drawn from the evidence presented, except that the burden of proof of an exemption shall be upon the party claiming the same.

Source Note: The provisions of this §105.11 adopted to be effective April 3, 2012, 37 TexReg 2165.

§105.12. Subpoenas and Depositions.

(a) In general. Except when in conflict with the provisions of the Act, including Section 28, and Board rules, such as §127.1 of this title (relating to Enforcement), subpoenas and depositions shall be administered in the manner prescribed by the APA and the SOAH Rules of Procedure.

(b) Pre-contested case. When the Staff anticipates the commencement of a contested case and determines that it is necessary to perpetuate testimony to prevent a failure or delay of justice due to the risk of unavailability of the testimony after the action is commenced, such as with the acute illness of a potential witness or receipt of information that the potential witness intends to leave the subpoena jurisdiction of the Commissioner, the Staff may file a request with the Commissioner for a commission to take a deposition as set forth in the APA, §2001.094.

(1) The request shall show:

(A) the Staff anticipates the commencement of a contested case;

(B) the subject matter of the anticipated action and the jurisdiction therein;

(C) the names and addresses, if known, of the persons expected to be interested adversely to the Staff; and

(D) the names and addresses of the persons to be examined, the substance of the testimony which the Staff expects to elicit from each, and the reasons why the testimony is necessary to prevent a failure or delay of justice.

(2) Upon filing a request with the Commissioner, a notice and copy of the request shall be served upon the witness, or witnesses, and upon each person named in the request as an expected adverse party. Each person served with a copy of the request shall have the right to respond to the request within 10 days of service of notice by filing a response with the Staff and the Commissioner.

(3) In any case where justice or necessity so requires, the Commissioner may permit the taking of such depositions upon shorter notice than required by paragraph (2) of this subsection, or may extend such time in order to permit service on any adverse party.

(4) If satisfied that the perpetuation of testimony may prevent a failure or delay of justice, the Commissioner may issue a commission authorizing the taking of such deposition. At such deposition the parties identified by the Staff as adverse persons or other parties identified shall have the right to attend and pose questions to the deponent.

Source Note: The provisions of this §105.12 adopted to be effective April 3, 2012, 37 TexReg 2165.

§105.13. Assessment of Hearing Costs. The State Securities Board may pay the costs charged by a court reporting service in transcribing a hearing in a contested case or the Securities Commissioner may assess the cost to one or more parties.

Source Note: The provisions of this §105.13 adopted to be effective April 3, 2012, 37 TexReg 2165.

§105.14. Proposal for Decision.

(a) At the conclusion of a hearing in a contested case, the Administrative Law Judge assigned to hear the case at SOAH will issue orders:

(1) setting appropriate deadlines for the filing of the parties' Proposed Findings of Fact and Conclusions of Law in the case, if any, and the responses thereto, if any; and

(2) setting appropriate deadlines for the filing of exceptions, if any, to the Administrative Law Judge's Proposal for Decision, and replies thereto, if any.

(b) In the event exceptions to the Administrative Law Judge's Proposal for Decision are not filed, SOAH loses jurisdiction over the case upon the expiration of the deadline for the filing of such exceptions.

(c) In the event exceptions to the Administrative Law Judge's Proposal for Decision are filed, SOAH loses jurisdiction over the case upon the issuance of the Administrative Law Judge's ruling on the said exceptions.

Source Note: The provisions of this §105.14 adopted to be effective April 3, 2012, 37 TexReg 2165.

§105.15. Orders Issued by Securities Commissioner.

(a) When SOAH loses jurisdiction over the case as prescribed in §105.14 of this title (relating to Proposal for Decision), the complete transcript and record of the case, and the Proposal for Decision shall be sent directly to the Securities Commissioner.

(b) The Commissioner may change a finding of fact or conclusion of law made by the Administrative Law Judge, or may vacate or modify an order issued by the Administrative Law Judge only on grounds set forth in the APA. The Commissioner shall state in writing the reason or basis for such a change.

Source Note: The provisions of this §105.15 adopted to be effective April 3, 2012, 37 TexReg 2165.

§105.16. Decisions; When Final.

(a) A decision is final:

(1) if a motion for rehearing is not filed on time, on the expiration of the period for filing a motion for rehearing;

(2) if a motion for rehearing is filed on time, on the date:

(A) the order overruling the motion for rehearing is rendered; or

(B) the motion is overruled by operation of law;

(3) if the Commissioner finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a decision or order, on the date the decision or order is rendered; or

(4) if the decision or order is rendered pursuant to the Act, Section 23-2.E, on the date it is rendered.

(b) If a decision or order is final under subsection (a)(3) of this section, the Commissioner must recite in the decision or order the finding made under subsection (a)(3) of this section and the fact that the decision or order is final and effective on the date rendered.

(c) A person who is aggrieved by a final decision of the Commissioner in a contested case may seek judicial review of the decision. Judicial review of such a decision is under the substantial evidence rule.

Source Note: The provisions of this §105.16 adopted to be effective April 3, 2012, 37 TexReg 2165.

§105.17. Motion for Rehearing.

(a) **In general.** A timely motion for rehearing is a prerequisite to an appeal in a contested case except that a motion for rehearing of a decision or order that is final under the Act, Section 23-2.E, is not a prerequisite for appeal. Rather, a decision or order affirming or modifying an emergency order under the Act, Section 23-2.E, is immediately final and appealable.

(b) A party's motion for rehearing must be filed with the Securities Commissioner not later than the 20th day after the date on which the party or the party's attorney of record is notified of the Commissioner's decision or order on the Administrative Law Judge's Proposal for Decision in the manner prescribed by the

APA. A motion for rehearing must set forth the particular finding(s) of fact, conclusion(s) of law, ruling(s), or other action(s) which the complaining party asserts were in error, such as violation of a constitutional or statutory provision(s), lack of authority, unlawful procedure(s), lack of substantive evidence, abuse of discretion or other error(s) of law, or other good cause specifically described in the motion. In the absence of specific grounds in the motion, the Commissioner shall presume that the motion should be overruled.

(c) A reply to a motion for rehearing must be filed not later than the 30th day after the date on which the party or the party's attorney of record is notified of the Commissioner's decision or order on the Administrative Law Judge's Proposal for Decision in the manner prescribed by the APA.

(d) The Commissioner shall act on a motion for rehearing not later than the 45th day after the date on which the party or the party's attorney of record is notified of the Commissioner's decision or order on the Administrative Law Judge's Proposal for Decision in the manner prescribed by the APA or the motion for rehearing is overruled by operation of law.

(e) The Commissioner may by written order extend the time for filing a motion for rehearing, for filing a reply thereto, or for taking action in relation thereto under this section, except that an extension may not extend the period for action beyond the 90th day after the date on which the party or the party's attorney of record is notified of the Commissioner's decision or order on the Administrative Law Judge's Proposal for Decision in the manner prescribed by the APA.

(f) In the event of an extension, a motion for rehearing is overruled by operation of law on the date fixed by the order or, in the absence of a fixed date, 90 days after the date on which the party or the party's attorney of record is notified of the Commissioner's decision or order on the Administrative Law Judge's Proposal for Decision in the manner prescribed by the APA.

Source Note: The provisions of this §105.17 adopted to be effective April 3, 2012, 37 TexReg 2165.

§105.18. Board Action on Motion for Rehearing.

(a) The Board may determine to act in place of the Securities Commissioner in ruling on a Motion for Rehearing filed by a party in a contested case. The decision to take such action is within the sound discretion of the Board and is not mandated by any request or motion.

(b) Upon receipt of a timely filed Motion for Rehearing in a contested case, the Commissioner shall provide a copy of the Motion to each member of the Board. Thereafter, the Commissioner shall provide to each member of the Board any response filed by a party to the proceeding in support of, or opposition to, the Motion for Rehearing.

(c) If requested by a member of the Board, a meeting of the Board shall be held for the purpose of determining whether the Board should act in place of the Commissioner in ruling on the Motion for Rehearing and, if so, whether the order of the Commissioner should be vacated or modified or a new hearing should be held. The meeting and all deliberations by the Board on the Motion for Rehearing shall be conducted in accordance with the Texas Open Meetings Act.

(d) The Board may change a finding of fact or conclusion of law, or vacate or modify an order only as permitted by the APA.

Source Note: The provisions of this §105.18 adopted to be effective April 3, 2012, 37 TexReg 2165.

§105.19. Record.

(a) The record in a contested case includes the following:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings on them;

(5) proposed findings and exceptions;

(6) any decision, opinion, or report by the Administrative Law Judge at the hearing; and

(7) all briefs, memoranda, or data submitted to or considered by the Administrative Law Judge or by members of the agency who are involved in making the decision.

(b) In the event a final decision or order is appealed and the agency is required to transmit to the reviewing court a copy of the record of the administrative proceeding, or any part thereof, the appealing party shall pay all of the costs of the preparation of any original or certified copy of the record of the administrative proceeding that is required to be transmitted to the reviewing court. The charges imposed by this subsection will be the same as those charged by the agency for requests for photographic reproductions and certified copies of public records made pursuant to the provisions of the Public Information Act, Texas Government Code, Chapter 552. These charges are considered to be a court cost and may be assessed, all or in part, by the reviewing court in accordance with the Texas Rules of Civil Procedure.

Source Note: The provisions of this §105.19 adopted to be effective April 3, 2012, 37 TexReg 2165.

§105.20. Ex Parte Communications.

(a) Upon the issuance of a Notice of Hearing in a contested case and continuing until the Securities Commissioner's decision or order becomes final as described in §105.16 of this title (relating to Decisions; When Final), the Commissioner (or other person assigned to render a decision in a contested case) and members of the Board may not communicate directly or indirectly with any party or a representative of a party in a contested case in connection with any issue of fact or law in the proceeding except on notice and opportunity for all parties to participate. Prohibited ex parte communications shall not include any written

communication if the communicator contemporaneously serves copies of the communication on all parties to the proceeding.

(b) The Commissioner (or other person assigned to render a decision in a contested case) and members of the Board, individually, may communicate ex parte with employees of the Agency who have not participated in a hearing in the case in order to utilize special skills or knowledge of the Agency's employees in evaluating the evidence in the case.

Source Note: The provisions of this §105.20 adopted to be effective April 3, 2012, 37 TexReg 2165.

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TITLE 7 BANKING AND SECURITIES
PART 7 STATE SECURITIES BOARD

CHAPTER 106. GUIDELINES FOR THE ASSESSMENT OF ADMINISTRATIVE FINES.

§106.1. Guidelines for the Assessment of Administrative Fines.

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§106.1. Guidelines for the Assessment of Administrative Fines. For the purpose of determining the amount of an administrative fine assessed against a person or company under The Securities Act, §23-1, the Securities Commissioner shall consider the following factors:

(1) the seriousness, nature, circumstances, extent, and persistence of the conduct constituting the violation;

(2) the harm to other persons resulting either directly or indirectly from the violation;

(3) cooperation by the person or company in any inquiry conducted by the State Securities Board concerning the violation, efforts to prevent future occurrences of the violation, and efforts to mitigate the harm caused by the violation, including any restitution made to other persons injured by the acts of the person or company;

(4) the history of previous violations by the person or company;

(5) the need to deter the person, company or others from committing such violations in the future; and

(6) such other matters as justice may require.

Source Note: The provisions of this §106.1 adopted to be effective September 22, 1995, 20 TexReg 7187.

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CHAPTER 107. TERMINOLOGY.

§107.1. General.
§107.2. Definitions.

. . . . . .

§107.1. General. All of the terms used in these rules have the same meaning as defined in Section 4 of the Texas Securities Act. In addition, the board may from time to time define and interpret certain terms, whether or not used in the Act, insofar as the definition and interpretation are not inconsistent with the purpose fairly intended by the policy and provisions of the Act.

Source Note: The provisions of this §107.1 adopted to be effective January 1, 1976.

§107.2. Definitions. The following words and terms, when used in Part 7 of this title (relating to the State Securities Board), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act or Securities Act or Texas Securities Act--The Texas Securities Act, Texas Revised Civil Statutes, Article 581-1 et seq., as amended.

(2) Affiliate--An "affiliate" of, or person "affiliated" with a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

(3) APA or Administrative Procedure Act--The Administrative Procedure Act, Texas Government Code, Title 10, Chapter 2001, as amended.

(4) Applicant--A person who submits an application for registration of securities, documents in connection with the offer and sale of federal covered securities, or for registration as a dealer, agent, investment adviser, or investment adviser representative, or who files an application for an order of the Securities Commissioner.

(5) Board or Securities Board--The State Securities Board of the State of Texas.

(6) Certified--In conjunction with the term "financial statement(s)," means financial statement(s) prepared in accordance with generally accepted accounting principles and examined in accordance with generally accepted auditing standards by independent certified public accountants or independent public accountants for the purposes of expressing an opinion thereon. Such opinion shall be one acceptable to the Securities Commissioner.

(7) Code or Internal Revenue Code--The Internal Revenue Code of 1986, as amended.

(8) Commissioner or Securities Commissioner--The State Securities Commissioner for the State of Texas.

(9) Control--The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or company, whether through the ownership of voting securities, by contract, or otherwise.

(10) Credit union--For definition see the Texas Credit Union Act (Texas Finance Code, Chapter 121, as amended), which regulates such credit unions.

(11) Detailed balance sheet--A balance sheet.

(12) Detailed statement showing all assets and liabilities--A balance sheet.

(13) Domestic corporation--A corporation incorporated under the laws of the State of Texas.

(14) Federal covered investment adviser--An investment adviser who is registered under the Investment Advisers Act of 1940 (15 U.S.C. §80b-1 et seq.), as amended. A federal covered investment adviser is not required to be registered pursuant to the Texas Securities Act.

(15) Federal covered securities--Any security or securities described as a “covered security” or as “covered securities” in the Securities Act of 1933,Section 18(b), or rules or regulations promulgated thereunder.

(16) Financial statement(s)--Balance sheet and related statements of income, changes in stockholders' equity, and cash flows, all (consolidated, if applicable) prepared in accordance with generally accepted accounting principles. The information contained in the previously described statements may vary according to presentation and titles as they relate to specific entities, such as individuals, partnerships, and nonprofit organizations.

(17) Investment Advisers Act of 1940--The federal statute of that name, as amended, 15 United States Code §80b-1, et seq.

(18) Investment Company Act of 1940--The federal statute of that name, as amended, 15 United States Code §80a-1, et seq.

(19) License--The whole or part of any registration as a dealer, investment adviser, agent, or investment adviser representative, or similar form of permission required by the Texas Securities Act to sell securities or render investment advice.

(20) Licensing--The process respecting the granting, denial, renewal, revocation, suspension, withdrawal, or amendment of a license.

(21) Managing agent or manager--One who is authorized to act generally for an organization within a particular locality.

(22) FINRA--The Financial Industry Regulatory Authority, created through the consolidation of NASD and the member regulation, enforcement, and arbitration functions of the New York Stock Exchange.

(23) Officer--A president, vice president, secretary, treasurer, or principal financial officer, comptroller, or principal accounting officer, or any other person occupying a similar status or performing similar functions with respect to any organization or entity, whether incorporated or unincorporated.

(24) Operating statement--An income statement.

(25) Parent--A person controlling another person directly or indirectly.

(26) Profit and loss statement--An income statement.

(27) Proposed plan of business--As used in the Texas Securities Act, those aspects and only those aspects of the business set-up (other than that done or proposed in respect to the pricing and selling of its securities) which would materially affect the business relationship between the prospective investor and those in control of the business as such relationship would exist after the sale to the public of the securities sought to be registered.

(28) Regulatory standards--All standards coming within the meaning of "rule" as defined herein.

(29) Rendering services as an investment adviser--Any act by which investment advisory services are provided for compensation.

(30) Rule--Any statement by the Board or the Securities Commissioner of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the Board or Securities Commissioner.

(31) Savings and loan association--For definition see the Texas Savings and Loan Act (Texas Finance Code, Chapter 61, as amended), which regulates such savings and loan associations.

(32) SEC--The United States Securities and Exchange Commission.

(33) Securities Act of 1933--The federal statute of that name, as amended, 15 United States Code §77a, et seq.

(34) Securities Exchange Act of 1934--The federal statute of that name, as amended, 15 United States Code §78a, et seq.

(35) Staff--Personnel of the Securities Board, excluding the members of the Board, the Securities Commissioner, and the Deputy Commissioner.

(36) State, territory, or insular possession of the United States--As used in the Texas Securities Act, includes a commonwealth.

(37) Statement to reflect the financial condition--A balance sheet.

(38) Telephone or telegram--For purposes of the Texas Securities Act, Section 7.C(2)(c), includes any means of electronic transmission such as, but not limited to, telephone, telegraph, wireless, email, graphic scanning, modem, or facsimile; provided, however, that the office of the State Securities Board has the necessary equipment to accept such a transmission.

(39) Within this state–

(A) A person is a “dealer” who engages “within this state” in one or more of the activities set out in the Texas Securities Act, Section 4.C, if either the person or the person's agent is present in this state or the offeree/purchaser or the offeree/purchaser's agent is present in this state at the time of the particular activity. A person can be a dealer in more than one state at the same time.

(B) Likewise, a person is an “agent” who engages “within this state” in one or more of the activities set out in the Texas Securities Act, Section 4.D, whether by direct act or through subagents except as otherwise provided, if either the agent or the agent's subagent is present in this state or the offeree/purchaser or the offeree/purchaser's agent is present in this state at the time of the particular activity. A person can be an agent in more than one state at the same time.

(C) Offers and sales can be made by personal contact, mail, telegram, telephone, wireless, electronic communication, or any other form of oral or written communication.

(40) Accredited investors--Persons who are either individual accredited investors or institutional accredited investors as those terms are defined in this section.

(41) Individual accredited investor--Natural person as described in Rule 501(a)(5) and (6) promulgated by the SEC under the Securities Act of 1933 as made effective in SEC Release Number 33-6389, as amended in Release Numbers 33-6758, 33-6825, and 33-9287.

(42) Institutional accredited investor--An entity described in Rule 501(a)(1) - (4), (7) and (8) promulgated by the SEC under the Securities Act of 1933 as made effective in SEC Release Number 33-6389, as amended in Release Numbers 33-6758 and 33-6825.

(43) Form D--

(A) For paper filings--Form D, Notice of Exempt Offering of Securities, as effective on September 23, 2013 (referenced in 17 Code of Federal Regulations §239.500).

(B) For electronic filings made through the EFD System--The information, relating to a filing designated to be made in Texas, that is submitted through the EFD System in connection with a Form D filing made with the SEC. It includes all information made available to the Securities Commissioner through the EFD System in connection with the Texas filing.

(44) EFD System--The Electronic Filing Depository system provided by the North American Securities Administrators Association (NASAA) that is used for electronic filing of Form D with the Securities Commissioner.

Source Note: The provisions of this §107.2 adopted to be effective January 1, 1976; amended to be effective September 14, 1977, 2 TexReg 3338; amended to be effective September 6, 1979, 4 TexReg 3014; amended to be effective March 19, 1984, 9 TexReg 1436; amended to be effective June 1, 1984, 9 TexReg 2774; amended to be effective August 29, 1985, 10 TexReg 2999; amended to be effective October 30, 1985, 10 TexReg 4081; amended to be effective February 15, 1989, 14 TexReg 692; amended to be effective November 29, 1989, 14 TexReg 6075; amended to be effective March 17, 1994, 19 TexReg 1543; amended to be effective April 8, 1997, 22 TexReg 3216; amended to be effective August 21, 1997, 22 TexReg 7485; amended to be effective August 24, 1998, 23 TexReg 8667; amended to be effective August 12, 2001, 26 TexReg 5786; amended to be effective November 26, 2001, 26 TexReg 9578; amended to be effective June 12, 2002, 27 TexReg 4934; amended to be effective February 21, 2008, 33 TexReg 1319; amended to be effective June 21, 2011, 36 TexReg 3714; amended to be effective December 21, 2011, 36 TexReg 8505; amended to be effective June 13, 2012, 37 TexReg 4185; amended to be effective February 16, 2015, 40 TexReg 700.

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TITLE 7 BANKING AND SECURITIES
PART 7 STATE SECURITIES BOARD

CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION.

§109.1. Transactions Involving Existing Security Holders.
§109.2. Parent Subsidiary Transactions.
§109.3. Financial Institutions under the Texas Securities Act, Section 5.H.
§109.4. Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors.
§109.5. Dealer Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors.
§109.6. Investment Adviser Registration Exemption for Investment Advice to Financial Institutions and Certain Institutional Investors.
§109.7. Secondary Trading Exemption under the Texas Securities Act, Section 5.O.
§109.8. Initial Offering Completed.
§109.9. Reserved for Expansion.
§109.10. Reserved for Expansion.
§109.11. Guarantee of Options.
§109.12. Stock Dividends.
§109.13. Limited Offering Exemptions.
§109.14. Oil, Gas, and Other Mineral Interests.
§109.15. Designated Matching Services.
§109.16. Reserved for Expansion.
§109.17. Banks under the Securities Act, Section 5.L.

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For the most part, rules in Chapter 109 are captioned to correspond to the alphabetically lettered subsections under Section 5 of the Texas Securities Act. For example, §109.1, captioned "5.E" below, interprets Section 5.E of the Act, etc. Subsections for which there has been no policy or interpretation and for which there is no rule are captioned "No Rule."

5.A. No Rule
5.B. No Rule
5.C. No Rule
5.D. §109.12
5.E. §109.1
5.F. No Rule
5.G. §109.2
5.H. §§109.3-109.6
5.I. §109.13
5.J. No Rule
5.K. No Rule (See Note 1)
5.L. §109.17 (See Note 2)
5.M. No Rule (See Note 3)
5.N. No Rule

5.O.	*§109.7*
5.P.	*§109.8*
5.Q.	*§109.14*
5.R.	*No Rule*
5.S.	*§109.11*
5.T.	*Various*
5.U.	*No Rule*
Other	*§109.15*

Note 1 -- For guidelines setting forth minimum disclosure requirements of transactions exempt under Section 5.K of the Act, see Chapter 125.

Note 2 -- Section 89.005 of the Texas Finance Code exempts certain securities issued by savings and loan associations from the registration provisions of the Texas Securities Act under appropriate circumstances. Likewise, Section 149.002 of the Texas Finance Code exempts some securities of credit unions when sold under certain conditions. Section 31.007 of the Texas Finance Code also exempts sales of bank securities by bank employees in some instances. Additional exemptions relevant to savings banks and federal savings banks can be found in Section 119.007 of the Texas Finance Code.

Note 3 -- For the registration requirements applicable to securities sold by industrial development corporations and authorities, see Chapter 135.

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§109.1. Transactions Involving Existing Security Holders.

(a) Section 5.E of the Act includes any offer and any transaction pursuant to any offer by the issuer of its "securities" to any one or more of its "existing security holders" even though such offer or transaction does not relate to all existing holders of such securities or to all existing holders of a class or series thereof.

(b) "Existing security holder" within the context of section 5.E does not include the following:

(1) the holder of an option, whether transferable or nontransferable, issued by an entity other than the issuer of the security underlying the option;

(2) the holder of an account which is devoid of securities.

(c) An employee's activities such as mailing reports, dividend notices, and revised prospectuses do not constitute "soliciting" within the context of Section 5.E. Furthermore, if an employee's job is fully justifiable even without soliciting existing security holders, occasional solicitations of existing security holders in this state will not affect the availability of Section 5.E. However, if an employee's primary job is to solicit existing security holders in this state either on a full-time or part-time basis, Section 5.E is not available.

(d) Where an open-end investment company adopts a plan pursuant to Securities and Exchange Commission Rule 12b-1 (17 Code of Federal Regulations §270.12b-1) and funds are used to pay commissions or other remuneration for soliciting existing security holders in this state, Section 5.E is not available.

(e) Where an offering provides for a minimum investment and only a portion of such minimum is paid initially, Section 5.E is not available for payments made subsequently to meet the required minimum investment.

Source Note: The provisions of this §109.1 adopted to be effective January 1, 1976; amended to be effective May 17, 1976, 1 TexReg 1180; amended to be effective January 7, 1985, 9 TexReg 6472.

§109.2. Parent Subsidiary Transactions. Securities issued by a parent corporation for outstanding securities of a corporation in connection with a merger of such corporation into a wholly-owned or materially-owned (80%) subsidiary are exempt within the meaning of Section 5.G of the Act. The exemption also applies to the issuance of securities by the parent corporation in connection with a consolidation where the resulting new corporation is wholly-owned or materially-owned (80%) by the parent. Similarly, securities issued by a parent corporation for the purchase of assets for a wholly-owned or materially-owned (80%) subsidiary are exempt under Section 5.G.

Source Note: The provisions of this §109.2 adopted to be effective January 1, 1976; amended to be effective August 3, 1976, 1 TexReg 1999.

§109.3. Financial Institutions under the Texas Securities Act, Section 5.H. The term "savings institution," as used in the Texas Securities Act, Section 5.H, includes any federally chartered credit union, savings and loan association, or federal savings bank, and any credit union or savings and loan association chartered under the laws of any state of the United States.

Source Note: The provisions of this §109.3 adopted to be effective January 1, 1976; amended to be effective May 17, 1976, 1 TexReg 1181; amended to be effective November 6, 1980, 5 TexReg 4223; amended to be effective June 20, 1985, 10 TexReg 1863; amended to be effective February 19, 1991, 16 TexReg 669; amended to be effective August 23, 1991, 16 TexReg 4349; amended to be effective December 1, 1992, 17 TexReg 8163; amended to be effective May 24, 1993, 18 TexReg 3045; amended to be effective April 5, 1998, 23 TexReg 3431; amended to be effective July 14, 2005, 30 TexReg 3987.

§109.4. Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors.

(a) Availability. The exemption from securities registration provided by the Texas Securities Act, Section 5.H, or this section is not available if the financial institution or other institutional investor named therein is in fact acting only as agent for another purchaser that is not a financial institution or other institutional investor listed in Section 5.H or this section. These exemptions are available only if the financial institution or other institutional investor named therein is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the specific securities for which the seller is claiming the exemption.

(b) Sales to certain institutional investors. The State Securities Board, pursuant to the Act, Section 5.T, exempts from the securities registration requirements of the Act, Section 7, the offer and sale of any securities to any of the following persons:

(1) an "institutional accredited investor," as that term is defined in §107.2 of this title (relating to Definitions), excluding, however, any self-directed employee benefit plan with investment decisions made solely by persons that are "individual accredited investors" as defined in §107.2 of this title;

(2) any "qualified institutional buyer" (as that term is defined in Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as made effective in SEC Release Number 33-6862, and amended in Release Number 33-6963); and

(3) a corporation, partnership, trust, estate, or other entity (excluding individuals) having net worth of not less than $5 million, or a wholly-owned subsidiary of such entity, as long as the entity was not formed for the purpose of acquiring the specific securities.

(c) **Financial statements.** For purposes of determining a purchaser's total assets or net worth under this section, the issuer and the seller may rely upon the entity's most recent annual balance sheet or other financial statement which shall have been audited by an independent accountant or which shall have been verified by a principal of the purchaser.

Source Note: The provisions of this §109.4 adopted to be effective July 14, 2005, 30 TexReg 3987; amended to be effective June 21, 2011, 36 TexReg 3714.

§109.5. Dealer Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors.

(a) **Availability.** The exemption from dealer and agent registration provided by the Texas Securities Act, Section 5.H, or this section is not available if the financial institution or other institutional investor named therein is in fact acting only as agent for another purchaser that is not a financial institution or other institutional investor listed in Section 5.H or this section. These exemptions are available only if the financial institution or other institutional investor named therein is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the specific securities for which the dealer or agent is claiming the exemption.

(b) **Sales to certain institutional investors.** The State Securities Board, pursuant to the Act, Section 5.T and Section 12.C, exempts a person from the dealer and agent registration requirements of the Act, when the person sells or offers for sale any securities to any of the following persons:

(1) an "institutional accredited investor," as that term is defined in §107.2 of this title (relating to Definitions), excluding, however, any self-directed employee benefit plan with investment decisions made solely by persons that are "individual accredited investors" as defined in §107.2 of this title;

(2) any "qualified institutional buyer" (as that term is defined in Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as made effective in SEC Release Number 33-6862, and amended in Release Number 33-6963); and

(3) a corporation, partnership, trust, estate, or other entity (excluding individuals) having net worth of not less than $5 million, or a wholly-owned subsidiary of such entity, as long as the entity was not formed for the purpose of acquiring the specific securities.

(c) **Financial statements.** For purposes of determining a purchaser's total assets or net worth under this section, the issuer and the seller may rely upon the entity's most recent annual balance sheet or other financial statement which shall have been audited by an independent accountant or which shall have been verified by a principal of the purchaser.

Source Note: The provisions of this §109.5 adopted to be effective July 14, 2005, 30 TexReg 3987; amended to be effective June 21, 2011, 36 TexReg 3714.

§109.6. Investment Adviser Registration Exemption for Investment Advice to Financial Institutions and Certain Institutional Investors.

(a) **Availability.** The exemption from investment adviser and investment adviser representative registration provided by the Texas Securities Act, Section 5.H, or this section is not available if the financial institution or other institutional investor named therein is in fact acting only as agent for another purchaser that is not a financial institution or other institutional investor listed in Section 5.H or this section. These exemptions are available only if the financial institution or other institutional investor named therein is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the investment advisory services for which the investment adviser or investment adviser representative is claiming the exemption. For purposes of this section, an investment adviser or investment adviser representative that is providing investment advisory services to a corporation, general partnership, limited partnership, limited liability company, trust or other legal entity, other than a private fund (as that term is defined in §139.23 of this title (relating to Registration Exemption for Investment Advisers to Private Funds)), is not providing investment advisory services to a shareholder, general partner, member, other security holder, beneficiary or other beneficial owner of the legal entity unless the investment adviser provides investment advisory services to such owner separate and apart from the investment advisory services provided to the legal entity.

(b) **Investment advice rendered to certain institutional investors.** The State Securities Board, pursuant to the Act, Section 5.T and Section 12.C, exempts from the investment adviser and investment adviser representative registration requirements of the Act, persons who render investment advisory services to any of the following:

(1) an "accredited investor" (as that term is defined in Rule 501(a)(1)-(3), (7), and (8) promulgated by the Securities and Exchange Commission (SEC) under the Securities Act of 1933, as amended (1933 Act), as made effective in SEC Release Number 33-6389, as amended in Release Numbers 33-6437, 33-6663, 33-6758, and 33-6825);

(2) any "qualified institutional buyer" (as that term is defined in Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as made effective in SEC Release Number 33-6862, and amended in Release Number 33-6963); and

(3) a corporation, partnership, trust, estate, or other entity (excluding individuals) having net worth of not less than $5 million, or a wholly-owned subsidiary of such entity.

(c) **Exclusions from exemption.** There is no exemption under this section for an investment adviser providing investment advisory services to a natural person. A private fund adviser, as that term is

defined in §139.23 of this title (relating to Registration Exemption for Investment Advisers to Private Funds), may not rely on this exemption except as provided in subsection (e) of this section.

(d) **Financial statements.** For purposes of determining an institutional investor's total assets or net worth under this section, an investment adviser or investment adviser representative may rely upon the entity's most recent annual balance sheet or other financial statement which shall have been audited by an independent accountant or which shall have been verified by a principal of the institutional investor.

(e) **Grandfathering.** An investment adviser to a private fund, as that term is defined in §139.23 of this title (relating to Registration Exemption for Investment Advisers to Private Funds), may nonetheless qualify for the exemption described in subsection (b) of this section if:

(1) the private fund existed prior to March 31, 2014;

(2) the investment adviser qualified for the exemption in subsection (b) of this section as modified by subsection (c) of this section as both subsections existed prior to March 31, 2014; and

(3) as of March 31, 2014, the private fund ceases to accept new beneficial owners.

Source Note: The provisions of this §109.6 adopted to be effective July 14, 2005, 30 TexReg 3987; amended to be effective March 31, 2014, 39 TexReg 491.

§109.7. Secondary Trading Exemption under the Texas Securities Act, Section 5.O.

(a) When a withdrawal of an application for registration of securities is allowed and thereafter the applicant files for a secondary trading exemption under the Act, Section 5.O, the Commissioner may, without a hearing, revoke or suspend the Section 5.O exemption. The applicant may either accept such action of the Commissioner or request a hearing under the Act, Section 24.

(b) The language, ". . . at prices reasonably related to the current market price of such securities at the time of such sale," means that the market price of the security in the existing secondary market must have a basis supported by a substantial volume of bona fide sales transactions within or without this state. In the absence of a going market or where there have been only casual transactions, it shall be incumbent on the person filing the Section 5.O exemption notice to prove to the Commissioner that the securities will have a market price which has been fairly determined and justified at inception with reasonable assurance of continuity of the market into the future, pursuant to which the following criteria will be considered:

(1) the nature and extent of the business operations of the issuer and its predecessor, if any, and the period of time during which the issuer and its predecessor, if any, has been continuously engaged in business;

(2) the net asset value of the stock per share;

(3) if there is a record of earnings for the issuer, the value per share of the stock based upon a reasonable times-earnings factor (setting out the factor used) related to the industry represented by the issuer;

(4) if the value per share of the stock on any other basis has been fully justified;

(5) if the issuer undertakes to furnish to its shareholders and dealers deemed likely to trade the securities of the issuer, financial statements for the three most recent fiscal years ending as of the balance sheet date (or for the period of existence if less than three years) and annual financial statements thereafter for so long as the exemption is maintained by filing statements with the Commissioner;

(6) whether a registered Texas securities dealer who is financially able has made a written undertaking setting out:

(A) his willingness to make a market in the issue of securities;

(B) the price at which he will begin the market; and

(C) the procedures which he intends to follow for the purpose of assuring an orderly market; and

(7) supplementary data to assist in determining the character of the share distribution and the number of publicly-held shares shall be as follows:

(A) identification of 10 largest holders of record, including beneficial owners (if known) of holdings of record by nominees;

(B) list of holdings of 1,000 shares or more in the names of registered dealers and unregistered out-of-state dealers;

(C) number of transfers and shares transferred during the last two years (or period of existence of the issuer, if shorter);

(D) summary, by principal groups, of stock owned or controlled by:

(i) officers or directors and their immediate families; or

(ii) other concentrated holdings of 10% or more;

(E) estimates of number of nonofficer employees owning stock and the total shares held;

(F) company shares held in profit-sharing, savings, pension, or other similar funds or trusts established for the benefit of officers or employees; and

(G) number of round-lot and number of odd-lot holders of record and aggregate numbers of shares so held.

(c) Sales of securities pursuant to the Securities Act, Section 5.O, may be made by or through securities dealers acting either as principal or agent in the transaction for which the exemption is claimed.

(d) Financial information required pursuant to the Act, Section 5.O(9)(b) and (c) must be prepared as certified financial statements (consolidated, if applicable) and shall include a balance sheet as of a date within 18 months of the date of such sale and the related statements of income, changes in stockholders' equity, and changes in financial position for the three most recent fiscal years ending as of the balance sheet date, or for the period of the issuer's existence, if less than three years. Such financial statements should disclose dividends paid or declared by each class of stock, for each period for which an income statement is presented.

(e) The term "recognized securities manual" used in the Texas Securities Act, Section 5.O(9)(c), is limited to the following and includes any electronic publication format that is as readily available to the general public as the printed version, including, without limitation, CD-Rom and electronic dissemination over the Internet:

(1) S&P Capital IQ Standard Corporation Descriptions (including the Daily News Section);

(2) Best's Insurance Reports Life-Health;

(3) Mergent's Bank and Finance Manual and News Reports;

(4) Mergent's Industrial Manual and News Reports;

(5) Mergent's Public Utility Manual and News Reports;

(6) Mergent's Transportation Manual and News Reports;

(7) Mergent's Municipal and Government Manual and News Reports;

(8) Mergent's International Manual and News Reports; and

(9) Mergent's OTC Industrial Manual and News Reports, provided however, that Mergent's OTC Industrial News Reports are recognized solely for the purpose of updating a current listing in the OTC Industrial Manual. A registered dealer who, between the date of the last publication of Mergent's OTC Industrial Manual and the effective date of this rule, relies upon a listing in the Mergent's OTC Industrial News Reports to comply with Section 5.O of the Act may continue to rely upon such listing until the publication date of the next Mergent's OTC Industrial Manual, which follows the effective date of this rule.

(f) The secondary trading exemption under the Act, Section 5.O, is not available for the securities of an issuer formed in a manner that constitutes part of a scheme to violate or evade the securities registration provisions of the Act. Depending upon all the facts and circumstances, such a scheme may include the merger of a private corporation with a corporation which has no substantive operations or assets ("shell corporation") when as a result of the merger trading in the secondary market of the shares of the post-merger corporation may be at prices which bear no relationship to the underlying financial condition or operations of the post-merger corporation, and such trading may occur within two years of the date of such merger.

Source Note: The provisions of this §109.7 adopted to be effective January 1, 1976; amended to be effective May 11, 1979, 4 TexReg 1543; amended to be effective September 6, 1979, 4 TexReg 3015; amended to be

effective December 30, 1983, 8 TexReg 5276; amended to be effective February 15, 1989, 14 TexReg 693; amended to be effective November 29, 1989, 14 TexReg 6076; amended to be effective December 3, 2000, 25 TexReg 11645; amended to be effective June 19, 2013, 38 TexReg 3779.

§109.8. Initial Offering Completed. The phrase "initial offering of such securities has been completed," used in section 5.P of the Act, means that any nonexempt public distribution of such securities has been completely sold to the public.

Source Note: The provisions of this §109.8 adopted to be effective January 1, 1976.

§109.9. Reserved for Expansion.

§109.10. Reserved for Expansion.

§109.11. Guarantee of Options.

(a) The broker-dealer guaranteeing the performance of the terms of the option must, on the date of the transaction, either be a member of the New York Stock Exchange or have stockholders' equity or partners' capital, according to generally accepted accounting principles, in excess of $1 million.

(b) A broker-dealer shall not:

(1) write call options for its account to its customers unless performance of the call option is guaranteed by the ownership by such broker-dealer of shares of the underlying security free of encumbrances sufficient to fully perform the terms of the option; or

(2) write put options for its account to its customers unless performance of the put option is guaranteed by sufficient unencumbered liquid net assets of the broker-dealer to fully perform the terms of the option.

(c) The guarantee must be full and unconditional and must be maintained throughout the term of the option.

(d) In lieu of the three requirements in subsections (a)-(c) of this section, the section 5.S(1) guarantee requirements will be satisfied if the option is issued by a clearing corporation recognized by the State Securities Board as satisfying all the following standards.

(1) Performance of the option issued by the clearing corporation is guaranteed by the clearing corporation and by broker-dealers which are members of the issuing clearing corporation.

(2) Every broker-dealer which is a member of the clearing corporation must be registered under the Federal Securities Exchange Act of 1934, as amended.

(3) The clearing corporation must be registered as a national clearing agency under the Securities Exchange Act of 1934, as amended, and must file with the commissioner a copy of the prospectus respecting such option currently being delivered pursuant to the requirements of the Securities Act of 1933, as amended, and further must agree to promptly file with the commissioner a copy of any amendments of such prospectus.

(4) The option must either be "covered" and the underlying security on deposit with the clearing corporation or the clearing corporation must maintain adequate reserve funds and guarantee system to reasonably assure performance of the option.

(5) Any other conditions the State Securities Board deems necessary to adequately protect the investing public.

(e) Application for recognition by the State Securities Board may be made by any organized options clearing corporation. Clearing corporations recognized by the State Securities Board are: Options Clearing Corporation; Chicago, Illinois.

Source Note: The provisions of this §109.11 adopted to be effective January 1, 1976; amended to be effective August 3, 1976, 1 TexReg 2000.

§109.12. Stock Dividends. The distribution by a corporation of securities direct to its stockholders as a stock dividend or other distribution paid out of earnings or surplus includes a stock dividend, stock split, reverse stock split, or other distribution out of paid-in capital (capital in excess of legal capital) or retained earnings.

Source Note: The provisions of this §109.12 adopted to be effective September 6, 1979, 4 TexReg 3015.

§109.13. Limited Offering Exemptions.

(a) Public solicitation, well-informed, and sophisticated investor. The offer for sale or sale of the securities of the issuer would not involve the use of public solicitation under the Act, Section 5.I, if the issuer, after having made a reasonable factual inquiry has reasonable cause to believe, and does believe, that the purchasers of the securities are sophisticated, well-informed investors or well-informed investors who have a relationship with the issuer or its principals, executive officers, or directors evincing trust between the parties (namely close business association, close friendship, or close family ties), and such purchasers acquire the securities as ultimate purchasers and not as underwriters or conduits to other beneficial owners or subsequent purchasers. The use of a registered dealer in a sale otherwise meeting the requirements of Section 5.I does not necessarily mean that the transaction involves the use of public solicitation. The offer without advertising to a person who did not come within the class of persons described in this subsection does not alone result in public solicitation if the issuer had a reasonable cause to believe and did believe that such person fell within the class of persons described, and that such offer was not made indiscriminately.

(1) The term "well-informed" could be satisfied through the dissemination of printed material to each purchaser prior to his or her purchase, which by a fair and factual presentation discloses the plan of business, the history, and the financial statements of the issuer, including material facts necessary in order that the statements made, in the light of circumstances under which they are made, not be misleading.

(2) In determining who is a sophisticated investor at least the following factors should be considered.

(A) The financial capacity of the investor, to be of such proportion that the total cost of that investor's commitment in the proposed investment would not be material when compared with his total financial capacity. It may be presumed that if the investment does not exceed 20% of the investor's net worth (or joint net worth with the investor's spouse) at the time of sale that the amount invested is not material.

(B) Knowledge of finance, securities, and investments, generally. This criteria may be met by the investor's purchaser representative if such purchaser representative has such knowledge, so long as such purchaser representative:

(i) has no business relationship with the issuer;

(ii) represents only the investor and not the issuer; and

(iii) is compensated only by the investor.

(C) Experience and skill in investments based on actual participation. This criteria may be met by the investor's purchaser representative if such purchaser representative has such experience and skill, so long as such purchaser representative:

(i) has no business relationship with the issuer;

(ii) represents only the investor and not the issuer; and

(iii) is compensated only by the investor.

(b) Advertisements. The term "advertisements" does not include the use of the type of printed material as set out in subsection (a) of this section under the discussion of the term "well-informed." Further, the main concept to be considered in a definitional analysis of the term "advertisements," as it is used in Section 5.I, is the method of use of the printed material. The following circumstances, though not intended to be exclusive, will be considered in determining whether the method of use of any printed material is within the limits of Section 5.I:

(1) limited printing of the material;

(2) limited distribution of the material only to persons who the issuer, after having made a reasonable factual inquiry has reasonable cause to believe and does believe are sophisticated investors, or to persons who have a relationship with the issuer as set forth in subsection (a) of this section, or to their purchaser representatives;

(3) control of the printing and distribution of the printed material;

(4) recognition of the necessity of compliance with the requirements set forth in this subsection on the part of the issuer and the investor. Such recognition might consist of a printed prohibition on

the front in large type that the circular is for that individual's confidential use only, and may not be reproduced; and, the use of a statement warning that any action contrary to these restrictions may place such individual and the issuer in violation of the Texas Securities Act.

(c) **Number of security holders or purchasers of securities.** In computing the number of purchasers or security holders for Section 5.I, the following criteria shall be used.

(1) There shall be counted as one purchaser or security holder any purchaser or security holder together with:

(A) any relative or spouse of such purchaser or security holder who has the same home as such purchaser or security holder; any relative of such spouse who has the same home as such purchaser or security holder; any relative or spouse or relative of such spouse who is a dependent of such security holder;

(B) any trust or estate in which such purchaser or security holder or any of the persons related to him as specified in subparagraph (A) or (C) of this paragraph collectively have more than 50% of the beneficial interest (excluding contingent interests); and

(C) any corporation or other organization of which such purchaser or security holder or any of the persons related to him as specified in subparagraph (A) or subparagraph (B) of this paragraph collectively are the beneficial owners of more than 50% of the equity securities (excluding directors' qualified shares) or equity interest.

(2) There shall be counted as one purchaser or security holder any corporation, partnership, association, joint stock company, trust, or unincorporated association, organized and existing other than for the purpose of acquiring securities of the issuer for which the exemption is claimed under Section 5.I.

(3) Any general partner of a limited partnership who is subject to general liability for the obligations of the limited partnership and actively engages in the control and management of the business and affairs of the limited partnership or of the managing general partner of the partnership shall not be counted as a purchaser or security holder for purposes of Section 5.I.

(4) The exemptions contained in the Act, Section 5.I(a) and (c), as interpreted in subsections (a) - (j) of this section may not be combined with the exemptions promulgated pursuant to the Act, Section 5.T, contained in subsections (k) and (l) of this section to exceed sales to 35 unaccredited investors in a 12-month period.

(5) "Security holders" or "purchasers of securities," as those terms are used in the Act, Section 5.I(a) and 5.I(c), do not include holders of any options granted pursuant to a plan that falls within the exemption for compensatory or benefit plans provided by the Act, Section 5.I(b).

(d) **Total number of security holders.** The phrase "the total number of security holders of the issuer" in Section 5.I(a) includes all security holders of the issuer without regard to their places of residence (within or without the State of Texas) and without regard to where they acquired the securities. In determining the number of persons for purposes of Section 5.I(c), prior sales to persons residing outside the State of Texas

and prior sales to Texas residents consummated outside the State of Texas shall be included unless such sales were made in compliance with §139.7 of this title (relating to Sale of Securities to Nonresidents).

(e) Other exemptions. The phrase "exempt under other provisions of this Section 5" in Section 5.I(c) means exempt under any provisions of the Act, other than Section 5.I(a), and subsections (k) and (l) of this section.

(f) Compensatory or benefit plans.

(1) No public solicitation or advertisement under Section 5.I occurs by the distribution to eligible persons of a prospectus filed under the Securities Act of 1933 with the Securities and Exchange Commission for the plan or any other material required or permitted to be distributed by the Securities Act of 1933 in connection with such plan when the securities under the plan are sold or distributed in a transaction otherwise meeting the requirements of Section 5.I(b).

(2) Insurance agents who are exclusive agents of the issuer or its subsidiary or derive more than 50% of their annual income from the issuer or its subsidiary are deemed "employees" as that term is used in Section 5.I(b).

(g) Compensatory or benefit plan sales. Only the employer and its participating subsidiaries, parents, or subsidiaries of such parents, if any, may offer or sell securities in connection with the employee plan without registration as dealers. For purposes of the Act, Section 5.I(b), the term "issuer" includes a general partner of a limited partnership with respect to a security sold or distributed by such limited partnership in a transaction otherwise meeting the requirements of Section 5.I(b). An employee of the issuer or its participating subsidiary who aids in offering or selling such securities in connection with the plan is not required to be registered as an agent provided the employee meets all of the following conditions:

(1) the employee was not hired for the purpose of offering or selling such securities;

(2) the employee's activity involving the offer and sale of such securities is strictly incidental to his or her bona fide primary nonsecurities-related work duties; and

(3) the employee's compensation is based solely on the performance of such other duties, i.e., the employee does not receive any compensation for offering for sale, selling, or otherwise aiding the sale of securities.

(h) Compensatory or benefit plans for counting purposes. A noncontributory stock ownership plan or stock ownership trust that holds securities of the issuer for the benefit of the participants in that issuer's plan shall be counted as one security holder under Section 5.I(a). Plan participants in such a stock ownership plan or trust will not be deemed security holders of the issuer for purposes of counting security holders under Section 5.I(a) solely because of their participation in the plan or trust. However, participants receiving distributions of securities from the plan or trust will be deemed security holders of the issuer on receipt of securities of the issuer from the plan or trust.

(i) Notices. There is no notice filing requirement for sales made under the Act, Section 5.I(a), (b), or (c).

(j) **Limitations on disposition.** The issuer and any person acting on its behalf shall exercise reasonable care to assure that the purchasers are acquiring the securities as an investment. Such reasonable care should include, but not be limited to, the following:

(1) making reasonable inquiry to determine if the purchaser is acquiring the securities for his or her own account or on behalf of other persons;

(2) placing a legend on the certificate or other document evidencing the securities to the effect that the securities have not been registered under any securities law and setting forth or referring to the restrictions on transferability and sale of the securities;

(3) issuing stop transfer instructions to the issuer's transfer agent, if any, with respect to the securities, or, if the issuer transfers its own securities, making a notation in the appropriate records of the issuer;

(4) obtaining from the purchaser a signed written agreement to the effect that the securities will not be sold without registration under applicable securities laws or exemptions therefrom; and

(5) prior to sale, written disclosure to each purchaser, to the effect that a purchaser of the securities must bear the economic risk of the investment for an indefinite period of time because the securities have not been registered under applicable securities laws and therefore cannot be sold unless they are subsequently registered under such securities laws or an exemption from such registration is available; and that the securities are subject to the limitations set forth in paragraphs (2) - (4) of this subsection.

(k) **Uniform limited offering exemption.** In addition to sales made under the Texas Securities Act, Section 5.I, the State Securities Board, pursuant to the Act, Section 5.T, exempts from the registration requirements of the Act, Section 7, any offer or sale of securities offered or sold in compliance with the Securities Act of 1933, Regulation D, Rules 230.505 and/or 230.506, including any offer or sale made exempt by application of Rule 508(a), as made effective in United States Securities and Exchange Commission Release Number 33-6389 and as amended in Release Numbers 33-6437, 33-6663, 33-6758, 33-6825, 33-6863, 33-6902, 33-6949, 33-6996, 33-7470, 33-8876, 33-8891, 33-9414, and 33-9415, and as adjusted by The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, and which satisfies the following further conditions and limitations.

(1) No commission, fee, or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless such person is appropriately registered in this state. It is a defense to a violation of this subsection if the issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee, or other remuneration was not appropriately registered in this state.

(2) No exemption under this subsection shall be available for the securities of any issuer if any of the parties described in the Securities Act of 1933, Regulation A, Rule 230.262, as made effective in United States Securities and Exchange Commission Release Number 33-6949:

(A) has filed a registration statement which is subject of a currently effective registration stop order entered pursuant to any state's securities law within five years prior to the filing of the notice required under this exemption;

(B) has been convicted within five years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(C) is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the filing of the notice required under this exemption or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the notice required under this exemption;

(D) is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities;

(E) is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminary restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the notice required under this exemption.

(3) The prohibitions of paragraph (2)(A) - (C) and (E) of this subsection shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the broker/dealer employing such party is licensed or registered in this state and the Form BD filed with this state discloses the order, conviction, judgment, or decree relating to such person. No person disqualified under this subsection may act in a capacity other than that for which the person is licensed or registered.

(4) Any disqualification caused by this subsection is automatically waived if the state securities administrator or Agency of the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied. It is a defense to a violation of this subsection if the issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that a disqualification under this subsection existed.

(5) The issuer shall file with the Securities Commissioner a notice on Form D.

(A) The notice shall be filed no later than 15 days after the receipt of consideration or the delivery of a subscription agreement by an investor in this state which results from an offer being made in reliance upon this exemption and at such other times and in the form required under Regulation D, Rule 230.503 to be filed with the Securities and Exchange Commission.

(B) The notice shall contain an undertaking by the issuer to furnish to the Securities Commissioner, upon written request, the information furnished by the issuer to offerees.

(C) Every person filing the initial notice on Form D shall pay a filing fee of 1/10 of 1.0% of the aggregate amount of securities described as being offered for sale, but in no case more than $500.

(D) The filing of Form D and the payment of the filing fee must be made electronically through the EFD System, when such system becomes available.

(6) In all sales to nonaccredited investors in this state, one of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one of the following conditions is satisfied.

(A) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation, and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed 10% of the investor's net worth, it is suitable.

(B) The purchaser either alone or with his/her purchaser representative(s) has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risks of the prospective investment.

(7) A failure to comply with a term, condition, or requirement of paragraphs (1) and (6) of this subsection will not result in loss of the exemption from the requirements of the Act, Section 7, for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

(A) the failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity; and

(B) the failure to comply was insignificant with respect to the offering as a whole; and

(C) a good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of paragraphs (1) and (6) of this subsection.

(8) Sales made pursuant to this subsection to nonaccredited investors must comply with the disclosure requirements of subsection (a)(1) of this section.

(9) Transactions which are exempt under this subsection may not be combined with offers and sales exempt under any other rule or section of the Act; however, nothing in this limitation shall act as an election. Should for any reason, the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

(10) The Securities Commissioner may, by rule or order, increase the number of purchasers or waive other conditions of this exemption.

(11) This limited offering transactional exemption is designed to further the objectives of compatibility with federal exemptions and uniformity among the states.

(12) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of the Texas Securities Act.

(13) In view of the objective of this subsection and the purposes and policies underlying the Texas Securities Act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this subsection, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this subsection.

(14) Nothing in this subsection is intended to relieve registered dealers, salesmen, or agents from the due diligence, suitability, or know your customer standards or any other requirements of law otherwise applicable to such registered persons.

(15) Review of Form D.

(A) The staff of the State Securities Board will review all notice filings made under this subsection for completeness of the information required to be filed under this section. If the staff determines that a filing is incomplete in any material respect, the staff will within five days of receipt of the form issue a letter notifying the user of the form of the deficiency.

(B) A user of this section who receives notice from the staff of a deficiency in a form filed under this section may correct the deficiency within 30 days of the date that the deficiency letter is issued by the staff. If a timely correction is made, the filing shall be deemed to be complete and in compliance with the filing requirements as of the date the original filing was received.

(C) In order to assist voluntary compliance within this subsection and to aid users in filing notices required under paragraph (5) of this subsection, the staff of the State Securities Board is available to answer questions about this regulation. Inquiries should be addressed to the Director of the Registration Division.

(16) If the securities comply with this subsection (except for paragraphs (1) - (6), (8), and (10) of this subsection) and are federal covered securities, as that term is defined in §107.2 of this title (relating to Definitions), the issuer should refer to Chapter 114 of this title (relating to Federal Covered Securities) for the applicable filing and fee requirements. (Issuers are advised of their obligation to comply with the dealer and agent registration requirements of the Texas Securities Act and Board rules. See §114.4(g) of this title (relating to Filings and Fees).)

(17) Issuers in Regulation D offerings. When an offering is made in compliance with Regulation D of the SEC and the offering will be made by or through a registered securities dealer, the issuer and its directors, officers, agents, and employees may make themselves available to answer questions from offerees, as required by Rule 502(b)(2)(v) of Regulation D, without being required to register as securities dealers or agents under the Act, Section 12.

(l) Intrastate limited offering exemption. In addition to sales made under the Texas Securities Act, Section 5.I, the State Securities Board, pursuant to the Act, Section 5.T, exempts from the registration requirements of the Act, Section 7, any offer or sale of any securities by the issuer itself, or by a registered dealer acting as agent for the issuer provided all offers and sales are made pursuant to an offering

made and completed solely within this state and all the conditions in paragraphs (1) - (11) of this subsection are satisfied.

(1) The sale is made, without the use of any public solicitation or advertisements, as set forth in subsection (a) and subsection (b) of this section to:

(A) not more than 35 new security holders of the issuer who meet the criteria stated in subsection (a) of this section and who became security holders during the period of 12 months ending with the date of the sale in question (subject to paragraph (7) of this subsection); and

(B) other well-informed investors who are "accredited investors" as defined in §107.2 of this title (relating to Definitions). (For purposes of this subsection, the term "well informed" shall have the same meaning as set out in subsection (a)(1) of this section, and the term "5.I" in such subsection shall include sales made pursuant to this subsection.)

(2) Neither the issuer nor the registered dealer (as such terms are defined in paragraph (4) of this subsection):

(A) is currently subject to any administrative order issued by state or federal authorities within five years of the expected offer and sale of securities in reliance upon this exemption, which order:

(i) is based upon a finding that such person has engaged in fraudulent conduct; or

(ii) has the effect of enjoining such person from activities subject to federal or state statutes designed to protect investors or consumers against unlawful or deceptive practices involving securities, insurance, commodities or commodity futures, real estate, franchises, business opportunities, consumer goods, or other goods and services;

(B) has been convicted within five years prior to commencement of the offering of any felony or misdemeanor of which fraud is an essential element, or which is a violation of the securities laws or regulations of this state, or of any other state of the United States, or of the United States, or any foreign jurisdiction; or which is a crime involving moral turpitude; or which is a criminal violation of statutes designed to protect consumers against unlawful practices involving insurance, securities, commodities or commodity futures, real estate, franchises, business opportunities, consumer goods, or other goods and services;

(C) is subject to any order, judgment, or decree entered within five years prior to commencement of the offering by any court of competent jurisdiction which temporarily or permanently restrains or enjoins such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving any false filing with any state; or which restrains or enjoins such person from activities subject to federal or state statutes designed to protect consumers against unlawful or deceptive practices involving insurance, commodities or commodity futures, real estate, franchises, business opportunities, consumer goods, or other goods and services.

(3) The prohibitions of subparagraphs (A) - (C) of paragraph (2) shall not apply if the party subject to the disqualifying order is duly licensed to conduct securities-related business in the state in which the administrative order or judgment was entered against such party or, if the order or judgment was entered by federal authorities, the prohibitions of subparagraphs (A) - (C) of paragraph (2) shall not apply if the party subject to the disqualifying order is duly licensed to conduct securities-related business by the Securities and Exchange Commission. Any disqualification caused by paragraph (2) is automatically waived if the state or federal authorities which created the basis for disqualification determine upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(4) For purposes of paragraphs (2) and (3) only, "issuer" includes any directors, executive officers, general partners, or beneficial owners of 10% or more of any class of its equity securities (beneficial ownership meaning the power to vote or direct the vote and/or the power to dispose or direct the disposition of such securities), and "registered dealer" shall include any partners, directors, executive officers, or beneficial owner of 10% or more of any class of the equity securities of the registered dealer (beneficial ownership meaning the power to vote or direct the vote and/or the power to dispose or direct the disposition of such securities).

(5) Upon application, and for good cause shown, the Commissioner may waive a disqualification contained in paragraph (2).

(6) The offering complies with subsections (a) - (d) and (j) of this section. However, persons who are "accredited investors" as defined in §107.2 of this title are deemed to be "sophisticated" as defined in subsection (a)(2) of this section.

(7) This subsection may not be combined with the Securities Act, Section 5.I(a) or Section 5.I(c), or subsection (k) of this section to make sales to more than 35 unaccredited security holders during a 12-month period. Except for accredited investors who became security holders pursuant to this subsection, security holders who purchase in sales made in compliance with this subsection are included in the count of security holders under Section 5.I(a) or purchasers under Section 5.I(c), but this subsection may be used to exceed the numbers of security holders or purchasers allowed by such sections over an extended period of time.

(8) Issuers who offer and sell securities under this subsection only through a securities dealer registered in Texas may do so without filing any notice with the State Securities Board.

(9) Notice filing requirements.

(A) An issuer who is not a registered securities dealer and who does not sell securities by or through a registered securities dealer shall file a sworn notice on Form 133.29 not less than 10 business days before any sale claimed to be exempt under this subsection may be consummated for sales under paragraph (1)(B) of this subsection, in whole or in part to individual accredited investors, as defined in §107.2 of this title.

(B) For the purpose of filing Form 133.29, "business days" means ordinary business days and does not include Saturdays, Sundays, or state holidays.

(C) No notice is required for sales made under paragraph (1)(A) of this subsection or under paragraph (1)(B) of this subsection where the sales are made exclusively to institutional accredited investors as defined in §107.2 of this title.

(D) The issuer may be required by the Securities Commissioner to give details concerning any information requested in Form 133.29 and may be required to furnish any additional information deemed necessary by the Securities Commissioner to determine the issuer's business repute and qualifications.

(E) Every issuer filing a notice on Form 133.29 shall pay a filing fee of 1/10 of 1.0% of the aggregate amount of securities described as being offered for sale, but in no case more than $500.

(10) Accredited investor security holders who purchase in sales made under this exemption are not counted as security holders under Section 5.I(a) or purchasers under Section 5.I(c) in determining whether any other sales to other security holders or purchasers are exempt under Section 5.I. That is to say, this exemption for sales to accredited investors is cumulative with and in addition to the exemptions contained in Section 5.I, and sales made under paragraph (1)(B) of this subsection are not considered in determining whether sales made in reliance on the exemptions contained in Section 5.I would be within the numerical limits on the number of security holders or purchasers contained in Section 5.I.

(11) "Accredited investor" is defined in §107.2 of this title and for purposes of this subsection, includes any person who the issuer reasonably believes comes within that definition at the time of the sale of the securities to that person.

Source Note: The provisions of this §109.13 adopted to be effective March 1, 1985, 10 TexReg 569; amended to be effective August 29, 1985, 10 TexReg 2999; amended to be effective April 8, 1986, 11 TexReg 1508; amended to be effective March 10, 1987, 12 TexReg 601; amended to be effective January 1, 1988, TexReg 4470; amended to be effective October 31, 1988, 13 TexReg 4851; amended to be effective November 29, 1989, 14 TexReg 6076; amended to be effective November 15, 1990, 15 TexReg 6290; amended to be effective June 8, 1994, 19 TexReg 4195; amended to be effective August 3, 1995, 20 TexReg 5381; amended to be effective April 8, 1997, 22 TexReg 3218; amended to be effective March14, 1999, 24 TexReg 1769; amended to be effective August 12, 2001, 26 TexReg 5788; amended to be effective June 12, 2002, 27 TexReg 4934; amended to be effective June 21, 2011, 36 TexReg 3715; amended to be effective February 5, 2014, 39 TexReg 492.

§109.14. Oil, Gas, and Other Mineral Interests.

(a) It is the intent of the State Securities Board that §109.13(a)-(c) and (j) of this title (relating to Limited Offering Exemptions) apply to transactions made pursuant to the Securities Act, Section 5.Q, and that the terms defined in §109.13(a)-(c) and (j) of this title (relating to Limited Offering Exemptions) have the same meanings for purposes of Section 5.Q as they do for the Securities Act, Section 5.I.

(b) For the purposes of Section 5.Q, an employee of the owner of an oil, gas, or mineral lease, fee, or title may aid such owner/employer in selling interests in such lease, fee, or title and will not be considered an agent required to be licensed under the Act provided all the following conditions are satisfied:

(1) the employee was not hired for the purpose of offering or selling such securities;

(2) the employee's activity involving the offer and sale of such securities is strictly incidental to his bona fide primary nonsecurities-related work duties; and

(3) the employee's compensation is based solely on the performance of such other duties, i.e., the employee does not receive any compensation for offering for sale, selling, or otherwise aiding in the sale of securities.

(c) In addition to sales made under the Securities Act, Section 5.Q, the State Securities Board, pursuant to the Act, Section 5.T, exempts from the registration requirements of the Act, Section 7, the sale of interests in and under oil, gas, and mining leases, fees, or titles, or contracts relating thereto (hereinafter called securities), by the owner itself, or by a registered dealer acting as agent for the owner, provided all of the conditions of §109.13(k) or (l) of this title (relating to Limited Offering Exemptions) are met. The purpose of this subsection is to provide a mechanism which will allow for sales of the securities listed herein to accredited investors where the conditions of §109.13(k) or (l) of this title (relating to Limited Offering Exemptions) are met.

(d) Exemption for transactions among persons in the oil and gas industry.

(1) In addition to offers and sales made pursuant to the Act, Section 5.Q, the State Securities Board, pursuant to the Act, Section 5.T, exempts from the securities registration requirements of the Act, Section 7, and the dealer and agent registration requirements of the Act, Section 12 and Section 18, the offer and sale of any interest in or under an oil, gas, or mining lease, fee, or title, or payments out of production in or under such leases, fees, or titles or contracts relating thereto by the owner or an agent for the owner when such offer or sale is made to persons and/or companies each of whom the owner or owner's agent shall have reasonable cause to believe and does believe meets the following criteria:

(A) is engaged in the business of exploring for or producing oil, gas, or other minerals as an ongoing business or is engaged in the practice of a profession, or discipline, which is directly related to the exploration for, production of, refining of, or marketing of oil, gas, or other minerals such as the interest being sold; or

(B) is a landman, drilling company, well service company, production company, refining company, geologist, geophysicist, petroleum engineer, earth scientist; or

(C) is an executive officer of a company whose primary plan of business involves either subparagraphs (A) or (B) of this paragraph.

(2) The offer to a person who did not meet the criteria set forth in paragraph (1)(A)-(C) of this subsection will not cause the exemption to be lost if such offer was not made indiscriminately.

(3) For purposes of this rule, an "agent for the owner" includes the following:

(A) officers, directors, and employees who are actively engaged in the day-to-day activities of the owner;

(B) independent landmen, engineers, geologists, and consultants who have a contractual working relationship with the owner;

(C) persons who meet the dealer registration requirements of the Securities Act, Section 12; and

(D) persons who represent the owner in transactions exclusively with persons described in paragraph (1)(A)-(C) of this subsection.

(4) This exemption includes sales at auction.

(e) Any person who acts as an agent of an owner or a purchaser in connection with a sale of an interest described in subsection (d) of this section to a person who does not meet the criteria set forth in subsection (d)(1)(A)-(C) of this section will not be exempt from the dealer registration requirements of the Act, Section 12, unless another exemption is available.

Source Note: The provisions of this §109.14 adopted to be effective March 1, 1985, 10 TexReg 569; amended to be effective August 29, 1985, 10 TexReg 3001; amended to be effective November 29, 1989, 14 TexReg 6076; amended to be effective December 16, 1991, 16 TexReg 7007.

§109.15. Designated Matching Services.

(a) **In general.** The use of a designated matching service facility by an issuer member shall not constitute public solicitation or advertisement within the meaning of The Securities Act, Section 5.I and Section 5.Q, §109.13 of this title (relating to Limited Offering Exemptions), §109.14 of this title (relating to Oil, Gas and Other Mineral Interests), or §139.16 of this title (relating to Sales to Individual Accredited Investors), and a designated matching service shall not be deemed a dealer subject to registration within the meaning of The Securities Act or the rules and regulations thereunder.

(b) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Designated matching service**--A matching service designated by the Securities Commissioner under this section.

(2) **Designated matching service facility**--A computer system operated, or a seminar or meeting conducted, by a designated matching service.

(3) **Investor member**--An investor who has been properly qualified by and uses a designated matching service. Any of the following investors, among others, may be properly qualified: any institutional investor as described in the Texas Securities Act, Section 5.H, or §109.4 of this title (relating to Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors); any individual accredited investor as defined in §139.16 of this title (relating to Sales to Individual Accredited Investors); any sophisticated investor as defined in §109.13(a)(2) of this title (relating to Limited Offering Exemptions); or any person who is engaged in the same business, or in the practice of a profession or

discipline directly related to that business, as is the issuer member whose identity and summary business plan is provided to that person.

(4) Issuer member--An issuer who uses a designated matching service facility.

(5) Summary business plan--A brief statement specifically describing the issuer, its management, its products or services, and the market for those products or services. Other information, including, specifically, financial projections, must not be included in a summary business plan.

(c) Application. A person may apply to the Securities Commissioner to be a designated matching service by filing Form 133.35, Application for Designation as Matching Service Under §109.15. No designation will be made unless the applicant demonstrates that it:

(1) owns, operates, sponsors, or conducts a matching service facility limited to providing investor members with the summary business plans and identities of issuer members;

(2) will not be involved in any manner in the sale, offer for sale, solicitation of a sale or offer to buy, a security other than as set forth in paragraph (1) of this subsection;

(3) believes, after making a reasonable factual inquiry, that any person who uses the matching service facility in the capacity of an investor is a properly qualified investor member;

(4) is a governmental entity, quasi-governmental entity, an institution of higher education or a domestic (Texas) nonprofit corporation that is associated with a governmental or quasi-governmental entity or an institution of higher education;

(5) does not employ any person required to be registered under the Act as a dealer, investment adviser, salesman, or agent;

(6) does not have, and does not employ any person who has, a business relationship with any investor member or issuer member other than to provide such member access to the matching service facility;

(7) charges fees only in an amount necessary to cover its reasonable operating costs and that are unrelated to the amount of money being raised by any issuer member or the amount of securities sold by any issuer member;

(8) agrees not to use any advertisement of its matching service facility that advertises any particular issuer or any particular securities or the quality of any securities or that is false or misleading or otherwise likely to deceive a reader thereof, and, upon objection by the Securities Commissioner, agrees to cease any advertisement; and

(9) meets such other conditions as the Securities Commissioner considers appropriate for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of The Securities Act and the rules and regulations thereunder.

(d) **Designation consistent with Act.** Designation under this section is not available to any matching service formed in a manner that constitutes part of a scheme to violate or evade the provisions of The Securities Act or Board rules.

(e) **Withdrawal of designation.** The Securities Commissioner, upon ten days notice and hearing before the Securities Commissioner or a hearings officer as now or hereafter required by law, may withdraw a person's designation as a matching service if the person does not meet the standards for designation provided in this section.

Source Note: The provisions of this §109.15 adopted to be effective April 21, 1995, 20 TexReg 2619; amended to be effective January 8, 2006, 30 TexReg 8865.

§109.16. Reserved for Expansion.

§109.17. Banks under the Securities Act, Section 5.L.

(a) The phrase "any savings and loan association organized and subject to regulation under the laws of this State" shall include any Texas state chartered savings bank.

(b) The phrase "any federal savings and loan association" shall include any federally chartered savings bank.

(c) The phrase "any bank organized and subject to regulation . . . under the laws of any State or territory of the United States" shall include any Texas state chartered limited banking association.

Source Note: The provisions of this §109.17 adopted to be effective August 28, 1992, 17 TexReg 5681; amended to be effective December 20, 1993, 18 TexReg 9093; amended to be effective June 8, 1994, 19 TexReg 4195.

The next page is 111-1.

TEXAS ADMINISTRATIVE CODE
TITLE 7 BANKING AND SECURITIES
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CHAPTER 111. SECURITIES EXEMPT FROM REGISTRATION.

§111.1. Reserved for Expansion.
§111.2. Listed and Designated Securities.

. . . . . .

Rules in Chapter 111 are captioned to correspond to the alphabetically lettered subsections under Section 6 of the Texas Securities Act. For example, §111.2, captioned "6.F" below, interprets Section 6.F of the Act, etc. Subsections for which there has been no policy or interpretation and for which there is no rule are captioned "No Rule."

6.A. No Rule.
6.B. No Rule.
6.C. No Rule.
6.D. No Rule
6.E. No Rule
6.F. §111.2
6.G. No Rule
6.H. No Rule
6.I. No Rule
6.J. No Rule (See Note 1)

Note 1 -- For guidelines setting forth minimum disclosure requirements of securities exempt under Section 6.J of the Act, see Chapter 125.

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§111.1. Reserved for Expansion.

§111.2. Listed and Designated Securities.

(a) Fully listed. As used in the Texas Securities Act, Section 6.F, "fully listed" includes any security listed or approved for listing upon notice of issuance on an exchange specified in the Act, Section 6.F, or on an exchange listed in subsection (b) of this section.

(b) Approved exchanges. The Securities Commissioner has approved the following exchanges, by written order, as satisfying the requirements of the Texas Securities Act, Section 6.F, for eligibility:

(1) Pacific Stock Exchange;

(2) Chicago Board Options Exchange.

(c) **Warrants for listed securities.** In addition to sales made under the Texas Securities Act, Section 6.F, the Board, pursuant to the Act, Section 5.T, exempts from the registration requirements of the Act, Section 7, the offer and sale by the issuer itself, or by a registered dealer, of warrants to purchase securities of the issuer which at the time of sale of the warrants are exempt pursuant to the Act, Section 6.F.

(d) **Recognized and responsible stock exchange.** In order to implement the general purposes of the Texas Securities Act declared in Section 10-1.A to maximize coordination with federal and other states law and administration, particularly with respect to exemptions, the Board hereby defines the term "recognized and responsible stock exchange," as used in the Act, Section 6.F, not to include any organization which is not registered with the United States Securities and Exchange Commission as a national securities exchange pursuant to the Securities Exchange Act of 1934, Section 6.

(e) **Who may sell.** Securities described in the Act, Section 6.F, may be sold by or through a registered securities dealer acting either as a principal or agent.

(f) **National market system of the NASDAQ stock market.** The "national market system of the NASDAQ stock market," as used in the Act, Section 6.F, includes NASDAQ Global Select Market, NASDAQ Global Market, and NASDAQ Capital Market.

Source Note: The provisions of this §111.2 adopted to be effective September 14, 1977, 2 TexReg 3339; amended to be effective February 2, 1983, 8 TexReg 280; amended to be effective October 26, 1983, 8 TexReg 4178; amended to be effective January 7, 1984, 9 TexReg 6473; amended to be effective October 30, 1985, 10 TexReg 4081; amended to be effective November 29, 1989, 14 TexReg 6077; amended to be effective August 23, 1991, 16 TexReg 4349; amended to be effective August 21, 1997, 22 TexReg 7486; amended to be effective January 7, 2007, 32 TexReg 43.

The next page is 113-1.

TEXAS ADMINISTRATIVE CODE
TITLE 7 BANKING AND SECURITIES
PART 7 STATE SECURITIES BOARD

CHAPTER 113. REGISTRATION OF SECURITIES.

§113.1. Qualification of Securities.
§113.2. Registration by Coordination.
§113.3. Fair, Just, and Equitable Standards.
§113.4. Application for Registration.
§113.5. Financial Statements.
§113.6. Renewal Update.
§113.7. Reporting Changes in Filed Materials.
§113.8. Notification of Status in Other States.
§113.9. Securities Underlying Transferable Warrants and Employee Stock Options.
§113.10. Sales Reports.
§113.11. Shelf Registration of Securities.
§113.12. Applicability of Statements of Policy to Exempt Offerings.
§113.13. Multijurisdictional Disclosure System--MJDS Offerings.
§113.14. Statements of Policy.

. . . . . .

§113.1. Qualification of Securities. Regulation "A" and "B" filings with the SEC are forms of exemption and cannot be the basis for a filing by coordination with the State Securities Board under the Texas Securities Act, Section 7.C. Such registrations with the Board should meet the requirements as outlined in the Act, Section 7.A.

Source Note: The provisions of this §113.1 adopted to be effective January 1, 1976; amended to be effective December 6, 1998, 23 TexReg 12293.

§113.2. Registration by Coordination.

(a) Time to file. Applications for registration under the Texas Securities Act, Section 7.C, should be filed contemporaneously with the Securities and Exchange Commission ("SEC") registration application. Delayed filings will jeopardize coordination effectiveness. Applications filed after effectiveness with the SEC are not eligible to use Section 7.C.

(b) Who should file. Applications to register securities of open-end investment companies and unit investment trusts subject to the provisions of the Investment Company Act of 1940, the Securities Act of 1933, and the Securities Exchange Act of 1934, will be considered and treated as applications to register securities by coordination, if the securities are not federal covered securities as that term is defined in §107.2 of this title (relating to Definitions). Filings and fees relating to federal covered securities are addressed in Chapter 114 of this title (relating to Federal Covered Securities).

Source Note: The provisions of this §113.2 adopted to be effective January 1, 1976; amended to be effective July 17, 1978, 3 TexReg 2314; amended to be effective September 22, 1995, 20 TexReg 7187; amended to be effective April 8, 1997, 22 TexReg 3219; amended to be effective November 7, 1999, 24 TexReg 9607.

§113.3. Fair, Just, and Equitable Standards. The following factors, among others, will usually be considered in determining whether or not a securities issue is fair, just, and equitable.

(1) General meaning. "Fair, just, and equitable" as used in the Texas Securities Act, Section 7.C and Section 10.A, means fair, just, and equitable to the new investors. It does not relate to customers or competitors of the business as such and does not apply to other business relationships of the issuer, promoter, or business. The words "fair, just, and equitable" are accorded their generally recognized meanings and are not used in any narrow, technical sense.

(2) Limitation on liability. Issues of securities that expose public investors to unlimited liability normally are not fair, just, or equitable; however, the Securities Commissioner may consider disclosure, sophistication of investors, potential probability of liability, amount of potential liability exposure, and amount of insurance against such exposure as possible mitigating factors.

Source Note: The provisions of this §113.3 adopted to be effective January 1, 1976; amended to be effective May 11, 1979, 4 TexReg 1543; amended to be effective July 22, 1981, 6 TexReg 2383; amended to be effective June 16, 1983, 8 TexReg 1857; amended to be effective March 19, 1984, 9 TexReg 1437; amended to be effective December 6, 1998, 23 TexReg 12293.

§113.4. Application for Registration.

(a) Misleading name. The improper use by an applicant of an assumed name containing "incorporated," "corporation," "associates," "limited," or an abbreviation of one of those words, may be grounds for denying registration if such designation is thereby misleading.

(b) No recommendations by Board. The State Securities Board will not recommend any specific dealer, underwriter, lawyer, or accountant to an applicant in any matter concerning the preparation and presentation for approval of a securities registration application.

(c) Consents to service of process.

(1) Except as provided in paragraphs (2) and (3) of this subsection, all applications to register securities issued by an issuer which is organized under the laws of any other state, territory, or government, or domiciled in any state other than Texas, must include with the application a written consent to service of process duly executed by an authorized agent of the issuer appointing the Securities Commissioner irrevocably its true and lawful attorney upon whom process in any action or proceeding against such issuer arising out of any transaction subject to the Texas Securities Act may be served with the same effect as if such issuer were organized or created under the laws of Texas and had been lawfully served with process herein.

(2) The consent to service of process required under paragraph (1) of this subsection is not required when the application for registration is filed by a registered dealer acting as a principal in a firm commitment underwriting.

(3) The consent to service of process required for applications to register securities filed through the Securities Registration Depository System will satisfy, in all respects, the requirements governing consents to service of process set out in this subsection and in the Texas Securities Act, Section 8.

(d) Abandonment of application.

(1) An application for registration of securities may be declared abandoned if the applicant fails to substantively respond within 30 days to a letter indicating that failure to respond will result in abandonment, which letter will be sent no sooner than 30 days after the last substantive request letter regarding the application to which there has been no reply.

(2) Except for good cause shown, the application for registration of securities that fails to meet registration requirements within one year of the filing date of the application will expire and become null and void. A copy of this rule will be mailed to an applicant at least 60 days prior to the expiration of the application.

(e) Sales in excess of amount registered. An offeror who sells securities in this state in excess of the amount of securities registered may do the following.

(1) If the registration is still in effect an offeror may:

(A) apply to register the excess securities by paying three times the difference between the initial fee paid and the fee required under the Texas Securities Act (Act), Section 35, for the securities sold to persons in this state; and

(B) pay the amendment fee prescribed by the Act, Section 35.A(1).

(2) If the registration is no longer in effect an offeror may:

(A) apply to register the excess in accordance with paragraph (1)(A) of this subsection, plus interest on the amount of fees owed computed at the rate of 6.0% from the date the registration was no longer in effect until the date the subsequent application is filed; and

(B) pay the amendment fee prescribed by the Act, Section 35.A(1).

(3) Registration of the excess securities, if granted, shall be effective retroactively to the effective date of the initial registration for the offering.

(4) As an alternative to paragraph (1) or (2) of this subsection, the offeror may issue letters of rescission to persons who bought excess securities and include a statement in the prospectus admitting the error, or show sales of unregistered securities as a contingent liability.

Source Note: The provisions of this §113.4 adopted to be effective January 1, 1976; amended to be effective November 15, 1977, 2 TexReg 4180; amended to be effective April 15, 1980, 5 TexReg 1285; amended to be effective June 16, 1983, 8 TexReg 1857; amended to be effective January 12, 1984, 8 TexReg 5529; amended to be effective March 19, 1984, 9 TexReg 1437; amended to be effective June 1, 1984, 9 TexReg 2776; amended to be effective November 15, 1990, 15 TexReg 6291; amended to be effective September 22, 1995, 20 TexReg 7187; amended to be effective December 2, 1997, 22 TexReg 11666; amended to be effective December 6, 1998, 23 TexReg 12293; amended to be effective August 10,2003,28 TexReg 5991; amended to be effective February 24, 2004, 29 TexReg 1643.

§113.5. Financial Statements.

(a) Audited financial statements. Except as provided in subsection (b) of this section, all financial statements submitted to the Securities Commissioner pursuant to the Texas Securities Act, Section 7.A(1)(f) (including all financial statements of the issuer and any entity that is being taken over by an issuer which has not been operating) must be audited, and an opinion must be expressed by an independent certified public accountant or an independent public accountant. Such opinion shall be one acceptable to the Commissioner.

(b) Reviewed financial statements. Financial statements, prepared in accordance with generally accepted accounting principles, submitted by a small business issuer in connection with a small business offering may be reviewed by an independent certified public accountant in accordance with the standards for reviewed financial statements promulgated by the American Institute of Certified Public Accountants.

(c) Small business issuer. For purposes of subsection (b) of this section, the term "small business issuer" shall mean any corporation:

(1) that has not previously sold securities by means of an offering involving public solicitation or advertising unless such offering was made in compliance with:

(A) §139.25 of this title (relating to Intrastate Crowdfunding Exemption);

(B) §139.16 of this title (relating to Sales to Individual Accredited Investors);

(C) §139.19 of this title (relating to Accredited Investor Exemption);

(D) §109.4 of this title (relating to Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors); or

(E) the Texas Securities Act, Section 5.H;

(2) that has not been previously required under federal or state securities law to provide audited financial statements in connection with any sale of its securities;

(3) that is not an investment company (including any mutual fund);

(4) that does not engage or propose to engage in petroleum exploration or production or other extractive industries;

(5) that is not subject to the reporting requirements of the Securities Exchange Act of 1934, Section 13 or Section 15(d);

(6) that has its principal place of business in Texas and employs at least 50% of its full-time employees in Texas; and

(7) whose previous sales of securities (exclusive of debt financing with banks and similar commercial lenders) does not exceed $1 million.

(d) Parent corporations. If a corporation otherwise meeting the criteria specified in subsection (c) of this section is a majority-owned subsidiary of another corporation, the subsidiary shall not be considered a "small business issuer" for purposes of subsection (b) of this section unless its parent corporation also meets the criteria specified in subsection (c) of this section.

(e) Small business offering. For purposes of subsection (b) of this section, the term "small business offering" shall mean that the amount of the offering must not exceed $5 million.

Source Note: The provisions of this §113.5 adopted to be effective January 1, 1976; amended to be effective November 28, 1977, 2 TexReg 4414; amended to be effective September 22, 1995, 20 TexReg 7188; amended to be effective December 6, 1998, 23 TexReg 12293; amended to be effective January 8, 2006, 30 TexReg 8865; amended to be effective November 17, 2014, 39 TexReg 8960.

§113.6. Renewal Update. It is the responsibility of the applicant for renewal to see that all exhibits and information required to be filed with the Securities Commissioner for an original registration pursuant to the Texas Securities Act, Section 7, are maintained current with the Commissioner for the issuer whose registration is renewed under the Act, Section 10.B, so long as the permit is outstanding. Whenever there are material changes, the prospectus must be amended and filed with the Commissioner.

Source Note: The provisions of this §113.6 adopted to be effective January 1, 1976; amended to be effective December 6, 1998, 23 TexReg 12293.

§113.7. Reporting Changes in Filed Materials. While an application to register securities is pending with the securities commissioner, any change in information material to the application (including documents on file such as financials) must be promptly reported to the commissioner by the applicant, and any new developments which are material must likewise be promptly reported by the applicant.

Source Note: The provisions of this §113.7 adopted to be effective January 1, 1976.

§113.8. Notification of Status in Other States. Any issuer with an application pending under the Texas Securities Act, Section 7.C, in addition to filing with the Securities Commissioner the original list of other states where filing has been made or is expected to be made as required by the Act, Section 7.C(1)(c), must make

a timely report of the names of any states where such an application is subsequently made, withdrawn, or denied (together with the reasons for any withdrawal or denial).

Source Note: The provisions of this §113.8 adopted to be effective January 1, 1976; amended to be effective December 6, 1998, 23 TexReg 12293.

§113.9. Securities Underlying Transferable Warrants and Employee Stock Options. When equity securities underlying transferable warrants or employee stock options are registered under the Texas Securities Act, Section 7, those equity securities shall thereafter be deemed to be properly registered in Texas regardless of the time at which the warrants are exercised by warrant or option holders. Continuous registration (or annual renewal of registration) of the underlying equity securities during the life of the warrants or options shall not be required solely because of the existence of outstanding warrants or options. Once the distribution process is completed pursuant to the registration, the issuer or dealer who sold such registered securities is not required to remain continuously registered pursuant to the Texas Securities Act, Section 12 solely because of the existence of outstanding warrants or options. However, if the issuer or dealer solicits the holders to exercise their warrants or options, the issuer or dealer must be registered as a securities dealer if the transaction does not fall within an exemption other than this section. This section is adopted pursuant to the authority granted by the Texas Securities Act, Section 5.T.

Source Note: The provisions of this §113.9 adopted to be effective January 25, 1980, 5 TexReg 139; amended to be effective October 4, 1984, 9 TexReg 4974; amended to be effective December 6, 1998, 23 TexReg 12293.

§113.10. Sales Reports. All registrants must prepare and forward to the securities commissioner annual reports showing the amount of securities which have been sold in Texas, the consideration received therefor, and the amount of unsold securities authorized to be sold in Texas. Upon completion of all offerings of securities registered in Texas, a final sales report must be filed with the securities commissioner showing the total aggregate amount of securities sold by a registrant and the total consideration received therefor.

Source Note: The provisions of this §113.10 adopted to be effective April 15, 1980, 5 TexReg 1285; amended to be effective January 7, 1985, 9 TexReg 6473.

§113.11. Shelf Registration of Securities.

(a) Applicability.

(1) This section shall apply to the registration by coordination in Texas of securities registered with the Securities and Exchange Commission (SEC) for offer and sale on a delayed or continuous basis under SEC Rule 415 (17 Code of Federal Regulations §230.415).

(2) Each series or takedown requires separate registration in Texas, except in the following cases:

(A) where there is disclosure in the prospectus that neither the security to be offered nor the selling method to be used may be varied from one series or takedown to the next; or

(B) as provided in subsection (b) of this section.

(3) Where appropriate, the statements of policy in §113.14(b) of this title (relating to Statements of Policy) and other provisions of this chapter will be applied.

(b) Certain debt offerings by substantial issuers.

(1) This subsection (b) applies to the registration of debt securities of issuers eligible to use SEC Form S-2 or S-3 (17 Code of Federal Regulations §239.12 and §239.13), to register debt securities with the SEC under SEC Rule 415.

(2) Separate registration of each series or takedown of debt securities of such an issuer is not required if the applicant (and the issuer if the applicant is other than the issuer) undertakes that all of the following conditions will be met:

(A) only the type of debt security that is specifically denominated and described in the prospectus supplement or prospectus amendment filed with the application to register securities in Texas will be sold in each takedown or series for which the registration is sought;

(B) all of the debt securities will be subject to and issued under the same indenture;

(C) the maturity of the securities will not be less than a specified length of time nor more than a specified length of time from the date of issue, and the interest rate will be within a specified range unless the Texas permit is first amended to permit interest rates differing from such maximum and minimum.

(3) The permit issued upon registration of debt securities pursuant to paragraph (2)(A) - (C) of this subsection shall incorporate the relevant terms of the required undertaking.

Source Note: The provisions of this §113.11 adopted to be effective August 8, 1984, 9 TexReg 4075; amended to be effective December 2, 1997, 22 TexReg 11666; amended to be effective December 6, 1998, 23 TexReg 12293; amended to be effective November 7, 1999, 24 TexReg 9608; amended to be effective April 3, 2012, 37 TexReg 2166.

§113.12. Applicability of Statements of Policy to Exempt Offerings. This chapter and the statements of policy listed in §113.14 of this title (relating to Statements of Policy) do not apply to offerings made pursuant to an exemption under either the Texas Securities Act, Section 5 or Section 6, or an exemption by Board rule pursuant to the Texas Securities Act, Section 5.T, or to an offering of federal covered securities, as that term is defined in §107.2 of this title (relating to Definitions).

Source Note: The provisions of this §113.12 adopted to be effective November 15, 1990, 15 TexReg 6291; amended to be effective August 23, 1993, 18 TexReg 5324; amended to be effective April 8, 1997, 22 TexReg

3219; amended to be effective December 2, 1997, 22 TexReg 11666; amended to be effective December 6, 1998, 23 TexReg 12293; amended to be effective November 7, 1999, 24 TexReg 9608; amended to be effective August 18, 2011, 36 TexReg 5093.

§113.13. Multijurisdictional Disclosure System--MJDS Offerings.

(a) This section shall apply to the registration by coordination in Texas of securities registered with the Securities and Exchange Commission (SEC) in accordance with the multijurisdictional disclosure system (MJDS) adopted in SEC Release Number 33-6902.

(b) For purposes of the Texas Securities Act, Section 7.C, MJDS offerings filed on SEC Form F-7, Form F-8, Form F-9 or Form F-10, shall become effective the later of three days after filing, or the effective date with the SEC, as long as the application for registration is filed contemporaneously with the SEC registration application in accordance with §113.2 of this title (relating to Registration by Coordination).

(c) Financial statements and financial information for offerings filed under subsection (b) of this section shall comply with instructions provided with SEC Form F-7, Form F-8, Form F-9, or Form F-10.

(d) In a rights offering, SEC Form F-7 will be accepted in lieu of any state form required to claim an exemption for any transaction pursuant to an offer to existing securities holders.

(e) After the SEC has declared effective an issuer's Form F-8, Form F-9 or Form F-10 registration statement, a non-issuer transaction in any class of the issuer's securities is exempt from registration, whether or not the transaction is effected through a broker dealer.

Source Note: The provisions of this §113.13 adopted to be effective January 8, 2006, 30 TexReg 8866.

§113.14. Statements of Policy.

(a) The Securities Commissioner, where applicable, will utilize the criteria contained in the North American Securities Administrators Association, Inc. (NASAA) Statements of Policy set forth in subsection (b) of this section for offerings registering pursuant to the Texas Securities Act, Section 7. While applications not conforming to a statement of policy shall be looked upon with disfavor, where good cause is shown or to protect investors, certain provisions may be modified or waived by the Commissioner.

(b) In order to promote uniform regulation, the following NASAA Statements of Policy shall apply to the registration of securities:

(1) Corporate Securities Definitions, as amended by NASAA on March 31, 2008;

(2) Impoundment of Proceeds, as amended by NASAA on March 31, 2008;

(3) Loans and Other Material Affiliated Transactions, as amended by NASAA on March 31, 2008;

(4) Options and Warrants, as amended by NASAA on March 31, 2008;

(5) Preferred Stock, as amended by NASAA on March 31, 2008;

(6) Promoter's Equity Investment, as amended by NASAA on March 31, 2008;

(7) Promotional Shares, as amended by NASAA on March 31, 2008;

(8) Specificity in Use of Proceeds, as amended by NASAA on March 31, 2008;

(9) Underwriting Expenses, Underwriter's Warrants, Selling Expenses, and Selling Security Holders, as amended by NASAA on March 31, 2008;

(10) Unsound Financial Condition, as amended by NASAA on March 31, 2008;

(11) Unequal Voting Rights, as amended by NASAA on March 31, 2008;

(12) Debt Securities, as amended by NASAA on April 25, 1993;

(13) Real Estate Programs, as amended by NASAA on May 7, 2007;

(14) Oil and Gas Programs, as amended by NASAA on May 6, 2012;

(15) Asset-backed Securities, as amended by NASAA on May 6, 2012;

(16) Equipment Programs, as amended by NASAA on May 6, 2012;

(17) Real Estate Investment Trusts, as amended by NASAA on May 7, 2007;

(18) Mortgage Program Guidelines, as amended by NASAA on May 7, 2007;

(19) Omnibus Guidelines, as amended by NASAA on May 7, 2007; and

(20) Registration of Commodity Pool Programs, as amended by NASAA on May 6, 2012.

(c) Copies of the NASAA Statements of Policy are available online at the NASAA web site (www.nasaa.org) and the Texas State Securities Board web site (www.ssb.state.tx.us). Print copies may be obtained by contacting the Texas State Securities Board, P.O. Box 13167, Austin, Texas 78711, or by calling (512) 305-8300.

Source Note: The provisions of this §113.14 adopted to be effective January 7, 2009, 34 TexReg 44; amended to be effective August 18, 2011, 36 TexReg 5093; amended to be effective May 15, 2014, 39 TexReg 3704.

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TEXAS ADMINISTRATIVE CODE
TITLE 7 BANKING AND SECURITIES
PART 7 STATE SECURITIES BOARD

CHAPTER 114. FEDERAL COVERED SECURITIES.

§114.1. Introduction.
§114.2. Definitions.
§114.3. Consents to Service of Process.
§114.4. Filings and Fees.

. . . . . .

§114.1. Introduction.

(a) **Scope.** This chapter covers filings and fees required to be paid in connection with the issuance of an authorization to offer and sell federal covered securities.

(b) **Availability of a corresponding state exemption.** Except as otherwise provided herein, the filing and fee requirements detailed in this chapter do not apply to federal covered securities that are exempt from registration pursuant to the Texas Securities Act, Section 5 or Section 6, or by Board rule pursuant to the Texas Securities Act, Section 5.T. Transactions in federal covered securities may be exempt under any other Board rule or section of the Texas Securities Act; however, nothing in this chapter shall act as an election. Should for any reason, the offer and sale of federal covered securities fail to comply with all of the conditions in this chapter, a person may claim the availability of any other applicable exemption. A person, claiming an exemption outside this chapter, must comply with all conditions associated with that exemption.

Source Note: The provisions of this §114.1 adopted to be effective April 8, 1997, 22 TexReg 3219; amended to be effective April 5, 1998, 23 TexReg 3431.

§114.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act or Securities Act or Texas Securities Act--The Texas Securities Act, Texas Civil Statutes, Article 581-1, et seq., as amended.

(2) Federal covered securities--Shall have the same meaning as provided in §107.2 of this title (relating to Definitions).

(3) Listed securities--The category of nationally traded federal covered securities defined in the Securities Act of 1933, Section 18(b)(1).

(4) SEC--The United States Securities and Exchange Commission.

Source Note: The provisions of this §114.2 adopted to be effective April 8, 1997, 22 TexReg 3219.

§114.3. Consents to Service of Process.

(a) Unless otherwise provided in subsection (b) of this section, a consent to service of process is required from an issuer of federal covered securities that is organized under the laws of any other state, territory, or government, or domiciled in any state other than Texas. The written consent to service of process must be duly executed by an authorized agent of the issuer and irrevocably appoint the Securities Commissioner as the issuer's true and lawful attorney upon whom all process may be served in any action or proceeding against such issuer arising out of any transaction subject to the Texas Securities Act with the same effect as if such issuer were organized or created under the laws of Texas and had been lawfully served with process therein.

(b) The consent to service of process is not required when the notice filing is made by a registered dealer acting as a principal in a firm commitment underwriting.

(c) The consent to service of process filed through the Securities Registration Depository System will satisfy, in all respects, the requirements governing consents to service of process set out in this section and in the Texas Securities Act, Section 8.

Source Note: The provisions of this §114.3 adopted to be effective April 8, 1997, 22 TexReg 3219; amended to be effective April 5, 1998, 23 TexReg 3431; amended to be effective August 10, 2003, 28 TexReg 5992.

§114.4. Filings and Fees.

(a) Generally. Unless otherwise provided in subsection (b) of this section, prior to the initial offer of the federal covered securities in this state, the issuer shall provide to the Securities Commissioner:

(1) a notice filing, verified under oath by the applicant, consisting of:

(A) page 1 of a Form U-1, Uniform Application to Register Securities, with items 1-6 completed, or a document providing substantially the same information; or

(B) if the issuer is an investment company, Form NF, Uniform Investment Company Notice Filing.

(2) a consent to service of process signed by the issuer, if required by §114.3 of this title (relating to Consents to Service of Process), if, previously, such a consent to service has not been filed with the Securities Commissioner; and

(3) the fee provided for in the Texas Securities Act (Act), Section 35.A(1) plus one-tenth of 1.0% of the aggregate amount of federal covered securities proposed to be sold to persons located within this state based on the price at which such securities are to be offered to the public, as provided in the Act, Section 35.B(2).

(b) Special circumstances.

(1) SEC Regulation D, Rule 506 offerings. In connection with an offering described in both §109.13(k)(16) of this title (relating to Limited Offering Exemptions) and SEC Regulation D, Rule 506, at the time the Form D is filed with the SEC, but no later than 15 days after the first sale of the federal covered securities in this state, the issuer shall provide to the Securities Commissioner:

(A) a notice on Form D; and

(B) a fee of one-tenth of 1.0% of the aggregate amount of federal covered securities described as being offered for sale, but in no case more than $500, as provided in the Texas Securities Act, Section 35.B(7).

(C) The filing of Form D and the payment of the filing fee shall be made electronically through the EFD System, when such system becomes available.

(2) Listed securities. No filing, consent to service, or fee shall be required of an issuer offering federal covered securities that are also "listed securities" as defined in §114.2 of this title (relating to Definitions).

(3) Money market status approved. Section 123.3 of this title (relating to Conditional Exemption for Money Market Funds) sets forth the requirements for obtaining and maintaining a money market designation and the reduced fee schedule available to funds so designated. In connection with an offering of securities of an issuer that has applied for and been granted money market status as provided in §123.3 of this title (relating to Conditional Exemption for Money Market Funds), the issuer shall provide to the Securities Commissioner:

(A) a consent to service of process signed by the issuer, if required by §114.3 of this title (relating to Consents to Service of Process), if such a consent to service has not previously been filed with the Securities Commissioner;

(B) any other filing required by §123.3 of this title (relating to Conditional Exemption for Money Market Funds) or subsection (f) of this section; and

(C) the fee provided for in §123.3 of this title (relating to Conditional Exemption for Money Market Funds).

(4) Secondary trading. A registered dealer or issuer that chooses to comply with the Texas Securities Act, Section 5.O(9), by filing a form, shall provide to the Securities Commissioner, prior to the sale of the securities in this state:

(A) a notice filing, verified under oath by the applicant, consisting of page 1 of a Form U-1, Uniform Application to Register Securities, with items 1-6 completed, or a document providing substantially the same information;

(B) a consent to service of process signed by the dealer or issuer, if such a consent to service has not previously been filed with the Securities Commissioner;

(C) a fee of $500, as provided in the Act, Section 35.B(6); and

(D) a written statement from the issuer that the issuer of such securities is in compliance with the reporting requirements of the Securities Exchange Act of 1934, Section 13 or Section 15(d), as applicable.

(c) Supplemental reports.

(1) Unless otherwise provided in paragraph (2) of this subsection, each applicant required to pay a fee in connection with federal covered securities offered in this state shall submit to the Securities Commissioner annual reports showing the amount of federal covered securities authorized to be sold in Texas, the actual amount sold in Texas, the consideration received therefor, and the amount of unsold securities authorized to be sold in Texas. Upon completion of all offerings of federal covered securities authorized for sale in Texas, a final sales report must be filed with the Securities Commissioner showing the total aggregate amount of federal covered securities authorized and sold in Texas and the total consideration received therefor.

(2) This subsection does not apply to an applicant proceeding pursuant to subsection (b)(1) or (b)(4) of this section.

(d) Excess sales.

(1) Except as provided in paragraph (2) of this subsection, an offeror who sells securities in this state in excess of the amount of federal covered securities authorized may do the following.

(A) If the authorization is still in effect an offeror may:

(i) request authorization for the excess securities by paying three times the difference between the initial fee paid and one-tenth of 1.0% of the aggregate amount of the securities sold to persons in this state, as provided in the Texas Securities Act, Sections 35.B(2) and 35-1.A; and

(ii) pay the amendment fee provided for in the Texas Securities Act, Section 35.A(1).

(B) If the authorization is no longer in effect an offeror may:

(i) request authorization of the excess securities in accordance with subparagraph (A)(i) of this paragraph, plus interest on the amount of fees owed computed at the rate of 6.0% from the date the authorization was no longer in effect until the date the subsequent request is made; and

(ii) pay the amendment fee provided for in the Texas Securities Act, Section 35.A(1).

(C) The authorization for the excess securities shall be effective retroactively to the effective date of the initial authorization for the offering.

(2) An offeror in an SEC Regulation D, Rule 506 offering, who paid less than the maximum fee prescribed in subsection (b)(1) of this section and offered a greater amount of federal covered securities than authorized may do the following:

(A) file an amended Form D disclosing the amount of federal covered securities offered; and

(B) pay three times the difference between the initial fee paid and the fee which should have been paid, plus interest on the fee owed computed at the rate of 6.0% from the date the original Form D was received by the Securities Commissioner until the date the amended notice is received by the Securities Commissioner, as provided in the Texas Securities Act, Section 35-1.B.

(C) The filing of Form D and the payment of the filing fee shall be made electronically through the EFD System, when such system becomes available.

(3) After compliance with paragraph (2) of this subsection, the amended Form D shall be effective retroactively to the date of the initial filing.

(e) Requests for additional documents. The Securities Commissioner may, upon written request, require a copy of any document required to be filed with the SEC in connection with the offering or sale of the federal covered securities.

(f) Period of effectiveness.

(1) The initial authorization for federal covered securities of an open-end investment company, as defined in the Investment Company Act of 1940, shall be effective until two months after the end of the issuer's fiscal year. After the initial authorization, the issuer or its agent may renew the authorization by submitting, within two months after the end of the issuer's fiscal year:

(A) a notice filing, verified under oath by the applicant, consisting of Form NF, Uniform Investment Company Notice Filing; and

(B) payment of the appropriate fees.

(2) The authorization for federal covered securities of a unit investment trust, as defined in the Investment Company Act of 1940, shall be effective until one year from the date of effectiveness granted by the SEC.

(3) Any other authorization of federal covered securities shall be effective for one year from the date the authorization is accepted by the Securities Commissioner.

(4) The renewal of an authorization for federal covered securities under this chapter may be renewed for additional periods of one year if the notice filing and renewal fees are received prior to the expiration date of the existing authorization. Failure to tender the renewal fee prior to the expiration date may subject the issuer to higher fees, pursuant to the Texas Securities Act, Sections 35-1 or 35-2.

(5) For SEC Regulation D, Rule 506 offerings issued under special circumstances in subsection (b)(1) of this section, the period of effectiveness extends from the date of the notice filing until the offering is completed or terminated.

(g) **Applicability of dealer and agent registration requirements.** In conducting sales in this chapter, dealer and agent registration requirements of the Texas Securities Act and Board rules must be complied with.

(h) **Preservation of fees.** The fees provided in this section correspond to the filing or registration fees that would be collected pursuant to the Texas Securities Act in effect on the day before the effectiveness of the National Securities Markets Improvement Act of 1996, Public Law Number 104-290.

(i) **Applicability of antifraud provisions.** With regard to this chapter, the Texas Securities Act prohibits fraud or fraudulent practice in connection with the sale or offer for sale of federal covered securities.

Source Note: The provisions of this §114.4 adopted to be effective April 8, 1997, 22 TexReg 3219; amended to be effective December 2, 1997, 22 TexReg 12038; amended to be effective November 7, 1999, 24 TexReg 9608; amended to be effective May 2, 2000, 25 TexReg 3740; amended to be effective February 24, 2004, 29 TexReg 1643; amended to be effective June 21, 2011, 36 TexReg 3715.

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TEXAS ADMINISTRATIVE CODE
TITLE 7 BANKING AND SECURITIES
PART 7 STATE SECURITIES BOARD

CHAPTER 115. SECURITIES DEALERS AND AGENTS.

§115.1. General Provisions.
§115.2. Application Requirements.
§115.3. Examination.
§115.4. Evidences of Registration.
§115.5. Minimum Records.
§115.6. Registration of Persons with Criminal Backgrounds.
§115.7. Maintenance and Inspection of Records.
§115.8. Fee Requirements.
§115.9. Post-Registration Reporting Requirements.
§115.10. Supervisory Requirements.
§115.11. Finder Registration and Activities.
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§115.13. Reserved for Expansion.
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§115.15. Reserved for Expansion.
§115.16. Use of Senior-Specific Certifications and Professional Designations.
§115.17. Reserved for Expansion.
§115.18. Special Application Provisions Available to a Military Spouse, Military Service Member, or Military Veteran.
§115.19. Texas Crowdfunding Portal Registration and Activities.

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§115.1. General Provisions.

(a) **Definitions**. Words and terms used in this chapter are also defined in §107.2 of this title (relating to Definitions). The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--A person who submits an application for registration as a dealer or an agent.

(2) Branch office--Any location where one or more agents of a dealer regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or that is held out as such.

(A) This definition excludes:

(i) any location that is established solely for customer service and/or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(ii) any location that is the agent's primary residence, provided that:

(I) only one agent, or multiple agents who reside at that location and are members of the same immediate family, conduct business at the location;

(II) the location is not held out to the public as an office and the agent does not meet with customers at the location;

(III) neither customer funds nor securities are handled at that location;

(IV) the agent is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by such agent;

(V) the agent's correspondence and communications with the public are subject to the dealer's supervision;

(VI) electronic communications (e.g., e-mail) are made through the dealer's electronic system;

(VII) all orders are entered through the designated branch office or an electronic system established by the dealer that is reviewable at the branch office;

(VIII) written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the dealer; and

(IX) a list of the residence locations are maintained by the dealer;

(iii) any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the dealer complies with the provisions of clause (ii)(II) - (VIII) of this subparagraph;

(iv) any office of convenience, where agents occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;

(v) any location that is used primarily to engage in non-securities activities and from which the agent(s) effects no more than 25 securities transactions in any one calendar year; provided that any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the agent(s) conducting business at the non-branch locations are directly supervised;

(vi) the floor of a registered national securities exchange where a dealer conducts a direct access business with public customers; and

(vii) a temporary location established in response to the implementation of a business continuity plan.

(B) Notwithstanding the exclusions in subparagraph (A) of this paragraph, any location that is responsible for supervising the activities of persons associated with the dealer at one or more non-branch locations of the dealer is considered to be a branch office.

(C) The term "business day" shall not include any partial business day provided that the agent spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

(3) Supervisor--The person named by a dealer to supervise the activities of a branch office and registered as an agent with the Securities Commissioner.

(4) Control--The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or company, whether through the ownership of voting securities, by contract, or otherwise.

(5) In this state--As used in the Texas Securities Act, Section 12, has the same meaning as the term "within this state" as defined in §107.2 of this title (relating to Definitions) and paragraph (8) of this subsection.

(6) FINRA--The Financial Industry Regulatory Authority, created through the consolidation of NASD and the member regulation, enforcement, and arbitration functions of the New York Stock Exchange.

(7) Officer--A president, vice president, secretary, treasurer, or principal financial officer, comptroller, or principal accounting officer, or any other person occupying a similar status or performing similar functions with respect to any organization or entity, whether incorporated or unincorporated.

(8) Within this state--

(A) A person is a "dealer" who engages "within this state" in one or more of the activities set out in the Texas Securities Act, Section 4.C, if either the person or the person's agent is present in this state or the offeree/purchaser or the offeree/purchaser's agent is present in this state at the time of the particular activity. A person can be a dealer in more than one state at the same time.

(B) Likewise, a person is an "agent" who engages "within this state" in one or more of the activities set out in the Texas Securities Act, Section 4.D, whether by direct act or through subagents except as otherwise provided, if either the person or the person's agent is present in this state or the offeree/purchaser or the offeree/purchaser's agent is present in this state at the time of the particular activity. A person can be an agent in more than one state at the same time.

(C) Offers and sales can be made by personal contact, mail, telegram, telephone, wireless, electronic communication, or any other form of oral or written communication.

(9) Finder--An individual who receives compensation for introducing an accredited investor to an issuer or an issuer to an accredited investor solely for the purpose of a potential investment in the securities of the issuer, but does not participate in negotiating any of the terms of an investment and does not give advice to any such parties regarding the advantages or disadvantages of entering into an investment, and conducts this activity in accordance with §115.11 of this title (relating to Finder Registration and Activities). Note that an individual registered as a finder is not permitted to register in any other capacity; however, a registered general dealer is allowed to engage in finder activity without separate registration as a finder.

(10) Texas crowdfunding portal--Any person registered as a Texas dealer pursuant to §115.19 of this title (relating to Texas Crowdfunding Portal Registration and Activities) that utilizes an Internet website to offer or sell securities that are exempt from securities registration solely pursuant to §139.25 of this title (relating to Intrastate Crowdfunding Exemption).

(b) Registration requirements of dealers, issuers, agents, and branch offices.

(1) Requirements of registration.

(A) No dealer, issuer, or agent of a dealer or issuer shall sell or offer for sale any securities within this state without first being registered as a dealer or agent, or exempt from registration.

(B) Each branch office in Texas must be registered. A registered officer, partner, or agent must be named as supervisor.

(2) Persons not required to register as an agent.

(A) Registration as an agent is not required for a person, associated with a dealer registered in Texas, who effects a transaction pursuant to the Securities Exchange Act of 1934, Section 15(h)(3), provided such person is:

(i) not ineligible to register with this state for any reason other than such a transaction; and

(ii) registered with a registered securities association and at least one other state.

(B) For purposes of this paragraph, a person is "ineligible to register with this state," if the person:

(i) has been convicted of a securities-related felony; or

(ii) has been convicted of a theft-related felony.

(C) For purposes of this paragraph, a "registered securities association" is one currently recognized as such by the SEC pursuant to the Securities Exchange Act of 1934, Section 15A.

(D) Persons not required to register with the Securities Commissioner pursuant to subparagraph (A) of this paragraph, are reminded that the Texas Securities Act prohibits fraud or

fraudulent practices in dealing in any manner in any securities whether or not the person engaging in fraud or fraudulent practices is required to be registered. The Agency has jurisdiction to investigate and bring enforcement actions to the full extent authorized in the Texas Securities Act with respect to fraud or deceit, or unlawful conduct by a dealer or agent in connection with transactions involving securities in Texas.

(c) Types of registrations.

(1) General registration. A general registration is a registration to deal in all categories of securities, without limitation.

(2) Restricted registration. The restricted registrations are as follows:

(A) registration to deal exclusively in the sale of interests (other than interests in limited partnerships) in oil, gas, and mining leases, fees, or titles or contracts relating thereto;

(B) registration to deal exclusively in municipal securities;

(C) registration to deal exclusively in real estate syndication interests and/or condominium securities, including interests in real estate limited partnerships;

(D) registration to deal exclusively in sales of securities to the dealer's own employees;

(E) registration to deal exclusively in securities issued by open-end investment companies registered under the Texas Securities Act and the Investment Company Act of 1940;

(F) registration for an issuer to deal exclusively in its own securities;

(G) registration to deal exclusively in options on foreign currencies;

(H) registration to deal exclusively in sales of securities in direct participation programs;

(I) registration to deal exclusively in government securities;

(J) registration to accept orders unsolicited by such person from existing customers of the dealer;

(K) registration to deal exclusively in corporate securities;

(L) registration to deal in all general securities except municipal securities;

(M) registration to act exclusively as a finder;

(N) registration to deal exclusively in investment banking;

(O) registration to act exclusively as a Texas crowdfunding portal; and

(P) registration with other restrictions which the Securities Commissioner may impose based upon the facts.

(3) In restricted registrations, the evidence of registration shall indicate that the holder thereof is entitled to act as a dealer only in the specified issue or category of securities.

(d) **Prohibition on fraud and availability of an exemption from registration.** The Texas Securities Act prohibits fraud or fraudulent practices in dealing in any manner in any securities whether or not the person engaging in fraud or fraudulent practices is required to be registered. The Agency has jurisdiction to investigate and bring enforcement actions to the full extent authorized in the Texas Securities Act with respect to fraud or deceit, or unlawful conduct by a dealer or agent in connection with transactions involving securities in Texas. However, the registration requirements detailed in this chapter do not apply to dealers and agents that are exempt from registration as such pursuant to the Texas Securities Act, Section 5, or by Board rule pursuant to the Texas Securities Act, Section 5.T or Section 12.C, contained in Chapter 109 or 139 of this title.

Source Note: The provisions of this §115.1 adopted to be effective August 12, 2001, 26 TexReg 5794; amended to be effective August 22, 2004, 29 TexReg 7966; amended to be effective January 8, 2006, 30 TexReg 8866; amended to be effective September 1, 2006, 31 TexReg 6709; amended to be effective February 21, 2008, 33 TexReg 1319; amended to be effective August 16, 2010, 35 TexReg 7050; amended to be effective November 8, 2012, 37 TexReg 8786; amended to be effective November 17, 2014, 39 TexReg 8961.

§115.2. Application Requirements.

(a) **Securities dealer application requirements.** A complete application consists of the following and must be filed in paper form with the Securities Commissioner:

(1) Form BD;

(2) Form U-4 for the designated officer and a Form U-4 for each agent to be registered (officers of a corporation or partners of a partnership shall not be deemed agents solely because of their status as officers or partners);

(3) a copy of articles of incorporation, partnership agreement, articles of association, trust agreement, or other documents which indicate the form of organization, certified by the appropriate jurisdiction or by an officer or partner of the applicant;

(4) a balance sheet prepared in accordance with United States generally accepted accounting principles reflecting the financial condition of the dealer as of a date not more than 90 days prior to the date of such filing. The balance sheet should be compiled, reviewed, or audited by independent certified public accountants or independent public accountants, or must instead be attested by the sworn notarized statement of the applicant's principal financial officer. If attested by the principal financial officer of the applicant, such officer shall make the certification on Form 133.18, Certification of Balance Sheet by Principal Financial Officer.

(5) any other information deemed necessary by the Securities Commissioner to determine a dealer's financial responsibility or a dealer's or agent's business repute or qualifications; and

(6) the appropriate registration fee(s).

(b) Designated officer registration. Dealers, including an individual filing as a sole proprietor, must file a Form U-4 application for a designated officer to register in connection with the registration of the dealer. The dealer's designated officer must be an officer, partner, or the sole proprietor of the dealer and have completed the necessary registration and examination requirements. If the designated officer of a dealer, other than a sole proprietor, resigns or is otherwise removed from his or her position, the dealer shall make an application to register another officer or partner within 30 days.

(c) Branch office registration and inspection. A request for registration of a branch office of a dealer may be made upon initial application of the dealer or by amendment to a current registration. No sales-related activity may occur in any branch office location until such time as the dealer receives notification from the Securities Commissioner that such location has been approved as a branch office. The request for registration of a branch office may be made by the submission of Form BR on CRD for FINRA member firms. For non-FINRA member firms, the request is made by submitting Form BR in paper form to the Securities Commissioner. The fee for registration of each branch office is $25. Simultaneous with the request for registration of a branch office, a supervisor must be designated. A supervisor is not required to be registered as a FINRA principal, but must be registered in Texas as an agent and is responsible for supervision of the activities of the branch office. A supervisor may not supervise sales activities encompassing a broader range of products than those covered by the supervisor's qualification examination(s). Within 10 business days from when a supervisor ceases to be employed or registered in such capacity by the dealer, a new supervisor, qualified by passage of the appropriate examinations, must be designated. Absent the designation of a new supervisor to the Securities Commissioner within the 10 business day period, the registration of a branch office whose supervisor ceases to be employed as such by a dealer may be automatically terminated. The branch office registration may be reinstated upon the designation of a qualified supervisor and payment of the branch office registration fee. Each branch office registered with the Securities Commissioner is subject to unannounced inspections at any time during normal business hours.

(d) Automatic withdrawal of a dealer or agent application for registration that has been pending for at least 90 days. If an application for dealer or agent registration has been pending for at least 90 days and the applicant has failed to substantively respond to a written request for information sent by certified mail to the applicant's address as set forth in the application, an automatic withdrawal will occur. The written request must have advised the applicant that if a substantive response is not received within 30 days from the date of the certified request, the application will be withdrawn automatically. Regardless of how long an application has been pending, it may not be withdrawn automatically without sending certified notice of this subsection to the address set forth in the application and allowing the applicant 30 calendar days from the date of the notice to provide a substantive written response. A copy of this subsection and the most recent written request for information will be included with the certified letter.

(e) Central Registration Depository System (CRD).

(1) Whenever the Texas Securities Act or Board rules require the filing of an application with the Securities Commissioner for dealer or agent registration, members of FINRA or applicants for membership in FINRA shall make such filing electronically through the CRD which is jointly operated by

FINRA and the North American Securities Administrators Association, Inc. (NASAA). Applicants shall use the applicable uniform form for the submission of the filing in question and shall supplement their electronic filing by filing, in paper form, the items listed in paragraphs (3) - (6) of subsection (a) of this section, directly with the Commissioner.

(2) Uniform forms submitted through the CRD that designate Texas as a jurisdiction in which the filing is to be made are deemed to be filed with the Securities Commissioner and constitute official records of the Board.

Source Note: The provisions of this §115.2 adopted to be effective August 12, 2001, 26 TexReg 5794; amended to be effective November 26, 2001, 26 TexReg 9581; amended to be effective March 6, 2002, 27 TexReg 1475; amended to be effective June 12, 2002, 27 TexReg 4935; amended to be effective August 22, 2004, 29 TexReg 7968; amended to be effective January 8, 2006, 30 TexReg 8866; amended to be effective April 2, 2006, 31 TexReg 2845; amended to be effective February 21, 2008, 33 TexReg 1319; amended to be effective August 18, 2011, 36 TexReg 5094; amended to be effective October 6, 2015, 40 TexReg 6888.

§115.3. Examination.

(a) Requirement. To determine the applicant's qualifications and competency to engage in the business of dealing in and selling securities, the State Securities Board requires a written examination on general securities principles and on state securities law. Applicants must make a passing score, as determined by the North American Securities Administrators Association, FINRA, or the Securities Commissioner, as appropriate, on any required examination.

(b) Examinations accepted.

(1) Each applicant must pass an examination on general securities principles. This requirement may be satisfied by passing an examination on general securities principles administered by FINRA. As set forth in paragraph (3) of this subsection, applicants for restricted registrations may substitute an examination dealing with a particular type of security for an examination on general securities principles.

(2) For purposes of this subsection, the Securities Commissioner recognizes the following general examinations administered by FINRA:

(A) Series 1--General Securities Examination;

(B) Series 2--FINRA Non-Member General Securities Examination; and

(C) Series 7--General Securities Representative Examination.

(3) In lieu of an examination on general securities principles, the Securities Commissioner recognizes the following limited examinations, administered by FINRA, for the corresponding restricted registrations:

(A) for persons seeking a restricted registration to deal exclusively in securities issued by open-end investment companies registered under the Texas Securities Act or the

Investment Company Act of 1940, the Series 6--Investment Company Products/Variable Contracts Representative Examination;

(B) for persons seeking a restricted registration to accept orders unsolicited by such person from existing customers of the dealer, the Series 11--Assistant Representative/Order Processing Examination;

(C) for persons seeking a restricted registration to deal exclusively in direct participation program securities, the Series 22--Direct Participation Programs Representative Examination;

(D) for persons seeking a restricted registration to deal exclusively in municipal securities, the Series 52--Municipal Securities Representative Examination;

(E) for persons seeking a restricted registration to deal exclusively in corporate securities, the Series 62--Corporate Securities Representative Examination;

(F) for persons seeking a restricted registration to deal in all general securities except municipal securities, either the Series 17--General Securities Representative Examination, the Series 37--General Securities Representative Examination, the Series 38--General Securities Representative Examination, or the Series 47--General Securities Representative Examination;

(G) for persons seeking a restricted registration to deal exclusively in investment banking, the Series 79--Investment Banking Qualification Examination; and

(H) for persons seeking a restricted registration to deal exclusively in government securities, the Series 72--Government Securities Representative Examination. A person registered on or before September 1, 1998, for the purpose of dealing exclusively in government securities, is not required to pass the Series 72 examination.

(4) Each applicant must pass an examination on state securities law. This requirement may be satisfied by passing an examination on the Texas Securities Act administered by this Agency or by passing the Uniform Securities Agent State Law Examination (Series 63) or the Uniform Combined State Law Examination (Series 66).

(c) Waivers of examination requirements.

(1) All persons who were registered in Texas on August 23, 1963, are not required to take any examinations.

(2) A full waiver of the examination requirements of the Texas Securities Act, Section 13.D, is granted by the Board to the following classes of persons:

(A) issuers offering securities in rights offerings to their own securities holders;

(B) issuers offering their own securities in exchange for outstanding securities of another corporation, provided consummation of the offer is dependent upon tender of at least 80% of such outstanding securities;

(C) issuers restricting distribution of securities to security holders of an affiliate company, a subsidiary, or a parent of the issuer, provided the registration certificate is issued on a temporary basis and terminated immediately after the offering;

(D) officers and employees whose firms restrict their officers' and employees' securities activities to acting as brokers between and among principals for the sale of a majority of the stock or equity securities of a privately held business pursuant to a privately negotiated purchase agreement, where the managerial control of the business will devolve upon the purchaser(s) and where compensation received by the firm will be payable for the brokerage activities only;

(E) a finder;

(F) a person who completed the required examinations, but whose registration has lapsed for more than two years and who has been continually employed in a securities-related position with an entity which was not required to be registered;

(G) a person who completed the required examinations and whose registration with FINRA and with another state securities regulator has not lapsed for more than two years; and

(H) a Texas crowdfunding portal and its agents.

(3) A partial waiver of the examination requirements of the Texas Securities Act, Section 13.D, is granted by the Board to the following classes of persons:

(A) applicants who have been continuously registered with the Securities and Exchange Commission, FINRA, or any other exchange listed in the Act, Section 6.F, or recognized by the Board pursuant to §111.2 of this title (relating to Listed and Designated Securities) for 10 years immediately preceding the application for registration in Texas. These applicants are required to pass an examination on state securities law as required by subsection (b)(4) of this section;

(B) applicants who passed the "state securities examination" promulgated and formerly administered by the Psychological Corporation, New York, New York, and later by the Psychological Corporation, San Antonio, Texas, which was an examination on general securities principles. These applicants are required to pass an examination on state securities law as required by subsection (b)(4) of this section;

(C) applicants seeking registration for the purpose of dealing exclusively in real estate syndication interests or condominium securities, provided such persons are licensed, at the time of application, under The Real Estate License Act (Texas Occupations Code, Chapter 1101). Such persons are not required to take a general securities examination, but are required to pass an examination on state securities law as required by subsection (b)(4) of this section;

(D) applicants seeking registration for the purpose of dealing exclusively in oil and gas interests (other than interests in limited partnerships). Such persons are not required to take the general securities examination, but are required to pass an examination on state securities law as required by subsection (b)(4) of this section. Provided, however, any persons registered prior to January 1, 1976, for the purpose of dealing exclusively in oil and gas interests, are not required to pass an examination; and

(E) applicants who are officers, partners, or employees of an issuer (other than an open-end investment company) if the issuer's securities will be registered for sale in Texas. Such officers, partners, and employees are not required to take the general securities examination, but are required to pass an examination on state securities law as required by subsection (b)(4) of this section. Evidences of registration granted pursuant to this subparagraph are restricted to sales of the currently registered securities of the issuer.

(4) The Securities Commissioner in his or her discretion is authorized by the Board to grant full or partial waivers of the examination requirements of the Texas Securities Act, Section 13.D.

(d) Texas securities law examination.

(1) The fee for each filing of a request to take the Texas securities law examination is $35. An admission letter issued by the Board is required for all entrants. The examination is given at 9:00 a.m. on each Tuesday at the office of the State Securities Board in Austin. The examination may be taken at other locations near principal population centers across the state. Testing centers require reservations and may charge an additional (monitor) fee for administering the examination. A list of examination centers with additional details may be obtained from the State Securities Board.

(2) While taking the examination on the Texas Securities Act, each applicant may use an unmarked copy of the Texas Securities Act as it is printed and distributed by the State Securities Board. No other reference materials are allowed to be used by applicants during the examination.

(3) Reexamination. An applicant who fails the examination on the Texas Securities Act may request reexamination. The applicant must bring his or her application up to date before retaking an examination.

(4) Disability accommodations. The Texas securities law examination shall be administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990, as amended ("ADA").

(A) Any applicant with a disability who wishes to request disability accommodations must submit to the Securities Commissioner a Form 133.3, ADA Accommodations Request Form, that has been completed and signed by the applicant and includes supporting documentation from a licensed or certified health professional appropriate for diagnosing and treating the disability, at least 60 days prior to the examination. A prior history of receiving disability accommodations, without demonstration of a current need, will not necessarily warrant approval of disability accommodations.

(B) The Securities Commissioner may request additional documentation to substantiate a request for disability accommodations.

(C) Documentation shall not be older than three years from the date of submission.

(D) All medical records provided to the Securities Commissioner are confidential under the Health Insurance Portability and Accountability Act ("HIPAA").

(E) The Securities Commissioner is not required to approve every request for disability accommodations or to provide every accommodation or service requested. The Securities Commissioner is not required to grant a request for disability accommodations if doing so would fundamentally alter the measurement of knowledge or the measurement of skill intended to be tested by the Texas securities law examination, would affect the security of the examination, or would create an undue financial or administrative burden.

(F) Once disability accommodations have been granted, they may not be altered during the examination unless prior approval of the Securities Commissioner is obtained.

Source Note: The provisions of this §115.3 adopted to be effective August 12, 2001, 26 TexReg 5794; amended to be effective November 26, 2001, 26 TexReg 9581; amended to be effective July 14, 2005, 30 TexReg 3988; amended to be effective September 1, 2006, 31 TexReg 6712; amended to be effective February 21, 2008, 33 TexReg 1319; amended to be effective August 16, 2010, 35 TexReg 7050; amended to be effective December 21, 2011, 36 TexReg 8505; amended to be effective June 19, 2013, 38 TexReg 3780, amended to be effective November 17, 2014, 39 TexReg 8961.

§115.4. Evidences of Registration.

(a) Issuance. An evidence of registration or certificate of registration shall be issued for each registered securities dealer reflecting the registered officer or partner. An evidence of registration shall be issued for each registered branch office reflecting the registered supervisor.

(b) Amendments. Any changes in the information reflected on the evidence of registration must be submitted to the Securities Commissioner within 30 days of such change. An amendment fee, in the amount set forth in the Texas Securities Act, Section 35, is required to amend the evidence of registration.

(c) Successions.

(1) Succession by application.

(A) If a succession results in a surviving entity that is not currently registered as a securities dealer, the successor entity must file a new application, including the fees, as required in §115.2 of this title (relating to Application Requirements). Such a succession may include, but is not limited to, any of the following that results in either a change in control of the beneficial owners, or a change in management:

(i) a merger;

(ii) a consolidation;

(iii) an acquisition; or

(iv) a reorganization.

(B) A complete application for the successor entity should be filed far enough in advance, but no later than 30 days after succession, so the application can be reviewed and approved prior to the successor entity taking over the business of the predecessor securities dealer. If a successor entity has taken over the business of a predecessor securities dealer before the application of the successor entity has been reviewed and approved, the registration of the successor entity will be automatically granted a temporary registration for 60 days from the date of succession to complete the registration for the new entity. If the successor entity fails to complete the registration requirements within the 60-day temporary registration period, it may submit a written request to the Securities Commissioner to grant an extension of the temporary registration for up to 30 additional days. If the Commissioner, in the exercise of his or her discretion, declines to grant the extension request, the registration will terminate for the dealer and all its agents on the expiration of the 60-day temporary registration. Any sales by the dealer and/or its agents after termination of the temporary registration are subject to the sanctions provided by the Texas Securities Act for selling securities while unregistered.

(C) Upon registration of the successor entity, the registration of the predecessor securities dealer will be terminated.

(2) Succession by amendment.

(A) When a succession does not result in a change in control of the beneficial owners or management, or does not result in any acquisition or assumption of substantially all of the assets and liabilities of the predecessor securities dealer, the successor entity may file an amendment in lieu of filing a new application. Such a succession may include, but is not limited to, any of the following:

(i) an internal corporate reorganization or restructuring;

(ii) a conversion;

(iii) a change in the form of business; or

(iv) a change in the composition of a partnership that does not result in change of control of the partnership.

(B) The provisions in subsection (b) of this section apply to a succession by amendment.

(d) Termination. A securities dealer is required to notify the Securities Commissioner upon termination of any registered agent from its employ. Upon receipt of such notification, the Commissioner may terminate the registration. Dealers who are members of FINRA must file a Form U-5, Uniform Termination Notice for Securities Industry Registration, through the CRD to comply with this subsection.

(e) Renewal.

(1) Procedures for renewing expired and unexpired registrations are set forth in the Texas Securities Act, Section 19.C.

(2) A notice of impending expiration of registration (renewal application) will be sent to a currently registered dealer. Members of FINRA shall file the renewal application electronically through the CRD. For non-FINRA member firms, the renewal application should be returned to the State Securities Board for processing, along with the appropriate fee.

(3) If a person's registration is not renewed in a timely manner because such person is or was on active duty with the armed forces of the United States of America serving outside Texas, such person may renew the registration pursuant to this paragraph.

(A) Renewal of the registration may be requested by such person, such person's spouse, or an individual having power of attorney from such person. The renewal application shall include a current address and telephone number for the individual requesting the renewal.

(B) Renewal may be requested before or after expiration of the registration.

(C) A copy of the official orders or other official military documentation showing that such person is or was on active duty serving outside Texas shall be submitted to the Securities Commissioner along with the renewal application.

(D) A copy of the power of attorney from such person, if any, shall be filed with the Securities Commissioner along with the renewal application if the individual having the power of attorney executes any of the documents required in this paragraph.

(E) A renewal application submitted to the Securities Commissioner pursuant to this paragraph shall be accompanied by the applicable renewal fee set out in §115.8 of this title (relating to Fee Requirements).

(F) The State Securities Board will not assess any increased fee or other penalty against the person for failure to timely renew such person's registration if such person establishes to the satisfaction of the Securities Commissioner that all requirements of this paragraph have been met.

Source Note: The provisions of this §115.4 adopted to be effective August 12, 2001, 26 TexReg 5794; amended to be effective January 8, 2006, 30 TexReg 8866; amended to be effective February 21, 2008, 33 TexReg 1319; amended to be effective November 8, 2012, 37 TexReg 8786.

§115.5. Minimum Records.

(a) **Dealer records.** Compliance with the record-keeping requirements of the United States Securities and Exchange Commission, found in 17 Code of Federal Regulations §240.17a-3 and §240.17a-4, will satisfy the requirements of this section.

(b) Records to be made by certain dealers. A person or company registered in Texas as a securities dealer shall make and keep current the following minimum records or the equivalent thereof.

(1) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash, and other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

(2) Ledgers (or other records) that reflect all assets and liabilities, income and expense, and capital accounts.

(3) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer and of such dealer and its partners, all purchases, sales, receipts, and deliveries of securities and commodities for such account and all other debits and credits to such account.

(4) Ledgers (or other records) that reflect the following:

(A) securities in transfer;

(B) dividends and interest received;

(C) securities borrowed and securities loaned;

(D) monies borrowed and monies loaned (together with a record of the collateral therefor and any substitutions in such collateral); and

(E) securities failed to receive and failed to deliver.

(5) A securities record or ledger that reflects separately for each security as of the clearance dates all “long” or “short” positions (including securities in safekeeping) carried by such dealer for his or her account or for the account of his or her customers or partners and showing the location of all securities long and the offsetting position of all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried.

(6) Order memoranda:

(A) A memorandum of each brokerage order and of any other instruction given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modifications or cancellation thereof, the account for which entered, the time the order was received, the time of entry, the price at which executed, the identity of each employee, if any, responsible for the account, the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry, and, to the extent feasible, the time of execution or cancellation. The memorandum need not show the identity of any person, other than the employee responsible for the account, who may have

entered or accepted the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible employee; in that circumstance, the dealer shall maintain a separate record that identifies each other person. Orders entered pursuant to the exercise of discretionary power by such dealer or any of its employees shall be so designated. The term "instruction" shall be deemed to include instructions between partners and employees of a dealer. The term "time of entry" shall be deemed to mean the time when such dealer transmits the order or instruction for execution.

(B) This memorandum need not be made as to a purchase, sale or redemption of a security on a subscription way basis directly from or to the issuer, if the dealer maintains a copy of the customer's subscription agreement regarding a purchase, or a copy of any other document required by the issuer regarding a sale or redemption.

(7) A memorandum of each purchase and sale for the account of such dealer showing the price, and, to the extent feasible, the time of execution; and, in addition, where such purchase or sale is with a customer other than a dealer, a memorandum of each order received, showing the time of receipt, the terms and conditions of the order and of any modification thereof, the account in which it was entered, the identity of each employee, if any, responsible for the account, the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry. The memorandum need not show the identity of any person other than the employee responsible for the account who may have entered the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible employee; in that circumstance, the dealer shall maintain a separate record that identifies each other person. An order with a customer other than a dealer entered pursuant to the exercise of discretionary authority by the dealer, or agent thereof, shall be so designated.

(8) Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash, and other items for the account of customers and partners of such dealer.

(9) A record in respect of each cash and margin account with such dealer containing the name and address of the beneficial owner of such account and, in the case of a margin account, the signature of such owner; provided that, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account.

(10) A record of all puts, calls, spreads, straddles, standby commitments, and other options in which such dealer has any direct or indirect interest or which such dealer has granted or guaranteed, containing at least an identification of the security and the number of units involved.

(11) A questionnaire or application for employment executed by each partner, officer, director, agent, trader, manager, and each employee who handles funds or securities or who solicits transactions or accounts for such dealer, which questionnaire or application shall be approved in writing by an authorized representative of such dealer and shall contain at least the following information with respect to such person (in the case of persons registered with the State Securities Board, a copy of their application for registration as an agent, officer, or partner will satisfy this requirement):

(A) name, address, social security number, and the starting date of employment or other association with the dealer;

(B) date of birth;

(C) the educational institutions attended and whether he or she graduated therefrom;

(D) a complete, consecutive statement of all business connections for at least the preceding 10 years, including the reason for leaving each prior employment, and whether the employment was part-time or full-time;

(E) a record of any denial, suspension, expulsion, or revocation of membership or registration of any dealer he or she was associated with in any capacity when such action was taken;

(F) a record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed, on the person by any federal or state agency, or by any national securities exchange or national securities association, including any finding that he or she was a cause of any disciplinary action or had violated any law;

(G) a record of any permanent or temporary injunction entered against the person or any dealer he or she was associated with in any capacity at the time such injunction was entered;

(H) a record of any arrest or indictment for any felony or misdemeanor, and the disposition of any such arrest or indictment or further explanation thereof, and a record of any conviction for any felony or any misdemeanor, except minor traffic offenses, of which he or she has been the subject; and

(I) a record of any other name or names he or she has been known by or has used.

(12) A record listing of every agent of the dealer that shows, for each agent, every office of the dealer where the agent regularly conducts the business of handling funds or securities or effecting any transaction in, or inducing or attempting to induce the purchase or sale of any security for the dealer, and the Central Registration Depository number, if any, and every internal identification number or code assigned to that agent by the dealer.

(13) For each account with a natural person as a customer or owner:

(A) An account record including the customer's or owner's name, tax identification number, address, telephone number, date of birth, employment status (including occupation and whether the customer is an agent of a dealer), annual income, net worth (excluding value of primary residence), and the account's investment objectives. In the case of a joint account, the account record must include personal information for each joint owner who is a natural person; however, financial information for the individual joint owners may be combined. The account record shall indicate whether it has been signed by the agent responsible for the account, if any, and approved or accepted by a supervisor of the dealer. For accounts

in existence on the effective date of this section, the dealer must obtain this information within three years of May 2, 2003.

(B) A record indicating that:

(i) The dealer has furnished to each customer or owner within three years of May 2, 2003, and to each customer or owner who opened an account after May 2, 2003 within 30 days of the opening of the account, and thereafter at intervals no greater than 36 months, a copy of the account record or an alternate document with all information required by subparagraph (A) of this paragraph. The dealer may elect to send this notification with the next statement mailed to the customer or owner after the opening of the account. The dealer may choose to exclude any tax identification number and date of birth from the account record or alternate document furnished to the customer or owner. The dealer shall include with the account record or alternate document provided to each customer or owner an explanation of any terms regarding investment objectives. The account record or alternate document furnished to the customer or owner shall include or be accompanied by prominent statements that the customer or owner should mark any corrections and return the account record or alternate document to the dealer, and that the customer or owner should notify the dealer of any future changes to information contained in the account record.

(ii) For each account record updated to reflect a change in the name or address of the customer or owner, the dealer furnished a notification of that change to the customer's old address, or to each joint owner, and the agent, if any, responsible for that account, on or before the thirtieth day after the date the dealer received notice of the change.

(iii) For each change in the account's investment objectives the dealer has furnished to each customer or owner, and the agent, if any, responsible for that account a copy of the updated customer account record or alternative document with all information required to be furnished by subparagraph (A) of this paragraph on or before the thirtieth day after the date the dealer received notice of any change, or, if the account was updated for some reason other than the dealer receiving notice of a change, after the date the account record was updated. The dealer may elect to send this notification with the next statement scheduled to be mailed to the customer or owner.

(C) For purposes of this paragraph, the neglect, refusal, or inability of a customer or owner to provide or update any account record information required under subparagraph (A) of this paragraph shall excuse the dealer from obtaining that required information.

(D) the account record requirements in subparagraph (A) of this paragraph shall only apply to accounts for which the dealer is, or has within the past 36 months been, required to make a suitability determination. Additionally, the furnishing requirement in subparagraph (B)(i) of this paragraph shall not be applicable to an account for which, within the last 36 months, the dealer has not been required to make a suitability determination. Subparagraph (C) of this paragraph does not relieve a dealer from any regulatory obligation regarding the collection of information from a customer or owner.

(E) If an account is a discretionary account, a record containing the dated signature of each customer or owner granting the authority and the dated signature of each natural person to whom discretionary authority was granted.

(F) A record for each account indicating that each customer or owner was furnished with a copy of each written agreement entered into on or after May 2, 2003 pertaining to that account and that, if requested by the customer or owner, the customer or owner was furnished with a fully executed copy of each agreement.

(14) A record:

(A) As to each agent of each written customer complaint received by the dealer concerning that associated person. The record shall include the complainant's name, address, and account number; the date the complaint was received; the name of any other agents identified in the complaint; a description of the nature of the complaint; and the disposition of the complaint. Instead of the record, a dealer may maintain a copy of each original complaint in a separate file by the agent named in the complaint along with a record of the disposition of the complaint.

(B) Indicating that each customer of the dealer has been provided with a notice containing the address and telephone number of the department of the dealer to which any complaints as to the account may be directed.

(15) A record:

(A) As to each agent listing each purchase and sale of a security attributable, for compensation purposes, to that agent. The record shall include the amount of compensation if monetary and a description of the compensation if non-monetary. In lieu of making this record, a dealer may elect to produce the required information promptly upon request of a representative of the Securities Commissioner.

(B) Of all agreements pertaining to the relationship between each agent and the dealer including a summary of each agent's compensation arrangement or plan with the dealer, including commission and concession schedules and, to the extent that compensation is based on factors other than remuneration per trade, the method by which the compensation is determined.

(16) A record, which need not be separate from the advertisements, sales literature, or communications, documenting that advertisements, sales literature, or any other communications with the public by a dealer or its agents have been approved by a supervisor.

(17) A record for each office listing, by name or title, each person at that office who, without delay, can explain the types of records the dealer maintains at that office and the information contained in those records.

(18) A record listing each supervisor of a dealer responsible for establishing policies and procedures that require acceptance or approval of a record by a supervisor.

(c) Exemptions from the requirements of subsection (b) of this section:

(1) A dealer is not required to make or keep such records of transactions cleared for such dealer by a member of FINRA, the American Stock Exchange, the Boston Stock Exchange, the Chicago Stock Exchange, the Pacific Stock Exchange, the Chicago Board Options Exchange, or any other recognized

and responsible stock exchange approved by the Securities Commissioner pursuant to the Texas Securities Act, Section 6.F, where such records are customarily made and kept by the clearing member.

(2) A dealer is not required to make or keep such records that reflect the sale of United States Tax Savings Notes, United States Defense Savings Stamps, or United States Defense Savings Bonds, Series E, F, and G.

(3) A dealer is not required to make or keep such records with respect to any cash transaction of $100 or less involving only subscription rights or warrants which by their terms expire within 90 days after the issuance thereof.

(4) For purposes of transactions in municipal securities by municipal securities dealers, compliance with Rule G-8 of the Municipal Securities Rulemaking Board will be deemed to be in compliance with subsection (b) of this section.

(d) Maintenance of office records.

(1) Every dealer shall make and keep current, as to each office, the books and records described in paragraphs (1), (6), (7), (11), (13), (14)(A), (15), (16), (17), and (18) of subsection (b) of this section.

(2) When used in this section, the term "office" means any location where one or more agents regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security. The term "office" as used in this section is not related to the term "branch office" defined in 115.1 of this chapter (relating to General Provisions).

(e) Records to be preserved by dealers.

(1) Persons subject to subsection (b) of this section shall preserve:

(A) all records required to be made pursuant to paragraphs (1), (2), (3), (5), (17), and (18) of subsection (b) of this section for a period of not less than six years from the end of the fiscal year during which the last entry was made on such record, the first two years in an easily accessible place; and

(B) all records required to be made pursuant to paragraphs (4), (6)-(10), and (14)-(16) of subsection (b) of this section for a period of not less than three years from the end of the fiscal year during which the last entry was made on such record, the first two years in an easily accessible place.

(2) Persons subject to subsection (b) of this section shall maintain and preserve in an easily accessible place:

(A) all records required to be made pursuant to paragraph (11) of subsection (b) of this section until at least three years following termination of the employment or other relationship between the dealer and the person to whom the records relate;

(B) All account record information required pursuant to subsection (b)(13) of this section until at least six years after the earlier of the date the account was closed or the date on which the information was replaced or updated;

(C) Each report which a securities regulatory authority has requested or required the dealer to make and furnish to it pursuant to an order or settlement, and each securities regulatory authority examination report until three years after the date of the report;

(D) Each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the dealer until three years after the termination of the use of the manual; and

(E) All reports produced to review for unusual activity in customer accounts until 18 months after the date the report was generated. In lieu of maintaining the reports, a dealer may produce promptly the reports upon request by a representative of the Securities Commissioner. If a report was generated in a computer system that has been changed in the most recent 18 month period in a manner such that the report cannot be reproduced using historical data in the same format as it was originally generated, the report may be produced by using the historical data in the current system, but must be accompanied by a record explaining each system change which affected the reports. If a report is generated in a computer system that has been changed in the most recent 18 month period in a manner such that the report cannot be reproduced in any format using historical data, the dealer shall promptly produce upon request a record of the parameters that were used to generate the report at the time specified by a representative of the Securities Commissioner, including a record of the frequency with which the reports were generated.

(3) Persons registered as dealers in Texas shall preserve for a period of not less than three years from the end of the fiscal year during which the last entry was made on such record, the first two years in an easily accessible place:

(A) all checkbooks, bank statements, cancelled checks, and cash reconciliations;

(B) all bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of the dealer, as such;

(C) originals of all communications received and copies of all communications sent by the dealer (including interoffice memoranda and communications) relating to the business of the dealer. As used in this subparagraph, the term “communications” includes sales scripts;

(D) all trial balances, financial statements, branch office reconciliations, and internal audit working papers relating to the business of the dealer;

(E) all guarantees of accounts and all powers of attorneys and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation;

(F) all written agreements (or copies thereof) entered into by the dealer relating to the business of the dealer, including agreements with respect to any account;

(G) all customer complaints received by the dealer relating to the business of the dealer, and all documents relating to such complaints; and

(H) all information including but not limited to offering materials and subscription agreements on any private placements offered by the dealer.

(4) Persons registered as dealers in Texas shall preserve for a period of not less than six years from when a customer's account was closed, any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of such account.

(5) Persons registered as dealers in Texas shall preserve for at least three years after the termination of the enterprise partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the dealer and of any predecessor, all Forms BD, all Forms BDW, all amendments to these forms, all licenses or other documentation showing the registration of the dealer with any securities regulatory authority.

(6) The records required to be maintained and preserved pursuant to this section may be immediately produced or reproduced on microfilm or other photograph and may be maintained and preserved for the required time in that form provided that such microfilms or other photographs are arranged and indexed in such a manner as to permit the immediate location of any particular document, and that such microfilms or other photographs are at all times available for inspection by representatives of the Securities Commissioner together with facilities for immediate, easily readable projection of the microfilm or other photograph and for the production of easily readable facsimile enlargements.

(7) If a person ceases to be registered as a dealer in Texas, such person shall for the remainder of the periods of time specified in this section continue to preserve the records required herein.

(8) For purposes of transactions in municipal securities by municipal securities dealers, compliance with Rule G-9 of the Municipal Securities Rulemaking Board will be deemed to be compliance with this subsection.

(9) The records required to be maintained pursuant to this section may be maintained by any electronic storage media available so long as such records are available for immediate and complete access by representatives of the Securities Commissioner. Any electronic storage media must preserve the records exclusively in a non-rewriteable, non-erasable format; verify automatically the quality and accuracy of the storage media recording process; serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media; and have the capacity to download indexes and records preserved on electronic storage media to an acceptable medium. In the event that a records retention system commingles records required to be kept under this section with records not required to be kept, representatives of the Securities Commissioner may review all commingled records.

(f) The Securities Commissioner has a right to review all records maintained by registered dealers regardless of whether such records are required to be maintained under any specific applicable rule provision.

(g) Records for the most recent two year period required to be made and maintained pursuant to subsections (d), (e)(2)(D), and (e)(3)(C) of this section, which relate to an office shall be maintained at the office to which they relate. If an office is a private residence where only one agent (or multiple agents who reside at that location and are members of the same immediate family) regularly conducts business, and it is not held out to the public as an office nor are funds or securities of any customer of the dealer handled there, the dealer need not maintain records at that office, but the records must be maintained at another location within Texas as the dealer may select. Rather than maintain the records at each office, the dealer may choose to produce the records promptly at the request of a representative of the Securities Commissioner at the office to which they relate or at another location agreed to by the representative.

Source Note: The provisions of this §115.5 adopted to be effective August 12, 2001, 26 TexReg 5794; amended to be effective November 26, 2001, 26 TexReg 9581; amended to be effective October 29, 2003, 28 TexReg 9236; amended to be effective February 21, 2008, 33 TexReg 1319.

§115.6. Registration of Persons with Criminal Backgrounds.

(a) An application for registration may be denied, or a registration may be revoked or suspended, if the Securities Commissioner finds that the person has been convicted of any felony, or of a misdemeanor offense that directly relates to its duties and responsibilities. In determining whether a misdemeanor directly relates to such duties and responsibilities, the Securities Commissioner shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring registration of dealers and agents;

(3) the extent to which the registration applied for might offer an opportunity to engage in further criminal activity of the same type as that in which the applicant previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a registered dealer or agent.

(b) The Securities Commissioner shall consider the following evidence in determining the present fitness of an applicant who has been convicted of a crime:

(1) The extent and nature of the person's past criminal activity.

(2) The age of the applicant at the time of the commission of the crime.

(3) The amount of time that has elapsed since the applicant's last criminal activity.

(4) The conduct and work activity of the applicant prior to and following the criminal activity.

(5) Evidence of the applicant's rehabilitation or rehabilitative effort while incarcerated or following release.

(6) Other evidence of the applicant's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant; the sheriff and chief of police in the community where the applicant resides; and any other persons in contact with the applicant.

(7) It shall be the responsibility of the applicant to the extent possible to secure and provide to the Securities Commissioner the recommendation of the prosecution, law enforcement, and correctional authorities as required under this section. The applicant shall also furnish proof to the Securities Commissioner that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

(c) The State Securities Board considers that the following misdemeanors directly relate to the duties and responsibilities of securities dealers and agents:

(1) any criminal violation of which fraud is an essential element or that involves wrongful taking or possession of property or services;

(2) any criminal violation of the securities laws or regulations of this state, or of any other state in the United States, or of the United States, or any foreign jurisdiction;

(3) any criminal violation of statutes designed to protect consumers against unlawful practices involving insurance, securities, commodities or commodity futures, real estate, franchises, business opportunities, consumer goods, or other goods and services; and

(4) any criminal violation involving an assault on a person.

(d) Prior to filing an application, a person may request a preliminary evaluation of license eligibility from the State Securities Board by following the procedure set out in §104.7 of this title (relating to Preliminary Evaluation of License Eligibility) and paying the requisite fee.

Source Note: The provisions of this §115.6 adopted to be effective August 12, 2001, 26 TexReg 5794; amended to be effective March 28, 2010, 35 TexReg 2549.

§115.7. Maintenance and Inspection of Records.

(a) The Securities Commissioner, without notice, may inspect a registered dealer as necessary to ensure compliance with the Texas Securities Act and Board rules.

(b) The Commissioner or his or her authorized representative, during regular business hours, may:

(1) enter the business premises of a registered dealer; and

(2) examine and copy books and records pertinent to the inspection.

(c) During the inspection, the dealer shall:

(1) provide to the Commissioner or the Commissioner's authorized representative immediate and complete access to the person's office, place of business, files, safe, and any other location in which books and records pertinent to the inspection are located; and

(2) allow the Commissioner or the Commissioner's authorized representative to make photostatic or electronic copies of books or records subject to inspection.

(d) A dealer may not charge a fee for copying information under this section.

(e) The Commissioner or his or her authorized representative may require that all records required to be maintained pursuant to Board rules or maintained in the normal course of business of the dealer be made available in any office of the State Securities Board designated by the Commissioner or his or her representative within 48 hours of a request or within a greater time period as the Commissioner or his or her authorized representative deems reasonable.

Source Note: The provisions of this §115.7 adopted to be effective August 12, 2001, 26 TexReg 5794; amended to be effective November 26, 2001, 26 TexReg 9581.

§115.8. Fee Requirements.

(a) **Registration and notice filing fees.** Information about registration and notice filing fees for original and renewal applications for dealer, agents, officers, or partners of a securities dealer is available on the Agency's web site located at www.ssb.state.tx.us or by contacting an office of the State Securities Board.

(b) **Reduced fees for certain person registered in multiple capacities.**

(1) In general. A person may request reduced fees under paragraph (2) of this subsection, provided they are registered or are seeking registration in Texas:

(A) as either an agent of a securities dealer or as a sole proprietor securities dealer; and

(B) as either an investment adviser representative of an investment adviser that has less than five investment adviser representatives or as a sole proprietor investment adviser with less than five investment adviser representatives.

(2) Procedure. Persons meeting the requirements of paragraph (1) of this subsection may request reduced registration fees by filing Form 133.36, Request for Reduced Fees for Certain Persons Registered in Multiple Capacities. Form 133.36 must be filed at the time the original application for investment adviser representative or sole proprietor investment adviser registration is filed, or at least 30 days before the person's existing investment adviser representative or sole proprietor investment adviser registration will expire. On review of Form 133.36, the Securities Commissioner may, in his or her discretion, grant or deny the request for reduced fees or direct the person to supply additional information.

(3) Reduced fees. If the Securities Commissioner grants a person's request, the person must pay all applicable fees for securities agent or dealer registration as specified in the Texas Securities Act, Sections 35.A(2), 35.A(4), 35.A(5), and 41(a), but is exempt from the fees specified in the Texas Securities Act, Section 41(a), in connection with original and renewal applications for investment adviser representative or sole proprietor investment adviser registration, as applicable at the time Form 133.36 is filed. The reduction in fees granted by the Securities Commissioner under this subsection shall continue in force, without any further filings, as long as a person remains registered in a multiple capacity status.

(c) Reduced fees for sole proprietor dealers. A person seeking registration in multiple capacities as a sole proprietor dealer and as the designated officer of that sole proprietor dealer shall pay only the fee required in connection with the original or renewal application for registering as a sole proprietor dealer.

(d) Fees for concurrent registrations. Notwithstanding the Texas Securities Act, Sections 35 and 41, a person shall pay only one fee required under those sections to engage in business in this state concurrently for the same person or company as:

(1) a dealer and an investment adviser; or

(2) an agent and an investment adviser representative.

Source Note: The provisions of this §115.8 adopted to be effective August 12, 2001, 26 TexReg 5794; amended to be effective November 26, 2001, 26 TexReg 9581; amended to be effective February 24, 2004, 29 TexReg 1643; amended to be effective August 18, 2011, 36 TexReg 5094.

§115.9. Post-Registration Reporting Requirements.

(a) Each person registered as a securities dealer shall report to the Securities Commissioner within 30 days after its entry against the registered person or an agent thereof, the matters described in this subsection. Likewise, each person registered as an agent of a securities dealer shall report to the Commissioner within 30 days after its occurrence or entry against the agent the matters described in this subsection. The following matters must be reported:

(1) any administrative order issued by state or federal authorities, which order:

(A) is based upon a finding that such person has engaged in fraudulent conduct; or

(B) was entered after notice and opportunity for a hearing, denying, suspending, or revoking the person's registration as a dealer, agent, investment adviser, or investment adviser representative, or the substantial equivalent of those terms;

(2) any felony criminal action or conviction;

(3) any misdemeanor action or conviction based on fraud, deceit, or wrongful taking of property;

(4) any order, judgment, or decree entered by any court of competent jurisdiction which temporarily or permanently restrains or enjoins such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving any false filing with any state; or which restrains or enjoins such person from activities subject to federal or state statutes designed to protect consumers against unlawful or deceptive practices involving insurance, commodities or commodity futures, real estate, franchises, business opportunities, consumer goods, or other goods and services;

(5) any expulsion, bar, suspension, censure, fine, or penalty imposed by a self-regulatory organization;

(6) any change in any other information previously disclosed to the Securities Commissioner on any application form or filing; and

(7) the filing of any voluntary or involuntary bankruptcy petition.

(b) Upon request by the Securities Commissioner, a securities dealer or agent is required to furnish to the Commissioner copies of the order, conviction, or decrees, or other documents which evidence events disclosable pursuant to subsection (a) of this section.

(c) For purposes of this section, a securities "dealer" shall include any partners, directors, executive officers, or beneficial owners of 10% or more of any class of the equity securities of a registered dealer (beneficial ownership meaning the power to vote or direct the vote of and/or the power to dispose or direct the disposition of such securities).

Source Note: The provisions of this §115.9 adopted to be effective August 12, 2001, 26 TexReg 5794.

§115.10. Supervisory Requirements.

(a) Supervisory system. Each dealer shall establish, maintain, and enforce a system to supervise the activities of its agents that is reasonably designed to achieve compliance with the Texas Securities Act, Board rules, and all applicable securities laws and regulations. A dealer's supervisory system shall provide, at a minimum, for the following:

(1) the establishment and maintenance of written procedures; and

(2) the appointment of one or more registered agents to carry out the supervisory responsibilities of the dealer.

(b) Written procedures.

(1) Each dealer shall establish, maintain, and enforce written procedures to supervise the activities of its agents that are reasonably designed to achieve compliance with the Texas Securities Act, Board rules, and all applicable securities laws and regulations.

(2) The dealer's written supervisory procedures shall set forth the supervisory system established by the dealer and shall include the titles and locations of supervisory personnel and the responsibilities of each supervisory person.

(3) The dealer shall maintain on an internal record the names of all persons who are designated as supervisory personnel and the dates for which such designation is or was effective. Such record shall be preserved by the dealer for a period of not less than three years, the first two years in an easily accessible place.

(4) A current copy of a dealer's written supervisory procedures, or the relevant portions thereof, shall be kept and maintained in each branch office and at each location where supervisory activities are conducted on behalf of the dealer. Each dealer shall amend its written supervisory procedures as appropriate within a reasonable time after changes occur in applicable securities laws and regulations.

(c) Internal inspections. Each dealer shall conduct a review, at least annually, of the businesses in which it engages, which review shall be reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations. The dealer shall document this review and provide the documentation to the Securities Commissioner upon request. Each dealer shall review the activities of each office, including the periodic examination of customer accounts to detect and prevent violations of applicable securities laws and regulations. Each branch office of the dealer shall be inspected according to a cycle which shall be set forth in the dealer's written supervisory and inspection procedures. In establishing such cycle, the dealer shall give consideration to the nature and complexity of the securities activities for which the location is responsible, the volume of business done, and the number of associated persons assigned to the location. Each dealer shall retain a written record of the dates upon which each review and internal inspection is conducted.

(d) Review of transactions and correspondence. Each dealer shall establish and implement procedures for the review and endorsement by a designated supervisor, in writing on an internal record, of all transactions and for the review by that supervisor of incoming and outgoing written and electronic correspondence of its registered agents with the public relating to the securities activities of such dealer. Such procedures should be in writing and be designed to reasonably supervise each agent. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to the Securities Commissioner upon request.

Source Note: The provisions of this §115.10 adopted to be effective August 12, 2001, 26 TexReg 5794; amended to be effective January 8, 2006, 30 TexReg 8866 ; amended to be effective August 16, 2010, 35 TexReg 7050.

§115.11. Finder Registration and Activities.

(a) Prohibited activities. A finder shall not:

(1) participate in negotiating any of the terms of an investment;

(2) give advice to an accredited investor or an issuer regarding the advantages or disadvantages of entering into an investment;

(3) conduct due diligence on behalf of a potential issuer or potential investor, provide valuation, or provide other analysis to an accredited investor or an issuer regarding an investment;

(4) advertise to seek accredited investors or issuers;

(5) have custody of an accredited investor's funds or securities;

(6) serve as an escrow agent for the parties; or

(7) disclose information to an accredited investor or to an issuer other than the information described in subsections (b) and (c) of this section.

(b) Required disclosures.

(1) A finder must disclose the following to each accredited investor:

(A) that compensation will be paid to the finder;

(B) that the finder can neither recommend nor advise the accredited investor with respect to the offering; and

(C) any potential conflict of interest in connection with the finder's activities.

(2) The disclosures required by paragraph (1) of this subsection must be provided in writing.

(c) Permitted disclosures.

(1) A finder may provide to an accredited investor some or all of the following information:

(A) the name, address, and telephone number of the issuer of the securities;

(B) the name, a brief description, and price (if known) of any security to be issued;

(C) a brief description of the business of the issuer in 25 words or less;

(D) the type, number, and aggregate amount of securities being offered; and/or

(E) the name, address, and telephone number of the person to contact for additional information.

(2) A finder may provide to an issuer contact information regarding an accredited investor.

(d) Recordkeeping.

(1) A finder is not required to maintain the records listed in §115.5 of this title (relating to Minimum Records); however, compliance with the recordkeeping requirements of §115.5 of this title will satisfy the requirements of this subsection.

(2) A finder shall maintain and preserve a copy of the Form BD and the Form U-4 used to register the finder, and any amendments thereto, for a period of five (5) years from the date of the termination of the finder's registration.

(3) A finder shall maintain and preserve for a period of five (5) years the following records related to transactions that are completed and to transactions where the finder receives compensation:

(A) records of compensation received for acting as a finder, including the name of the payor, the date of payment, name of the issuer, and name of the accredited investor;

(B) copies of information provided by the finder to prospective accredited investors;

(C) any agreements and/or contracts between the finder and the accredited investor;

(D) any agreements and/or contracts between the finder and the issuer;

(E) any lists of contacts/prospective accredited investors and/or issuers; and

(F) any correspondence with accredited investors and/or issuers.

(4) The records required to be maintained and preserved pursuant to this subsection must be maintained in a manner that will permit the immediate location of any particular document.

(5) The records required to be maintained and preserved pursuant to this subsection may be archived if they are more than two years old.

(6) A finder shall not commingle records to be maintained and preserved pursuant to this subsection with other records.

(7) A finder shall, upon written request of the Securities Commissioner, furnish to the Securities Commissioner any records required to be maintained and preserved under this subsection.

(e) Supervisory requirements. Because a finder is an individual who will not have agents, a finder is not required to maintain a supervisory system as provided in §115.10 of this title (relating to Supervisory Requirements).

(f) Filings.

(1) Application. In lieu of the application requirements listed in §115.2 of this title (relating to Application Requirements), a complete application for a finder consists of the following and must be filed in paper form with the Securities Commissioner:

(A) Form BD, including all applicable Disclosure Reporting Pages. For any question that does not pertain to the finder's business, the finder must indicate that the question is not applicable. To identify the finder's activities, the finder must mark Form BD, Item 12.Z, that refers to "Other," and describe such activities on Form BD, Schedule D, Section II. A finder is not required to complete certain schedules of the Form BD unless requested to do so by the Securities Commissioner. Such schedules include Schedule A, B, C, and E, and Schedule D, Sections IV, V and VI.

(B) Form U-4, with the following items completed:

(i) Item 1 (General Information) limited to completion of the:

(I) first, middle, last name; and

(II) individual social security number.

(ii) Item 3 (Registration With Unaffiliated Firms);

(iii) Item 6 (Registration Requests With Affiliated Firms);

(iv) Item 9 (Identifying Information/Name Change);

(v) Item 10 (Other Names);

(vi) Item 11 (Residential History);

(vii) Item 12 (Employment History);

(viii) Item 13 (Other Business);

(ix) Item 14 (Disclosure Questions and related Disclosure Reporting Pages if applicable);

(x) Item 15 (Signatures);

(xi) Item 15A (Individual/Applicant's Acknowledgement and Consent); and

(xii) Item 15D (Amendment Individual/Applicant's Acknowledgement and Consent).

(C) any other information deemed necessary by the Securities Commissioner to determine a finder's financial responsibility or a finder's business repute or qualifications; and

(D) the appropriate registration fee(s).

(2) Post-reporting requirements. A finder is subject to the dealer and agent requirements contained in §115.9 of this title (relating to Post-Registration Reporting Requirements).

Source Note: The provisions of this §115.11 adopted to be effective September 1, 2006, 31 TexReg 6713; amended to be effective November 8, 2012, 37 TexReg 8787.

§115.12. Reserved for Expansion.

§115.13. Reserved for Expansion.

§115.14. Reserved for Expansion.

§115.15. Reserved for Expansion.

§115.16. Use of Senior-Specific Certifications and Professional Designations.

(a) The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be an inequitable practice within the meaning of the Texas Securities Act, Section 14.A(3). The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

(1) use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) use of a nonexistent or self-conferred certification or professional designation;

(3) use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(4) use of a certification or professional designation that was obtained from a designating or certifying organization that:

(A) is primarily engaged in the business of instruction in sales and/or marketing;

(B) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(C) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(D) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

(b) There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subsection (a)(4) of this section when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The National Commission for Certifying Agencies; or

(3) an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

(c) In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) the manner in which those words are combined.

(d) For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(1) indicates seniority or standing within the organization; or

(2) specifies an individual's area of specialization within the organization.

(e) For purposes of subsection (d) of this section, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

(f) Nothing in this rule shall limit the Securities Commissioner's authority to enforce existing provisions of law.

Source Note: The provisions of this §115.16 adopted to be effective October 30, 2008, 33 TexReg 8761.

§115.17. Reserved for Expansion.

§115.18. Special Application Provisions Available to a Military Spouse, Military Service Member, or Military Veteran.

(a) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Current registration--A registration or license that is:

(A) issued by another state, the District of Columbia, or a territory of the United States that has registration requirements that are substantially equivalent to the requirements for a Texas registration in the same capacity;

(B) in good standing; and

(C) in the same capacity as the application for registration in Texas.

(2) Good standing--A registration or license that is effective and unrestricted. A registration or license is considered to be restricted and not in good standing if it is subject to:

(A) an undertaking, special stipulations or agreements relating to payments, limitations on activity or other restrictions;

(B) a pending administrative or civil action; or

(C) an order or other written directive issued pursuant to statutory authority and procedures, including orders of denial, suspension, or revocation.

(3) Military spouse--An applicant who is married to a military service member who is currently on active duty.

(4) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(5) Military veteran--A person who has served in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, or in the auxiliary service of one of those branches of the armed forces.

(b) Alternative procedure for a military spouse as authorized by Occupations Code, Section 55.004.

(1) An applicant who is a military spouse may use the procedure set out in this subsection if:

(A) the applicant holds a current registration in another jurisdiction; or

(B) has been registered in Texas in the same capacity within the five years preceding the date of the application for registration, but whose registration in Texas expired while the applicant lived in another state for at least six months.

(2) If the applicant is not registered within five days of submitting an application, the applicant may request special consideration of his or her application for registration by filing Form 133.4, Request for Special Consideration of a Registration Application by a Military Spouse, Military Service Member, or Military Veteran, with the Securities Commissioner ("Commissioner"). Within five business days of receipt of the completed Form 133.4, the applicant will be notified in writing of the reason(s) for the pending or deficient status assigned to the application.

(3) In addition to the waivers of examination requirements set out in §115.3 of this title (relating to Examination), the Commissioner in his or her discretion is authorized by the Board to grant full or partial waivers of the examination requirements of the Texas Securities Act, Section 13.D, on a showing of alternative demonstrations of competency to meet the requirements for obtaining the registration sought.

(c) Expedited review of an application submitted by a military spouse as authorized by Occupations Code, Section 55.005 and Section 55.006.

(1) An applicant who is a military spouse may use the procedure set out in this subsection if the applicant holds a current registration in another jurisdiction.

(2) If the applicant is not registered within five days of submitting an application, the applicant may request special consideration of his or her application for registration by filing Form 133.4, Request for Special Consideration of a Registration Application by a Military Spouse, Military Service Member, or Military Veteran, with the Commissioner.

(3) An applicant proceeding under this subsection may be registered despite having pending and/or deficient items ("deficiencies"). The deficiencies will be communicated to the applicant in writing or by electronic means within five business days from approval of the registration.

(4) The deficiencies noted at the time the registration is granted must be resolved by the applicant within a 12 month period. Failure to resolve outstanding deficiencies will cause the registration granted under this subsection or any renewal of such registration to automatically terminate 12 months after the date the registration was initially granted pursuant to this subsection.

(d) Registration of persons with military experience as authorized by Occupations Code, Section 55.007.

(1) An applicant who is a military service member or military veteran may request special consideration of verified military service, training, or education towards registration requirements, other than an examination requirement, for the registration sought by submitting Form 133.4, Request for Special Consideration of a Registration Application by a Military Spouse, Military Service Member, or Military Veteran, with the applicant's registration application.

(2) The procedure authorized by this subsection is not available to a military service member or military veteran who:

(A) is registered in another jurisdiction but such registration is not in good standing; or

(B) has been convicted of a crime that could be the basis for denial of the registration pursuant to the Texas Securities Act, Section 14.A.

(e) Other provisions in this chapter.

(1) Unless specifically allowed in this section, an applicant must meet the requirements for registration or renewal specified in this chapter. This includes the requirement that certain filings be made electronically through the CRD.

(2) A one-year period, instead of the 90-day period contained in §115.2 of this title (relating to Application Requirements), will apply to the automatic withdrawal of an application for which a Form 133.4 is properly filed.

(f) Additional information. An applicant receiving special consideration pursuant to this section in connection with a registration application shall provide any other information deemed necessary by the Commissioner. Such information may include, but is not limited to documentation:

(1) demonstrating status as a military spouse, service member, or military veteran;

(2) to determine whether the applicant meets licensing requirements through some alternative method;

(3) relating to prior military service, training, or education that may be credited towards a registration requirement; or

(4) to determine a dealer's financial responsibility or a dealer's or agent's business repute or qualifications.

Source Note: The provisions of this §115.18 adopted to be effective June 13, 2012, 37 TexReg 4185; amended to be effective March 1, 2014, 39 TexReg 493.

§115.19. Texas Crowdfunding Portal Registration and Activities.

(a) Intrastate portal. A Texas crowdfunding portal:

(1) must be an entity incorporated or organized under the laws of Texas, authorized to do business in Texas, and engaged exclusively in intrastate offers and sales of securities in Texas;

(2) must limit its activities to operating an Internet website utilized to offer and sell securities exempt from registration pursuant to §139.25 of this title (relating to Intrastate Crowdfunding Exemption); and

(3) does not operate or facilitate a secondary market in securities.

(b) Internet website. The Internet website operated by the Texas crowdfunding portal must meet the following requirements:

(1) the website must contain a disclaimer that reflects that access to securities offerings on the website is limited to Texas residents and offers and sales of the securities appearing on the website are limited to persons that are Texas residents;

(2) an affirmative representation by a visitor to the Internet website that the visitor is a resident of Texas is required before the visitor can view securities-related offering materials on the website;

(3) evidence of residency within Texas is required before a sale is made to a prospective purchaser. An affirmative representation made by a prospective purchaser that the prospective purchaser is a Texas resident and proof of at least one of the following would be considered sufficient evidence that the individual is a resident of this state:

(A) a valid Texas driver license or official personal identification card issued by the State of Texas;

(B) a current Texas voter registration; or

(C) general property tax records showing the individual owns and occupies property in this state as his or her principal residence;

(4) prior to offering an investment opportunity to residents of Texas and throughout the term of the offering, the portal shall give the Securities Commissioner access to the Internet website; and

(5) prior to permitting an investment in any securities listed on the Internet website, the portal shall obtain an affirmative acknowledgment from the investor of the following:

(A) There is no ready market for the sale of the securities acquired from this offering; it may be difficult or impossible for an investor to sell or otherwise dispose of this investment. An investor may be required to hold and bear the financial risks of this investment indefinitely;

(B) The securities have not been registered under federal or state securities laws and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under federal and state law;

(C) In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved; and

(D) No federal or state securities commission or regulatory authority has confirmed the accuracy or determined the adequacy of the disclosure statement or any other information on this Internet website.

(c) Prohibited activities. A Texas crowdfunding portal shall not:

(1) offer investment advice or recommendations;

(2) compensate employees, agents, or other persons not registered with the Securities Commissioner for soliciting offers or sales of securities displayed or referenced on its platform or portal;

(3) hold, manage, possess or otherwise handle investor funds or securities;

(4) be affiliated with or under common control with an issuer whose securities appear on the Internet website;

(5) hold a financial interest in any issuer offering securities on the portal's Internet website; or

(6) receive a financial interest in an issuer as compensation for services provided to or on behalf of an issuer.

(d) Background and regulatory checks. Prior to offering securities to residents of Texas, the Texas crowdfunding portal shall conduct a reasonable investigation of the background and regulatory history of each issuer whose securities are offered on the portal's Internet website and of each of the issuer's control persons. "Control persons" for purposes of this subsection means the issuer's officers; directors; or other persons having the power, directly or indirectly, to direct the management or policies of the issuer, whether by contract or otherwise; and persons holding more than 20% of the outstanding equity of the issuer. The portal must deny an issuer access to its Internet website if the portal has a reasonable basis for believing that:

(1) the issuer or any of its control persons is subject to a disqualification under §139.25 of this title (relating to Intrastate Crowdfunding Exemption);

(2) the issuer has engaged in, is engaging in, or the offering involves any act, practice, or course of business that will, directly or indirectly, operate as a fraud or deceit upon any person; or

(3) it cannot adequately or effectively assess the risk of fraud by the issuer or its potential offering.

(e) Recordkeeping.

(1) A Texas crowdfunding portal is not required to maintain the records listed in §115.5 of this title (relating to Minimum Records) or to maintain a supervisory system under §115.10 of this title (relating to Supervisory Requirements).

(2) A portal shall maintain and preserve for a period of five (5) years from either the date of the document or communication or the date of the closing or termination of the securities offering, whichever is later, the following records related to offers and sales made through the Internet website and to transactions where the portal receives compensation:

(A) records of compensation received for acting as a portal, including the name of the payor, the date of payment, name of the issuer, and name of the investor;

(B) copies of information provided by the portal to issuers offering securities through the portal, prospective purchasers, and investors;

(C) any agreements and/or contracts between the portal and an issuer, prospective purchaser, or investor;

(D) any information used to establish that an issuer, prospective purchaser, or investor is a Texas resident;

(E) any information used to establish that a prospective purchaser or investor is an accredited investor as defined in §107.2 of this title (relating to Definitions);

(F) any correspondence or other communications with issuers, prospective purchasers, and/or investors;

(G) any information made available through the portal's Internet website relating to an offering;

(H) ledgers (or other records) that reflect all assets and liabilities, income and expense, and capital accounts; and

(I) any other records relating to the offers and/or sales of securities made through the Internet website.

(3) A portal shall maintain and preserve a copy of the Form 133.15 (relating to Texas Crowdfunding Portal Registration), Form 133.16 (relating to Texas Crowdfunding Portal Withdrawal of Registration), and the Form U-4 (Uniform Application for Securities Industry Registration or Transfer) used to register the portal and its designated officer, and any amendments thereto, for a period of five (5) years from the termination of the portal's registration.

(4) The records required to be maintained and preserved under this subsection may be archived if they are over two years old.

(5) A portal shall, upon written request of the Securities Commissioner, furnish to the Commissioner any records required to be maintained and preserved under this subsection.

(6) The portal shall provide to the Commissioner access, inspection, and review of any Internet website operated by a portal and records maintained by the portal; and

(7) The records required to be kept and preserved under this subsection must be maintained in a manner, including by any electronic storage media, that will permit the immediate location of any particular document so long as such records are available for immediate and complete access by representatives of the Commissioner. Any electronic storage system must preserve the records exclusively in a non-rewriteable, non-erasable format; verify automatically the quality and accuracy of the storage media recording process; serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media; and can download indexes and records preserved on electronic storage media to an acceptable medium. In the event that a records retention system commingles records required to be kept under this subsection with records not required to be kept, representatives of the Commissioner may review all commingled records.

(f) Filings.

(1) Application. In lieu of the application requirements in §115.2 of this title (relating to Application Requirements), a complete application for a Texas crowdfunding portal consists of the following and must be filed with the Securities Commissioner:

(A) Form 133.15, including all applicable schedules and supplemental information;

(B) Form U-4, for the designated officer and a Form U-4 for each agent to be registered (officers of a corporation or partners of a partnership shall not be deemed agents solely because of their status as officers or partners);

(C) a copy of the articles of incorporation or other documents which indicate the form of organization, certified by the Texas Secretary of State or by an officer or partner of the applicant;

(D) any other information deemed necessary by the Commissioner to determine the financial responsibility, business repute, or qualifications of the portal; and

(E) the appropriate registration fee(s).

(2) Post-reporting requirements. A portal is subject to the dealer and agent requirements in §115.9 of this title (relating to Post-Registration Reporting Requirements).

(3) Renewal. Registration as a portal expires at the close of the calendar year, but subsequent registration for the succeeding year shall be issued upon written application and upon payment of the appropriate renewal fee(s), without filing of further statements or furnishing any further information unless specifically requested by the Commissioner.

Source Note: The provisions of this §115.19 adopted to be effective November 17, 2014, 39 TexReg 8961.

The next page is 116-1.

TEXAS ADMINISTRATIVE CODE
TITLE 7 BANKING AND SECURITIES
PART 7 STATE SECURITIES BOARD

CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES.

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§116.1. General Provisions.

(a) **Definitions.** Words and terms used in this chapter are also defined in §107.2 of this title (relating to Definitions). The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Applicant--A person who submits an application for registration as an investment adviser or an investment adviser representative.

(2) Branch office--Any location where one or more representatives of an investment adviser regularly conduct investment advisory services or that is held out as such.

(A) This definition excludes:

(i) any location that is established solely for customer service and/or back office type functions where no advisory services are conducted and that is not held out to the public as a branch office;

(ii) any location that is the investment adviser representative's primary residence, provided that:

(I) only one investment adviser representative, or multiple representatives who reside at that location and are members of the same immediate family, conduct business at the location;

(II) the location is not held out to the public as an office and the investment adviser representative does not meet with customers at the location;

(III) neither customer funds nor securities are handled at that location;

(IV) the investment adviser representative is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by such representative;

(V) the investment adviser representative's correspondence and communications with the public are subject to the investment adviser's supervision;

(VI) electronic communications (e.g., e-mail) are made through the investment adviser's electronic system;

(VII) all orders are entered through the designated branch office or an electronic system established by the investment adviser that is reviewable at the branch office;

(VIII) written supervisory procedures pertaining to supervision of investment advisory services conducted at the residence are maintained by the investment adviser; and

(IX) a list of the residence locations are maintained by the investment adviser;

(iii) any location, other than a primary residence, that is used for investment advisory services for less than 30 business days in any one calendar year, provided the investment adviser complies with the provisions of clause (ii)(II) - (VIII) of this subparagraph;

(iv) any office of convenience, where investment adviser representatives occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;

(v) any location that is used primarily to engage in non-securities activities and from which the investment adviser representative(s) effects no more than 25 investment advisory services in any one calendar year; provided that any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the representative(s) conducting business at the non-branch locations are directly supervised; and

(vi) a temporary location established in response to the implementation of a business continuity plan.

(B) Notwithstanding the exclusions in subparagraph (A) of this paragraph, any location that is responsible for supervising the activities of persons associated with the investment adviser at one or more non-branch locations of the investment adviser is considered to be a branch office.

(C) The term "business day" shall not include any partial business day provided that the investment adviser representative spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

(3) Supervisor--The person named by the investment adviser to supervise the activities of a branch office and registered as an investment adviser representative.

(4) Control--The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or company, whether through the ownership of voting securities, by contract, or otherwise.

(5) In this state--

(A) A person renders services as an investment adviser "in this state" as set out in the Texas Securities Act, Section 12.B, if either the person or the person's agent is present in this state or the client/customer or the client/customer's agent is present in this state at the time of the particular activity. A person can be an investment adviser in more than one state at the same time.

(B) Likewise, a person renders services as an investment adviser representative "in this state" as set out in the Texas Securities Act, Section 12.B, whether by direct act or through subagents except as otherwise provided, if either the person or the person's agent is present in this state or the client/customer or the client/customer's agent is present in this state at the time of the particular activity. A person can be an investment adviser representative in more than one state at the same time.

(C) Rendering services as an investment adviser or as an investment adviser representative can be made by personal contact, mail, telegram, telephone, wireless, electronic communication, or any other form of oral or written communication.

(6) Investment adviser--A person who, for compensation, engages in the business of advising others, either directly or through publications or writings, with respect to the value of securities or to the advisability of investing in, purchasing, or selling securities or a person who, for compensation and as part of a regular business, issues or adopts analyses or a report concerning securities. The term does not include:

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

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

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

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

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

(i) a direct obligation of or an obligation the principal or interest of which is guaranteed by the United States government, or

(ii) issued or guaranteed by a corporation in which the United States has a direct or indirect interest and designated by the United States Secretary of the Treasury under Securities Exchange Act of 1934, Section 3(a)(12), (15 U.S.C. §78c(a)(12)), as amended, as an exempt security for purposes of that Act.

(7) Investment adviser representative or representative of an investment adviser--Each person or company who, for compensation, is employed, appointed, or authorized by an investment adviser to solicit clients for the investment adviser or who, on behalf of an investment adviser, provides investment advice, directly or through subagents, to the investment adviser's clients. The term does not include a partner of a partnership or an officer of a corporation or other entity that is registered as an investment adviser under the Texas Securities Act solely because of the person's status as an officer or partner of that entity.

(8) Rendering services as an investment adviser--Any act by which investment advisory services are provided for compensation.

(9) Solicitor--Any investment adviser or investment adviser representative who limits their activities to referring potential clients to an investment adviser for compensation.

(10) Federal covered investment adviser--An investment adviser who is registered under the Investment Advisers Act of 1940 (15 U.S.C. §80b-1 et seq.), as amended. A federal covered investment adviser is not required to be registered pursuant to the Texas Securities Act.

(11) Registered investment adviser--An investment adviser who has been issued a registration certificate by the Securities Commissioner under the Texas Securities Act, Section 15. (A federal covered investment adviser is not prohibited from being registered with the Securities Commissioner. If a federal covered investment adviser elects to register with the Securities Commissioner, it is subject to all of the registration requirements of the Act.)

(12) Officer--A president, vice president, secretary, treasurer, or principal financial officer, comptroller, or principal accounting officer, or any other person occupying a similar status or performing similar functions with respect to any organization or entity, whether incorporated or unincorporated.

(b) Registration of investment advisers, investment adviser representatives, and branch offices.

(1) Requirements of registration.

(A) Any person who renders services as an investment adviser, including acting as a solicitor, may not engage in such activity for compensation without first being registered as an investment adviser under the provisions of the Texas Securities Act or notice-filed under the provisions of paragraph (2) of this subsection. Likewise, every person employed or appointed, or authorized by such person to render services, which include the giving of investment advice or acting as a solicitor, cannot conduct such activities unless registered as an investment adviser or an investment adviser representative under the provisions of the Act, or notice-filed as an investment adviser or an investment adviser representative under the provisions of paragraph (2) of this subsection.

(B) Each branch office of a registered investment adviser in Texas must be registered. A registered officer, partner, or investment adviser representative must be named as supervisor.

(2) Exemption from the registration requirements. The Board pursuant to the Texas Securities Act, Sections 12.C and 5.T, exempts from the registration provisions of the Act, Section 12, persons not required to register as an investment adviser or an investment adviser representative on or after July 8, 1997, by act of Congress in Public Law Number 104-290, Title III.

(A) Registration as an investment adviser is not required for the following:

(i) an investment adviser registered under the Investment Advisers Act of 1940, Section 203;

(ii) an investment adviser registered with the Securities and Exchange Commission pursuant to a rule or order adopted under the Investment Advisers Act of 1940, Section 203A(c);

(iii) a person not registered under the Investment Advisers Act of 1940, Section 203, because such person is excepted from the definition of an investment adviser under the Investment Advisers Act of 1940, Section 202(a)(11); or

(iv) an investment adviser who does not have a place of business located in this state and, during the preceding 12-month period, has had fewer than six clients who are Texas residents.

(B) Registration as an investment adviser representative of an investment adviser described in subparagraph (A) of this paragraph is not required for an investment adviser representative who does not have a place of business located in Texas but who otherwise engages in the rendering of investment advice in this state.

(C) Notice filing requirements and fees for investment advisers and investment adviser representatives exempted from registration pursuant to this subsection only.

(i) Initially, the provisions of subparagraphs (A) and (B) of this paragraph are available provided that the investment adviser files:

(I) Form ADV through the IARD designating Texas as a jurisdiction in which the filing is to be made; and

(II) an initial fee equal to the amount that would have been paid had the investment adviser and each investment adviser representative filed for registration in Texas.

(ii) Annually, the investment adviser files renewal fees which would have been paid had the investment adviser and each investment adviser representative been registered in Texas.

(D) Persons not required to register with the Securities Commissioner pursuant to subparagraphs (A) and (B) of this paragraph, are reminded that the Texas Securities Act prohibits fraud or fraudulent practices in dealing in any manner in any securities whether or not the person engaging in fraud or fraudulent practices is required to be registered. The Agency has jurisdiction to investigate and bring enforcement actions to the full extent authorized in the Texas Securities Act with respect to fraud or deceit, or unlawful conduct by an investment adviser or investment adviser representative in connection with transactions involving securities in Texas.

(c) Types of registrations.

(1) General registration. A general registration is a registration to render advisory services regarding all categories of securities, without limitation.

(2) Restricted registration. A restricted registration as an investment adviser or as an investment adviser representative may be issued based upon the qualifying examination(s) passed by the investment adviser or investment adviser representative.

(3) In restricted registration, the evidence of registration shall indicate that the holder thereof is entitled to act as an investment adviser, investment adviser representative, or solicitor only in the restricted capacity.

(d) Prohibition on fraud and availability of an exemption from registration. The Texas Securities Act prohibits fraud or fraudulent practices in dealing in any manner in any securities whether or not the person engaging in fraud or fraudulent practices is required to be registered. The Agency has jurisdiction to investigate and bring enforcement actions to the full extent authorized in the Texas Securities Act with respect to fraud or deceit, or unlawful conduct by an investment adviser or investment adviser representative in connection with transactions involving securities in Texas. However, the registration requirements detailed in this chapter do not apply to investment advisers and investment adviser representatives that are exempt from registration as such pursuant to the Texas Securities Act, Section 5, or by Board rule pursuant to the Texas Securities Act, Section 5.T or Section 12.C, contained in Chapters 109 or 139 of this title.

Source Note: The provisions of this §116.1 adopted to be effective August 12, 2001, 26 TexReg 5799; amended to be effective November 26, 2001, 26 TexReg 9582; amended to be effective March 6, 2002, 27 TexReg 1475; amended to be effective August 22, 2004, 29 TexReg 7968; amended to be effective January

8, 2006, 30 TexReg 8868; amended to be effective August 18, 2011, 36 TexReg 5094; amended to be effective December 21, 2011, 36 TexReg 8507.

§116.2. Application Requirements.

(a) **Investment adviser and investment adviser representative application requirements.** A complete application consists of the following:

(1) items filed electronically via the Investment Adviser Registration Depository (IARD), which is jointly operated by the North American Securities Administrators Association, Inc. (NASAA), the Securities and Exchange Commission (SEC), and Financial Industry Regulatory Authority (FINRA) using the applicable uniform forms:

(A) Form ADV;

(B) Form U-4 for the designated officer and a Form U-4 for each investment adviser representative or solicitor to be registered;

(C) disclosure document or Part 2 of Form ADV; and

(D) the appropriate registration fee(s).

(2) items filed in paper form with the Securities Commissioner:

(A) a copy of articles of incorporation, partnership agreement, articles of association, trust agreement, or other documents which indicate the form of organization, certified by the jurisdiction or by an officer or partner of the applicant;

(B) a balance sheet prepared in accordance with United States generally accepted accounting principles reflecting the financial condition of the investment adviser as of a date not more than 90 days prior to the date of such filing. The balance sheet should be compiled, reviewed, or audited by independent certified public accountants or independent public accountants, or must instead be attested by the sworn notarized statement of the applicant's principal financial officer. If attested by the principal financial officer of the applicant, such officer shall make the certification on Form 133.18, Certification of Balance Sheet by Principal Financial Officer.

(C) a copy of the investment adviser's standard advisory contract;

(D) fee schedule; and

(E) any other information deemed necessary by the Securities Commissioner to determine an investment adviser's financial responsibility or an investment adviser's or investment adviser representative's business repute or qualification.

(b) **Designated officer registration.** Investment advisers, including an individual filing as a sole proprietor, must file a Form U-4 application for a designated officer to register in connection with the

registration of the investment adviser. The investment adviser's designated officer must be an officer, partner, or the sole proprietor of the investment adviser and have completed the necessary registration and examination requirements. If the designated officer of an investment adviser, other than a sole proprietor, resigns or is otherwise removed from his or her position, the investment adviser shall make an application to register another officer or partner within 30 days.

(c) **Branch office registration and inspection.** A request for registration of a branch office of an investment adviser may be made upon initial application of the investment adviser or by amendment to a current registration. No investment advisory activity may occur in any branch office location until such time as the investment adviser receives notification from the Securities Commissioner that such location has been approved as a branch office. The request for registration of a branch office is made by the submission of Form BR on CRD. The fee for registration of each branch office is $25. Simultaneous with the request for registration of a branch office, a supervisor must be named. The supervisor must satisfy the examination qualifications required of the investment adviser before the branch office may be registered. A supervisor is responsible for supervision of the activities of the branch office. Within 10 business days from when a supervisor ceases to be employed or registered in such capacity by the investment adviser, a new supervisor, qualified by passage of the appropriate examinations, must be named. Absent the designation of a new supervisor to the Commissioner within the 10 business day period, the registration of a branch office whose supervisor ceases to be employed as such by an investment adviser shall be automatically terminated. The branch office registration may be reinstated upon the designation of a qualified supervisor and payment of the branch office registration fee. Each branch office registered with the Commissioner is subject to unannounced inspections at any time during normal business hours.

(d) **Automatic withdrawal of an investment adviser or investment adviser representative application for registration that has been pending for at least 90 days.** If an application for investment adviser or investment adviser representative registration has been pending for at least 90 days and the applicant has failed to substantively respond to a written request for information sent by certified mail to the applicant's address as set forth in the application, an automatic withdrawal will occur. The written request must have advised the applicant that if a substantive response is not received within 30 days from the date of the certified request, the application will be withdrawn automatically. Regardless of how long an application has been pending, it may not be withdrawn automatically without sending certified notice of this subsection to the address set forth in the application and allowing the applicant 30 calendar days from the date of the notice to provide a substantive written response. A copy of this subsection and the most recent written request for information will be included with the certified letter.

(e) **Investment Adviser Registration Depository (IARD).** Uniform forms submitted through the IARD that designate Texas as a jurisdiction in which the filing is to be made are deemed to be filed with the Securities Commissioner and constitute official records of the Board.

Source Note: The provisions of this §116.2 adopted to be effective August 12, 2001, 26 TexReg 5799; amended to be effective November 26, 2001, 26 TexReg 9582; amended to be effective March 6, 2002, 27 TexReg 1475; amended to be effective January 8, 2006, 30 TexReg 8868; amended to be effective April 2, 2006, 31 TexReg 2846; amended to be effective February 21, 2008, 33 TexReg 1319; amended to be effective March 9, 2011, 36 TexReg 1473; amended to be effective August 18, 2011, 36 TexReg 5095; amended to be effective October 6, 2015, 40 TexReg 6889.

§116.3. Examination.

(a) Requirement. To determine the applicant's qualifications and competency to engage in the business of rendering investment advice, the State Securities Board requires written examinations. Applicants must make a passing score on any required examination.

(b) Examinations accepted.

(1) Each applicant for registration as an investment adviser or investment adviser representative must pass:

(A) the Uniform Investment Adviser Law Examination (the new entry level competency examination, Series 65, administered after December 31, 1999); or

(B) the following combination of examinations:

(i) a general securities representative examination as described in §115.3(b)(2) of this title (relating to Examination) or a limited examination as described in §115.3(b)(3) of this title; and

(ii) the Uniform Combined State Law Examination (Series 66), the Uniform Investment Advisers State Law Examination (Series 65, as it existed and was administered on or before December 31, 1999), or an examination on the Texas Securities Act administered by this Agency.

(2) Each of these examinations (except the Texas Securities Act examination) is administered by FINRA and can be scheduled by submitting a Form U-10 to FINRA.

(c) Waivers of examination requirements.

(1) All persons who were registered in Texas on August 23, 1963, are not required to take any examinations.

(2) A full waiver of the examination requirements of the Texas Securities Act, Section 13.D, is granted by the Board to the following classes of persons:

(A) a person who was registered as an investment adviser or investment adviser representative on or before December 31, 1999, provided the person has maintained a registration as an investment adviser or investment adviser representative with any state securities administrator that has not lapsed for more than two years from the date of the last registration;

(B) applicants who are certified by the CFA Institute, or its predecessors, the Association for Investment Management and Research, the Financial Analysts Federation, or the Institute of Chartered Financial Analysts, to be chartered financial analysts (CFA);

(C) applicants who are certified by the Certified Financial Planner Board of Standards, Inc., to use the mark "CERTIFIED FINANCIAL PLANNER" (CFP);

(D) applicants who are designated by the American Institute of Certified Public Accountants as accredited personal financial specialists (PFS);

(E) applicants who are designated by the Investment Adviser Association, or its predecessor, the Investment Counsel Association of America, Inc., as Chartered Investment Counselors (CIC);

(F) applicants who are designated by the American College, Bryn Mawr, Pennsylvania, as chartered financial consultants (ChFC);

(G) a person who completed the required examinations, but whose registration has lapsed for more than two years and who has been continually employed in a securities-related position with an entity which was not required to be registered; and

(H) a person who completed the required examinations and whose registration with another state securities regulator has not lapsed for more than two years.

(3) The CFA Institute, the Certified Financial Planner Board of Standards, Inc., the American Institute of Certified Public Accountants, the American College, and the Investment Adviser Association are required to submit to the Securities Commissioner any changes to their certification programs as such changes occur.

(4) A partial waiver of the examination requirements of the Texas Securities Act, Section 13.D, is granted by the Board to solicitor applicants. Such persons are required to pass only an examination on state securities law.

(5) The Securities Commissioner in his or her discretion is authorized by the Board to grant full or partial waivers of the examination requirements of the Texas Securities Act, Section 13.D.

(d) Texas securities law examination.

(1) The fee for each filing of a request to take the Texas securities law examination is $35. An admission letter issued by the Board is required for all entrants. The examination is given at 9:00 a.m. on each Tuesday at the office of the State Securities Board in Austin. The examination may be taken at other locations near principal population centers across the state. Testing centers require reservations and may charge an additional (monitor) fee for administering the examination. A list of examination centers with additional details may be obtained from the State Securities Board.

(2) While taking the examination on the Texas Securities Act, each applicant may use an unmarked copy of the Texas Securities Act as it is printed and distributed by the State Securities Board. No other reference materials are allowed to be used by applicants during the examination.

(3) The passing score for all applicants on the examination on the Texas Securities Act is 70%. An applicant who fails the examination on the Texas Securities Act may request reexamination. The applicant must bring his or her application up to date before retaking an examination.

(4) Disability accommodations. The Texas securities law examination shall be administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990, as amended ("ADA").

(A) Any applicant with a disability who wishes to request disability accommodations must submit to the Securities Commissioner a Form 133.3, ADA Accommodations Request Form, that has been completed and signed by the applicant and includes supporting documentation from a licensed or certified health professional appropriate for diagnosing and treating the disability, at least 60 days prior to the examination. A prior history of receiving disability accommodations, without demonstration of a current need, will not necessarily warrant approval of disability accommodations.

(B) The Securities Commissioner may request additional documentation to substantiate a request for disability accommodations.

(C) Documentation shall not be older than three years from the date of submission.

(D) All medical records provided to the Securities Commissioner are confidential under the Health Insurance Portability and Accountability Act ("HIPAA").

(E) The Securities Commissioner is not required to approve every request for disability accommodations or to provide every accommodation or service requested. The Securities Commissioner is not required to grant a request for disability accommodations if doing so would fundamentally alter the measurement of knowledge or the measurement of skill intended to be tested by the Texas securities law examination, would affect the security of the examination, or would create an undue financial or administrative burden.

(F) Once disability accommodations have been granted, they may not be altered during the examination unless prior approval of the Securities Commissioner is obtained.

Source Note: The provisions of this §116.3 adopted to be effective August 12, 2001, 26 TexReg 5799; amended to be effective July 14, 2005, 30 TexReg 3989; amended to be effective February 21, 2008, 33 TexReg 1319; amended to be effective December 21, 2011, 36 TexReg 8508; amended to be effective June 13, 2012, 37 TexReg 4186.

§116.4. Evidences of Registration.

(a) Issuance. An evidence of registration or certificate of registration shall be issued for each registered investment adviser reflecting the registered officer or partner. An evidence of registration shall be issued for each registered branch office reflecting the registered supervisor.

(b) Amendments. Any changes in the information reflected on the evidence of registration must be submitted to the Securities Commissioner within 30 days of such change. An amendment fee, in the amount set forth in the Texas Securities Act, Section 35, is required to amend the evidence of registration.

(c) Successions.

(1) Succession by application.

(A) If a succession results in a surviving entity that is not currently registered as an investment adviser, the successor entity must file a new application, including the fees, as required in §116.2 of this title (relating to Application Requirements). Such a succession may include, but is not limited to, any of the following that results in either a change in control of the beneficial owners, or a change in management:

(i) a merger;

(ii) a consolidation;

(iii) an acquisition; or

(iv) a reorganization.

(B) A complete application for the successor entity should be filed far enough in advance, but no later than thirty (30) days after succession, so the application can be reviewed and approved prior to the successor entity taking over the business of the predecessor investment adviser. If a successor entity has taken over the business of a predecessor investment adviser before the application of the successor entity has been reviewed and approved, the registration of the successor entity will be automatically granted a temporary registration for 60 days from the date of succession to complete the registration for the new entity. If the successor entity fails to complete the registration requirements within the 60-day temporary registration period, it may submit a written request to the Securities Commissioner to grant an extension of the temporary registration for up to 30 additional days. If the Commissioner, in the exercise of his or her discretion, declines to grant the extension request, the registration will terminate for the investment adviser and all its investment adviser representatives on the expiration of the 60-day temporary registration. Any investment advisory services rendered by the investment adviser and/or its investment adviser representatives after termination of the temporary registration are subject to the sanctions provided by the Texas Securities Act for rendering investment advice while unregistered.

(C) Upon registration of the successor entity, the registration of the predecessor investment adviser will be terminated.

(2) Succession by amendment.

(A) When a succession does not result in a change in control of the beneficial owners or management, or does not result in any acquisition or assumption of substantially all of the assets and liabilities of the predecessor investment adviser, the successor entity may file an amendment in lieu of filing a new application. Such a succession may include, but is not limited to, any of the following:

(i) an internal corporate reorganization or restructuring;

(ii) a conversion;

(iii) a change in the form of business; or

(iv) a change in the composition of a partnership that does not result in change of control of the partnership.

(B) The provisions in subsection (b) of this section apply to successions by amendment.

(3) All procedures set forth in this subsection shall also apply to investment advisers and investment adviser representatives who have submitted a notice filing and fee to the Securities Commissioner.

(d) Termination. An investment adviser is required to notify the Securities Commissioner upon termination of any registered investment adviser representative from its employ. Upon receipt of such notification, the Securities Commissioner may terminate the registration. Investment advisers must file a Form U-5, Uniform Termination Notice for Securities Industry Registration, through the IARD to comply with this subsection.

(e) Renewal.

(1) Procedures for renewing expired and unexpired registrations are set forth in the Texas Securities Act, Section 19.C and Section 12-1.C.

(2) A notice of impending expiration of registration (renewal application) will be sent by IARD to a currently registered investment adviser. The renewal application should be filed through IARD, along with the appropriate fee.

(3) If a person's registration is not renewed in a timely manner because such person is or was on active duty with the armed forces of the United States of America serving outside Texas, such person may renew the registration pursuant to this paragraph.

(A) Renewal of the registration may be requested by such person, such person's spouse, or an individual having power of attorney from such person. The renewal application shall include a current address and telephone number for the individual requesting the renewal.

(B) Renewal may be requested before or after expiration of the registration.

(C) A copy of the official orders or other official military documentation showing that such person is or was on active duty serving outside Texas shall be submitted to the Securities Commissioner along with the renewal application.

(D) A copy of the power of attorney from such person, if any, shall be filed with the Securities Commissioner along with the renewal application if the individual having the power of attorney executes any of the documents required in this paragraph.

(E) A renewal application submitted to the Securities Commissioner pursuant to this paragraph shall be accompanied by the applicable renewal fee set out in §116.8 of this title (relating to Fee Requirements).

(F) The State Securities Board will not assess any increased fee or other penalty against the person for failure to timely renew such person's registration if such person establishes to the satisfaction of the Securities Commissioner that all requirements of this paragraph have been met.

Source Note: The provisions of this §116.4 adopted to be effective August 12, 2001, 26 TexReg 5799; amended to be effective January 8, 2006, 30 TexReg 8868; amended to be effective November 8, 2012, 37 TexReg 8787.

§116.5. Minimum Records.

(a) Records to be made by investment advisers. Persons registered as investment advisers whose principal place of business is located in another state shall maintain records at least in accordance with the minimum record-keeping requirements of that state. Persons registered as investment advisers whose principal place of business is located in Texas shall make and keep current the following minimum records or the equivalent thereof:

(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers, (or other comparable records) reflecting asset, liability, reserve capital, income and expense accounts.

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank, broker, or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(4) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to funds, securities, or transactions of any client.

(5) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication recommending the purchase or sale of a specific security, which the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than investment supervisory clients or persons connected with such investment adviser), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor.

(6) In the case of any client receiving investment supervisory or management service, to the extent that the information is reasonably available to or obtainable by the investment adviser, records showing separately for that client:

(A) the client's current position in any security; and

(B) all securities purchased and sold and the date, amount, and price of each purchase and sale.

(7) In the case of an investment adviser who has custody or possession of the funds or securities of any client:

(A) a journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and other debits and credits to such accounts;

(B) a separate ledger account for each such client showing all purchases, sales, receipts, and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits;

(C) copies of confirmations of all transactions effected by or for the account of any such client; and

(D) a record for each security in which any client has a position, which record shall show the name of each such client having any interest in each security, the amount or interest of each such client, and the location of each such security.

(8) A record of every transaction in a security in which the investment adviser or any investment adviser representative has, or by reason of such transaction acquires any direct or indirect beneficial ownership, except:

(A) transactions effected in any account over which neither the investment adviser nor any investment adviser representative has any direct or indirect influence or control; and

(B) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer, or bank with or through whom the transaction was effected. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(9) For each client, a record listing the client's:

(A) birth year;

(B) employment status, including occupation;

(C) annual income;

(D) net worth, excluding the value of the client's primary residence;

(E) investment objectives; and

(F) risk tolerance.

(10) For accounts in existence on the effective date of this section, the investment adviser must obtain the information required in paragraph (9) of this subsection within one year of January 1, 2012, and thereafter must update this information for each client at intervals not greater than 36 months.

(11) The internal control report that an investment adviser is required to obtain or receive from its related person, pursuant to §116.17(b)(6)(B).

(12) A memorandum describing the basis upon which the investment adviser has determined that the presumption that any related person is not operationally independent under §116.17(a)(7) has been overcome.

(b) Records to be preserved by investment advisers.

(1) Persons registered as investment advisers in Texas shall preserve all records required pursuant to subsection (a) of this section for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an easily accessible place.

(2) Persons registered as investment advisers in Texas shall preserve for a period of not less than three years from the end of the fiscal year during which the last entry was made on such record, the first two years in an easily accessible place:

(A) all checkbooks, bank statements, cancelled checks, and cash reconciliations of the investment adviser;

(B) all bills or statements (or copies thereof) paid or unpaid, relating to the business of the investment adviser as such;

(C) all trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser;

(D) originals of all written communications received and copies of all written communications sent by such investment adviser relating to:

(i) any recommendation made or proposed to be made and any advice given or proposed to be given;

(ii) any receipt, disbursement, or delivery of funds or securities; or

(iii) the placing or execution of any order to purchase or sell any security. Provided, however, that the investment adviser shall not be required to keep any unsolicited market

letters and other similar communications of general public distribution not prepared by or for the investment adviser, and that if the investment adviser sends any notice, circular, or other advertisement offering any report, analysis, publication, or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular, or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular, or advertisement a memorandum describing the list and the source thereof;

(E) all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser or copies thereof;

(F) all written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such; and

(G) all complaints received from investment clients, and all documents relating to such complaints.

(3) Persons registered as investment advisers in Texas shall preserve for at least three years after the termination of the enterprise partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor.

(4) If a person ceases to be registered as an investment adviser in Texas, such person shall, for the remainder of the time period specified in this section, continue to preserve the records required in this section.

(5) The records required to be maintained and preserved pursuant to this section may be immediately produced or reproduced on microfilm or other photograph and may be maintained and preserved for the required time in that form, provided that such microfilms or other photographs are arranged and indexed in such a manner as to permit the immediate location of any particular document, and that such microfilms or other photographs are at all times available for examination by representatives of the Securities Commissioner together with facilities for immediate, easily readable projection of the microfilm or other photograph and for the production of easily readable facsimile enlargements.

(c) The records required to be maintained pursuant to this section may be maintained by any electronic storage media available so long as such records are available for immediate and complete access by representatives of the Securities Commissioner. Any electronic storage media must preserve the records exclusively in a non-rewriteable, non-erasable format; verify automatically the quality and accuracy of the storage media recording process; serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media; and have the capacity to download indexes and records preserved on electronic storage media to an acceptable medium. In the event that a records retention system commingles records required to be kept under this section with records not required to be kept, representatives of the Securities Commissioner may review all commingled records.

(d) The Securities Commissioner has a right to review all records maintained by registered investment advisers regardless of whether such records are required to be maintained under any specific applicable rule provision.

Source Note: The provisions of this §116.5 adopted to be effective August 12, 2001, 26 TexReg 5799; amended to be effective November 26, 2001, 26 TexReg 9582; amended to be effective August 18, 2011, 36 TexReg 5095; amended to be effective December 21, 2011, 36 TexReg 8509.

§116.6. Registration of Persons with Criminal Backgrounds.

(a) The application for registration may be denied, suspended, or revoked if the Securities Commissioner finds that the person has been convicted of any felony, or of a misdemeanor offense that directly relates to its duties and responsibilities. In determining whether a misdemeanor conviction directly relates to such duties and responsibilities, the Securities Commissioner shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring registration of investment advisers and investment adviser representatives;

(3) the extent to which the registration applied for might offer an opportunity to engage in further criminal activity of the same type as that in which the applicant previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a registered investment adviser or investment adviser representative.

(b) The Securities Commissioner shall consider the following evidence in determining the present fitness of an applicant who has been convicted of a crime:

(1) The extent and nature of the person's past criminal activity.

(2) The age of the applicant at the time of the commission of the crime.

(3) The amount of time that has elapsed since the applicant's last criminal activity.

(4) The conduct and work activity of the applicant prior to and following the criminal activity.

(5) Evidence of the applicant's rehabilitation or rehabilitative effort while incarcerated or following release.

(6) Other evidence of the applicant's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant; the sheriff and chief of police in the community where the applicant resides; and any other persons in contact with the applicant.

(7) It shall be the responsibility of the applicant to the extent possible to secure and provide to the Securities Commissioner the recommendation of the prosecution, law enforcement, and correctional authorities as required under this section. The applicant shall also furnish proof to the Securities Commissioner that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

(c) The State Securities Board considers that the following crimes directly relate to the duties and responsibilities of investment advisers and investment adviser representatives:

(1) any criminal violation of which fraud is an essential element or that involves wrongful taking or possession of property or services;

(2) any criminal violation of the securities laws or regulations of this state, or of any other state in the United States, or of the United States, or any foreign jurisdiction;

(3) any criminal violation of statutes designed to protect consumers against unlawful practices involving insurance, securities, commodities or commodity futures, real estate, franchises, business opportunities, consumer goods, or other goods and services; and

(4) any criminal violation involving an assault on a person.

(d) Prior to filing an application, a person may request a preliminary evaluation of license eligibility from the State Securities Board by following the procedure set out in §104.7 of this title (relating to Preliminary Evaluation of License Eligibility) and paying the requisite fee.

Source Note: The provisions of this §116.6 adopted to be effective August 12, 2001, 26 TexReg 5799; amended to be effective March 28, 2010, 35 TexReg 2549.

§116.7. Maintenance and Inspection of Records.

(a) The Securities Commissioner, without notice, may inspect a registered investment adviser as necessary to ensure compliance with the Texas Securities Act and Board rules.

(b) The Commissioner or his or her authorized representative, during regular business hours, may:

(1) enter the business premises of a registered investment adviser; and

(2) examine and copy books and records pertinent to the inspection.

(c) During the inspection, the investment adviser shall:

(1) provide to the Commissioner or the Commissioner's authorized representative immediate and complete access to the person's office, place of business, files, safe, and any other location in which books and records pertinent to the inspection are located; and

(2) allow the Commissioner or the Commissioner's authorized representative to make photostatic or electronic copies of books or records subject to inspection.

(d) An investment adviser may not charge a fee for copying information under this section.

(e) The Commissioner or his or her authorized representative may require that all records required to be maintained pursuant to Board rules or maintained in the normal course of business of the investment adviser be made available in any office of the State Securities Board designated by the Commissioner or his or her representative within 48 hours of a request or within a greater time period as the Commissioner or his or her authorized representative deems reasonable.

Source Note: The provisions of this §116.7 adopted to be effective August 12, 2001, 26 TexReg 5799; amended to be effective November 26, 2001, 26 TexReg 9582.

§116.8. Fee Requirements.

(a) **Registration and notice filing fees.** Information about registration and notice filing fees for original and renewal applications for investment adviser and investment adviser representatives, officers, partners, or solicitors of an investment adviser is available on the Agency's web site located at www.ssb.state.tx.us or by contacting an office of the State Securities Board.

(b) **Reduced fees for certain person registered in multiple capacities.**

(1) In general. A person may request reduced fees under paragraph (2) of this subsection, provided they are registered or are seeking registration in Texas:

(A) as either an agent of a securities dealer or as a sole proprietor securities dealer; and

(B) as either an investment adviser representative of an investment adviser that has less than five investment adviser representatives or as a sole proprietor investment adviser with less than five investment adviser representatives.

(2) Procedure. Persons meeting the requirements of paragraph (1) of this subsection may request reduced registration fees by filing Form 133.36, Request for Reduced Fees for Certain Persons Registered in Multiple Capacities. Form 133.36 must be filed at the time the original application for investment adviser representative or sole proprietor investment adviser registration is filed, or at least 30 days before the person's existing investment adviser representative or sole proprietor investment adviser registration will expire. On review of Form 133.36, the Securities Commissioner may, in his or her discretion, grant or deny the request for reduced fees or direct the person to supply additional information.

(3) Reduced fees. If the Securities Commissioner grants a person's request, the person must pay all applicable fees for registration as a dealer or dealer's agent as specified in the Texas Securities Act, Sections 35.A(2), 35.A(4), 35.A(5), and 41(a), but is exempt from the fees specified in the Texas Securities Act, Section 41(a), in connection with original and renewal applications for registration as an investment adviser representative or sole proprietor investment adviser, as applicable at the time Form 133.36 is filed. The reduction in fees granted by the Securities Commissioner under this subsection shall continue in force, without any further filings, as long as a person remains registered in a multiple capacity status.

(c) Reduced fees for sole proprietor investment advisers. A person seeking registration in multiple capacities as a sole proprietor investment adviser and as the designated officer of that sole proprietor investment adviser shall pay only the fee required in connection with the original or renewal application for registering as a sole proprietor investment adviser.

(d) Fees for concurrent registrations. Notwithstanding the Texas Securities Act, Sections 35 and 41, a person shall pay only one fee required under those sections to engage in business in this state concurrently for the same person or company as:

(1) a dealer and an investment adviser; or

(2) an agent and an investment adviser representative.

Source Note: The provisions of this §116.8 adopted to be effective August 12, 2001, 26 TexReg 5799; amended to be effective November 26, 2001, 26 TexReg 9582; amended to be effective February 24, 2004, 29 TexReg 1644; amended to be effective August 18, 2011, 36 TexReg 5095.

§116.9. Post-Registration Reporting Requirements.

(a) Each person registered as an investment adviser shall report to the Securities Commissioner within 30 days after its entry against the registered person or an investment adviser representative thereof, the matters described in this subsection. Likewise, each person registered as an investment adviser representative shall report to the Commissioner within 30 days after its occurrence or entry against the investment adviser representative the matters described in this subsection. The following matters must be reported:

(1) any administrative order issued by state or federal authorities, which order:

(A) is based upon a finding that such person has engaged in fraudulent conduct; or

(B) was entered after notice and opportunity for a hearing, denying, suspending, or revoking the person's registration as an investment adviser, investment adviser representative, dealer, or agent, or the substantial equivalent of those terms;

(2) any felony criminal action or conviction;

(3) any misdemeanor action or conviction based on fraud, deceit, or wrongful taking of property;

(4) any order, judgment, or decree entered by any court of competent jurisdiction which temporarily or permanently restrains or enjoins such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving any false filing with any state; or which restrains or enjoins such person from activities subject to federal or state statutes designed to protect consumers against unlawful or deceptive practices involving insurance, commodities or commodity futures, real estate, franchises, business opportunities, consumer goods, or other goods and services;

(5) any expulsion, bar, suspension, censure, fine, or penalty imposed by a self-regulatory organization;

(6) any change in any other information previously disclosed to the Securities Commissioner on any application form or filing; and

(7) the filing of any voluntary or involuntary bankruptcy petition.

(b) Upon request by the Securities Commissioner, an investment adviser or investment adviser representative is required to furnish to the Commissioner copies of the order, conviction, or decrees, or other documents which evidence events disclosable pursuant to subsection (a) of this section.

(c) For purposes of this section an "investment adviser" shall include any partners, directors, executive officers, or beneficial owners of 10% or more of any class of the equity securities of an investment adviser (beneficial ownership meaning the power to vote or direct the vote of and/or the power to dispose or direct the disposition of such securities).

(d) Each person registered as an investment adviser shall update the Form ADV Part 2 or disclosure document as part of any amendment or annual updating amendment. For purposes of this subsection, "annual updating amendment" means an amendment to an investment adviser's Form ADV filed within 90 days after an investment adviser's fiscal year end that is used to update the responses to any other item for which the information is no longer accurate.

Source Note: The provisions of this §116.9 adopted to be effective August 12, 2001, 26 TexReg 5799; amended to be effective March 9, 2011, 36 TexReg 1473.

§116.10. Supervisory Requirements. Each registered investment adviser shall establish, maintain, and enforce a system to supervise the activities of its investment adviser representatives that is reasonably designed to achieve compliance with the Texas Securities Act, Board rules, and all applicable securities laws and regulations. Supervisory systems must be written and available for inspection in either print or electronic format.

Source Note: The provisions of this §116.10 adopted to be effective August 12, 2001, 26 TexReg 5799; amended to be effective November 26, 2001, 26 TexReg 9582; amended to be effective July 14, 2005, 30 TexReg 3989; amended to be effective August 16, 2010, 35 TexReg 7050.

§116.11. Disclosure Requirement/Brochure Rule. All registered investment advisers must deliver to all clients or prospective clients a written disclosure statement that may be:

(1) either Part 2 of Form ADV, Uniform Application for Investment Adviser Registration, or another disclosure statement which contains at least the information disclosed on Part 2 of Form ADV as effective on October 12, 2010 (17 Code of Federal Regulations §279.1); or

(2) a disclosure statement containing at least the information required by Part 2A Appendix 1 and Part 2B of Form ADV, Uniform Application for Investment Adviser Registration, if the investment adviser is the sponsor, or the sponsor and the portfolio manager, of a wrap fee program that the client will enter into.

(3) The disclosure statement shall be delivered to a client or prospective client either:

(A) not less than 48 hours prior to entering into any written or oral investment advisory contract with such client or prospective client; or

(B) at the time of entering into any such contract, if the advisory client has the right to terminate the contract without penalty within five business days after entering into the contract.

(4) On an annual basis, the Part 2 of Form ADV or other disclosure statement satisfying the requirements of paragraph (1) or (2) of this section must be provided to all customers, or in the alternative, the investment adviser must offer the client the right to receive such Part 2 of Form ADV or other disclosure statement.

Source Note: The provisions of this §116.11 adopted to be effective August 12, 2001, 26 TexReg 5799; amended to be effective March 9, 2011, 36 TexReg 1473; amended to be effective April 7, 2013, 38 TexReg 2098.

§116.12. Advisory Contract Requirements.

(a) The advisory contract must contain the following language: "Client acknowledges receipt of Part 2 of Form ADV; a disclosure statement containing the equivalent information; or a disclosure statement containing at least the information required by Part 2A Appendix 1 of Form ADV, if the client is entering into a wrap fee program sponsored by the investment adviser. If the appropriate disclosure statement was not delivered to the client at least 48 hours prior to the client entering into any written or oral advisory contract with this investment adviser, then the client has the right to terminate the contract without penalty within five business days after entering into the contract. For the purposes of this provision, a contract is considered entered into when all parties to the contract have signed the contract, or, in the case of an oral contract, otherwise signified their acceptance, any other provisions of this contract notwithstanding."

(b) Investment advisers are free to provide a time period longer than five business days for penalty-free termination by their clients. If the client chooses to terminate the contract within the five business day period, the adviser can only charge for fees incurred prior to the termination excluding administrative fees, account set-up fees, and minimum quarterly fees.

(c) The advisory contract must contain a provision that prohibits the assignment of the contract by the adviser without the written consent of the client.

(d) Nothing in this section shall relieve an investment adviser from any obligation pursuant to any provision of the Investment Advisers Act of 1940 or the rules and regulations thereunder or other federal case law, interpretative opinions, and administrative actions by the SEC (as in existence on April 8, 1997) or state law to disclose any information to its clients not specifically required by this section.

Source Note: The provisions of this §116.12 adopted to be effective August 12, 2001, 26 TexReg 5799; amended to be effective March 9, 2011, 36 TexReg 1473.

§116.13. Advisory Fee Requirements.

(a) Any registered investment adviser who wishes to charge 3.0% or greater of the assets under management must disclose that such fee is in excess of the industry norm and that similar advisory services can be obtained for less.

(b) Any registered investment adviser who wishes to charge a fee based on a share of the capital gains or the capital appreciation of the funds or any portion of the funds of a client must comply with SEC Rule 205-3 (17 Code of Federal Regulations §275.205-3), which permits the use of such fee if the client is a "qualified client" as defined therein.

Source Note: The provisions of this §116.13 adopted to be effective August 12, 2001, 26 TexReg 5799; amended to be effective November 26, 2001, 26 TexReg 9582; amended to be effective April 3, 2012, 37 TexReg 2166.

§116.14. Prevention of Misuse of Nonpublic Information. All investment advisers registered under the Texas Securities Act are required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information.

Source Note: The provisions of this §116.14 adopted to be effective August 12, 2001, 26 TexReg 5799.

§116.15. Advertising Restrictions. The antifraud provisions of the Texas Securities Act prohibit an investment adviser from using any advertisement that contains any untrue statement of material fact or that is otherwise misleading. The prohibition would include any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any publication or by radio, television, Internet, the World Wide Web, or similar proprietary or common carrier electronic systems, that offers any service as an investment adviser.

(1) Specifically, an advertisement of a registered investment adviser may not:

(A) use or refer to testimonials (including any statement of a client's experience or endorsement);

(B) refer to past, specific recommendations made by an investment adviser that were profitable, unless the advertisement sets out a list of all recommendations made by the investment adviser within the preceding period of not less than one year, and complies with paragraph (2) of this subsection;

(C) represent that any graph, chart, formula, or other device can, in and of itself, be used to determine which securities to buy or sell, or when to buy or sell securities, or assist persons in making those decisions, unless the advertising prominently discloses the limitations thereof and the difficulties regarding its use; and

(D) represent that any report, analysis, or other service will be provided without charge unless the report, analysis, or other service will be provided without any obligation whatsoever.

(2) A registered investment adviser may advertise its past performance (both actual performance and hypothetical or model results) only if the advertisement discloses all material facts necessary to avoid any unwarranted inference. An investment adviser may not advertise its performance data if the advertisement:

(A) fails to disclose the effect of material market or economic conditions on the results advertised;

(B) fails to disclose whether and to what extent the advertised results reflect the reinvestment of dividends or other earnings;

(C) suggests or makes claims about the potential for profit without disclosing the potential for loss; or

(D) omits any of the facts material to the performance figures.

(3) In addition, generally a registered investment adviser may not advertise gross performance data (i.e., performance data that does not reflect the deduction of various fees, commissions, and expenses that a client would pay) unless the investment adviser also includes net performance information in an equally prominent manner.

Source Note: The provisions of this §116.15 adopted to be effective August 12, 2001, 26 TexReg 5799; amended to be effective November 26, 2001, 26 TexReg 9582.

§116.16. Use of Senior-Specific Certifications and Professional Designations.

(a) The use of a senior specific certification or designation by any person in connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be an inequitable practice within the meaning of the Texas Securities Act, Section 14.A(3). The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

(1) use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) use of a nonexistent or self-conferred certification or professional designation;

(3) use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(4) use of a certification or professional designation that was obtained from a designating or certifying organization that:

(A) is primarily engaged in the business of instruction in sales and/or marketing;

(B) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(C) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(D) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

(b) There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subsection (a)(4) of this section when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The National Commission for Certifying Agencies; or

(3) an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

(c) In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) the manner in which those words are combined.

(d) For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(1) indicates seniority or standing within the organization; or

(2) specifies an individual's area of specialization within the organization.

(e) For purposes of subsection (d) of this section, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

(f) Nothing in this rule shall limit the Securities Commissioner's authority to enforce existing provisions of law.

Source Note: The provisions of this §116.16 adopted to be effective October 30, 2008, 33 TexReg 8762.

§116.17. Custody of Funds or Securities of Clients by Registered Investment Advisers.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Audit--when used in regard to financial statements, an examination of the financial statements by an independent accountant in accordance with generally accepted auditing standards, as may be modified or supplemented by the Board, for the purpose of expressing an opinion thereon.

(2) Control--the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise. Control includes:

(A) each of the investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the firm;

(B) a person is presumed to control a corporation if the person:

(i) directly or indirectly has the right to vote 25% or more of a class of the corporation's voting securities; or

(ii) has the power to sell or direct the sale of 25% or more of a class of the corporation's voting securities;

(C) a person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25% or more of the capital of the partnership;

(D) a person is presumed to control a limited liability company if the person:

(i) directly or indirectly has the right to vote 25% or more of a class of the interests of the limited liability company;

(ii) has the right to receive upon dissolution, or has contributed, 25% or more of the capital of the limited liability company; or

(iii) is an elected manager of the limited liability company; or

(E) a person is presumed to control a trust if the person is a trustee or managing agent of the trust.

(3) Custody--holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them. The investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients. Custody includes:

(A) possession of client funds or securities (but not of checks drawn by clients and made payable to third parties) unless the investment adviser receives them inadvertently and returns them to the sender promptly but in any case within three business days of receiving them;

(B) any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and

(C) any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser or its supervised person legal ownership of or access to client funds or securities.

(4) Independent public accountant--a public accountant that meets the standards of independence described in Securities and Exchange Commission, Rule 2-01(b) and (c) of Regulation S-X (17 CFR §210.2-01(b) and (c)) as existed on April 1, 2010.

(5) Independent representative--a person that:

(A) acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership (or members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle) and by law or contract is obliged to act in the best interest of the advisory client or the limited partners (or members, or other beneficial owners);

(B) does not control, is not controlled by, and is not under common control with the investment adviser; and

(C) does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(6) Open-end company--a management company which is offering for sale or has outstanding any redeemable security of which it is the issuer.

(7) Operationally independent--for purposes of subsection (c)(6) of this section, a related person is presumed not to be operationally independent unless each of the following conditions is met and no other circumstances can reasonably be expected to compromise the operational independence of the related person:

(A) client assets in the custody of the related person are not subject to claims of the adviser's creditors;

(B) advisory personnel do not have custody or possession of, or direct or indirect access to client assets of which the related person has custody, or the power to control the disposition of such client assets to third parties for the benefit of the adviser or its related persons, or otherwise have the opportunity to misappropriate such client assets;

(C) advisory personnel and personnel of the related person who have access to advisory client assets are not under common supervision; and

(D) advisory personnel do not hold any position with the related person or share premises with the related person.

(8) Qualified custodian--

(A) a bank as defined in the Investment Advisers Act of 1940, Section 202(a)(2), or a savings association as defined in the Federal Deposit Insurance Act, Section 3(b)(1), that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;

(B) a broker-dealer registered under the Securities Exchange Act of 1934, Section 15(b)(1), holding the client assets in customer accounts;

(C) a futures commission merchant registered under the Commodity Exchange Act, Section 4f(a), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

(D) a foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

(9) Related person--any person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser.

(b) **Safekeeping required.** No registered investment adviser may have custody of client funds or securities unless:

(1) Qualified custodian. A qualified custodian maintains those funds and securities:

(A) in a separate account for each client under that client's name; or

(B) in accounts that contain only the investment adviser's clients' funds and securities, under the investment adviser's name as agent or trustee for the clients.

(2) Notice to clients. If the investment adviser opens an account with a qualified custodian on behalf of the client, either under the client's name or under the investment adviser's name as agent, the investment adviser notifies the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. If the investment adviser sends account statements to a client to which the investment adviser is required to provide this notice, the investment adviser includes in the notification provided to that client and in any subsequent account statement the investment adviser sends that client, a statement urging the client to compare the account statements from the custodian with those from the investment adviser.

(3) Account statements to clients. The investment adviser has a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each of the investment adviser's clients for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period.

(4) Independent verification. The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year, except as provided below, by an independent public accountant, pursuant to a written agreement between the investment adviser and the accountant, at a time that is chosen by the accountant without prior notice or announcement to the investment adviser and that is irregular from year to year. The written agreement must provide for the first examination to occur within six months of becoming subject to this paragraph, except that, if the investment adviser maintains client funds or securities pursuant to this section as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after obtaining the internal control report. The written agreement must require the accountant to:

(A) file a certificate on Form ADV-E with the Securities Commissioner within 120 days of the time chosen by the accountant in paragraph (4) of this subsection, stating that it has examined the funds and securities and describing the nature and extent of the examination;

(B) upon finding any material discrepancies during the course of the examination, notify the Securities Commissioner within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Director of the Inspections and Compliance Division; and

(C) upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, file with the Securities Commissioner within four business days Form ADV-E accompanied by a statement that includes:

(i) the date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the accountant; and

(ii) an explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

(5) Special rule for limited partnerships and limited liability companies. If the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account statements required under paragraph (3) of this subsection must be sent to each limited partner (or member or other beneficial owner).

(6) Investment advisers acting as qualified custodians. If the investment adviser maintains, or if the investment adviser has custody because a related person maintains, client funds or securities pursuant to this subsection as a qualified custodian in connection with advisory services the investment adviser provides to clients:

(A) the independent public accountant the investment adviser retains to perform the independent verification required by paragraph (4) of this subsection must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and

(B) the investment adviser must obtain, or receive from the investment adviser's related person, within six months of becoming subject to this paragraph and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent public accountant:

(i) the internal control report must include an opinion of an independent public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the investment adviser or a related person on behalf of the investment adviser's clients, during the year;

(ii) the independent public accountant must verify that the funds and securities are reconciled to a custodian other than the investment adviser or the investment adviser's related person; and

(iii) the independent public accountant must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules.

(7) Independent representatives. A client may designate an independent representative to receive, on his or her behalf, notices and account statements as required under paragraphs (2) and (3) of this subsection.

(c) Exceptions.

(1) Shares of an open-end company. With respect to shares of an open-end company (as defined in this section), the investment adviser may use the open-end company's transfer agent in lieu of a qualified custodian for purposes of complying with subsection (b) of this section.

(2) Certain privately offered securities.

(A) The investment adviser is not required to comply with subsection (b)(1) of this section with respect to securities that are:

(i) acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(ii) uncertificated, and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and

(iii) transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(B) Notwithstanding subparagraph (A) of this paragraph, the provisions of this paragraph are available with respect to securities held for the account of a limited partnership (or a limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in paragraph (4) of this subsection.

(3) Fee deduction. Notwithstanding subsection (b)(4) of this section, the investment adviser is not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if:

(A) the investment adviser has custody of the funds and securities solely as a consequence of the investment adviser's authority to make withdrawals from client accounts to pay its advisory fee; and

(B) if the qualified custodian is a related person, the investment adviser can rely on paragraph (6) of this subsection.

(4) Limited partnerships subject to annual audit. The investment adviser is not required to comply with subsection (b)(2) and (b)(3) of this section and the investment adviser shall be deemed to have complied with subsection (b)(4) of this section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit (as defined in this section):

(A) at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year;

(B) by an independent public accountant that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and

(C) upon liquidation and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) promptly after the completion of such audit.

(5) Registered investment companies. The investment adviser is not required to comply with this section with respect to the account of an investment company registered under the Investment Company Act of 1940.

(6) Certain related persons. Notwithstanding subsection (b)(4) of this section, the investment adviser is not required to obtain an independent verification of client funds and securities if:

(A) the investment adviser has custody under this rule solely because a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients; and

(B) the investment adviser's related person is operationally independent of the investment adviser.

(d) **Delivery to related person.** Sending an account statement under subsection (b)(5) of this section or distributing audited financial statements under subsection (c)(4) of this section shall not satisfy the requirements of this section if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are the investment adviser's related persons.

Source Note: The provisions of this §116.17 adopted to be effective December 21, 2011, 36 TexReg 8510.

§116.18. Special Application Provisions Available to a Military Spouse, Military Service Member, or Military Veteran.

(a) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Current registration--A registration or license that is:

(A) issued by another state, the District of Columbia, or a territory of the United States that has registration requirements that are substantially equivalent to the requirements for a Texas registration in the same capacity;

(B) in good standing; and

(C) in the same capacity as the application for registration in Texas.

(2) Good standing--A registration or license that is effective and unrestricted. A registration or license is considered to be restricted and not in good standing if it is subject to:

(A) an undertaking, special stipulations or agreements relating to payments, limitations on activity or other restrictions;

(B) a pending administrative or civil action; or

(C) an order or other written directive issued pursuant to statutory authority and procedures, including orders of denial, suspension, or revocation.

(3) Military spouse--An applicant who is married to a military service member who is currently on active duty.

(4) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(5) Military veteran--A person who has served in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, or in the auxiliary service of one of those branches of the armed forces.

(b) Alternative procedure for a military spouse as authorized by Occupations Code, Section 55.004.

(1) An applicant who is a military spouse may use the procedure set out in this subsection if:

(A) the applicant holds a current registration in another jurisdiction; or

(B) has been registered in Texas in the same capacity within the five years preceding the date of the application for registration, but whose registration in Texas expired while the applicant lived in another state for at least six months.

(2) If the applicant is not registered within five days of submitting an application, the applicant may request special consideration of his or her application for registration by filing Form 133.4, Request for Special Consideration of a Registration Application by a Military Spouse, Military Service Member, or Military Veteran, with the Securities Commissioner ("Commissioner"). Within five business days of receipt of the completed Form 133.4, the applicant will be notified in writing of the reason(s) for the pending or deficient status assigned to the application.

(3) In addition to the waivers of examination requirements set out in §115.3 of this title (relating to Examination), the Commissioner in his or her discretion is authorized by the Board to grant full or partial waivers of the examination requirements of the Texas Securities Act, Section 13.D, on a showing of alternative demonstrations of competency to meet the requirements for obtaining the registration sought.

(c) Expedited review of an application submitted by a military spouse as authorized by Occupations Code, Section 55.005 and Section 55.006.

(1) An applicant who is a military spouse may use the procedure set out in this subsection if the applicant holds a current registration in another jurisdiction.

(2) If the applicant is not registered within five days of submitting an application, the applicant may request special consideration of his or her application for registration by filing Form 133.4,

Request for Special Consideration of a Registration Application by a Military Spouse, Military Service Member, or Military Veteran, with the Commissioner.

(3) An applicant proceeding under this subsection may be registered despite having pending and/or deficient items ("deficiencies"). The deficiencies will be communicated to the applicant in writing or by electronic means within five business days from approval of the registration.

(4) The deficiencies noted at the time the registration is granted must be resolved by the applicant within a 12 month period. Failure to resolve outstanding deficiencies will cause the registration granted under this subsection or any renewal of such registration to automatically terminate 12 months after the date the registration was initially granted pursuant to this subsection.

(d) Registration of persons with military experience as authorized by Occupations Code, Section 55.007.

(1) An applicant who is a military service member or military veteran may request special consideration of verified military service, training, or education towards registration requirements, other than an examination requirement, for the registration sought by submitting Form 133.4, Request for Special Consideration of a Registration Application by a Military Spouse, Military Service Member, or Military Veteran, with the applicant's registration application.

(2) The procedure authorized by this subsection is not available to a military service member or military veteran who:

(A) is registered in another jurisdiction but such registration is not in good standing; or

(B) has been convicted of a crime that could be the basis for denial of the registration pursuant to the Texas Securities Act, Section 14.A.

(e) Other provisions in this chapter.

(1) Unless specifically allowed in this section, an applicant must meet the requirements for registration or renewal specified in this chapter. This includes the requirement that certain filings be made electronically through the IARD.

(2) A one-year period, instead of the 90-day period contained in §116.2 of this title (relating to Application Requirements), will apply to the automatic withdrawal of an application for which a Form 133.4 is properly filed.

(f) Additional information. An applicant receiving special consideration pursuant to this section in connection with a registration application shall provide any other information deemed necessary by the Commissioner. Such information may include, but is not limited to documentation:

(1) demonstrating status as a military spouse, service member, or military veteran;

(2) to determine whether the applicant meets licensing requirements through some alternative method;

(3) relating to prior military service, training, or education that may be credited towards a registration requirement; or

(4) to determine an investment adviser's financial responsibility or an investment adviser's or investment adviser representative's business repute or qualifications.

Source Note: The provisions of this §116.18 adopted to be effective June 13, 2012, 37 TexReg 4186; amended to be effective March 1, 2014, 39 TexReg 493.

The next page is 123-1.

TEXAS ADMINISTRATIVE CODE
TITLE 7 BANKING AND SECURITIES
PART 7 STATE SECURITIES BOARD

CHAPTER 123. ADMINISTRATIVE GUIDELINES FOR REGISTRATION OF OPEN-END INVESTMENT COMPANIES.

§123.1. Reserved for Expansion.
§123.2. Reserved for Expansion.
§123.3. Conditional Exemption for Money Market Funds.

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§123.1. Reserved for Expansion.

§123.2. Reserved for Expansion.

§123.3. Conditional Exemption for Money Market Funds.

(a) Introduction.

(1) Certain open-end investment companies commonly known as money market funds have investment characteristics and sales patterns materially different from other types of mutual funds and other securities. These funds, defined in subsection (b) of this section, are designed to attract a large volume of comparatively short-term investments by purchasers. As early redemptions are contemplated by both purchaser and seller, and because these funds continuously offer to repurchase their own securities and issue new securities to new and repeat investors, an excessive amount of fees may be paid under the Texas Securities Act, Section 35.B(2), for the securities issued. Therefore, pursuant to the Act, Section 5.T, the State Securities Board conditionally exempts from the fee provisions of the Texas Securities Act certain investment company securities defined herein provided all the requirements of this section are satisfied.

(2) Nothing in this section shall be construed to relieve any open-end investment company from any condition or requirement of registration under the Texas Securities Act except as specifically stated herein or in Chapter 114 of this title (relating to Federal Covered Securities).

(b) Definition. In this section, a “money market fund” or “fund” is an open-end investment company which must meet all of the following conditions.

(1) The fund must engage in a continuous offering of its securities.

(2) The fund must hold itself out to be a money market fund or an equivalent to a money market fund and must be in compliance with the Investment Company Act of 1940, Rule 2a-7, as made effective in Securities and Exchange Commission Release Number IC-13380 and as amended in Release Numbers IC-14606, IC-14983, IC-18005, IC-18177, and IC-21837.

(3) The fund must not pay or charge sales commissions or redemption fees except nominal exchange fees which may not be used for sales expenses or in lieu of initial sales charges or redemption fees.

(4) The fund's total charges against net assets for sales distribution activities and/or the servicing of shareholder accounts must not be in excess of .25% of average net assets per annum.

(5) With the exception of mergers, consolidations, or acquisitions of assets, or as noted in paragraph (6) of this subsection, the fund's investments in other investment companies must be limited to:

(A) 10% of the fund's total assets;

(B) other investment companies with substantially similar investment objectives; and

(C) other investment companies with charges and fees substantially similar to those set forth in paragraphs (3) and (4) of this subsection.

(6) In the case of a master/feeder fund structure:

(A) feeder fund(s) must meet, or invest in a master fund which meets, paragraphs (1)-(4) of this subsection;

(B) when viewed together, the master/feeder fund(s) must meet paragraphs (3) and (4) of this subsection; and

(C) all feeder funds must have investment objectives substantially similar to those of the master fund.

(7) A currently authorized fund which has been granted money market status is not required to comply with this subsection until the fund files its Year End Report of Sales of Federal Covered Securities by a Money Market Fund on Form 133.27, but it is required to comply with the subsection as it was in effect at the time that the fund was designated a money market fund for purposes of this section.

(c) Request for determination.

(1) At the time an applicant submits documents or fees in connection with an authorization to sell federal covered securities, or at any time thereafter, the applicant may request the Securities Commissioner determine that the issuer is a money market fund as defined in this section. The request shall be made in writing on Form 133.26 of this title (relating to Request for Determination of Money Market Fund Status for Federal Covered Securities). The Securities Commissioner shall review the request and any other information the Securities Commissioner deems relevant to the determination of whether the issuer is a money market fund for purposes of this section.

(2) If the request is made after the issuance of the fund's original authorization, an amendment fee as prescribed by the Texas Securities Act, Section 35.A(1) will be required. Additional sales

information will be required since only the federal covered securities authorized and sold after the date the Securities Commissioner determines that the issuer is a money market fund will be subject to the reduced fees under subsection (d) of this section.

(d) **Conditional exemption.** Subject to the other provisions of this section, federal covered securities issued by money market funds are exempt from the fee imposed by the Texas Securities Act, Section 35.B(2), provided all of the following requirements are satisfied at the time of sale of the federal covered securities.

(1) An applicant has requested that the Securities Commissioner determine that the issuer is a money market fund as defined in this section.

(2) The Securities Commissioner has determined that the issuer is a money market fund as defined in this section.

(3) For each filing of an original, renewal, or amended authorization under the conditional exemption provided by this section, the applicant has paid the filing fee required by the Act, Section 35.A(1), in addition to the reduced fee imposed by paragraph (5) of this subsection.

(4) During the current calendar year, the fund has an aggregate authorized amount of $10 million of federal covered securities for sale in Texas.

(5) The fund has paid the reduced authorization fee imposed by this paragraph for the aggregate amount of federal covered securities proposed to be sold during the current calendar year under this conditional exemption. The reduced authorization fee imposed by this paragraph for authorization of federal covered securities in excess of the first $10 million aggregate amount of securities sold is:

(A) for the next $10 million of federal covered securities authorized, 1/20 of 1.0% of the aggregate amount to be sold;

(B) for the next $30 million of federal covered securities authorized, 1/50 of 1.0% of the aggregate amount to be sold;

(C) for the next $50 million of federal covered securities to be authorized, 1/100 of 1.0% of the aggregate amount to be sold; and

(D) 1/200 of 1.0% of the aggregate amount on the remainder of the federal covered securities authorized to be sold.

(e) **Oversales.** The reduced authorization fee schedule imposed by subsection (d)(5) of this section shall not apply to any federal covered securities authorized under the Act, Section 35-1. All fees paid for authorization of federal covered securities of money market funds pursuant to Section 35-1 shall be computed as set forth in the Act, Sections 35.A(1), 35.B(2), and 35-1.

(f) **Unsold balance at end of calendar year.** In any calendar year, the fees required to be paid by a fund for sales that year will be calculated under subsection (d)(4) and (5) of this section without regard to the amount of fees paid or federal covered securities sold in any other year. If, at the end of any

calendar year a money market fund has a remaining unsold balance of federal covered securities authorized to be sold, the dollar amount of fees paid under subsection (d) of this section for authorization of the unsold balance may be reapplied to fees required in the next calendar year, but no unsold balance of authorized but unsold federal covered securities will be carried forward to the subsequent calendar year.

(g) Year end reports. To qualify for the reduced fees accorded to a fund granted money market fund status pursuant to this section, the fund must file a year end report of sales on Form 133.27 of this title (relating to Year End Report of Sales of Federal Covered Securities by a Money Market Fund) in January of each year which reflects the amount of federal covered securities sold in the previous year, the balance of fees paid for authorization of any unsold balance in the previous year and the recalculated balance of authorized federal covered securities at the beginning of the current year. In calculating fees applied to sales during the previous year, fees will first be applied at the higher rates specified in the reduced fee schedule in subsection (d)(5) of this section, and then at more reduced rates as sales volume increases, and not vice versa. Funds should consult Form 133.27 in determining how to compute fees.

(h) Effect of noncompliance. If at any time the business or plan of business of any fund has been altered so that it is no longer a money market fund within subsection (b) of this section, such an issuer shall not be entitled to any reduction of fees as provided in subsection (d)(5) of this section. Such fund shall not be entitled to any reduction in fees as provided in subsection (d)(5) of this section for any sales of its securities from the time at which it ceases to comply with subsection (b) of this section until the Securities Commissioner redetermines in a subsequent calendar year that the issuer is again a money market fund as defined in subsection (b) of this section, and instead fees shall be calculated for such issuer as provided in the Act, Section 35 and Section 35-1.

(i) Appeals. If any person should take exception to an action of the Securities Commissioner in making, failing to make, or revoking a determination whether that person is a money market fund, the aggrieved person may appeal the decision of the Securities Commissioner as provided in the Act, Section 24.

(j) Effect of a prior determination. A fund offering federal covered securities, that was determined to be a money market fund prior to October 11, 1996, will continue to be considered a money market fund for purposes of this section without the necessity of submitting a new request for determination, so long as the fund continues to meet the definition of a “money market fund” in subsection (b) of this section.

Source Note: The provisions of this §123.3 adopted to be effective September 1, 1979, 4 TexReg 2901; amended to be effective February 2, 1983, 8 TexReg 281; amended to be effective December 20, 1993, 18 TexReg 9093; amended to be effective June 8, 1994, 19 TexReg 4196; amended to be effective April 8, 1997, 22 TexReg 3227; amended to be effective February 24, 2004, 29 TexReg 1644.

The next page is 125-1.

TEXAS ADMINISTRATIVE CODE
TITLE 7 BANKING AND SECURITIES
PART 7 STATE SECURITIES BOARD

CHAPTER 125. MINIMUM DISCLOSURES IN CHURCH AND NONPROFIT INSTITUTION BOND ISSUES.

§125.1. Introduction.
§125.2. Name.
§125.3. The Issuer.
§125.4. Description of Terms of Security Offered.
§125.5. Plan of Distribution.
§125.6. Financial Information.
§125.7. Risk Factors.
§125.8. Litigation and Other Material Transactions.

. . . . . .

§125.1. Introduction. In order to be fair, just, and equitable to, and not tend to work a fraud upon, purchasers of securities, those offering for sale or selling securities issued by churches and similar nonprofit institutions should comply with the following guidelines for minimum information to be communicated to each prospective investor.

Source Note: The provisions of this §125.1 adopted to be effective January 1, 1976.

§125.2. Name. The name of the security being offered must be disclosed.

Source Note: The provisions of this §125.2 adopted to be effective January 1, 1976.

§125.3. The Issuer. Background information on the issuer must be given, including the following.

(1) The name, address, state in which organized, date organized, the type of legal entity, and purposes of the issuer.

(2) A brief history of the issuer, and its denominational affiliation, if any.

(3) A description of the general area and location of the issuer.

(4) Accreditation and regulation of the issuer, if any.

(5) A brief summary of the backgrounds of the key employees and those individuals responsible for the management and control of the issuer. In the case of religious organizations, a brief summary of the background of the minister or ministers and name and occupation of other responsible church officials must be included.

(6) A description of any current or past transactions, or of any proposed transactions, between the issuer and such persons mentioned in paragraph (5) of this section, or any affiliate of such persons.

(7) A statement of all direct and indirect remuneration paid by the issuer or received by members of the issuer in connection with the offering.

(8) A statement of any affiliation between the issuer and the broker/dealer, or any officers of either, with any building contractor or supplier who has an interest in or may receive any of the proceeds of the issue.

Source Note: The provisions of this §125.3 adopted to be effective January 1, 1976.

§125.4. Description of Terms of Security Offered.

(a) There must be a description of the indenture under which the securities are to be issued. This description should include information as to:

(1) interest and interest payment dates;

(2) default;

(3) redemption and prepayment;

(4) subordination;

(5) sinking fund;

(6) subsequent issues;

(7) modification of the indenture;

(8) paying agents and trustees including a brief statement concerning the duties of trustees;

(9) insurance coverage on properties of issuer; and

(10) any other material facts regarding the rights of bond holders.

(b) If any organization (it does not matter whether the organization is affiliated with the issuer or not) makes a guarantee of payment for the issue, information describing the ability of that organization to guarantee payment must be furnished, including financial statements. The word "guarantee" should not be used to describe the obligation of the issuer to pay, and it is appropriate only if there is a second obligation by another entity. The guarantee in and of itself may involve the offering of a second security which may require registration.

(c) If the security for the bond issue is in part real estate, the cost (if reasonably ascertainable) and appraised value of said property must be stated; likewise, a statement must be made concerning whether the sale of additional bonds may be authorized for the same underlying security.

Source Note: The provisions of this §125.4 adopted to be effective January 1, 1976.

§125.5. Plan of Distribution.

(a) There must be a statement as to whom the offering is being made.

(b) The names and addresses of those who are compensated to engage in the sale of securities or act as fundraising adviser must be given.

(c) A brief description of the distribution must be given.

(d) A brief description must be included of any underwriting agreement between any known broker-dealer and the issuer, including whether such agreements are “best efforts” or “firm” commitment, and whether “exclusive” or “nonexclusive.”

(e) A clear statement of the responsibilities of the broker-dealer, issuer, and the membership of the issuer under the terms of any underwriting agreement must be made.

(f) All past, present, and anticipated future dealings with broker-dealers must be disclosed. In the case of church bond issues, all past, present, and anticipated future dealings with or without church bond financing organizations must be disclosed.

(g) All expenses of the issue, including the amount of remuneration to be given to those who will engage in the sale of the issue, must be fully disclosed.

(h) If there is to be an escrow of funds, a brief description of the escrow agreement must be given.

(i) All disclosure documents must be dated.

(j) If the issue has not been registered with the Securities and Exchange Commission or under the Texas Securities Act, such must be clearly indicated in the disclosure document.

Source Note: The provisions of this §125.5 adopted to be effective January 1, 1976.

§125.6. Financial Information.

(a) Complete financial (preferably audited), prepared in accordance with generally accepted accounting principles. Complete financials are to include: a statement of assets and liabilities (a balance sheet); comparative figures showing the budget, the number of families giving on a regular basis and their average annual contribution, if applicable and available, and income (revenue) and expense statements for the past

three years; interim statements of church financials for the interim period between the last annual statements and 90 days just preceding the month of the offering.

(b) If any of the above information is not available, a statement to that effect must be made, along with an explanation of why it is not available.

(c) Any information necessary to explain extraordinary or nonrecurring fluctuations in the above-mentioned statements must be supplied.

(d) Obligations, if any, on existing indebtedness must be clearly stated and explained.

(e) An itemized statement showing the major uses of the proceeds of the offering by dollar amount is to be included. In stating the use of the proceeds, when construction costs are not based upon firm contracts, a statement should be made that the costs are estimates only and subject to change. If additional funds are needed to accomplish the stated purposes of the offering, this is to be disclosed, together with a statement showing how such funds will be obtained.

(f) A pay-out or maturity schedule must be included and sinking fund requirements must be indicated. If projected growth in income is used as the basis for increases in later sinking fund payments, great care must be exercised to insure that the estimates used are realistic and all assumptions fully disclosed.

(g) If refinancing is needed when the bonds mature, this needs to be clearly brought out. Unless special circumstances are show, “balloon payments” normally would not be considered fair, just, and equitable.

(h) Anything that is known that will take place in the future, and which could have an adverse effect on the issuer’s ability to pay back the bonds or the interest on the bonds, must be disclosed and explained.

(i) Schedules or charts showing the amount of return to be received when interest coupons are reinvested must be omitted unless there are specific provisions for reinvesting interest received.

(j) The person or persons preparing any appraisals must be identified and their qualifications for serving as such should be indicated along with the method of appraisal.

(k) Where part or all of the proceeds of an issue are to be used to retire outstanding indebtedness against certain property so that the property will serve as collateral for a first mortgage indebtedness, proceeds from the issue must be escrowed to insure that the indebtedness will be retired.

(l) If a legal opinion concerning the validity of the issue has not been rendered by an attorney, this fact shall be stated.

(m) In stating the use of the proceeds of the issue when construction costs are not based upon firm contracts, a statement should be made that the costs are estimates only which are subject to change.

Source Note: The provisions of this §125.6 adopted to be effective January 1, 1976.

§125.7. Risk Factors. Mention must be made of appropriate risk factors. Statements made concerning the risks or lack thereof in purchasing the securities must be made in the light of the financial information concerning the particular issuer. In the case of church bond offerings, it must be stated that church bonds may be offered by other issuers (of the same or other denominations) offering similar terms for greater security and less risk. Statements to the effect that little or no risk is involved in buying church bonds will be regarded as material misrepresentation. Likewise, comparisons with other investments made solely on the basis of the interest return paid will be considered misleading, unless other comparative aspects of these investments are also described. The disclosure document involved must make prominent reference to the risk factors, along with a notation as to the page number in which these risk factors may be found. The risk factors which are to be disclosed shall not be limited to the following.

(1) The issuer is primarily dependent upon contributions of the membership to meet the expenses of operation and the payment of the principal and interest on the securities. Due to population shifts or other factors, the issuer may not receive sufficient funds to meet its obligations.

(2) There has been no quoted market for the issuer's debt securities; however, the broker-dealer may effect secondary market transactions upon compliance with applicable securities laws. Neither the issuer nor the broker-dealer is obligated to repurchase the securities at the request of the holder thereof. Consequently, investors may not be able to resell any securities purchased should they need or wish to do so for emergency purposes or otherwise.

(3) (If the entity does not have a fixed price contract for the proposed construction, the following disclosure must be included.) A fixed price contract has not been obtained; consequently sufficient funds may not be available for completion of the project.

(4) If the entity has defaulted on previous issues and this issue is to refinance such a default, then such should be disclosed.

(5) If appropriate, the trust indenture permits the issuer to further encumber the property securing the bonds of this issue through the issuance and sale of additional bonds at some future date, the maximum debt-to-property valuation ratio and the debt-to-income ratio, in such event, should be set forth under section called "additional bond issues."

(6) If appropriate, issuer's financial statements as shown under "financial statements and statistical data" may be unaudited and prepared on a cash basis.

(7) Bonds of this issue will be offered to the general public and therefore must compete with other investment opportunities which may be of more or less risk by comparison and similarly provide higher or lower interest yields.

(8) The total value of the security for payment of bonds of this issue is based upon the market value appraisal of the land as shown under "security for payment of bonds" and the anticipated cost of the proposed facility to be constructed as shown under "purpose of bond issue." There is no assurance that the facility (its construction being for the most part single purpose) and land could be sold for the values stated therein in the event of a default.

Source Note: The provisions of this §125.7 adopted to be effective January 1, 1976.

§125.8. Litigation and Other Material Transactions.

(a) Any pending or threatened litigation which may materially affect the issuer's ability to pay back the bonds, or the interest on them, must be mentioned.

(b) Any transactions to which the issuer is a party which may materially affect this offering, and which have not been mentioned in subsection (a) of this section, must be fully disclosed.

Source Note: The provisions of this §125.8 adopted to be effective January 1, 1976.

The next page is 127-1.

TEXAS ADMINISTRATIVE CODE
TITLE 7 BANKING AND SECURITIES
PART 7 STATE SECURITIES BOARD

CHAPTER 127. MISCELLANEOUS.

§127.1. Enforcement.
§127.2. Reserved for Expansion.
§127.3. Seal of the State.

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§127.1. Enforcement.

(a) Complaints signed by investigators. Investigators or other members of the staff, on instructions from the commissioner, may sign complaints before appropriate district or county attorneys where there is sufficient evidence of a violation of the penal section of the Act and where no complaint of such violation has been made by any other person.

(b) Disclosure of section 28 testimony. The language ". . . that all information of every kind and nature contained therein shall be treated as confidential by the Commissioner and shall not be disclosed to the public except under order of court; but nothing in this section shall be interpreted to prohibit or limit the publication of rulings or decisions of the Commissioner nor shall this limitation apply to hearings provided for in sections 24 and 25 of this Act . . . ," in section 28 of the Securities Act prohibits the commissioner and staff from permitting a witness in an investigative proceeding under section 28 to have a copy of his own statement and from permitting the distribution or dissemination of testimony to anyone except under order of court, or permitting tape recorders or private court reporters to be present at any hearing or investigation.

Source Note: The provisions of this §127.1 adopted to be effective January 1, 1976.

§127.2. Reserved for Expansion.

§127.3. Seal of the State. The term "state seal" as used in the Securities Act, Section 30, includes the official seal of the State Securities Board.

Source Note: The provisions of this §127.3 adopted to be effective January 1, 1976; amended to be effective March 17, 1994, 19 TexReg 1543.

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TEXAS ADMINISTRATIVE CODE
TITLE 7 BANKING AND SECURITIES
PART 7 STATE SECURITIES BOARD

CHAPTER 131. GUIDELINES FOR CONFIDENTIALITY OF INFORMATION.

§131.1. Information Sharing.

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§131.1. Information Sharing.

(a) The Board recognizes the need for cooperative law enforcement among agencies responsible for the prevention, detection, and prosecution of white collar crime, for the regulation and policing of persons who offer and sell securities, and for the regulation of offerings of securities. Pursuant to the authority given the Board under the Texas Securities Act, Section 28, the Board authorizes the Securities Commissioner in his or her discretion to supply any confidential information in the Commissioner's possession to:

(1) any governmental or regulatory authority, including any bankruptcy trustee, receiver, or other official appointed by a state or federal court in a proceeding involving a governmental or regulatory authority; or

(2) any association of governmental or regulatory authorities.

(b) Disclosure for limited purposes. Disclosure of the confidential information referred to in subsection (a) of this section will be made only for the purpose(s) of assisting in the detection or prevention of violations of law or to further administrative, civil, or criminal action.

Source Note: The provisions of this §131.1 adopted to be effective September 18, 1977, 2 TexReg 3401; amended to be effective February 23, 1993, 18 TexReg 835; amended to be effective September 22, 1995, 20 TexReg 7189; amended to be effective June 12, 2002, 27 TexReg 4935; amended to be effective August 18, 2011, 36 TexReg 5096.

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TITLE 7 BANKING AND SECURITIES
PART 7 STATE SECURITIES BOARD

CHAPTER 133. FORMS.

Form 133.1. Reserved for Expansion.
Form 133.2. Public Information Charges--Billing Detail.
Form 133.3. ADA Accommodations Request Form.
Form 133.4. Request for Special Consideration of a Registration Application by a Military Spouse, Military Service Member, or Military Veteran.
Form 133.5. Secondary Trading Exemption Notice.
Form 133.6. Secondary Trading Exemption Renewal Notice.
Form 133.7. Application for Registration of Securities.
Form 133.8. Power of Attorney.
Form 133.9. Notice Filing for Third Party Brokerage Arrangements on Financial Entity Premises.
Form 133.10. Investment Company Report of Sales.
Form 133.11. Sales Report for Non-continuous Offerings.
Form 133.12. Renewal Application for Mutual Funds and Other Continuous Offerings.
Form 133.13. Application for Renewal Permit.
Form 133.14. Consent of Independent Accountants.
Form 133.15. Texas Crowdfunding Portal Registration.
Form 133.16. Texas Crowdfunding Portal Withdrawal of Registration.
Form 133.17. Crowdfunding Exemption Notice.
Form 133.18. Certification of Balance Sheet by Principal Financial Officer.
§133.19. Reserved for Expansion.
§133.20. Reserved for Expanion.
§133.21. Reserved for Expansion.
§133.22. Reserved for Expansion.
§133.23. Reserved for Expansion.
§133.24. Reserved for Expansion.
§133.25. Reserved for Expansion.
Form 133.26. Request for Determination of Money Market Fund Status for Federal Covered Securities
Form 133.27. Year-End Report of Sales of Federal Covered Securities by a Money Market Fund (Pursuant to §123.3).
§133.28. Reserved for Expansion.
Form 133.29. Intrastate Exemption Notice.
Form 133.30. Information Concerning Projected Market Prices and Related Market Information.
§133.31. Reserved for Expansion.
§133.32. Reserved for Expansion.
§133.33. Uniform Forms Accepted, Required, or Recommended.
Form 133.34. Undertaking Regarding Non-issuer Sales.
Form 133.35. Application for Designation as Matching Service under §109.15.
Form 133.36. Request for Reduced Fees for Certain Persons Registered in Multiple Capacities.

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§133.1. Reserved for Expansion.

§133.2. Public Information Charges--Billing Detail. The State Securities Board adopts by reference the public information charges--billing detail form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

Source Note: The provisions of this §133.2 adopted to be effective July 14, 2005, 30 TexReg 3990.

§133.3. ADA Accommodations Request Form. The State Securities Board adopts by reference the ADA Accommodations Request Form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

Source Note: The provisions of this §133.3 adopted to be effective December 21, 2011, 36 TexReg 8513.

§133.4. Request for Special Consideration of a Registration Application by a Military Spouse, Military Service Member, or Military Veteran. The State Securities Board adopts by reference Form 133.4, Request for Special Consideration of a Registration Application by a Military Spouse, Military Service Member, or Military Veteran. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

Source Note: The provisions of this §133.4 adopted to be effective March 1, 2014, 39 TexReg 494.

§133.5. Secondary Trading Exemption Notice. The State Securities Board adopts by reference the Secondary Trading Exemption Notice form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711 and at www.ssb.state.tx.us.

Source Note: The provisions of this §133.5 adopted to be effective August 16, 2010, 35 TexReg 7051.

§133.6. Secondary Trading Exemption Renewal Notice. The State Securities Board adopts by reference the Secondary Trading Exemption Renewal Notice form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711 and at www.ssb.state.tx.us.

Source Note: The provisions of this §133.6 adopted to be effective August 16, 2010, 35 TexReg 7051.

§133.7. Application for Registration of Securities. The State Securities Board adopts by reference the application for registration of securities form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

Source Note: The provisions of this §133.7 adopted to be effective February 21, 2008, 33 TexReg 1321.

§133.8. Power of Attorney. The State Securities Board adopts by reference the power of attorney form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711.

Source Note: The provisions of this §133.8 adopted to be effective August 10, 2003, 28 TexReg 5992.

§133.9. Notice Filing for Third Party Brokerage Arrangements on Financial Entity Premises. The State Securities Board adopts by reference the Notice Filing for Third Party Brokerage Arrangements on Financial Entity Premises form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711 and at www.ssb.state.tx.us.

Source Note: The provisions of this §133.9 adopted to be effective August 16, 2010, 35 TexReg 7051.

§133.10. Investment Company Report of Sales. The State Securities Board adopts by reference the investment company report of sales form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711.

Source Note: The provisions of this §133.10 adopted to be effective September 22, 1995, 20 TexReg 7190.

§133.11. Sales Report for Non-continuous Offerings. The State Securities Board adopts by reference the Sales Report for Non-continuous Offerings form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711 and at www.ssb.state.tx.us.

Source Note: The provisions of this §133.11 adopted to be effective August 16, 2010, 35 TexReg 7051.

§133.12. Renewal Application for Mutual Funds and Other Continuous Offerings. The Texas State Securities Board adopts by reference the renewal application for mutual funds and other continuous offerings form. This form is available from the Texas State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

Source Note: The provisions of this §133.12 adopted to be effective February 24, 2004, 29 TexReg 1645.

§133.13. Application for Renewal Permit. The Texas State Securities Board adopts by reference the application for renewal permit form. This form is available from the Texas State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

Source Note: The provisions of this §133.13 adopted to be effective February 24, 2004, 29 TexReg 1645.

§133.14. **Consent of Independent Accountants.** The State Securities Board adopts the attached consent of independent accountants. This form is available from the Securities Board, P.O. Box 13167, Capitol Station, Austin, Texas 78711.

Source Note: The provisions of this §133.14 adopted to be effective February 16, 1979, 4 TexReg 396.

§133.15. **Texas Crowdfunding Portal Registration.** The State Securities Board adopts by reference Form 133.15, Texas Crowdfunding Portal Registration. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.state.tx.us.

Source Note: The provisions of this §133.15 adopted to be effective November 17, 2014, 39 TexReg 8967.

§133.16. **Texas Crowdfunding Portal Withdrawal of Registration.** The State Securities Board adopts by reference Form 133.16, Texas Crowdfunding Portal Withdrawal of Registration. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.state.tx.us.

Source Note: The provisions of this §133.16 adopted to be effective November 17, 2014, 39 TexReg 8967.

§133.17. **Crowdfunding Exemption Notice.** The State Securities Board adopts by reference Form 133.17, Crowdfunding Exemption Notice. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.state.tx.us.

Source Note: The provisions of this §133.17 adopted to be effective November 17, 2014, 39 TexReg 8967.

§133.18. **Certification of Balance Sheet by Principal Financial Officer.** This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.state.tx.us.

Source Note: The provisions of this §133.18 adopted to be effective October 6, 2015, 40 TexReg 6889.

§133.19 - §133.25. **Reserved for Expansion.**

§133.26. **Request for Determination of Money Market Fund Status for Federal Covered Securities.** The Texas State Securities Board adopts by reference the request for determination of money market fund status for federal covered securities form. This form is available from the Texas State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

Source Note: The provisions of this §133.26 adopted to be effective February 24, 2004, 29 TexReg 1645.

§133.27. **Year-End Report of Sales of Federal Covered Securities by a Money Market Fund (Pursuant to §123.3).** The State Securities Board, in March 1997, adopts by reference the year-end report of sales of

federal covered securities by a money market fund (pursuant to §123.3) form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

Source Note: The provisions of this §133.27 adopted to be effective April 8, 1997, 22 TexReg 3228.

§133.28. Reserved for Expansion.

§133.29. Intrastate Exemption Notice. The State Securities Board adopts by reference the Intrastate Exemption Notice form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711 and at www.ssb.state.tx.us.

Source Note: The provisions of this §133.29 adopted to be effective August 16, 2010, 35 TexReg 7051.

§133.30. Information Concerning Projected Market Prices and Related Market Information. The State Securities Board adopts by reference the Information Concerning Projected Market Prices and Related Market Information form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711 and at www.ssb.state.tx.us.

Source Note: The provisions of this §133.30 adopted to be effective August 16, 2010, 35 TexReg 7051.

§133.31. - §133.32. Reserved for Expansion.

§133.33. Uniform Forms Accepted, Required, or Recommended.

(a) Assuming the appropriate exhibits and supplements are filed, the State Securities Board will accept for filing the following "Uniform Forms" in lieu of the requisite Texas form, if any.

(1) U-1. Uniform Application to Register Securities.

(2) U-2. Uniform Consent to Service of Process.

(3) U-4. Uniform Application for Securities Industry Registration or Transfer.

(4) U-5. Uniform Termination Notice for Securities Industry Registration.

(5) ADV. Uniform Application for Investment Adviser Registration.

(6) BD. Uniform Application for Broker-Dealer Registration.

(7) USR-1. Investment Company Report of Sales.

(8) U-7. Small Company Offerings Registration Form may be used as a disclosure guide when making a small company offering of securities pursuant to an exemption under the Act or when making small public offerings pursuant to the Act, §7.A.

(9) NF. Uniform Investment Company Notice Filing.

(10) Model Accredited Investor Exemption Uniform Notice of Transaction.

(11) BR. Uniform Branch Office Registration Form.

(b) The following "Uniform Forms" may be filed with this agency as appropriate.

(1) ADV-W. Notice of Withdrawal from Registration as Investment Adviser.

(2) BDW. Uniform Request for Withdrawal from Registration as a Broker-Dealer.

(3) ADV-E. Certificate of Accounting of Client Securities and Funds in the Possession or Custody of an Investment Adviser.

(c) Section 109.13(k)(5) of this title (relating to Limited Offering Exemptions) and §114.4(b)(1) of this title (relating to Filings and Fees) require the filing of a Form D, "Notice of Sale of Securities Pursuant to Regulation D, §4(6), and/or Uniform Limited Offering Exemption."

Source Note: The provisions of this §133.33 adopted to be effective November 29, 1989, 14 TexReg 6079; amended to be effective April 21, 1995, 20 TexReg 2621; amended to be effective April 8, 1997, 22 TexReg 3228; amended to be effective December 2, 1997, 22 TexReg 11668; amended to be effective August 10, 2003, 28 TexReg 5992; amended to be effective January 8, 2006, 30 TexReg 8869; amended to be effective December 21, 2011, 36 TexReg 8513.

§133.34. **Undertaking Regarding Non-issuer Sales.** The State Securities Board adopts by reference the Undertaking Regarding Non-issuer Sales form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711 and at www.ssb.state.tx.us.

Source Note: The provisions of this §133.34 adopted to be effective August 16, 2010, 35 TexReg 7051.

§133.35. **Application for Designation as Matching Service under §109.15.** The State Securities Board, in March 1995, adopts by reference the application for designation as matching service under §109.15 form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

Source Note: The provisions of this §133.35 adopted to be effective April 21, 1995, 20 TexReg 2621.

§133.36. **Request for Reduced Fees for Certain Persons Registered in Multiple Capacities.** The State Securities Board adopts by reference the request for reduced fees for certain persons registered in multiple capacities form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

Source Note: The provisions of this §133.46 adopted to be effective October 26, 2006, 31 TexReg 8671.

Form
133.2

Texas State Securities Board

Public Information Charges - Billing Detail

Description of Information _____ Date _____

Agency/Company _____ Method of Payment:

Address _____ Cash _____

_____ Check _____

Telephone No. _____ Other _____

	Number		Total
Standard-size Paper Copies	_____	@$0.10/page	$_____
Nonstandard-size Copies			
-CD	_____	@$1.00/ea.	$_____
-Diskette	_____	@$1.00/ea.	$_____
-Magnetic Tape	_____	(actual cost)	$_____
-Audio Cassette	_____	@$1.00/ea.	$_____
-Paper	_____	@$0.50/ea.	$_____
-Other		(actual cost)	$_____
Personnel Charges:			
-Programming	_____	@$28.50/hr.	$_____
-Other	_____	@$15.00/hr.	$_____
Overhead Charges:			
(20% of Total Personnel Charges)	_____	x 20%	$_____
Computer Resource Charges:			
-PC or LAN	_____	@$1.00/hr.	$_____
-Mainframe	_____	@$10.00/min.	$_____
Postage/Shipping Charges		(actual cost)	$_____
Other Charges:			
(Description:_____)	_____		$_____

TOTAL CHARGES: $_____

07-14-2005

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Form
133.3

Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167
(512) 305-8300

ADA Accommodations Request Form

The Texas State Securities Board ("TSSB") complies with the Americans with Disabilities Act of 1990, as amended. To ensure equal opportunity for all qualified applicants with disabilities, TSSB will not pay any costs an applicant may incur in obtaining the required evaluation, diagnosis, and recommendations.

Note: This form must be submitted each time the applicant requests to take an examination.

1. **Biographical Information:**

Name: _____

Date of Birth: _____ CRD Number: _____

Mailing Address (Street or P.O. Box): _____

City: _____ State: _____ Zip Code: _____

Telephone: _____ Fax: _____ Email: _____

2. **Examination Information:**

Requested examination date or window: _____

Have you previously taken this examination? ☐ Yes ☐ No

If yes, please provide:

Date of last examination: _____

Location of last examination: _____

Were you provided special accommodations? ☐ Yes ☐ No

If yes, what type of accommodations were provided? _____

_____

_____

_____

What is your requested accommodation? (Attach separate sheet if more space is needed.)

_____
_____
_____
_____
_____
_____

3. **Information regarding disability.** Supporting documentation, that is no more than three years old, must be submitted with this form. Please see guidelines on the following page.

What is the disability that limits one or more of your major life activities (e.g., walking, hearing, speaking, seeing, reading or writing?) _____
_____
_____
_____
_____
_____

Please describe the special accommodations needed and include written documentation supporting the accommodation that you are requesting. (Attach separate sheet if more space is needed.) _____
_____
_____
_____
_____
_____

Supporting documentation must comply with the following:

a. Be on official letterhead from a licensed or certified health professional appropriate for diagnosing and treating the disability;

b. Make a recommendation for the specific accommodations with current, detailed documentation supporting the request;

c. Provide evidence that similar accommodations have been made for you in other educational or testing situations or in employment settings, or describe why no such accommodation was made in the past but is now required;

d. Be dated within the last three years; **AND**

e. Be received by the application deadline.

Form
133.3

Disability Documentation Guidelines

These guidelines are developed to ensure candidates are protected under Title II of the Americans with Disabilities Act of 1990, as amended. The Securities Commissioner will evaluate all requests for examination modifications to determine whether the applicant: 1) has a disability, as defined by the ADA, and 2) is qualified for protection under Title II. Such modifications must maintain the security of the examination. Exam modifications that fundamentally alter the nature or security of the exam are not permitted.

The following guidelines describe the necessary components of acceptable evidence required to validate a disability and the current need for testing accommodations. A prior history of accommodations, without demonstration of a current need, will not necessarily warrant approval of testing modifications. To avoid unnecessary delays, ensure the submission of all information and documentation by the application deadline and in accordance with these guidelines.

Qualified individuals with disabilities are required to request accommodations every time they apply to take an examination by the application deadline for the respective examination. This requirement allows the Securities Commissioner to determine if the individual is "disabled" under the ADA. It also provides enough time to arrange reasonable and appropriate accommodations and services before the administration of the examination. Consequently, it is in the applicant's best interests to provide recent and appropriate documentation that clearly defines the extent and impact of the impairment(s) upon current levels of academic and physical functioning.

- Requests for accommodations and appropriate, supporting documentation, which is complete, must be submitted by the application deadline.

- Documentation should provide evidence of a substantial current limitation to physical or academic functioning.

- Clinical evaluations should be performed by a licensed or qualified professional (e.g. physician, psychologist, or educator) who has conducted an examination of the candidate and has diagnosed a physical or mental impairment. Details about the professional's area of specialization and professional credentials, including certification and licensure, should be provided.

- Documentation must be submitted on official letterhead from a licensed or qualified professional who has examined the candidate and diagnosed a physical or mental impairment. Depending on the disability and written evaluation, documentation may include a letter from a physician or a detailed report.

- Documentation should not be more than three years old.

- Documentation for all disabilities should describe the extent of the disability, the criteria for the diagnosis, the diagnosis, the type and length of treatment and the recommended accommodation. Terms such as "problems," "deficiencies," "weaknesses," "differences,"

and "learning disabilities" are not the equivalent of a diagnosed specific disability (such as ADD, Dyslexia, Multiple Sclerosis, etc). The disability must be specific. The accommodation must also be specific. "Extended time" or "unlimited time" is not sufficient. The recommendation must be specific, such as an extra thirty minutes per session, time and one-half over one day, etc.

- Indicate why specific accommodations are needed and how the effects of the specific disability are mediated by the recommended accommodations.

- Indicate any medication currently being taken that is directly linked to the disability and any effect that medication may have relating to the major life activity affected by the disability.

- All accommodations must be approved by the Securities Commissioner. Once accommodations have been granted, they may not be altered during the examination unless prior approval of the Securities Commissioner is obtained.

Information Relating To Tests

The following information should be shared with the health professional. This information will help them in formulating their response as it relates to each individual test.

The TEXAS SECURITIES LAW EXAMINATION ("TSLE") consists of 25 multiple choice questions and is a timed exam. The applicant has 30 minutes to complete the examination. While taking the TSLE, the applicant may have for reference a clean copy of The Texas Securities Act, which will be provided by the TSSB at the time of examination. No other reference materials are allowed to be used by applicants during the examination. The testing facility is kept as quiet as possible to reduce distractions. The test is completed on paper and each applicant is alone in the room except for a proctor. For additional information regarding what the exam covers, please contact the Registration Division by calling (512) 305-8300.

I hereby affirm that I have read and agree to all of the information provided above.

_____ _____

Applicant's Signature Date

Please keep a copy of all documentation, including this form, for your records.

Return this form, along with documentation, to:

Texas State Securities Board
Attention: ADA Coordinator
P.O. Box 13167
Austin, TX 78711-3167

Form
133.4

Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

Request for Special Consideration of a Registration Application by a Military Spouse, Military Service Member, or Military Veteran (§115.18 or §116.18)

1. Name of Applicant: _____

2. Application Type (check all that apply):

   ☐ Dealer ☐ Agent
   ☐ Investment Adviser ☐ Investment Adviser Representative

3. CRD No. of the Applicant (if applicable): _____

4. SSN of the Applicant: _____

5. Name of Employer: _____

   CRD or IARD No. of the Employer, if applicable: _____

6. Applicant (check all that apply):

   ☐ is the spouse of an individual on active duty currently serving in the armed forces of the United States, or in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

   ○ holds a current registration issued by another state, the District of Columbia, or a territory of the United States. Please list all such jurisdictions where the applicant holds a comparable current registration:

   _____
   _____
   _____

   ○ was previously registered in Texas within the last five years preceding the date of the application for registration for which expedited review is requested.

   ○ within the last five years was living in another state for at least six months during which time the applicant's previous registration in Texas expired.

   ○ wishes to resolve any pending and/or deficient items identified in connection with my registration before my registration becomes effective.

○ wishes to become registered at the earliest possible date and acknowledges that any pending and/or deficient items identified in connection with my registration application must be corrected within 12 months after my registration is granted or my registration will be automatically terminated after that 12-month period.

☐ is currently serving in the armed forces of the United States, or in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state. Please attach verification of the military service, training, or education that you wish to apply towards the Texas registration requirements, other than the Texas examination requirements contained in §115.3 or §116.3 of the Board rules.

If applicable, please list all jurisdictions where the applicant holds a comparable current registration: _____

_____

_____

_____

☐ has served in the army, navy, air force, marine corps, or coast guard of the United States, or in the auxiliary service of one of those branches of the armed forces. Please attach verification of the military service, training, or education that you wish to apply towards the Texas registration requirements, other than the Texas examination requirements contained in §115.3 or §116.3 of the Board rules.

If applicable, please list all jurisdictions where the applicant holds a comparable current registration: _____

_____

_____

_____

The undersigned affirms that to the best of his or her knowledge, information, and belief the statements made on this form are true.

Date: _____ _____

(Signature)

_____

(Printed name)

Form
133.5

Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

Secondary Trading Exemption Notice
(Section 5.O, Texas Securities Act)

FILING FEE $500.00

1. Name of Issuer: _____
State of incorporation: _____
Address and principal place of business: _____
_____
_____

Location of books and records: _____
_____

Correspondent: _____
Firm: _____
Address: _____
_____

Telephone: _____

2. Attach Forms 10, 10-K, 8-K, and 10-Q for last 3 years, if any. (Answers to any of the following items may be cross-referenced to the appropriate pages of these documents if the cross-reference fully and adequately supplies the information required by the item).

3. Describe history of Issuer. Include state of incorporation, date of incorporation, dates of consolidation, mergers, or spin offs. Give names of companies, partnerships, etc., involved: _____
_____
_____
_____
_____
_____
_____
_____
_____
_____

4. Description of business: _____

_____

5. Property and location: _____

_____

6. Subsidiaries: _____

7. (a) Names and addresses of current officers and directors: _____

_____

_____

_____

Names and addresses of any other officers and/or directors who have held office within the past 5 years: _____

_____

_____

_____

(b) Has the Issuer or any person named in Item 7(a):

(1) been charged, indicted or convicted of any felony or misdemeanor of which fraud is an essential element?

☐ No ☐ Yes If yes, give details in an attached statement. Include identification of court, pertinent dates, style and number of case, charge, and disposition of case.

(2) been subject to a permanent or temporary injunction instituted by any court?

☐ No ☐ Yes If yes, give details in an attached statement. Include identification of court, pertinent dates, style and number of case, charge, and disposition of case.

8. Name and address of transfer agent: _____

_____

9. Date of annual meeting: _____

10. Number of stockholders on recent date. Specify date: _____

11. Number of employees on recent date. Specify date: _____

12. Attach all financial statements (consolidated, if applicable) prepared in accordance with Section 7.A(1) of the Texas Securities Act - although the statements need not reflect the financial condition of the Issuer on a day not less than 90 days before the date this notice is filed - including the following:

    (a) a balance sheet for the most recent fiscal year available, and as of a date not more than 18 months before the date of filing, that is certified by independent certified public accountants or independent public accountants; and

    (b) statements of income, changes in stockholders' equity and statements of cash flow for the 3 years ended as of the balance sheet date (or for the period of existence of the Issuer, if such period is less than 3 years) that are certified by independent certified public accountants or independent public accountants.

13. Record of dividends paid (cash, stock and property): _____

_____

_____

14. Public offerings - if any:

    Dates securities issued to public in the following states: _____

    _____

    Number of shares, price per share, net proceeds to the company, date of offering, name and address of underwriter (prices per share adjusted to reflect the present capitalization):

    _____

    _____

    _____

    _____

    _____

    Furnish copies of the latest prospectus, annual report and proxy statement.

15. Disclose all facts pertaining to the issuance of securities in transactions other than those described in Item 14. Include a description of all warrants and options that have been granted or authorized but not yet exercised: _____

_____

_____

_____

_____

_____

_____

16. Is there an existing over-the-counter market for the Issuer's securities?

☐ No ☐ Yes If yes, the Issuer's transfer agent must furnish the following justification of the market for the previous 12 months (excluding trades by insiders and control persons):

Sales Transactions For

	First Quarter Ending _____ (Date)	Second Quarter Ending _____ (Date)	Third Quarter Ending _____ (Date)	Fourth Quarter Ending _____ (Date)
Number of shares	_____	_____	_____	_____
Number of transactions	_____	_____	_____	_____
High bid price	_____	_____	_____	_____
Low bid price	_____	_____	_____	_____

17. Names and addresses of dealers making a market in the securities: _____

_____

_____

_____

_____

18. Names of the registered Texas dealers who have agreed to make a market in the securities. Include copies of their agreements: _____

_____

_____

_____

_____

_____

19. (a) Class(es) of security(ies) for which exemption is sought: _____

_____

(b) Number of shares or units eligible for secondary trading without benefit of registration under the Securities Act of 1933: _____

_____

_____

20. Include a statement from an officer of the Issuer that to the best of his or her knowledge and belief there has been no material adverse change in the financial condition of the Issuer since the date of the last audited financial statement.

21. In an attached statement, describe reason exemption is being sought.

STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____ (applicant), and having been duly sworn on oath deposes and says that the securities proposed to be sold under this exemption are not a part of an unsold allotment or subscription in the distribution of such securities by the Issuer; that securities of the same class, of the same issuer, are outstanding in the hands of the public; that no part of the proceeds of such sale will be paid directly or indirectly to the Issuer of such securities; that such sale is not directly or indirectly for the purpose of providing or furthering any scheme to violate or evade any provision of the Texas Securities Act; and that the Issuer of such securities is a going concern actually engaged in business and is neither in an organizational stage nor in receivership or bankruptcy.

_____
(Signature of Affiant)

_____
(Capacity)

Subscribed and sworn to before me the _____ day of _____, 20 _____.

_____

Notary Public in and for the County of _____
State of _____

(NOTARY SEAL) My commission expires _____

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Form
133.6

Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

Secondary Trading Exemption Renewal Notice
(Section 5.O, Texas Securities Act)

FILING FEE $500.00

1. Name of Issuer: _____
State of incorporation: _____
Address and principal place of business: _____
_____
_____

Location of books and records: _____
_____

Correspondent: _____
Firm: _____
Address: _____
_____

Telephone: _____

2. Attach all Forms 10, 10-K, 8-K, and 10-Q not previously filed with the last filing for Secondary Trading Exemption.

3. Furnish copies of latest prospectus (if any), annual report and proxy statement.

4. (a) Names and addresses of current officers and directors: _____
_____
_____
_____
_____
_____

Names and addresses of new officers and directors since last filing for Secondary Trading Exemption: _____
_____
_____
_____

Names and addresses of any other officers and/or directors who have held office within the past 5 years, who have not been named in any prior Secondary Trading Exemption Notices: _____

_____
_____
_____
_____
_____
_____
_____
_____

(b) Has the Issuer or any person named in Item 4(a):

(1) been charged, indicted or convicted of any felony or misdemeanor of which fraud is an essential element?

☐ No ☐ Yes If yes, give details in an attached statement. Include identification of court, pertinent dates, style and number of case, charge, and disposition of case.

(2) been subject to a permanent or temporary injunction instituted by any court?

☐ No ☐ Yes If yes, give details in an attached statement. Include identification of court, pertinent dates, style and number of case, charge, and disposition of case.

5. Name and address of transfer agent: _____

_____
_____
_____
_____

6. Attach certified financial statements of the Issuer. Such financial statements (consolidated, if applicable) shall include a balance sheet for the most recent fiscal year and the related statements of income, changes in stockholders' equity and statements of cash flow for the 3 years ending as of the balance sheet date (or for the period of existence of the Issuer, if such period is less than 3 years).

7. Is there an existing over-the-counter market for the Issuer's securities?

☐ No ☐ Yes If yes, the Issuer's transfer agent must furnish the following justification of the market for the previous 12 months (excluding trades by insiders and control persons):

Sales Transactions For

	First Quarter Ending _____ (Date)	Second Quarter Ending _____ (Date)	Third Quarter Ending _____ (Date)	Fourth Quarter Ending _____ (Date)
Number of shares	_____	_____	_____	_____
Number of transactions	_____	_____	_____	_____
High bid price	_____	_____	_____	_____
Low bid price	_____	_____	_____	_____

8. Names and addresses of dealers making a market in the securities: _____

_____

_____

_____

_____

9. (a) Class(es) of security(ies) for which exemption is sought: _____

_____

(b) Number of shares or units eligible for secondary trading without benefit of registration under the Securities Act of 1933: _____

_____

10. Include a statement from an officer of the Issuer that to the best of his or her knowledge and belief there has been no material adverse change in the financial condition of the Issuer since the date of the last audited financial statement.

Form
133.6

STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____ (applicant), and having been duly sworn on oath deposes and says that the securities proposed to be sold under this exemption are not a part of an unsold allotment or subscription in the distribution of such securities by the Issuer; that securities of the same class, of the same issuer, are outstanding in the hands of the public; that no part of the proceeds of such sale will be paid directly or indirectly to the Issuer of such securities; that such sale is not directly or indirectly for the purpose of providing or furthering any scheme to violate or evade any provision of the Texas Securities Act; and that the Issuer of such securities is a going concern actually engaged in business and is neither in an organizational stage nor in receivership or bankruptcy.

_____
(Signature of Affiant)

_____
(Capacity)

Subscribed and sworn to before me the _____ day of _____, 20 _____.

_____

Notary Public in and for the County of _____
State of _____

(NOTARY SEAL) My commission expires _____

Form
133.7

Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

Application for Registration of Securities,
Section 7, Article 581, Vernon's Annotated Civil Statutes
The Texas Securities Act

ANSWER ALL QUESTIONS. IF NOT APPLICABLE, SO STATE.

1. Name of applicant. If the applicant is not the issuer, state the capacity in which the application is made (e.g., licensed dealer): _____

_____

_____

2. Correspondent: _____
Firm: _____
Address: _____

_____

Telephone: (_____) _____

3. Name of Issuer: _____

(a) Address of Issuer's principal office: _____

_____

(b) Address of Issuer's principal office in Texas: _____

_____

4. Is the filing under the Texas Securities Act, Section 7.A ☐, 7.B ☐, or 7.C ☐?

NOTE: An applicant filing under the Texas Securities Act, Section 7.A, is cautioned to observe the audited financial statement requirements of Sections 7.A(1)f and 7.D, unless the issuer is a "small business issuer" as defined in Rule 113.5. (See Rule 113.5 for financial statement requirements.)

5. Date of Issuer's fiscal year end: _____

6. Describe the securities to be offered in Texas:

Quantity of Securities	Type of Securities	Maximum Price Per Unit	Aggregate Maximum Offering Price

Describe the securities to be offered in the total offering:

Quantity of Securities	Type of Securities	Maximum Price Per Unit	Aggregate Maximum Offering Price

7. Maximum commissions: _____%. Estimate other offering expenses: _____

8. Amount of fees submitted with this application: $ _____

NOTE: Fees are 1/10 of 1% of the aggregate amount of securities to be sold to Texas residents plus the applicable filing fee. Current information on fees is available on the Agency's web site (www.ssb.state.tx.us) or by contacting the Texas State Securities Board.

9. If registration application has been made with the Securities and Exchange Commission, state the effective date thereof or the expected date of effectiveness: _____

_____

10. Submit one copy of each of the following documents and indicate the documents submitted. Include:

(a) Securities and Exchange Commission Registration Statement;

(b) preliminary prospectus and all amendments thereto;

(c) each of the following, which may be in preliminary form, with a definitive copy furnished when available:

Issuer's charter and all amendments;
Issuer's bylaws and all amendments;
Underwriting agreement;
Agreement among underwriters and dealers;
Opinion of counsel;
Specimen copy of security; and
Firm offering price commitment from managing underwriter;

(d) all advertising to be used in connection with the offering of the securities in Texas; and

(e) if the Issuer is organized under the laws of any other state, territory, or government, or domiciled in any other state than Texas, a consent to service of process under proper resolution or authority of the governing body of the Issuer.

11. (a) List the states in which it is proposed to offer the securities for sale to the public:

_____

_____

_____

(b) List the states, if any, in which the securities are eligible for sale to the public:

_____

_____

_____

(c) List the states, if any, which have refused, by order or otherwise, to authorize sales of the securities to the public, or have revoked or suspended the right to sell the securities, or in which an application has been withdrawn: _____

_____

_____

_____

12. Describe any stop order, denial, order to show cause, suspension or revocation order, injunction or restraining order, withdrawal order or permission, or similar order issued to date by any state regulatory body, or other governmental authority, or by any court, concerning the securities covered by this application, or other securities of the issuer currently being offered to the public, and attach copies of any materials pertaining to any such orders: _____

_____

_____

_____

_____

_____

13. The applicant agrees:

(a) that any changes or amendments in the prospectus or registration statement shall be furnished with changes, additions, or deletions marked;

(b) that within two days after the filing under the Securities Act of 1933 of the final prospectus or of any further amendments or supplements thereto, whether post-effective or otherwise, one copy thereof will be filed with the Texas State Securities Board;

(c) that upon receipt of notice by the issuer or applicant of any orders of the Securities and Exchange Commission issued under Section 8(b) (Refusal Order Proceeding) or Section 8(d) (Stop Order Proceeding) of the Securities Act of 1933, in connection with the registration of the securities thereunder, and of any notice of effectiveness of said registration, notice thereof will be given to the Texas State Securities Board by any means of electronic submission, such as graphic scanning, modem or facsimile, provided, however, that the office of the Texas State Securities Board has the necessary equipment to accept such a transmission;

(d) that upon receipt of notice by the issuer or applicant of any stop order, denial, order to show cause, suspension or revocation order, injunction or restraining order, withdrawal order or permission, or similar order issued by any state regulatory body, or other governmental authority, or by any court, concerning the securities covered by this application, or other securities of the issuer currently being offered to the public, notice thereof will be given to the Texas State Securities Board by any means of electronic submission, such as graphic scanning, modem or facsimile; provided, however, that the office of the Texas State Securities Board has the necessary equipment to accept such a transmission; and

(e) that it will promptly furnish all such additional information and documents regarding the issuer or the securities covered by this application as may be requested by the Securities Commissioner prior to registration.

Signed and sealed this _____ day of _____, 20 _____

_____
(Name of Applicant)

By: _____
(Title)

Attest: _____
(Secretary or Partner)

STATE OF _____

COUNTY OF _____

The undersigned, being duly sworn, deposes and says that he or she executed the foregoing application for and on behalf of the applicant named therein; that he or she is _____ _____ (title) of such applicant and is fully authorized to execute and file such application; that he or she is familiar with such application; that to the best of his or her knowledge, information and belief the statements made in such application are true and the

documents submitted therewith are true copies of the original thereof; and that to date, unless the Texas State Securities Board has been otherwise notified, no stop order, denial, order to show cause, suspension or revocation order, injunction or restraining order, withdrawal order or permission, or similar order has been issued by any state regulatory body, or other governmental authority, or by any court, concerning the securities covered by this application, or other securities of the issuer currently being offered to the public.

_____
(Signature)

_____
(Capacity)

Subscribed and sworn to before me the _____ day of _____, 20____

_____

Notary Public in and for the County of _____

State of _____

(NOTARY SEAL) My commission expires: _____

The Texas State Securities Board will mail the correspondent a notice of receipt of the application.

Pursuant to the requirements of the Texas Government Code, Chapter 2005, the Rules and Regulations of the Texas State Securities Board, Chapter 104, set forth time periods for processing applications and a process for appeal where, without good cause, an application is not processed within the time periods prescribed.

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Form
133.8

POWER OF ATTORNEY

BE IT KNOWN:

That the undersigned _____, (a corporation), (a partnership), (a) organized under the laws of _____ , or (an individual/sole proprietor, a resident of the State of _____), hereby irrevocably appoints the Securities Commissioner of Texas, and the Commissioner's successors in office, its attorney in Texas upon whom may be served any notice, process, or pleading in any action or proceeding arising out of any transaction subject to the Texas Securities Act, in accordance with all applicable laws of the State of Texas; and the undersigned hereby agrees that any proceeding against it may be commenced in any court of competent jurisdiction and proper venue within Texas by service of process upon the Securities Commissioner of Texas, and the Commissioner's successors in office, with the same effect as if the undersigned was organized or created under the laws of Texas, or was a resident of Texas, and had been lawfully served with process in Texas.

A copy of any notice, process, or pleading served hereunder will be mailed to the undersigned's address of record on file with the Securities Commissioner as of the date of service.

This Power of Attorney is made in compliance with the provisions of the Texas Securities Act, Tex. Rev. Civ. Stat. Ann. art. 581-1 et seq.

Dated this _____ day of _____, 2____.

_____
(Name of applicant)

By _____
(President)(Partner)(Sole Proprietor)(Member)( )

By _____
(Secretary)( )

Strike out inapplicable terminology and fill in blanks, as appropriate.

Form
133.8

ACKNOWLEDGMENT

CORPORATE/LLC/ENTITY WITH DUAL SIGNATURE REQUIREMENT

STATE OF _____
COUNTY OF _____

Before me, the undersigned authority, personally appeared _____ and _____, known to me to be the persons whose names were subscribed in my presence to the foregoing instrument and to be the _____ and _____ of _____, and who acknowledged to me that the instrument was executed for the purpose and considerations therein expressed.

Subscribed and sworn to before me the _____ day of _____, 2_____.

_____

Notary Public in and for the County of_____
State of _____

(NOTARY SEAL) My commission expires:_____

INDIVIDUAL/PARTNERSHIP

STATE OF _____
COUNTY OF _____

Before me, the undersigned authority, personally appeared _____ , known to me to be the person whose name was subscribed in my presence to the foregoing instrument, and who acknowledged to me that the instrument was executed for the purpose and considerations therein expressed.

Subscribed and sworn to before me the _____ day of _____, 2_____.

_____

Notary Public in and for the County of_____
State of _____

(NOTARY SEAL) My commission expires:_____

INSTRUCTIONS FOR FORM 133.8 - POWER OF ATTORNEY

1. As part of the application for registration in Texas filed by a dealer or issuer, every entity not organized under the laws of Texas, or that has its principal place of business outside Texas, and any individual/sole proprietor applicant who is not a Texas resident, must complete a Power of Attorney form. This form allows for service of process upon the dealer or issuer by service upon the Securities Commissioner as the attorney in fact for the dealer or issuer in any action or proceeding against the dealer or issuer arising out of any transaction subject to the Texas Securities Act. (Note: Texas will accept Form U-2 in lieu of this Form 133.8.)

2. Issuers seeking to register securities for sale in Texas are not required to file this form if the issuer's application is filed by a registered dealer acting as a principal in a firm commitment underwriting.

3. For entities other than natural persons, the forms must be completed using the **exact** name of the entity as used in the document that created the entity (e.g., articles of incorporation, partnership agreement, etc.). Abbreviations may not be used unless they are also used in the document that created the entity. Applicants **will be required to re-execute** the form if the names are not identical.

4. **CORPORATIONS ONLY.** If a corporate seal is used, any two officers may sign the forms. If no corporate seal is used, the president and the secretary **must** sign as directed on the power of attorney page. If the bylaws of the corporation do not allow the president and the secretary to be the same person, then the appointed secretary and president who execute the form as directed **must** be two different persons. Corporate applicants who do not follow this instruction **will be required to re-execute** the form.

5. **LIMITED LIABILITY COMPANIES ONLY.** The forms must be signed by members with managing authority for the company, in accordance with its articles of organization.

6. The first page, labeled **POWER OF ATTORNEY**, should be completed by all applicants meeting the above criteria, including both natural persons and entities. If a series of choices is listed within parentheses or brackets, applicants should strike out inapplicable terminology and fill in blanks with the correct terms. For sole proprietors, the signature of the sole proprietor is sufficient and no second signature is required. For general partnerships, the signature of one general partner will be sufficient, unless the partnership agreement requires otherwise. For limited partnerships, the signature of one general partner may be sufficient, but if the general partner is not an individual or partnership itself, it must follow the directions for a corporation or other entity, as appropriate.

7. The second page of the form, labeled **ACKNOWLEDGMENT**, contains two acknowledgments. The top acknowledgment should be completed by corporate or limited liability company applicants, and any other entity that requires two signatures to properly execute the power of attorney. The bottom acknowledgment should be completed by individual/sole proprietor and partnership applicants. The power of attorney page must be signed in the presence of the notary. If the dates of execution and notarization do not match, the applicant **will be required to re-execute** the form.

This page intentionally left blank.

Form
133.9

Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

Notice Filing for Third Party Brokerage Arrangements on Financial Entity Premises (§139.20)

1. Name of Financial Entity: _____

_____

2. Address of Financial Entity: _____

_____

_____

3. Designated Officer/Contact: _____

4. Name of Registered General Dealer Providing Services: _____

_____

_____

5. Is the financial entity currently the subject of any litigation or arbitration relating in any way to the offer or sale of securities? ☐ Yes ☐ No

6. Please Attach the Following Fees:
   ☐ Financial Entity (Same as dealer registration fee)
   ☐ Designated Officer (contact person) (Same as agent registration fee)

By: _____
(Full Name - Printed or Typed)

_____
(Signature)

Date: _____

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Form
133.10

TEXAS PERMIT NO. _____
F.Y. END DATE _____

INVESTMENT COMPANY REPORT OF SALES

IN THE STATE OF

TEXAS

For the 12 month period beginning _____ Ending _____

Fund _____

Address _____

_____

Contact Person _____

Telephone _____

BEGINNING BALANCE	$ _____
ADDITIONAL AMOUNTS AUTHORIZED DURING THIS PERIOD (if any)	$ _____
TOTAL AVAILABLE FOR SALE	$ _____
SALES DURING THE PERIOD	$ _____
ENDING BALANCE	$ _____

We certify that the foregoing is a complete report of sales for this Fund during the period specified.

Date: _____ _____
(Fund)

By: _____
(Authorized signature)

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Form
133.11

Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

Sales Report for Non-continuous Offerings

In order to comply with §113.10, you should furnish the information requested in the tabulation below. If this is to be a final sales report indicate the total expenses of the offering.*

PERMIT NO. _____ FINAL REPORT: ☐ Yes ☐ No

For the Period: FROM _____ TO _____

	# Shares	$ Consideration
1. Balance UNSOLD in Texas Beginning Period[1]	_____	_____
2. Add: Increase of Offering in Texas by Permit Amendment During the Period[2]	_____	_____
3. Deduct: Amount SOLD in Texas During Period[3]	_____	_____
4. Balance of Authorization in Texas UNSOLD on (Date) _____	_____	_____
*Total Offering Expenses (to be completed in Final Report ONLY)	_____	_____
Total Sales in all States including Texas	_____	_____

Name of Issuer: _____

By: _____

Date: _____

---

[1] The offering UNSOLD at the beginning of a report period is the BALANCE of authorization UNSOLD at the previous reporting period. For first year Permits this total is the aggregate authorization of the original Permit.

[2] Increase to authorized offerings result only from formal amendments to Permits.

[3] This deduction is the TOTAL amount of any commitments for SHARES SOLD. Liquidations, abandonments or cancellations may not be deducted from the amount of certificates SOLD, nor added to any authorized UNSOLD balance.

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Form
133.12

TEXAS PERMIT NO. _____
EXPIRATION DATE _____
F.Y. END DATE _____

Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

Renewal Application for Mutual Funds and Other Continuous Offerings

Must be submitted with the applicable renewal fee.
[This form must be filed at least one month before the expiration of a current permit.]

1. Name of Issuer. This name must be the same as that shown on Texas permit: _____

_____

2. Principal address of Issuer: _____

_____

_____

3. Correspondent: _____

Firm: _____

Address: _____

_____

_____

Telephone: ( ) _____

4. Describe any legal or administrative proceedings of a material nature that have been instituted in which the Issuer, its advisor, or any affiliate was named as a party. If you have not previously notified the State Securities Board of such proceedings, please attach a summary or copy of the pleadings.

Form
133.12

AFFIDAVIT

STATE OF _____

COUNTY OF _____

_____ ("Affiant") being duly sworn, deposes and says that he or she is _____ (title) of the above-named registrant, having full authority in said capacity to agree to the following undertakings as evidenced by his or her signature below in consideration of a renewed registration. The registrant agrees:

(1) to file one copy of each new, revised, or amended prospectus as soon as it is available, with such copy marked to show changes;

(2) to continue to file single copies of all advertising literature as required by the Texas Securities Act, Section 22;

(3) to continue to file sales reports of securities sold and to maintain an adequate authorization based upon the rate of sales in Texas;

(4) to terminate security sales immediately if a licensed Texas dealer is no longer authorized to make sales; and

(5) to notify the State Securities Board immediately of any material adverse change in the registrant's plan of business or financial condition.

Affiant further deposes and says that unless the State Securities Board has been notified otherwise, no legal or administrative proceedings of a material nature have been instituted in which the Issuer, its advisor, or any affiliate thereof was a party since publication of the Issuer's most recent prospectus.

_____
(Signature of Affiant)

_____
(Capacity)

Subscribed and sworn to before me the _____ day of _____, 20 _____

_____

Notary Public in and for the County of _____
State of _____
(NOTARY SEAL) My commission expires: _____

Form
133.13

TEXAS PERMIT NO. _____
EXPIRATION DATE _____

Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

Application for Renewal Permit

Must be submitted with the applicable renewal fee.

This application may be completed by the issuer or by a registered dealer. Each of the following items must be completed to effect a renewal permit.

1. Name of Issuer: _____

2. Principal office of Issuer: _____

   _____

3. Issuer's principal office in Texas (if any): _____

   _____

4. Correspondent: _____

   Firm: _____

   Address: _____

   _____

   _____

   Telephone: ( ) _____

5. Issuer's form of organization (e.g., corporation, trust, partnership, etc.): _____

   _____

6. State of incorporation (if applicable): _____

7. Date of incorporation (if applicable): _____

8. Describe any legal or administrative proceedings of a material nature that have been instituted in which the Issuer, its advisor, or any affiliate was named as a party. If you have not previously notified the State Securities Board of such proceedings, please attach a summary or copy of the pleadings.

9. Describe the securities registered in Texas (e.g., quantity, type, price per unit, offering price): _____

_____

_____

10. Number of shares and dollar amount of securities sold in Texas under current permit:

_____

For the period from: _____ to: _____

11. Number of shares and dollar amount of securities sold elsewhere under current permit:

_____

For the period from: _____ to: _____

12. Is the renewal fee enclosed? Yes ( ) No ( )
If this fee is not enclosed, a renewal permit will not be issued.

13. Submit one copy of each of the following exhibits:

(a) opinion of either an independent public accountant or an independent certified public accountant;

(b) the most recent financial statement required by the applicable provisions of the Texas Securities Act, Section 7. If these statements are as of a date more than 90 days prior to the permit expiration date, interim statements as of a date within the 90-day period should be filed; and

(c) up-to-date current prospectus including all material changes and current financial statements as described in (b) above.

Signed and sealed this _____day of _____, 20_____

_____
(Name of applicant)

By: _____
(Title)

Attest: _____
(Secretary or Partner)

Form
133.13

STATE OF _____

COUNTY OF _____

The undersigned being duly sworn deposes and says that he or she has executed the foregoing application for and on behalf of the applicant named therein; that he or she is _____ _____ (title) of such applicant and is fully authorized to execute and file such application; that he or she is familiar with such application; and to the best of his or her knowledge, information, and belief the statements made in such application are true and the documents submitted herewith are true copies of the originals thereof.

The undersigned further deposes and says that unless the State Securities Board has been notified otherwise, no legal or administrative proceedings of a material nature have been instituted in which the Issuer, its advisor, or any affiliate thereof was a party since publication of the Issuer's most recent prospectus.

_____
(Signature)

_____
(Capacity)

Subscribed and sworn to before me the _____ day of _____ , 20 _____

_____

Notary Public in and for the County of _____

State of _____

(NOTARY SEAL)

My commission expires: _____

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Form
133.14

CONSENT OF INDEPENDENT ACCOUNTANTS

TO THE BOARD OF DIRECTORS OF _____ COMPANY:

We hereby consent to the use in the Registration Statement and Prospectus to be used in connection with a public offering of securities, which you are filing with the Texas State Securities Board, of our Opinion dated _____, relating to the Financial Statements of _____, Company, and subsequently included in the Prospectus, constituting a part of the Registration Statement. We also consent to the reference to us in the Prospectus under the heading "EXPERTS."

_____
(Name)

_____
(Address)

_____
(Date)

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Form 133.15

Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

Texas Crowdfunding Portal Registration
(§115.19)

Notice: This form is for use in filing an original application for registration as a Texas crowdfunding portal that acts as an intermediary in a transaction pursuant to §139.25 of this title relating to the Intrastate Crowdfunding Exemption and to file amendments and supplementary information with the Securities Commissioner as necessary to keep this form current. Any material change to the information or responses to questions herein must be updated within 30 days of the change by filing an amendment with the Securities Commissioner.

☐ Application ☐ Amendment

☐ Schedule A ☐ Schedule B ☐ Schedule C

1. Applicant information:

A. Full name of the Applicant: _____

B. IRS Employer Identification Number: _____

C. Name(s) under which business is conducted, if different from Item 1A: _____

_____

D. If this filing makes a name change on behalf of the Applicant, enter the new name: _____

_____

and specify whether the name change is of the ☐ Applicant name (1.A.) or ☐ Business name (1.C.).

E. Applicant's main address (do not use a P.O. Box): _____

_____

(Other business locations must be reported on Schedule C)

F. Telephone Number: _____ Website(s) URL: _____

G. Contact employee: Email Address: _____

Name and Title: _____

Direct Telephone Number: _____

2. Form of Organization. Indicate the legal status of Applicant.

☐ Texas Corporation ☐ Texas Partnership

☐ Texas Limited Liability Company ☐ Other (specify): _____

Date of Formation: _____

3. Successions. Is the Applicant at the time of this filing succeeding to the business of a currently-registered Applicant? If yes, provide name of acquired Applicant: _____

_____

4. Owners, Officers, Directors and Control Persons. If this is an initial application, the Applicant must complete Schedule A providing information about these persons. If this is an amendment to update information previously filed on Schedule A, Schedule B must be completed.

5. Disclosure Information. Provide information about the Applicant's disciplinary history and the disciplinary history for any person listed on Schedule A or B. One event may result in the requirement to answer "yes" to more than one of the questions below.

If the answer is "yes" to a question in any part of Item 5, detailed information must be submitted as part of the application or amendment including:

Criminal Actions: Docket/case number, whether felony or misdemeanor, jurisdiction where charges were brought, detailed description of the offense and circumstances leading to the charge, relevant dates when the conduct occurred that was the subject of the charge, disposition of the case, and date of disposition.

Regulatory Actions and Self-Regulatory Organization Actions: Docket/case number, filing date of action, agency/organization initiating regulatory action, sanctions, date of sanctions, detailed description of the case and circumstances leading to the action, relevant dates when the conduct occurred that was the subject of the action, disposition of the case, and date of disposition.

Civil Judicial Actions: Docket/case number, filing date of court action, detailed description of the case and circumstances leading to the litigation, current status, resolution date, detailed description of the resolution and sanctions.

5.A. Criminal Actions. Check all that apply.	**Yes**	**No**
1. In the past 10 years has the Applicant or any person on Schedule A or B been convicted of any felony, or pled guilty or nolo contendere ("no contest") to any charge of a felony, in a domestic, foreign, or military court?	☐	☐
2. Is the Applicant or any person on Schedule A or B currently charged with any felony in a domestic, foreign, or military court?	☐	☐

3.	In the past 10 years has the Applicant or any person on Schedule A or B been convicted of any misdemeanor, or pled guilty or nolo contendere ("no contest"), in a domestic, foreign, or military court to any charge of a misdemeanor in a case involving investment-related business, fraud, false statements, omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	☐	☐
4.	Is the Applicant or any person on Schedule A or B currently charged with any misdemeanor in a domestic, foreign, or military court involving investment-related business, fraud, false statements, omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	☐	☐
5.B.	**Regulatory Actions.** Check all that apply. Has any state, federal, or foreign financial regulatory authority ever:	**Yes**	**No**
1.	found the Applicant or any person on Schedule A or B to have made a false statement or omission, or been dishonest, unfair, or unethical?	☐	☐
2.	found the Applicant or any person on Schedule A or B to have been involved in a violation of any regulation or statute?	☐	☐
3.	found the Applicant or any person on Schedule A or B to have been a cause of the denial, suspension, revocation, or restriction of the authorization of an investment-related business to operate?	☐	☐
4.	entered an order against the Applicant or any person on Schedule A or B in connection with investment-related activity?	☐	☐
5.	imposed a civil money penalty on the Applicant or any person on Schedule A or B, or ordered the Applicant or any person on Schedule A or B to cease and desist from any activity?	☐	☐
6.	denied, suspended, or revoked the registration or license of the Applicant or any person on Schedule A or B, or otherwise restricted the activities of the Applicant or any person on Schedule A or B?	☐	☐
5.C.	**Self-Regulatory Organization Actions**. Check all that apply. Has any self-regulatory organization ever:	**Yes**	**No**
1.	found the Applicant or any person on Schedule A or B to have made a false statement or omission?	☐	☐
2.	found the Applicant or any person on Schedule A or B to have been involved in a violation of its rules?	☐	☐
3.	found the Applicant or any person on Schedule A or B to have been the cause of a denial, suspension, revocation, or restriction of the authorization of an investment-related business to operate?	☐	☐

4.	disciplined the Applicant or any person on Schedule A or B by expelling, suspending, or otherwise restricting the activities of the Applicant or any person on Schedule A or B?	☐	☐
5.D.	Is the Applicant or any person on Schedule A or B currently the subject of any proceeding that could result in a "yes" answer to any part of Item 5.B or 5.C?	**Yes** ☐	**No** ☐
5.E.	**Civil Judicial Actions**. Check all that apply.	**Yes**	**No**
1.	In the past 10 years has any domestic or foreign court enjoined the Applicant or any person on Schedule A or B in connection with any investment-related activity?	☐	☐
2.	In the past 10 years has any domestic or foreign court ever found that the Applicant or any person on Schedule A or B was involved in a violation of investment-related statutes or regulations?	☐	☐
3.	In the past 10 years has any domestic or foreign court ever dismissed, pursuant to a settlement agreement, an investment-related civil action brought against the Applicant or any person on Schedule A or B by a state or foreign financial regulatory authority?	☐	☐
4.	Is the Applicant or any person on Schedule A or B now the subject of any civil proceeding that could result in a "yes" answer to any part of Items 5.E.1, 5.E.2, or 5.E.3?	☐	☐
5.	Is the Applicant or any person on Schedule A or B currently the subject of any unsatisfied judgments or liens?	☐	☐
5.F.	Has the Applicant or any person on Schedule A or B ever had an authorization to act as an attorney, accountant, or state or federal contractor revoked or suspended?	**Yes** ☐	**No** ☐
6.	**Non-Securities Related Business.** Does the Applicant engage in any non-securities related business?	**Yes** ☐	**No** ☐

If "yes," briefly describe the non-securities business: _____

_____

_____

_____

EXECUTION

The undersigned hereby represents that he/she has executed this form on behalf of the Applicant and that the information contained herein and other information filed herewith, all of which are made a part hereof, are current, accurate and complete. The undersigned and the Applicant further represent that, to the extent that any information previously submitted is not amended, such information is currently accurate and complete.

_____
(Name of Applicant)

By: _____
(Signature)

_____
(Print name and title)

Subscribed and sworn to before me this _____ day of _____, 20_____.

_____

Notary Public in and for the County of _____

State of _____

My commission expires _____

SCHEDULE A, Owners, Officers, Directors and Control Persons

1. ***Complete Schedule A only if submitting an initial application.*** Schedule A asks for information about the Applicant's owners, officers, directors and control persons. Use Schedule B to amend this information.

2. List below the names of:

   a. Each officer, director, or other person having the power, directly or indirectly, to direct the management or policies of the Applicant, whether by contract or otherwise;

   b. If the Applicant is a corporation, each person that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of 25% or more of a class of the Applicant's voting securities. For purposes of this Schedule, a person beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security;

   c. If the Applicant is organized as a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the Applicant's capital;

   d. In the case of a trust, (i) a person that directly owns 25% or more of a class of the Applicant's voting securities, or that has the right to receive upon dissolution, or has contributed, 25% or more of the Applicant's capital, (ii) the trust, and (iii) each trustee; and

   e. If the Applicant is organized as a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the Applicant's capital, and (ii) if managed by elected managers, all elected managers.

3. Complete the Title or Status column by entering board/management titles; status as partner, trustee, sole proprietor, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).

4. Enter an ownership code if applicable. Ownership codes are:
   A - Less than 25%
   B - 25% or more but less than 50%
   C - 50% or more but less than 75%
   D - 75% or more

5. Enter the social security number and date of birth of the person or, if a business entity, the IRS Tax ID number or Employer ID number.

Form 133.15

SCHEDULE A, Owners, Officers, Directors and Control Persons

Full Name	Title / Status	Ownership Code	SSN and Date of Birth / IRS Tax No. or Employer ID No.

SCHEDULE B, Amendments to Schedule A

1. ***Use Schedule B only to amend information requested on Schedule A.*** Refer to Schedule A for specific instructions for completing Schedule B. Complete each column. File with a completed Execution Page.

2. In the first column, indicate "A" (addition), "D" (deletion), or "C" (change in information about the same person).

A, D, or C	Full Name	Title / Status	Ownership Code	SSN and Date of Birth / IRS Tax No. or Employer ID No.

SCHEDULE C, Other Business Locations

1. ***Initial Applications.*** Use Schedule C to report business locations of the Applicant other than the main address designated in the application.

2. ***Amendments.*** Use Schedule C to update information previously reported for the main office or other business locations of the crowdfunding portal.

☐ Application ☐ Amendment

1. Full name of the Applicant: _____

2. Applicant's main address (do not use a P.O. Box): _____

_____

3. Other business locations:

Address	Contact Person	Telephone No.

INSTRUCTIONS FOR FORM 133.15

A. GENERAL INSTRUCTIONS

1. EXPLANATION OF FORM

- This is the form that a Texas crowdfunding portal ("portal") must use to register with the Texas State Securities Board and to amend its registration as a portal. Form 133.16 must be used to withdraw from registration as a portal.
- Information on this form, including amendments, with the exception of certain personally identifiable information (such as social security numbers) is available to the public upon request.

2. WHEN TO FILE FORM 133.15

- A portal's registration must become effective before offering or selling any securities in reliance on §139.25, the Intrastate Crowdfunding Exemption.
- A portal must promptly (within 30 days) file an amendment to Form 133.15 when any information previously submitted on the form becomes inaccurate or incomplete for any reason.
- A successor portal may succeed to the registration of a registered portal by filing a registration on Form 133.15 within 30 days after the succession.
- If a portal succeeds to and continues the business of a registered portal and the succession is based solely on a change of the predecessor's date of incorporation, form of organization, or composition of a partnership or similar reason, the successor may, within 30 days of the succession, amend the registration on Form 133.15 to reflect these changes.
- A portal must also file a withdrawal on Form 133.16 promptly upon ceasing to operate as a portal.
- A Form 133.15 filing will not be considered complete unless it complies with all applicable requirements.

3. CONTACT EMPLOYEE--The individual listed as the contact employee must be authorized to receive all compliance information, communications, and mailings, and be responsible for disseminating it within the applicant's organization.

4. REQUESTED INFORMATION

- Items 1-6 must be answered and all fields requiring a response must be completed before the filing will be accepted.
- Detailed information relating to an item reportable under Item 5 must be included in a separate document submitted as part of the application or amendment.
- Specific instructions for Schedules A, B, and C are set forth at the beginning of each of those sections in Form 133.15.
- The execution page must be signed in the presence of a notary. The applicant and individual signing the execution page certify that the information contained in the form is current, accurate and complete and that, to the extent any information previously submitted is not amended, such information is currently accurate and complete.

5. FILING INSTRUCTION--The original application, amendment, and other information included as part of the filing must be submitted along with any applicable fees to the Securities Commissioner, Attn: Registration Division, P.O. Box 13167, Austin, Texas 78711. A copy of the initial Form 133.15 filing, amendments, and disclosure reporting information must be retained by the applicant and be made available for inspection by the Securities Commissioner upon request.

B. EXPLANATION OF TERMS

1. GENERAL

APPLICANT--The portal applying on or amending this form.

TEXAS CROWDFUNDING PORTAL (“PORTAL”)--One acting as an intermediary in a transaction involving the offer or sale of securities in reliance on §139.25, Intrastate Crowdfunding Exemption, and in compliance with the requirements of §115.19, Texas Crowdfunding Portal Registration and Activities.

PERSON--An individual, partnership, corporation, trust, or other organization.

SELF-REGULATORY ORGANIZATION (“SRO”)--The Financial Industry Regulatory Authority (‘‘FINRA’’) or any other national securities association registered with the Securities and Exchange Commission or any national securities exchange or registered clearing agency, as such terms are defined in Section 3 of the Exchange Act.

SUCCESSOR--A portal that assumes or acquires substantially all of the assets and liabilities, and that continues the business of, a registered predecessor portal that ceases its portal activities.

2. FOR THE PURPOSE OF ITEM 5

CHARGED--Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge).

ENJOINED--Includes being subject to a mandatory injunction, prohibitory injunction, preliminary injunction, or temporary restraining order.

FELONY--For jurisdictions that do not differentiate between a felony and a misdemeanor, a felony is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at least $1,000. The term also includes a general court martial.

FOREIGN FINANCIAL REGULATORY AUTHORITY--Includes (1) a foreign securities authority; (2) other governmental body or foreign equivalent of a SRO empowered by a foreign government to administer or enforce its laws relating to the regulation of investment or investment-related activities; and (3) a foreign membership organization, a function of which is to regulate the participation of its members in the activities listed above.

FOUND--Includes adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include agreements, deficiency letters, examination reports, memoranda of understanding, letters of caution, admonishments, and similar informal resolutions of matters.

INVESTMENT or INVESTMENT-RELATED--Pertaining to securities, commodities, banking, savings association activities, credit union activities, insurance, or real estate (including, but not limited to, acting as or being associated with a funding portal broker-dealer, portal, municipal securities dealer, government securities broker or dealer, issuer, investment company, investment adviser, futures sponsor, bank, security-based swap dealer, major security-based swap participant, savings association, credit union, insurance company, or insurance agency).

INVOLVED--Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

JURISDICTION--Any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, any other territory of the United States, or any subdivision or regulatory body thereof.

MISDEMEANOR--For jurisdictions that do not differentiate between a felony and a misdemeanor, a misdemeanor is an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than $1,000. The term also includes a special court martial.

ORDER--A written directive issued pursuant to statutory authority and procedures, including orders of denial, suspension, or revocation; does not include special stipulations, undertakings or agreements relating to payments, limitations on activity or other restrictions unless they are included in an order.

PROCEEDING--Includes a formal administrative or civil action initiated by a governmental agency, SRO or a foreign financial regulatory authority; a felony criminal indictment or information (or equivalent formal charge); or a misdemeanor criminal information (or equivalent formal charge). Does not include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge).

Form 133.16

Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

Texas Crowdfunding Portal
Withdrawal of Registration

1. Date the Texas crowdfunding portal ("portal") ceased business or the Applicant withdrew its registration request:

   _____

2. Location of Books and Records after Registration Withdrawal. Complete the following information for the location at which the portal will keep books and records after withdrawing its registration:

   Name of the Custodian of Records: _____

   Contact person: _____

   Address: _____

   Telephone Number: _____ Email: _____

3. This is (check one): ☐ one of the portal's other business locations or affiliates.
   ☐ a third-party unaffiliated recordkeeper.
   ☐ other.

4. If this address is a private residence, check this box: ☐

5. Briefly describe the books and records kept at this location: _____

   _____

   _____

6. Is the portal now the subject of or named in any investment-related:

   a. Investigation? ☐ Yes ☐ No

   b. Investor initiated complaint? ☐ Yes ☐ No

   c. Private civil litigation? ☐ Yes ☐ No

Execution

The undersigned hereby represents that he/she has executed this form on behalf of the Texas crowdfunding portal ("portal") or Applicant named below and that all information contained herein, including any attachments hereto, is current, accurate and complete. The undersigned and portal further represent that the

portal's books and records will hereinafter be preserved and available for inspection by the Securities Commissioner as required by law.

_____
(Name of Texas Crowdfunding Portal or Applicant)

By: _____
(Signature)

_____
(Print name and title)

Subscribed and sworn to before me this _____ day of _____, 20_____.

_____

Notary Public in and for the County of _____

State of _____

My commission expires _____

Form 133.17

Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

Crowdfunding Exemption Notice
(§139.25)

The exemption provided in §139.25 is available only to issuers organized and based in Texas, and all offers and sales of securities under the exemption must be limited to Texas residents. This form is due before any Internet website is used in connection with an offering of securities in reliance on §139.25. All provisions of §139.25 should be reviewed carefully for compliance with the rule.

1. Issuer and offering information (the issuer is the entity issuing securities):

Name of issuer: _____

Address: _____

_____

Telephone: _____ Email: _____

Website address where the issuer's securities will be offered: _____

_____

Identify the general dealer or Texas crowdfunding portal operating the website: _____

_____

Amount of the offering: $ _____

Name and address of the bank or other depository institution where investors' funds are to be deposited:

_____

2. Contact to whom communications regarding this Notice should be directed:

Name: _____

Address: _____

_____

Telephone: _____ Email: _____

3. Issuer's predecessors, owners, officers, directors, and control persons. In the chart that follows, list the names of the following persons:
   a. Any predecessor of the issuer;
   b. Each officer, director, or other person having the power, directly or indirectly, to direct the management or policies of the Issuer, whether by contract or otherwise; and
   c. Each person that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of 20% or more of a class of the Issuer's voting securities. For purposes of this provision, a person beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

Complete the Title/Status column by entering predecessor or board/management titles; status as partner, trustee, sole proprietor, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).

Enter an ownership code if applicable. Ownership codes are:

A - Less than 20% B - 20% or more but less than 50%
C - 50% or more but less than 75% D - 75% or more

Full Name	**Title / Status**	**Ownership Code**

Full Name	Title / Status	Ownership Code

By filing this Crowdfunding Exemption Notice, the issuer of these securities hereby represents that the issuer; the issuer's predecessors; any affiliated issuer; the issuer's directors, officers, control persons:

- has not within the last five years, filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;
- has not within the last five years, been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
- is not currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
- is not currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

The undersigned represents that the issuer is familiar with the conditions that must be satisfied to be entitled to the Intrastate Crowdfunding Exemption and understands that the issuer claiming the availability of this exemption has the burden of establishing that these conditions have been satisfied. The issuer has read this Notice and knows the contents to be true and has duly caused this Notice to be signed on its behalf by the undersigned duly authorized person.

The undersigned affirms that to the best of his or her knowledge, information, and belief the statements made on this form are true.

Date:_____ Representative of Issuer: _____
(Title)

_____ _____
(Printed name) (Signature)

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Form 133.18

Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

Certification of Balance Sheet by Principal Financial Officer
(§115.2(a)(4) or §116.2(a)(2)(B))

1. Name of Applicant: _____

2. Application Type (Check all that apply):

   ☐ Dealer ☐ Investment adviser

3. Form of Entity (Check only one):

   ☐ Sole Proprietor ☐ Corporation (includes LLC)
   ☐ Partnership (includes GP, LP, and LLP)

I, the undersigned, am the principal financial officer of the Applicant. I do certify that the accompanying balance sheet has been prepared under my direction and control. I have carefully examined the balance sheet and, to the best of my knowledge and belief, declare that the balance sheet presents accurately the assets, liabilities, capital, and retained earnings of the Applicant and fairly reflects the financial position of the Applicant as of the dates indicated.

Date: _____ _____
(Title)

_____ _____
(Printed name) (Signature)

Subscribed and sworn to before me, the _____ day of _____, 20____.

_____

Notary Public in and for the County of _____
State of _____

(NOTARY SEAL) My commission expires _____

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Form
133.26

Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

Request For Determination of Money Market Fund Status for Federal Covered Securities (Pursuant to §123.3(c))

1. Texas Authorization Number (if any): _____

2. Issuer: _____

3. Correspondent: _____
   Firm: _____
   Address: _____
   _____
   Telephone: ( ) _____

4. Enclose a copy of the most recent prospectus and statement of additional information.

5. Enclose the filing fee if the issuer already has a Texas Authorization in effect.

6. The Issuer hereby requests that the Securities Commissioner determine that it is a "money market fund" for purposes of §123.3, and hereby undertakes that it meets all of the following conditions:

   (a) The fund must engage in a continuous offering of its securities.

   (b) The fund must hold itself out to be a money market fund or an equivalent of a money market fund and must be in compliance with the Investment Company Act of 1940, Rule 2a-7, as made effective in Securities and Exchange Commission Release No. IC-13380 and as amended in Release Nos. IC-14606, IC-14983, IC-18005, IC-18177, and IC-21837.

   (c) The fund must not pay or charge sales commissions or redemption fees except nominal exchange fees which may not be used for sales expenses or in lieu of initial sales charges or redemption fees.

   (d) The fund's total charges against net assets for sales distribution activities and/or the servicing of shareholder accounts must not be in excess of .25% of average net assets per annum.

(e) With the exception of mergers, consolidations, or acquisitions of assets, or as noted in Item (f) below, the fund's investments in other investment companies must be limited to:

(1) 10% of the fund's total assets;

(2) other investment companies with substantially similar investment objectives; and

(3) other investment companies with charges and fees substantially similar to those set forth in Items (c) and (d) above.

(f) In the case of a master/feeder fund structure:

(1) feeder fund(s) must meet, or invest in a master fund which meets, Items (a)-(d) above;

(2) when viewed together, the master/feeder fund(s) must meet Items (c) and (d) above; and

(3) all feeder funds must have investment objectives substantially similar to those of the master fund.

(g) If money market status is granted pursuant to §123.3, the Issuer further undertakes to monitor its policies constantly and immediately notify the Securities Commissioner if it no longer meets the terms of this undertaking. It also agrees that all future sales shall be calculated pursuant to §123.3.

STATE OF _____

COUNTY OF _____

The undersigned, being duly sworn, deposes and says that he or she has executed the foregoing application for and on behalf of the Issuer named therein; that he or she is _____ of the Issuer and is fully authorized to execute and file the application; that he or she is familiar with the application; and that to the best of his or her knowledge, information, and belief, the statements made in the application are true and the documents submitted herewith are true copies of the originals thereof.

_____
(Signature)

Subscribed and sworn to before me the _____ day of _____ 20_____

_____
Notary Public in and for the County of _____
State of _____

(NOTARY SEAL) My commission expires: _____

Form
133.27

State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

Year-End Report of Sales of Federal Covered Securities by a Money Market Fund (Pursuant to §123.3)

1. Texas Authorization Number: _____

2. Issuer: _____

3. Correspondent: _____
   Firm: _____
   Address: _____
   _____
   _____
   Telephone: _____

4. For the year ended December 31, _____

   Beginning balance in Texas -- the amount federally covered securities authorized on January 1 by the Unapplied Fees in the prior year: _____

5. Enter the dollar amount of fund shares authorized during the year and the fees paid (including the beginning balance above). Do not include fees paid in order to register shares in connection with an Oversale pursuant to Section 35-1 of the Act.

	Total Shares Authorized			Fees Paid
(a)	First $0 - $10,000,000 authorized. Amount authorized at this level: _____	x .001	=	_____
(b)	Next $10,000,001 - $20,000,000. Amount authorized at this level: _____	x .0005	=	_____
(c)	Next $20,000,001 - $50,000,000. Amount authorized at this level: _____	x .0002	=	_____
(d)	Next $50,000,001 - $100,000,000. Amount authorized at this level: _____	x .0001	=	_____
(e)	Next $100,000,001 and above. Amount authorized at this level: _____	x.00005	=	_____
(f)	Enter total (a) through (e): _____			_____

6. Enter the amount of fund shares sold and determine the fees applied for shares sold during the year.

	Total Shares Sold			Fees Applied
(a)	First $0 - $10,000,000 shares sold. Amount sold at this level: _____	x .001	=	_____
(b)	Next $10,000,001 - $20,000,000 sold. Amount sold at this level: _____	x .0005	=	_____
(c)	Next $20,000,001 - $50,000,000 sold. Amount sold at this level: _____	x .0002	=	_____
(d)	Next $50,000,001 - $100,000,000 sold. Amount sold at this level: _____	x .0001	=	_____
(e)	Next $100,000,001 and above sold. Amount sold at this level: _____	x .00005	=	_____
(f)	Enter total (a) through (e) _____			_____

7. Subtract the total amount of fees applied in Item 6(f) from the total amount of fees paid in Item 5(f): _____ (Item 7 represents the amount of Unapplied Fees for the new year.)

NOTE: If the amount of Unapplied Fees (Item 7) is negative, the fund has an Oversale. Oversold securities should be retroactively authorized pursuant to §123.3 of the Rules.

8. Apply the Unapplied Fees to authorize fund shares as of January 1 of the new year.

	Application of Unapplied Fees			Shares Authorized
(a)	First $0 - $10,000 in Unapplied Fees. Amount at this level: _____	÷ .001	=	_____
(b)	Next $10,001 - $15,000 in Unapplied Fees. Amount at this level: _____	÷ .0005	=	_____
(c)	Next $15,001 - $21,000 in Unapplied Fees. Amount at this level: _____	÷ .0002	=	_____
(d)	Next $21,001 - $26,000 in Unapplied Fees. Amount at this level: _____	÷ .0001	=	_____
(e)	Next $26,001 and above in Unapplied Fees. Amount at this level: _____	÷ .00005	=	_____
(f)	Enter total (a) through (e): _____		=	_____

The amount of Shares Authorized in Item 8(f) is the amount of fund shares to be authorized as of January 1 of the new year.

9. Report of Oversale amounts authorized during the past year. Please itemize the Oversale amounts authorized pursuant to §123.3 of the Rules during the past year. Oversale amounts should not be included in any of the above computations.

   (a) Amount of Oversale Authorized: _____
   Authorization No.: _____
   Date of Oversale: _____

   (b) Amount of Oversale Authorized: _____
   Authorization No.: _____
   Date of Oversale: _____

   (c) Amount of Oversale Authorized: _____
   Authorization No.: _____
   Date of Oversale: _____

   NOTE: It is the Fund's obligation to file timely year-end reports of sales (§123.3). Failure to comply with the guidelines governing continued registration of money market shares could place in jeopardy the Fund's status as a money market fund under §123.3.

10. Attestation regarding continuing status as a money market fund. By executing this form the signatory attests that the Fund continues to meet all the requirements of §123.3 such that it remains entitled to pay the reduced registration fees set forth in §123.3.

    The undersigned has executed this report for and on behalf of the Fund named herein; is duly authorized to execute and file this report; and that, to the best of the undersigned's knowledge, the statements made herein are true.

By: _____
(Full Name - Printed or Typed)

_____
(Signature)

Date: _____

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Form
133.29

Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

Intrastate Exemption Notice
(§109.13(l))

This form is used to notify the Texas State Securities Board of an issuer's intent to sell securities under §109.13(l).

All answers required by this form must be completed and this form must be submitted to the Texas State Securities Board at least 10 business days before any sale may be consummated under §109.13(l).

Where needed, please attach answers on a separate sheet of paper and number answers to correspond to the numbers on this Form.

Name of issuer: _____

Contact persons and telephone numbers: _____

_____

_____

_____

State of organization: _____

Address of principal place of business: _____

_____

1. Description of the issuer's plan of business: _____

   _____

   _____

   _____

   _____

   _____

2. Information on securities to be sold:

   (a) Description of securities to be sold (including title and class): _____

   _____

(b) Total number of shares or units proposed to be sold: _____

_____

(c) Offering price per unit at which the securities are to be sold: _____

_____

(d) Aggregate dollar amount of securities to be sold: _____

3. Section 35 of the Texas Securities Act requires payment of a fee that is equal to one-tenth of one percent (1/10 of 1%) of the aggregate amount of securities described as being offered for sale, but in no case more than $500. Please indicate the amount of fees remitted. _____

_____

4. List present officers, directors, partners, members, trustees or managers. Give complete names, dates of birth, home addresses, and business addresses: _____

_____
_____
_____
_____
_____
_____
_____

5. List all persons who will actually engage in selling securities. Give complete names, dates of birth, and addresses: _____

_____
_____
_____
_____
_____
_____
_____

6. State whether the issuer or the registered dealer (as such terms are defined in §109.13(l)):

(a) is currently subject to any administrative order issued by state or federal authorities within 5 years of the expected offer and sale of securities in reliance upon this exemption, and the order:

(1) is based upon a finding that such person has engaged in fraudulent conduct; or

(2) has the effect of enjoining such person from activities governed by federal or state statutes designed to protect investors or consumers against unlawful or deceptive practices involving securities, insurance, commodities or commodity futures, real

estate, franchises, business opportunities, consumer goods, or other goods and services.

☐ No ☐ Yes If yes, give details in an attached statement, including pertinent dates, style and number of case, and disposition of case.

(b) has been convicted within 5 years prior to commencement of the offering:

(1) of any felony or misdemeanor of which fraud is an essential element, or which is a violation of the securities laws or regulations of this state, any other state of the United States, the United States, or any foreign jurisdiction;

(2) of a crime involving moral turpitude; or

(3) of a criminal violation of statutes designed to protect consumers against unlawful practices involving insurance, securities, commodities or commodity futures, real estate, franchises, business opportunities, consumer goods or other goods and services.

☐ No ☐ Yes If yes, give details in an attached statement, including identification of court, style and number of case, charge, and disposition of case.

(c) is subject to any order, judgment or decree entered within 5 years prior to commencement of the offering by any court of competent jurisdiction which:

(1) temporarily or permanently restrains or enjoins such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving any false filing with any state; or

(2) restrains or enjoins such person from activities governed by federal or state statutes designed to protect consumers against unlawful or deceptive practices involving insurance, commodities or commodity futures, real estate, franchises, business opportunities, consumer goods, or other goods and services.

☐ No ☐ Yes If yes, give details in an attached statement, including identification of court, style and number of case, and disposition of case.

STATE OF _____

COUNTY OF _____

The undersigned being duly sworn deposes and says that he or she has executed the foregoing application for and on behalf of the issuer named therein; that he or she is the _____ of such issuer and is fully authorized to execute and file such application; that he or she is familiar

with such application; and that to the best of his or her knowledge, information and belief the statements made in such application are true and any documents submitted therewith are true copies of the originals thereof.

_____
(Signature)

_____
(Printed name)

Subscribed and sworn to before me the _____ day of _____, 20____.

_____

Notary Public in and for the County of _____
State of _____

(NOTARY SEAL) My commission expires _____

Form
133.30

Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

Information Concerning Projected Market Prices and Related Market Information
(§109.7 and Section 5.O(3), Texas Securities Act)
(Supplement to Form 133.5 or Form 133.6)

Section 5.O(3) provides that securities should be offered for sale at prices reasonably related to the current market price of such security at the time of sale. The Texas Securities Board has interpreted the language "at prices reasonably related to the current market price of such security at the time of sale" to mean that the market price of such security in the existing secondary market must have a basis supported by a substantial volume of bona fide sales transactions within or without this state. Additionally, the Board policy provides that in the absence of a going market or where there have been only casual transactions, it shall be incumbent on the person filing the Section 5.O Exemption Notice to prove to the Commissioner that the security will have a market price that has been fairly determined and justified at inception with reasonable assurance of continuity of the market into the future.

This procedure would include consideration by the Commissioner of criteria established in the items set out below. If additional space is needed to complete any item, please submit attached sheets, identifying each item by number.

(Note: If the requested information is contained in a 10-K or 10-Q report submitted to our Agency, answers may be made by appropriate references.)

1. Describe the nature and extent of the business operations of the issuer and its predecessor, if any, and the period of time during which the issuer and its predecessor, if any, has been continuously engaged in business. _____

2. The net asset value of the stock per share. _____

3. If there is a record of earnings for the issuer, the value per share of the stock based upon a reasonable times-earnings factor (setting out the factor used) related to the industry represented by the issuer. _____

4. Any other basis for full justification of the value per share of the stock. _____

5. Attach a written undertaking by the issuer to furnish to its shareholders and dealers deemed by the issuer to be likely to trade the securities of the issuer a current balance sheet, a comparative 3-year income statement and analysis of shareholder's equity (or for the period of the existence of the issuer, if such period of existence is less than 3 years), and annual financial statements thereafter.

6. Attach a written undertaking by a registered Texas securities dealer who is financially able, setting out:

   (a) The dealer's willingness to make a market in the issue of securities;

   (b) The price at which the dealer will begin the market; and

   (c) The procedures which the dealer intends to follow for the purpose of assuring an orderly market.

7. Supplementary data to assist in determining the character of the share distribution and the number of publicly held shares;

   (a) Identification of 10 largest holders of record, including beneficial owners (if known) of holdings of record by nominees;

Name of Holder	# Shares	Name of Holder	# Shares

(b) List of holdings of 1,000 shares or more in the names of registered dealers and unregistered out-of-state dealers;

Name of Dealer	# Shares	Name of Dealer	# Shares

(c) Number of transfers and shares transferred of record during the last 2 years (or period of existence of the issuer, if shorter). _____

(d) Summary, by principal groups, of stock, owned or controlled by:

(1) Officers or directors and their immediate families. _____

(2) Other concentrated holdings of 10% or more. _____

(e) Estimates of number of non-officer employees owning stock and the total shares held.

(f) Company shares held in profit-sharing, savings, pension, or other similar funds or trusts established for the benefit of officers or employees. _____

(g) Number of round-lot and number of odd-lot holders of record and aggregate numbers of shares so held. _____

Form
133.30

STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____ (applicant), and having been duly sworn on oath deposes and says that the securities proposed to be sold under this exemption are not a part of an unsold allotment or subscription in the distribution of such securities by the Issuer; that securities of the same class, of the same issuer, are outstanding in the hands of the public; that no part of the proceeds of such sale will be paid directly or indirectly to the Issuer of such securities; that such sale is not directly or indirectly for the purpose of providing or furthering any scheme to violate or evade any provision of the Texas Securities Act; and that the Issuer of such securities is a going concern actually engaged in business and is neither in an organizational stage nor in receivership or bankruptcy.

_____
(Signature of Affiant)

_____
(Capacity)

Subscribed and sworn to before me the _____ day of _____, 20 _____.

_____
Notary Public in and for the County of _____
State of _____

(NOTARY SEAL) My commission expires _____

Form
133.34

Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

Undertaking Regarding Non-issuer Sales
(§139.14)

Re: Sales of _____ securities.
(Name of Issuer)

The undersigned, (Check one or more as applicable)

☐ director

☐ executive officer

☐ owner of 15% or more of a class of voting securities or other ownership interests

of the issuer of the securities sought to be sold pursuant to §139.14, hereby affirms that none of the proceeds from the sale(s) of such securities will inure to the benefit of the issuer.

Date: _____ By: _____
(Full Name - Printed or Typed)

_____
(Signed Name)

Subscribed and sworn to before me this _____ day of _____, 20_____.

_____
Notary Public in and for the County of _____
State of _____

(NOTARY SEAL) My commission expires _____

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Form
133.35

State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

Application for Designation as Matching Service Under §109.15

1. Applicant's name: _____
Address: _____
_____
Principal place of business (if applicable): _____
Telephone: _____

Applicant is (check one):

Governmental entity _____ Type: _____
Statutory authority: _____

Quasi-governmental entity _____ Type: _____
Statutory authority: _____

Institution of
Higher Education _____ Type: _____
Accrediting agency: _____

Nonprofit corporation _____
If nonprofit corporation, describe in detail nature of association with governmental or quasi-governmental entity, or institution of higher education, identify entity and, if applicable, cite statutory authority:
_____
_____
_____
_____
_____
_____

2. Correspondent's name: _____
Firm (if applicable): _____
Address: _____
_____
Telephone: (____) _____

3. Describe in detail, on separate sheets of paper, the matching service facility operated or proposed to be operated by the applicant. Address, among other things, how investor and issuer members are identified and made aware of the facility and how the operations of the facility and the presentation of business plans are limited to ensure compliance with §109.15. Demonstrate that the facility and its employees do not and will not have any business relationship with any investor or issuer member, other than as permitted in §109.15. If the applicant currently operates a facility, describe the history of operations. Provide copies of all materials generated or maintained by the applicant demonstrating that the matching service is limited to providing investor members with summary business plans and identities of issuer members.

4. Describe in detail, on separate sheets of paper, the nature of the inquiry the applicant undertakes to determine whether investor members are properly qualified.

5. State the number of employees engaged in operating the facility, describe the functions of each employee, and describe how employees are compensated: _____

6. Affirm that no employee is required under The Securities Act to be a registered dealer, salesman or agent. If any employee, officer, director, or control person, has, at any time within the past five years, been engaged in the offer or sale of securities as a dealer, salesman or agent, identify such employee(s), officer(s), director(s), or control person(s), describe the nature of the securities-related activities, and firm affiliation (if any, with dates): _____

7. If any employee, officer, director, or control person of the applicant is subject to any disqualification set forth in §109.13(k)(2)(A)-(E) of this title, give the name of such employee, officer, director, or control person and all particulars in an attached statement.

8. What fees are charged members for use of the facility? _____

9. How are fees calculated? _____

10. Provide information demonstrating that fees are not in excess of amount necessary to cover reasonable operating costs and are in no way related to the amount of money being raised by any issuer member or the amount of securities sold by any issuer member.

11. If applicable, describe in detail how the facility is advertised or proposed to be advertised. Include text of any advertisement pertaining to the facility: _____

Form
133.35

STATE OF _____

COUNTY OF _____

The undersigned being duly sworn deposes and says that he or she has executed the foregoing application for and on behalf of the applicant named therein; that he or she is authorized to execute and file the application; that to the best of his or her knowledge and belief the statements made in the application are true and the documents submitted therewith are true copies of the originals; and that if the applicant is designated as a matching service for purposes of §109.15, he or she agrees, on behalf of the applicant, to limit advertisement of the service facility as set out in §109.15(c)(8) and, on objection of the Securities Commissioner, to cease any such advertisement.

_____ _____
(Date) (Applicant's Signature)

_____
(Capacity)

Subscribed and sworn to before me the _____ day of _____, 19 _____.

_____

Notary Public in and for the County of _____
State of _____

(NOTARY SEAL) My commission expires _____

Form
133.36

Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

Request for Reduced Fees for Certain Persons Registered in Multiple Capacities

Name: _____

Address: _____

_____

Telephone: _____ Date of Birth: _____

Social Security Number: _____ CRD Number: _____

Applicant's Dealer or name under which applicant will conduct business as a sole proprietor Dealer: _____

Applicant's Investment Adviser or name under which applicant will conduct business as a sole proprietor Investment Adviser: _____

I, _____, certify that I am currently registered in Texas as either an agent of the above named dealer or as the above named sole proprietor dealer and that I am seeking to be or currently am registered in Texas as either an investment adviser representative of the above named investment adviser which has less than five investment adviser representatives or as the above named sole proprietor investment adviser who has less than five investment adviser representatives. I hereby request that the Securities Commissioner, pursuant to §115.8 and §116.8, grant a reduction in my registration fees. I further certify that I will notify the Securities Commissioner, within 30 days, of any cessation of dual registration or if any of the criteria enumerated in these Board Rules cease to be applicable.

_____
(Signature)

Subscribed and sworn to before me the _____ day of _____, 2_____.

_____

Notary Public in and for the County of _____
State of _____

(NOTARY SEAL) My commission expires _____

10-26-2006

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TEXAS ADMINISTRATIVE CODE
TITLE 7 BANKING AND SECURITIES
PART 7 STATE SECURITIES BOARD

CHAPTER 135. INDUSTRIAL DEVELOPMENT CORPORATIONS AND AUTHORITIES.

§135.1. Exemption.
§135.2. Dealer and Agent Registration.
§135.3. Anti-fraud Provisions.

. . . . . .

§135.1. Exemption. The State Securities Board, pursuant to the Texas Securities Act, Section 5.T, exempts from the securities registration requirements of the Act, securities issued pursuant to the Development Corporation Act, Texas Local Government Code, Title 12, Subtitle C1.

Source Note: The provisions of this §135.1 adopted to be effective November 7, 1999, 24 TexReg 9609; amended to be effective April 3, 2012, 37 TexReg 2167.

§135.2. Dealer and Agent Registration. Any person who acts as an agent of the issuer in connection with a sale to any prospective purchaser in a transaction exempt from securities registration by virtue of this section shall be registered as either a dealer or agent under the Texas Securities Act, as applicable.

Source Note: The provisions of this §135.2 adopted to be effective November 7, 1999, 24 TexReg 9609.

§135.3. Anti-fraud Provisions. Nothing in this section relieves issuers or persons acting on their behalf from the duty to disclose to prospective investors information to satisfy the anti-fraud provisions of the Texas Securities Act.

Source Note: The provisions of this §135.3 adopted to be effective November 7, 1999, 24 TexReg 9609.

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The next page is 137-1.

TEXAS ADMINISTRATIVE CODE
TITLE 7 BANKING AND SECURITIES
PART 7 STATE SECURITIES BOARD

CHAPTER 137. ADMINISTRATIVE GUIDELINES FOR REGULATION OF OFFERS.

§137.1. Application.
§137.2. Filing Requirements.
§137.3. Preliminary Prospectus.
§137.4. Tombstone Advertisements.
§137.5. Materials for Dealer Use.
§137.6. Standards for Supplemental Advertising.
§137.7. Advertisements in Texas Publications.

. . . . . .

§137.1. Application. This chapter relates to offers to sell securities which must be filed with the Commissioner under the Texas Securities Act, Section 22. This chapter does not apply to advertising for sales made in reliance upon exemptions contained in the Act, Section 5 or Section 6, including exemptions by rule adopted by the State Securities Board pursuant to the Texas Securities Act, Section 5.T. This chapter does not require the filing of any offering documents, prepared by or on behalf of the issuer, in connection with the offer of federal covered securities, as that term is defined in §107.2 of this title (relating to Definitions). The Act, Sections 29, 32, and 33, prohibits fraud or fraudulent practices in connection with the purchase or sale of any security, whether exempt or not. The Agency has jurisdiction to investigate and bring enforcement actions with respect to fraud or deceit, or unlawful conduct by a dealer or agent, in connection with any securities subject to the Texas Securities Act, including federal covered securities or transactions involving federal covered securities.

Source Note: The provisions of this §137.1 adopted to be effective August 12, 1980, 5 TexReg 3043; amended to be effective May 16, 1991, 16 TexReg 2472; amended to be effective April 8, 1997, 22 TexReg 3229.

§137.2. Filing Requirements.

(a) Written or printed offers required to be filed with the commissioner pursuant to the Securities Act, Section 22.A(1), must be received by the commissioner within 10 days after the date of their first use in Texas, including distribution of the offers to dealers; provided this shall not apply to offers by preliminary or final prospectus or to tombstone ads. Material filed under this section may be used unless expressly prohibited by the commissioner.

(b) Draft copies of material, galley proofs, and scripts of film or slide presentations may be submitted to the commissioner to satisfy the filing requirement of Section 22.A(1), but true, final copies of any such material or filmed presentation must be provided to the commissioner, and adequate equipment or facilities made available to actually view the material or presentation, within 10 days after the date of their first use in Texas.

(c) "Generic" advertisements, which under Rule 135A of the SEC are not deemed to offer any security for sale, need not be filed pursuant to this section.

(d) If with respect to any issues of securities which are part of a series of offerings of similar nature, an advertisement is proposed to be used in substantially the same form for more than one issue of securities in the series, the offeror or sponsor may file within 10 days after the date of its first use in Texas a final copy of each such advertisement with the commissioner.

Source Note: The provisions of this §137.2 adopted to be effective August 12, 1980, 5 TexReg 3043; amended to be effective January 7, 1985, 9 TexReg 6475; amended to be effective December 23, 1988, 13 TexReg 6075.

§137.3. Preliminary Prospectus. The language adopted by the Securities and Exchange Commission in paragraph (b)(10) of Item 501 of Regulation S-K (17 Code of Federal Regulations §229.501) meets the requirements of the Texas Securities Act, Section 22.A(4)(b), and is approved for use on preliminary prospectuses in Texas.

Source Note: The provisions of this §137.3 adopted to be effective August 12, 1980, 5 TexReg 3043; amended to be effective June 8, 1994, 19 TexReg 4196; amended to be effective November 7, 1999, 24 TexReg 9609.

§137.4. Tombstone Advertisements. "Tombstone" advertisements need not be filed pursuant to §137.2(a) of this title (relating to Filing Requirements) and are not subject to the requirements of §137.6(a) of this title (relating to Standards for Supplemental Advertising) if they contain no more than one or more of the following:

(1) date of issuance or release;

(2) name and address of issuer;

(3) identity or title of securities;

(4) per unit offering price;

(5) amount of offering;

(6) brief statement of character or business taken from summary in the preliminary or final prospectus;

(7) names of the underwriters;

(8) address where prospectus or offering circular may be obtained; or

(9) any statement or legend required by state law or administrative authority.

Source Note: The provisions of this §137.4 adopted to be effective August 12, 1980, 5 TexReg 3043.

§137.5. **Materials for Dealer Use.** Materials intended for dissemination to dealers only must bear a legend stating that the materials are not for public dissemination and are intended only for the use of dealers.

Source Note: The provisions of this §137.5 adopted to be effective August 12, 1980, 5 TexReg 3043.

§137.6. **Standards for Supplemental Advertising.**

(a) Advertising or sales material, other than tombstone ads, must be consistent with and conform to disclosures contained in the prospectus. Advertising and sales materials which depict predominately the positive elements of an offering and exclude such negative elements as are required to be disclosed in the offering prospectus may be found by the commissioner to be false, misleading, and likely to deceive a reader thereof. Sales materials which refer to specific issuers of securities by name must be accompanied by or preceded by a prospectus. Sales materials that include comparisons to other investment vehicles or indexes which are unwarranted or not fully explained may be considered misleading.

(b) References in advertising or sales materials to an exemption from or reduction in taxation under any laws should be consistent with the information or summaries of information which are contained in the prospectus.

(c) Projections, generalizations, conclusions, and opinions which tend to be misleading or likely to deceive a reader thereof shall not be permitted.

(d) All advertisements of and oral invitations to group sales meetings or "seminars" at which specific issue(s) of securities are to be offered or sold shall clearly indicate that the purpose of the meeting is to offer such securities for sale and shall disclose the name of the sponsor, underwriter, or selling agent.

(e) Any bonus, prize, gift, or similar consideration which is offered to investors as an inducement to buy securities or offered to dealers or salesmen as an inducement to sell a specific offering or issue of securities (but not as an inducement in connection with general public relations or goodwill-building activities unrelated to the sale of a specific issue) must be fully disclosed to investors and to the commissioner.

Source Note: The provisions of this §137.6 adopted to be effective August 12, 1980, 5 TexReg 3043.

§137.7. **Advertisements in Texas Publications.** Advertisements in newspapers or periodicals whose circulation is directed primarily to residents of Texas or placed solely in a local edition of an otherwise nationally distributed newspaper or periodical which offer securities which may not be legally offered to Texas residents should indicate in the text of the advertisement that the securities are not offered for sale to Texas residents.

Source Note: The provisions of this §137.7 adopted to be effective August 12, 1980, 5 TexReg 3043.

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TEXAS ADMINISTRATIVE CODE
TITLE 7 BANKING AND SECURITIES
PART 7 STATE SECURITIES BOARD

CHAPTER 139. EXEMPTIONS BY RULE OR ORDER.

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§139.1. Policies.

(a) It is the policy of the State Securities Board to refuse to grant any exemptions by order under Section 5.T of the Securities Act for specific individual transactions or issuers.

(b) The company or person engaged in a transaction exempt under a rule adopted pursuant to the Securities Act, Section 5.T, shall not be deemed a dealer within the meaning of the Act unless the rule by its terms indicates otherwise.

Source Note: The provisions of this §139.1 adopted to be effective April 15, 1980, 5 TexReg 1285; amended to be effective October 4, 1984, 9 TexReg 4974.

§139.2. Professional Associations. The sale, issuance, or offering of any securities of a professional association organized pursuant to Texas Civil Statutes, Article 1528(f), to persons permitted by the provisions of such article to own such securities are hereby exempted from the securities registration and dealer registration requirements of the Act; and the sale, issuance, or offering of any such securities to such persons shall be legal without any action or approval whatsoever on the part of the board or the commissioner.

Source Note: The provisions of this §139.2 adopted to effective April 15, 1980, 5 TexReg 1285.

§139.3. Blue Chip Exemption. The sale of any security by the issuer itself or by a registered dealer is exempt from the registration requirements of the Securities Act if all of the following conditions are met:

(1) If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process, and has set forth the name and address of such agent in its prospectus, offering memorandum or similar disclosure document.

(2) The security is senior to or on a parity with a class of the issuer's securities registered under section 12 of the Securities Exchange Act of 1934, and the class of securities has been so registered for the three years immediately preceding the offering date.

(3) Neither the issuer nor a subsidiary, which accounts for more than 15% of assets or revenues on a consolidated basis, has had a default that exceeded 5.0% of total assets on a consolidated basis during the last seven years (or the issuer's existence if less than seven years) in the payment of:

(A) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or

(B) rentals under leases with terms of three years or more.

(4) The issuer has had consolidated net income after taxes (but before extraordinary items and the cumulative effect of accounting changes) of at least $1 million in each of four of its last five fiscal years including its last fiscal year. In addition, if the offering is of interest-bearing securities, the issuer must have had net income for its last fiscal year (but before deduction for income taxes and depreciation) of at least 1-1/2 times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year" means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than 12 months from the commencement of the offering.

(5) If the offering is of stock or shares, other than preferred stock or shares, such securities have voting rights and such rights include:

(A) the right to have at least as many votes per share; and

(B) the right to vote on at least as many general corporate decisions, as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law.

(6) If the offering is of stock or shares, other than preferred stock or shares, such securities are owned beneficially or of record, on any date within six months prior to the commencement of the offering, by at least 1,200 persons, and on such date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least $3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

(7) Any security issued or guaranteed as to both principal and interest by an international bank of which the United States is a member is exempted without regard to the conditions in this section.

(8) If the offering is of interest-bearing securities of a finance company with liquid assets of at least 105% of its liabilities (other than deferred income taxes, deferred investment tax credits, capital stock, and retained earnings) at the end of each of its last five fiscal years, the applicable net income requirements of paragraph (4) of this section, but before deduction for interest expense, shall be 1-1/4 times the issuer's annual interest expense. "Finance company" means a company engaged primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial, and consumer financing, banking, or factoring. "Liquid assets" means cash, receivables payable on demand or not more than 12 years following the close of the company's last fiscal year, and readily marketable securities; in each case, less applicable reserves and unearned income.

(9) The issuer is not in bankruptcy.

Source Note: The provisions of this §139.3 adopted to be effective October 29, 1980, 5 TexReg 4146.

§139.4. Mexican Securities. Any security either issued or guaranteed by the federal government of Mexico shall be exempt from the securities registration requirements of the Act when offered for sale, sold, or dealt in by a registered dealer.

Source Note: The provisions of this §139.4 adopted to be effective May 24, 1993, 18 TexReg 3047.

§139.5. Canadian Securities. Any security, issued or guaranteed by Canada or any Canadian province or political subdivision thereof whose power of taxation or assessment will underlie the obligations evidenced by such securities, shall be exempt from the securities registration requirements of the Act when offered for sale, sold, or dealt in by a registered dealer.

Source Note: The provisions of this §139.5 adopted to be effective January 20, 1981, 6 TexReg 48.

§139.6. Distributions by Liquidating Trustees. The distribution to security holders of record at the time of the corporation's dissolution or liquidation of securities held by the liquidating trustee shall be exempt from the securities registration and dealer registration requirements of the Act. The distribution of such securities,

as part of their pro rata share of assets, to the security holders of record shall be exempt, provided that either articles of dissolution of the dissolving corporation have been or will be filed pursuant to a plan of complete liquidation or dissolution approved by the shareholders or a court of competent jurisdiction orders the dissolution and no security holder is obligated to pay or give any consideration other than the surrender of his shares of the dissolved corporation.

Source Note: The provisions of this §139.6 adopted to be effective January 20, 1981, 6 TexReg 48; amended to be effective June 23, 1992, 17 TexReg 4173.

§139.7. Sale of Securities to Nonresidents.

(a) The offer and sale of securities by an issuer or its selling agent to a non-Texas resident not present in Texas when the offer is made is exempt from the securities registration provisions of the Securities Act. (The Securities Act provides exemptions from the securities registration requirements which might be available to some issuers or selling agents offering or selling to non-Texas residents present in the state.)

(b) An issuer or selling agent who makes an offer or sale from Texas, by any means, including use of the mail or telephone, is a dealer and must comply with the dealer registration requirements of the Securities Act. (The Securities Act provides exemptions from the dealer registration requirements which might be available to some issuers or selling agents.) An offer is not deemed to be made from Texas merely because offering material is prepared in Texas, if such material is still in the possession of the issuer or its selling agent when it leaves the state. A sale is not deemed to be made in Texas merely because a purchaser sends his purchase money to Texas, or because clerical functions connected with the closing of a sale are performed in Texas.

Source Note: The provisions of this §139.7 adopted to be effective July 22, 1981, 6 TexReg 2383.

§139.8. Sales to Underwriters. Any transaction between the issuer, or other person on whose behalf the offering is made, and an underwriter, or among underwriters, is hereby exempted from the securities registration requirements of the Securities Act, Section 7.

Source Note: The provisions of this §139.8 adopted to be effective March 19, 1984, 9 TexReg 1440; amended to be effective October 4, 1984, 9 TexReg 4975.

§139.9. Bank Holding Companies. A bank holding company with fewer than 500 shareholders that owns the majority of the voting shares of a bank domiciled in Texas is hereby exempted from the dealer registration requirements of the Securities Act, Section 12, with respect to its participation in a sale or other transaction involving its own securities or the securities of a bank where the bank holding company owns a majority of the voting shares of such bank.

Source Note: The provisions of this §139.9 adopted to be effective January 12, 1984, 8 TexReg 5532.

§139.10. Exchange Offers. The offer or sale by the issuer of common stock in exchange for units of limited partnership or interests in oil, gas, or mineral leases, fees, or titles is hereby exempted from the securities registration requirements of the Securities Act, Section 7, if all of the following conditions are met:

(1) the units of limited partnership or interests in oil, gas, or mineral leases, fees, or titles for which the offer is made have been issued and outstanding for more than 36 months;

(2) the shares of common stock to be exchanged are registered for sale with the Securities and Exchange Commission;

(3) all sales to exchanging Texas residents are made by or through a registered dealer, who may be the issuer;

(4) the exchanging unit holders are not obligated to pay any consideration for the common stock issued to them other than the units of limited partnership or interests in oil, gas, or mineral leases, fees, or titles held by them;

(5) the shares of common stock received pursuant to the exchange are fully tradeable without restrictions; and

(6) at the close of the offering, the securities meet all of the criteria for trading on The National Association of Securities Dealers Automatic Quotations (NASDAQ).

Source Note: The provisions of this §139.10 adopted to be effective March 9, 1984, 9 TexReg 1441.

§139.11. Transactions in United States Savings Bonds. The State Securities Board, pursuant to the Securities Act, Section 5.T and Section 12.B, exempts from the securities and dealer registration requirements of the Act, the sale of any United States Series EE Savings Bond if no commission or other remuneration is paid or given or is to be paid or given, directly or indirectly, in connection with the sale. For purposes of this section, "commission or other remuneration" does not include a fee paid by the United States Treasury.

Source Note: The provisions of this §139.11 adopted to be effective December 27, 1995, 20 TexReg 10593.

§139.12. Oil and Gas Auction Exemption. For purposes of this rule only, the term "mineral interest" means an interest in or under an oil, gas, or mining lease, fee, or title, including real property from which the minerals have not been severed, or contracts relating thereto. The offer and sale of a mineral interest, at an auction, by the seller itself, or a registered dealer or agent acting on behalf of the seller, is exempt from the securities registration requirements of the Texas Securities Act, Section 7, if all of the following conditions are met.

(1) Auctioneer. The auctioneer or auction company through which the mineral interest is offered or sold must be licensed as a dealer under the Texas Securities Act and licensed by the Texas Department of Licensing and Regulation in accordance with Texas Occupations Code, §1802.001 et. seq.

(2) Seller.

(A) Intent. The seller did not acquire the mineral interest with a view to resale, unless the seller was forced to acquire the mineral interest in a package in order to obtain other properties in the package.

(B) No fractionalization of mineral interests.

(i) The seller has the full right and authority to sell the mineral interest, and is selling 100% of its mineral interest, except that retention by the seller of a royalty or overriding royalty or the horizontal severance of the property is permissible as indicated in clause (ii) of this subparagraph.

(ii) The seller must not be creating undivided interests out of its mineral interest for the purpose of resale. Where all the seller owns is a partial interest (such as a royalty, overriding royalty, or undivided fractional working interest), this requirement is met if the seller sells all of that interest. However, the seller shall not be considered to be fractionalizing its interest in sales where the seller retains only a royalty or overriding royalty, or where the seller horizontally severs the property by retaining all of its existing rights in certain formations or depths under the whole property.

(3) Not applicable to investment contracts. The mineral interest offered or sold does not constitute an investment contract.

(4) Purchaser.

(A) Knowledge and experience. The purchaser or its representative is engaged in the business of exploring for or producing oil or gas or other minerals as an ongoing business. By reason of this knowledge and experience, the purchaser or its representative has evaluated the merits and risks of the mineral interest to be purchased at auction and has formed an opinion based solely upon his knowledge and experience and not upon any statement, representation, or printed material provided or made by auctioneer or seller. If a purchaser representative is used, such purchaser representative:

(i) has no business relationship with the seller;

(ii) represents only the purchaser and not the seller; and

(iii) is compensated only by the purchaser.

(B) Financial ability. The purchaser has sufficient financial resources in order to bear the risk of loss attendant to the purchase of the property.

(C) Suitability. In all sales to purchasers in this state, the seller or any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that the purchaser satisfies the requirements set forth in subparagraphs (A) and (B) of this paragraph. This requirement could be met by obtaining a document signed by the purchaser to the effect that the purchaser meets these conditions.

(5) **Auction.** For purposes of this rule only, auction shall mean the sale of the seller's mineral interest by public outcry.

(6) **Information not prohibited.** The use of statistical information in trade journals and data bases as well as auction pamphlets concerning the mineral interests to be offered pursuant to this rule is not prohibited.

Source Note: The provisions of this §139.12 adopted to be effective August 23, 1991, 16 TexReg 4352; amended to be effective June 12, 2002, 27 TexReg 4936.

§139.13. **Resales under SEC Rule 144 and Rule 145(d).**

(a) **Exemption from securities registration.** Offers to resell and resales of any security by the owner thereof, or any person acting on behalf of the owner, shall be exempt from the securities registration requirements of the Texas Securities Act, Section 7, pursuant to Section 5.T, if the offers to resell and resales of securities are made in compliance with either:

(1) Rule 144 promulgated by the Securities and Exchange Commission (SEC) under the Securities Act of 1933, as amended (1933 Act), as made effective in SEC Release Number 33-5223, as amended in Release Numbers 33-5307, 33-5452, 33-5452A, 33-5560, 33-5613, 33-5717, 33-5979, 33-5995, 33-6032, 33-6180, 34-16589, 33-6286, 33-6389, 33-6488, 33-6768, 33-6862, 33-7285, and 33-7390; or

(2) Rule 145(d) promulgated by the SEC under the 1933 Act as made effective in SEC Release Number 33-5316, as amended in Release Numbers 33-5932, 33-6508, 33-6578, 33-6579, 33-6611, 33-6862, and 33-7390.

(b) **Dealer and agent registration.** Any person (other than the owner) who acts as an agent of the owner in connection with a sale to any prospective purchaser in a transaction exempt from securities registration by virtue of this section shall be registered as either a dealer or agent under the Act, as applicable.

Source Note: The provisions of this §139.13 adopted to be effective August 28, 1992, 17 TexReg 5681; amended to be effective August 24, 1998, 23 TexReg 8672.

§139.14. **Non-Issuer Sales.** The State Securities Board, pursuant to the Securities Act, Section 5.T, exempts from the securities registration requirements of the Securities Act, Section 7, the offer and sale of any securities, provided the following conditions are met.

(1) **Who may sell.** Offers or sales may be made by an owner of the securities, or any person acting on the owner's behalf, so long as the owner is not the issuer of the securities.

(2) **Dealer and agent registration.** Any person (other than the owner) who acts as an agent of the owner in connection with a sale to any prospective purchaser in a transaction exempt from securities registration by virtue of this section shall be registered as either a dealer or agent under the Act, as applicable.

(3) **Use of proceeds.** The proceeds of the sale shall be for the benefit of the owner and not directly or indirectly for the benefit of the issuer of the securities.

(4) **Number of sales.**

(A) Except as the allowable number of sales may be increased as provided in subparagraph (B) of this paragraph, the owner, together with any persons acting in concert with the owner, may make no more than 15 sales in any 12-month period under and in reliance on this section, exclusive of sales made:

(i) to the issuer;

(ii) in compliance with the Act, Sections 5.O, 6.F, or 5.H; or

(iii) in compliance with the following:

(I) §109.4 of this title (relating to Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors);

(II) §139.7 of this title (relating to Sales of Securities to Nonresidents); or

(III) §139.13 of this title (relating to Resales under SEC Rule 144 and Rule 145(d)).

(B) The number of sales that may be made under subparagraph (A) of this paragraph may be increased to a higher number as approved by the Securities Commissioner in response to a written request based on the particular circumstances of a specific transaction. If the Securities Commissioner approves a higher number of sales in accordance with the provisions of this subparagraph, then in the particular case addressed by the written request, the higher number of approved sales will be allowed.

(C) The exemption provided by this section may not be combined with sales made pursuant to the Act, Section 5.C(1), to exceed sales otherwise allowable under this section.

(5) **Filing requirement for certain persons.** Any person who is a director, executive officer, or owner of 15% or more of a class of voting securities or other ownership interests of the issuer who wishes to make sales under and in reliance on this section must file a Form 133.34 with the Securities Commissioner no later than 15 days after the first receipt of any portion of the consideration for the securities being sold.

(6) **Anti-fraud provisions.** Nothing in this section relieves owners or persons acting on behalf of owners from the duty to disclose to prospective investors information adequate to satisfy the anti-fraud provisions of the Act.

Source Note: The provisions of this §139.14 adopted to be effective August 28, 1992, 17 TexReg 5681; amended to be effective June 8, 1994, 19 TexReg 4196; amended to be effective January 8, 2006, 30 TexReg 8869.

§139.15. Credit Enhancements.

(a) Any "qualified credit enhancement" need not be registered as a separate security when no additional consideration is required to receive the enhancement and the enhancement is offered and sold in conjunction with, and is not tradeable separately from, securities that are:

(1) registered pursuant to the Securities Act, Section 7;

(2) exempt under the Securities Act, Section 6; or

(3) included within a transaction exempt under the Securities Act, Section 5.

(b) For purposes of this section, the term "qualified credit enhancement" means:

(1) a letter of credit issued by a domestic branch or agency of a foreign bank if the nature and extent of the regulation and supervision of the particular branch or agency is substantially equivalent to that applicable to federal or state chartered domestic banks doing business in the same domestic jurisdiction; or

(2) a municipal bond insurance policy or guarantee issued by an insurance company licensed or supervised by the Texas Department of Insurance.

Source Note: The provisions of this §139.15 adopted to be effective September 14, 1994, 19 TexReg 6842.

§139.16. Sales to Individual Accredited Investors.

(a) In general. The State Securities Board, pursuant to the Securities Act, Section 5.T, exempts from the securities registration requirements of the Securities Act, Section 7, the offer and sale by the issuer or a registered dealer without advertising of any security to an individual accredited investor, or to any purchaser who the issuer has reasonable grounds to believe and after making reasonable inquiry shall believe to be an individual accredited investor, provided that such security is not part of the same distribution or offering as securities of the same issuer which have been registered or are proposed to be registered by pending application under the Securities Act, Section 7. "Advertising," as used in this subsection, does not include the use of limited use advertisements under subsection (e) of this section or the use of the type of printed material as permitted by §109.13(b) of this title (relating to Limited Offering Exemptions) in connection with an offering under the Act, Section 5.I.

(b) Who may purchase; who constitutes the issuer for purposes of selling securities.

(1) Individual accredited investors. The term "individual accredited investor" is defined in §107.2 of this title (relating to Definitions). For purposes of this section, the term "individual accredited investor" also includes any self-directed employee benefit plan with investment decisions made solely by persons that are "individual accredited investors" as defined in §107.2 of this title and the individual retirement account of any such individual accredited investor.

(2) Issuer. For the purposes of subsection (a), the term "issuer" includes any director, officer, or employee of the issuer provided all the following conditions are satisfied:

(A) the director, officer, or employee was not hired for the purpose of offering or selling such securities;

(B) the director's, officer's, or employee's activity involving the offer and sale of such securities is strictly incidental to his or her bona fide primary non-securities related work duties; and

(C) the director's, officer's, or employee's compensation is based solely on the performance of other such duties, i.e., the director, officer, or employee does not receive any compensation for offering for sale, selling, or otherwise aiding in the sale of securities.

(c) Disqualifications.

(1) No exemption under this section shall be available for the securities of any issuer if the issuer or registered dealer:

(A) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by the United States Securities and Exchange Commission or any state securities administrator;

(B) within the last five years, has been convicted of any felony in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit;

(C) is currently subject to any state or federal administrative enforcement order, entered within the last five years, finding fraud or deceit in connection with the purchase and sale of any security; or

(D) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase and sale of any security.

(2) For purposes of this subsection and subsection (d) of this section only, the term "issuer" includes:

(A) any of the issuer's predecessors or any affiliated issuer;

(B) any of the issuer's directors, officers, general partners, or beneficial owners of 10% or more of any class of its equity securities (beneficial ownership meaning the power to vote or direct the vote and/or the power to dispose or direct the disposition of such securities);

(C) any of the issuer's promoters presently connected with the issuer in any capacity, including:

(i) any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer; or

(ii) any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10% or more of any class of securities of the issuer or 10% or more of the proceeds from the sale of any class of such securities; however, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this clause if such person does not otherwise take part in founding and organizing the enterprise; or

(D) any underwriter of the issuer.

(3) For purposes of this subsection and subsection (d) of this section only, the term "registered dealer" includes any of the registered dealer's partners, directors, executive directors, or beneficial owners of 10% or more of any class of its equity securities (beneficial ownership meaning the power to vote or direct the vote and/or the power to dispose or direct the disposition of such securities).

(d) **Exceptions from disqualifications.** The prohibitions of subsection (c) of this section shall not apply if:

(1) the party subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party; or

(2) before the first offer under this section, the Securities Commissioner, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification upon a showing of good cause.

(e) **Limited use advertisements.** Any limited use advertisement used in connection with an offering under this section must be filed with the Securities Commissioner ten days prior to use in this state. A limited use advertisement may be disseminated by any means, direct or indirect. A limited use advertisement shall contain only the statements required or permitted to be included therein by this subsection.

(1) A limited use advertisement shall contain the following items of information:

(A) a brief description of the securities to be offered (e.g., description of class, size of offering, price, percentage of commission);

(B) the name, address, and telephone number of the person to contact for additional information concerning the offering;

(C) the address where offering material may be obtained; and

(D) the following statement: "The securities have not been registered with or approved by the Texas Securities Commissioner and are being offered and sold pursuant to the exemption

provided by §139.16 of the Rules and Regulations of the State Securities Board. This advertisement was filed with the Texas Securities Commissioner on or about (fill in date). The securities are being offered to, and may be purchased by, only those natural persons whose individual net worth, or joint net worth with that person's spouse, at the time of purchase of the securities, exceeds $1 million, excluding the value of the person's primary residence, or natural persons who have an individual income in excess of $200,000 in each of the two most recent years, or joint income with that person's spouse in excess of $300,000 in each of those years, and who have a reasonable expectation of reaching that same income level in the current year."

(2) A limited use advertisement may include any one or more of the following items of information:

(A) the name and address of the issuer of the securities;

(B) a brief description of the business of the issuer; and

(C) the name and address of the registered dealer(s) acting on the issuer's behalf in connection with the offering.

(f) Any issuer relying on this exemption shall, upon written request, furnish to the Securities Commissioner the information furnished by the issuer or registered dealer to offerees. Any issuer relying on this exemption must maintain, for a period of at least three years, evidence of the basis for its belief that all purchasers were accredited investors at the time of purchase.

(g) Transactions exempt under this section may be combined with offers and sales exempt under the Securities Act, Section 5.H, and §109.4 of this title (relating to Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors). In this event, the statement required by subsection (e)(1)(D) of this section may be modified to indicate that the securities are also being offered to eligible purchasers under Section 5.H and §109.4 of this title (relating to Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors).

(h) Because this exemption permits limited use advertisements, use of this exemption under certain circumstances could result in other exemptions not being available for other sales due to prohibitions in such exemptions against public solicitation and advertisements. Therefore, issuers or registered dealers who use this exemption should take all necessary steps to document that any sales to persons who are not individual accredited investors, as defined, were not made in response to a limited use advertisement. Users of this section should consult with experienced securities counsel, especially if they anticipate selling, within six months of the last sale made under this section, to any persons who are not individual accredited investors.

(i) The use of a limited use advertisement in compliance with this section and in connection with sales under this section will not render exemptions that prohibit public solicitation or advertisements unavailable to sales that are made more than six months after the use of the limited use advertisement.

(j) Should the offer and sale of securities fail, for any reason, to comply with all the terms and conditions for use of this section, the issuer may claim the availability of any other applicable exemption. A limited use advertisement that results in an offer to a person who is not an individual accredited investor within the meaning of this section does not alone result in loss of the exemption.

(k) Investment intent; resales. The issuer and any person acting on its behalf shall exercise reasonable care to assure that the purchasers are acquiring the securities as an investment. Such reasonable care should include, but not be limited to, the following:

(1) having reasonable grounds to believe and, after making reasonable inquiry, believe that the purchaser is acquiring the securities with investment intent for his or her own account or on behalf of other persons and not for resale or with a view toward distribution;

(2) placing a legend on the certificate or other document evidencing the securities to the effect that the securities have not been registered under any securities law and setting forth or referring to the restrictions on transferability and sale of the securities;

(3) issuing stop transfer instructions to the issuer's transfer agent, if any, with respect to the securities, or, if the issuer transfers its own securities, making a notation in the appropriate records of the issuer; and

(4) obtaining from the purchaser a signed written agreement to the effect that the securities will not be sold without registration under applicable securities laws or exemptions therefrom.

Source Note: The provisions of this §139.16 adopted to be effective April 21, 1995, 20 TexReg 2622; amended to be effective December 27, 1995, 20 TexReg 10593; amended to be effective July 14, 2005, 30 TexReg 3990; amended to be effective January 8, 2006, 30 TexReg 8869; amended to be effective June 21, 2011, 36 TexReg 3715; amended to be effective November 8, 2012, 37 TexReg 8787.

§139.17. Offers Disseminated Through the Internet.

(a) An offer of securities not made from Texas is exempt from the securities and dealer registration requirements of The Securities Act when that offer is disseminated through the Internet and:

(1) the offer indicates, directly or indirectly, that the securities are not being offered for sale to any person in Texas;

(2) an offer is not otherwise specifically directed to any person in Texas by, or on behalf of, the issuer; and

(3) no sales of the issuer’s securities are made to any person in Texas as a result of the offer.

(b) An offer of securities made from Texas is exempt from the securities registration requirements of The Securities Act, but not from the dealer registration requirements of The Securities Act, when that offer is disseminated through the Internet and:

(1) the offer indicates, directly or indirectly, that the securities are not being offered for sale to any person in Texas;

(2) an offer is not otherwise specifically directed to any person in Texas by, or on behalf of, the issuer; and

(3) no sales of the issuer's securities are made to any person in Texas as a result of the offer.

(c) Subsection (a)(1) or (b)(1) of this section is met by inclusion of any of the following statements, or a substantially similar one, in an offer disseminated through the Internet.

(1) "These securities are not being offered or sold in Texas."

(2) "These securities are being offered and sold in (fill in names of states other than Texas)."

(3) "This is neither a solicitation to buy nor an offer to sell to persons in Texas."

Source Note: The provisions of this §139.17 adopted to be effective March 27, 1996, 21 TexReg 2226.

§139.18. Dealer and Investment Adviser Use of the Internet To Disseminate Information on Products and Services.

(a) Dealers, investment advisers, dealer agents, and investment adviser representatives who use the Internet, the World Wide Web, and similar proprietary or common carrier electronic systems (collectively, the "Internet") to distribute information on available products and services through certain communications made on the Internet directed generally to anyone having access to the Internet, and transmitted through postings on Bulletin Boards, displays on "Home Pages" or similar methods ("Internet Communications") shall not be deemed to be a "dealer" in this state for purposes of the Act, Section 4.D, based solely on that fact if the following conditions are observed:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(A) the dealer, investment adviser, dealer agent, or investment adviser representative in question may only transact business in this state if first registered, excluded, or exempted from Texas dealer, investment adviser, dealer agent, or investment adviser representative registration requirements, as may be; and

(B) follow-up, individualized responses to persons in Texas by such dealer, investment adviser, dealer agent, or investment adviser representative that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, will not be made absent compliance with Texas dealer, investment adviser, dealer agent, or investment adviser representative registration requirements, or an applicable exemption or exclusion;

(2) The Internet Communication contains a mechanism, including and without limitation, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in Texas, said dealer, investment adviser, dealer agent, or investment adviser representative is first registered in Texas or qualifies

for an exemption or exclusion from such requirement. Nothing in this section shall be construed to relieve a Texas registered dealer, investment adviser, dealer agent, or investment adviser representative from any applicable securities registration requirement in Texas;

(3) The Internet Communication does not involve either effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, in Texas over the Internet, but is limited to the dissemination of general information on products and services; and

(4) In the case of a dealer agent or investment adviser representative:

(A) the affiliation with the dealer or investment adviser of the dealer agent or investment adviser representative is prominently disclosed within the Internet Communication;

(B) the dealer or investment adviser with whom the dealer agent or investment adviser representative is associated retains responsibility for reviewing and approving the content of any Internet Communication by a dealer agent or investment adviser representative;

(C) the dealer or investment adviser with whom the dealer agent or investment adviser representative is associated first authorizes the distribution of information on the particular products and services through the Internet Communication; and

(D) in disseminating information through the Internet Communication, the dealer agent or investment adviser representative acts within the scope of the authority granted by the dealer or investment adviser.

(b) The position expressed in this section extends to state dealer, investment adviser, dealer agent, and investment adviser representative registration requirements only, and does not excuse compliance with applicable securities registration, antifraud, or related provisions.

(c) Nothing in this section shall be construed to affect the activities of any dealer, investment adviser, dealer agent, or investment adviser representative engaged in business in this state that is not subject to the jurisdiction of the Securities Commissioner as a result of the National Securities Markets Improvement Act of 1996, as amended.

Source Note: The provisions of this §139.18 adopted to be effective December 2, 1997, 22 TexReg 11668.

§139.19. Accredited Investor Exemption. Any offer or sale of a security by an issuer in a transaction that meets the requirements of this section is exempted from the securities registration requirements of the Texas Securities Act and exempted from the filing requirements contained in the Texas Securities Act, Section 22.A, and Chapter 137 of this title (relating to Administrative Guidelines for Regulation of Offers).

(1) Who may purchase. Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited investors. “Accredited investor” is defined in §107.2 of this title (relating to Definitions).

(2) **Unavailable for certain issuers.** The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(3) **Investment intent; resales.** The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under the Texas Securities Act, Section 7, or to an accredited investor pursuant to an exemption available under the Texas Securities Act or Board rules.

(4) **Disqualifications.**

(A) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:

(i) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(ii) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

(iii) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(iv) is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(B) Subparagraph (A) of this paragraph shall not apply if:

(i) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;

(ii) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(iii) the issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph.

(5) General announcement.

(A) A general announcement of the proposed offering may be made by any means.

(B) The general announcement shall include only the following information, unless additional information is specifically permitted by the Securities Commissioner:

(i) the name, address, and telephone number of the issuer of the securities;

(ii) the name, a brief description, and price (if known) of any security to be issued;

(iii) a brief description of the business of the issuer in 25 words or less;

(iv) the type, number, and aggregate amount of securities being offered;

(v) the name, address, and telephone number of the person to contact for additional information; and

(vi) a statement that:

(I) sales will only be made to accredited investors;

(II) no money or other consideration is being solicited or will be accepted by way of this general announcement; and

(III) the securities have not been registered with or approved by any state securities agency or the U.S. Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

(6) Provision of additional information. The issuer, in connection with an offer, may provide information in addition to the general announcement under paragraph (5) of this section, if such information:

(A) is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(B) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(7) Telephone solicitation. No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(8) **Loss of exemption.** Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this section.

(9) **Filing.** The issuer shall file with the Securities Commissioner a notice of transaction on the Model Accredited Investor Exemption Uniform Notice of Transaction form, a consent to service of process, and a copy of the general announcement within 15 days after the first sale in this state.

(10) **Dealer and agent registration.** Although the issuer is not required to register as a dealer to conduct sales pursuant to this section, third parties must comply with the dealer and agent registration requirements of the Texas Securities Act and Board rules. For the purposes of this section, the term "issuer" includes any director, officer, or employee of the issuer provided all the following conditions are satisfied:

(A) the director, officer, or employee was not hired for the purpose of offering or selling such securities;

(B) the director's, officer's, or employee's activity involving the offer and sale of such securities is strictly incidental to his or her bona fide primary non-securities related work duties; and

(C) the director's, officer's, or employee's compensation is based solely on the performance of other such duties, i.e., the director, officer, or employee does not receive any compensation for offering for sale, selling, or otherwise aiding in the sale of securities.

Source Note: The provisions of this §139.19 adopted to be effective December 2, 1997, 22 TexReg 11668; amended to be effective December 6, 1998, 23 TexReg 12295; amended to be effective June 21, 2011, 36 TexReg 3715.

§139.20. Third Party Brokerage Arrangements on Financial Entity Premises.

(a) The State Securities Board, pursuant to the Texas Securities Act, Section 12.B, exempts a financial entity from the dealer registration requirements of the Texas Securities Act, when such financial entity is engaging in securities-related activity consisting solely of acting as a correspondent in a third party brokerage arrangement coordinated with a registered dealer on the premises of the financial entity. A financial entity may receive compensation for such an arrangement based on a percentage of commissions generated by the arrangement or on the basis of leased space of the premises; officers and employees of the financial entity may receive compensation as set forth in subsection (b) of this section. For purposes of this section, the following words and terms shall have the following meanings:

(1) "financial entity" shall include any state or national bank, any federal savings and loan association or savings and loan association organized and subject to the laws and regulation of this State as defined in §109.17 of this title (relating to Banks Under The Securities Act, Section 5.L), or any credit union, insurance company, bank holding company, or financial holding company organized and subject to functional regulation under the laws of the United States or under the laws of any State or territory of the United States;

(2) "acting as a correspondent in a third party brokerage arrangement" means that the activity of the financial entity is limited to providing an area on the financial entity premises for the dealer's

brokerage activities, advertising the brokerage service, referring customers to a representative of the dealer, and performing clerical or ministerial functions in connection with brokerage transactions including scheduling appointments with agents of the dealer and transferring customer funds or securities;

(3) "premises" shall include the physical location of the financial entity, including all of its branches, as well as the financial entity's web site. Thus, a financial entity may engage in linking arrangements with third party brokerages within this exemption.

(b) The State Securities Board, pursuant to the Texas Securities Act, Section 12.B, exempts officers and employees of a financial entity from the agent registration requirements of the Texas Securities Act, when such employee or officer is engaging in securities-related activity consisting solely of referring customers to a representative of the registered dealer. For the purposes of this subsection, the officers and employees of a financial entity may receive a referral fee for this activity provided that:

(1) the fee is a nominal, one time fee of a fixed dollar amount per referral;

(2) the payment of such referral fee is not contingent on whether the referral results in a transaction; and

(3) such payment is made directly by the registered dealer to the financial entity which, as a condition of this exemption, upon request agrees to provide the Securities Commissioner, or representative of the Commissioner, a statement or internal records itemizing such payments including, but not limited to, the date, amount of payment, the name of each person for whom a referral payment was made and the name of the person receiving the payment.

(c) The filing and fee requirements for dealers and agents exempted from registration pursuant to this section are preserved.

(1) Initially, the exemptions provided by subsections (a) and (b) of this section are available after the filing of:

(A) a Form 133.9;

(B) a consent to service of process (if the financial entity is domiciled outside of Texas);

(C) a copy of the agreement with the third party dealer; and

(D) an initial fee equal to the amount that would have been paid had the financial entity and designated officer of the financial entity filed for registration in Texas.

(2) Upon amendment to its Form 133.9, the financial entity files an amended Form 133.9 and an amendment fee as provided in the Texas Securities Act, Section 35.B(1).

(3) Annually, the financial entity files renewal fees which would have been paid had the financial entity been registered in Texas.

(d) Any financial entity relying on this exemption shall, upon written request, furnish to the Securities Commissioner any information relative to the third party brokerage arrangement that the Commissioner deems relevant, including, but not limited to, records regarding referral fee payments to employees and officers of the financial entity, agreements between the financial entity and the registered dealer, and customer complaints regarding the brokerage activities. Standard compensation records are sufficient "records regarding referral fee payments to employees and officers." All records required by this subsection shall be kept for the life of the third party brokerage arrangement plus an additional five years and may be retained electronically, in hard copy form, microfilm, or microfiche.

Source Note: The provisions of this §139.20 adopted to be effective December 3, 2000, 25 TexReg 11647; amended to be effective August 12, 2001, 26 TexReg 5806; amended to be effective February 24, 2004, 29 TexReg 1645.

§139.21. Dealer, Agent, and Securities Exemptions for Canadian Accounts.

(a) The State Securities Board, pursuant to the Texas Securities Act, Sections 5.T and 12.C, exempts Canadian dealers and agents from the registration requirements of the Texas Securities Act, when such dealers and agents comply with subsections (b) and (c) of this section and are conducting a transaction in a Canadian self-directed tax advantaged retirement plan of which the holder or contributor is a person from Canada who is present in this state or when conducting a transaction in the Canadian securities account of a Canadian citizen who is temporarily present in this state and with whom the dealer or agent has a preexisting client relationship.

(b) A Canadian dealer must be a member of a self-regulatory organization, a stock exchange in Canada, or the bureau "des services financiers" of Quebec, and maintain provincial or territorial registration and membership in a Canadian self-regulatory organization or stock exchange in good standing. An agent must be registered and in good standing in the jurisdiction from which he or she is effecting transactions into this state and maintain registration in such jurisdiction in good standing.

(c) Any Canadian dealer or agent relying on this exemption shall, upon written request, furnish to the Securities Commissioner any information relative to a transaction covered by this section that the Commissioner deems relevant.

(d) The State Securities Board, pursuant to the Texas Securities Act, Section 5.T, exempts from the securities registration requirements of the Texas Securities Act, Section 7, the offer and sale of any securities effected by a Canadian dealer pursuant to this section.

(e) The Texas Securities Act prohibits fraud or fraudulent practices in connection with the sale or offer for sale of securities covered by this exemption.

Source Note: The provisions of this §139.21 adopted to be effective November 26, 2001, 26 TexReg 9585.

§139.22. Exemption for Investment Adviser to a High Net Worth Family Entity.

(a) The State Securities Board, pursuant to the Texas Securities Act, Section 5.T and Section 12.C, exempts an investment adviser and its investment adviser representatives from the registration requirements of the Act, Section 12, when such adviser:

(1) renders services as an investment adviser to a high net worth family entity or related family entities, and

(2) does not hold itself out to the public as one who renders services as an investment adviser.

(b) For purposes of this section, a "high net worth family entity" is a corporation, limited partnership, limited liability company, or other entity, with all of its owners, partners, or members belonging to a single family who are all related by blood, adoption or marriage; with a combined net worth of not less than $5 million; and with ownership by an individual family member being direct or indirect pursuant to a trust or other similar arrangement where the investment is made by or on behalf of, or for the benefit of, the individual. An individual shall not constitute a "family entity" for purposes of this exemption regardless of the net worth of the individual.

(c) For purposes of determining "net worth" under this section, an investment adviser may rely on the entity's most recent annual balance sheet or other financial statement which shall have been audited by an independent accountant or which shall have been verified under oath by a principal of the entity.

Source Note: The provisions of this §139.22 adopted to be effective October 25, 2004, 29 TexReg 9825.

§139.23. Registration Exemption for Investment Advisers to Private Funds.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Private Fund Adviser--An investment adviser who provides advice:

(A) solely to one or more Private Funds; or

(B) solely to one or more Private Funds and other clients, who are not Private Funds, to whom advice may be provided pursuant to another exemption from investment adviser registration provided under the Texas Securities Act or Board rules.

(2) Private Fund--An issuer that would be an investment company as defined in the Investment Company Act of 1940, Section 3, but for an exclusion from the definition of an investment company in Section 3(c)(1) or Section 3(c)(7) of that Act, 15 U.S.C. Section 80a.

(3) 3(c)(1) Fund--A Private Fund that relies solely on the exclusion from the definition of an investment company under Section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. Section 80a-3(c)(l).

(4) Private Equity Fund--A Private Fund that meets the definition of a private equity fund in the Instructions to Part 1A of Form ADV.

(5) Real Estate Fund--A Private Fund that meets the definition of a real estate fund in the Instructions to Part 1A of Form ADV.

(6) Venture Capital Fund--A Private Fund that meets the definition of a venture capital fund in SEC Rule 203(l)-1, 17 CFR §275.203(l)-1.

(b) Exemption for Private Fund Advisers. Subject to the additional requirements of this section, the State Securities Board, pursuant to the Texas Securities Act, Section 5.T and Section 12.C, exempts from the investment adviser registration requirements of the Texas Securities Act, Section 12, a Private Fund Adviser satisfying each of the following conditions and limitations:

(1) The Private Fund Adviser files with the Securities Commissioner each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 CFR §275.204-4. These filings are to be made electronically through the Investment Adviser Registration Depository (IARD). A report shall be deemed filed when the report required by subsection (b) of this section is filed and accepted by the IARD on the state's behalf.

(2) Except as provided in paragraph (3) of this subsection, neither the Private Fund Adviser, nor any of its advisory affiliates, as that term is defined in the Instructions to Part 1A of Form ADV, are subject to the following disqualifications:

(A) any of those described in Rule 262 of SEC Regulation A, 17 CFR §230.262;

(B) has been convicted within five years prior to the filing of the notice required under this exemption of any felony or misdemeanor involving the offer, purchase, or sale of any security or the rendering of investment advice, or any felony involving embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(C) is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of a security or the rendering of investment advice;

(D) is the subject of a United States Postal Service fraud order that is currently effective and was issued within the last five years;

(E) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of a security or the rendering of investment advice;

(F) is subject to an order issued by a state or federal authority that bars the person from association with an entity regulated by the authority that issued the order, or from engaging in the business of securities, insurance, or banking, or savings association or credit union activities; or

(G) is the subject of a suspension or expulsion from membership in or association with a member of a self-regulatory organization that is currently effective and was issued within the last five years.

(3) Exceptions from disqualifications. The prohibitions of paragraph (2) of this subsection shall not apply if:

(A) the party subject to the disqualification is duly licensed or registered to conduct securities related business or render investment advisory services in the state in which the order, judgment, or decree creating the disqualification was entered against such party; or

(B) before investment advisory services are rendered under this section, the Securities Commissioner, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification upon a showing of good cause.

(c) **Additional requirements for Private Fund Advisers to certain 3(c)(1) Funds.** In order to qualify for an exemption pursuant to this section, a Private Fund Adviser who advises at least one 3(c)(1) Fund that is not a Private Equity Fund, Real Estate Fund, or Venture Capital Fund shall comply with the following additional requirements:

(1) the Private Fund Adviser shall advise only those 3(c)(1) Funds (other than Private Equity Funds, Real Estate Funds, and Venture Capital Funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who would each meet the definition of a qualified client in SEC Rule 205-3, 17 CFR §275.205-3, at the time the securities are purchased from the issuer; provided that if an entity was organized and exists only for the purpose of acquiring an interest in the 3(c)(1) Fund, each beneficial owner of such entity must be a qualified client; and

(2) the Private Fund Adviser shall comply with §116.17 of this title (relating to Custody of Funds or Securities of Clients by Registered Investment Advisers) as if registered.

(d) **Federal covered investment advisers.** If a Private Fund Adviser is registered with the Securities and Exchange Commission, the adviser shall not be eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers in the Texas Securities Act, Section 12-1.

(e) **Investment adviser representatives.** An investment adviser representative is exempt from the registration requirements of the Texas Securities Act, Section 12, if he or she is employed by or associated with an investment adviser that is exempt from investment adviser registration in this state pursuant to this section and does not otherwise act as an investment adviser representative.

(f) **Requests for records.**

(1) Upon a written request from the Securities Commissioner or the Commissioner's authorized representative, an investment adviser relying on an exemption provided by this section shall make available to the Commissioner all records subject to the custody or control of the investment adviser related to any private fund to which the investment adviser provides investment advice.

(2) Failure to comply with this subsection will result in the loss of the exemption provided by this section.

Source Note: The provisions of this §139.23 adopted to be effective March 31, 2014, 39 TexReg 495.

§139.24. Charitable Organizations Assisting Economically Disadvantaged Clients with Texas Qualified Tuition Program Plans.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

(1) Charitable organization--A 501(c)(3) nonprofit organization located in Texas that provides services to economically disadvantaged individuals and families.

(2) Client--An individual receiving services from a financial coach or counselor of a charitable organization relating to a Texas qualified tuition program plan.

(3) Economically disadvantaged--Eligible for services based on criteria established by a charitable organization using the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

(4) Financial coach or counselor--An individual acting on behalf of a charitable organization in counseling or providing services to economically disadvantaged clients of the charitable organization.

(5) Texas qualified tuition program plan--A fund or plan established under the Texas Education Code, Chapter 54, Subchapter G, H, or I, as amended.

(b) Exemption from dealer, agent, investment adviser, and investment adviser representative registration. The State Securities Board, pursuant to the Texas Securities Act, Section 12.C, exempts a charitable organization and its financial coaches and counselors from the dealer, agent, investment adviser, and investment adviser representative registration requirements of the Texas Securities Act, when their securities-related activities are limited to:

(1) assisting economically disadvantaged clients with completing documentation necessary to enroll or make a contribution to a Texas qualified tuition program plan; and

(2) providing materials relating to a Texas qualified tuition program plan that have been prepared on behalf of or approved by the plan manager or administrator of a Texas qualified tuition program plan, Texas Prepaid Higher Education Tuition Board, Office of the Comptroller of Public Accounts, Texas State Securities Board, Texas Match the Promise Foundation, or a tax-exempt charitable organization established by law to implement the Texas Save and Match Program.

(c) Prohibited activities. A charitable organization and its financial coaches and counselors are prohibited from the following activities in connection with a client's enrollment in or contribution to a Texas qualified tuition program plan:

(1) selecting or recommending a particular investment option; or

(2) receiving a commission or other remuneration.

Source Note: The provisions of this §139.24 adopted to be effective February 5, 2014, 39 TexReg 495.

§139.25. Intrastate Crowdfunding Exemption.

(a) General. The State Securities Board, pursuant to the Texas Securities Act (Act), Section 5.T, exempts from the securities registration requirements of the Act, any offer or sale of securities of an issuer through a registered general dealer or a registered Texas crowdfunding portal, provided that all offers and sales made pursuant to the offering are made to Texas residents, completed solely within this state, and all the requirements of this section are satisfied.

(b) Issuer.

(1) The issuer is a Texas entity that has filed a certificate of formation with the Texas Secretary of State and is authorized to do business in Texas and:

(A) At least 80% of the issuer's gross revenues during its most recent fiscal year prior to the offering are derived from the operation of a business in Texas;

(B) At least 80% of the issuer's assets at the end of its most recent semiannual period prior to the offering are located in Texas;

(C) The issuer will use at least 80% of the net proceeds of this offering in connection with the operation of its business within Texas; and

(D) The principal office of the issuer is located in Texas.

(2) The issuer is not, either before or because of the offering:

(A) A company, that engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities;

(B) Subject to the reporting requirements of the Securities and Exchange Act of 1934, Section 13 or Section 15(d), 15 U.S.C. §78m and §78o(d); or

(C) a company that has not yet defined its business operations, has no business plan, has no stated investment goal for the funds being raised, or that plans to engage in a merger or acquisition with an unspecified business entity.

(c) Coordination with federal securities laws. Securities offered in reliance on the exemption provided by this section must also meet the requirements of the federal exemption for intrastate offerings in the Securities Act of 1933, Section 3(a)(11), 15 U.S.C. §77c(a)(11), and Securities and Exchange Commission Rule 147, 17 CFR §230.147.

(d) Offering. The offering must be made exclusively through an Internet website operated by a registered general dealer or registered Texas crowdfunding portal. All consideration received for all sales of the securities in reliance on this exemption shall not exceed $1 million in a 12-month period. This amount is reduced by the aggregate amount received for all sales of securities by the issuer in another offering that does not take place prior to the six month period immediately preceding or after the six month period immediately following any offers or sales made in reliance upon this section.

(e) Individual investments. The issuer will not accept more than $5,000 from any single purchaser unless the purchaser is an accredited investor as defined in §107.2 of this title (relating to Definitions). The issuer must have a reasonable basis for believing that the purchaser of a security under this section is a Texas resident and, if applicable, an accredited investor.

(f) Escrow. All payments for purchases of securities offered under this section are directed to and deposited in an escrow account with a bank or other depository institution located in Texas and organized and subject to regulation under the laws of the United States or under the laws of Texas, and will be held in escrow until the aggregate capital raised from all purchasers is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan. Investors will receive a return of all their subscription funds if the target offering amount is not raised by the time stated in the disclosure statement.

(g) Communications.

(1) All communications between the issuer, prospective purchasers, or investors taking place during the offer of securities pursuant to this section must occur through the Internet website of the registered general dealer or Texas crowdfunding portal. During the time the offering appears on the Internet website, the website must provide channels through which potential purchasers and investors can communicate with one another and with representatives of the issuer about the offering. These communications must be visible to all those with access to the offering materials on the Internet website.

(2) Notwithstanding the foregoing, the issuer may distribute a notice within Texas limited to a statement that the issuer is conducting an offering, the name of the registered general dealer or portal through which the offering is being conducted and a link directing the potential investor to the dealer or portal's Internet website. The notice must contain a disclaimer that reflects that the offering is limited to Texas residents and offers and sales of the securities appearing on the Internet website are limited to persons that are Texas residents.

(h) Internet website.

(1) The Internet website operated by a registered general dealer or the Texas crowdfunding portal must meet the following requirements:

(A) the website must contain a disclaimer that reflects that access to securities offerings on the website is limited to Texas residents and offers and sales of the securities appearing on the website are limited to persons that are Texas residents;

(B) an affirmative representation by a visitor to the Internet website that the visitor is a resident of Texas is required before the visitor can view securities-related offering materials on the website;

(C) evidence of residency within Texas is required before a sale may be made to a prospective purchaser. An affirmative representation made by a prospective purchaser that the prospective purchaser is a Texas resident and proof of at least one of the following would be considered sufficient evidence that the individual is a resident of this state:

(i) a valid Texas driver license or official personal identification card issued by the State of Texas;

(ii) a current Texas voter registration; or

(iii) general property tax records showing the individual owns and occupies property in this state as his or her principal residence; and

(D) prior to offering an investment opportunity to residents of Texas and throughout the term of the offering, the registered general dealer or registered portal shall give the Securities Commissioner access to the Internet website.

(2) Information about the issuer and the offering posted on the Internet website, entry onto which is conditioned upon evidence of Texas residency, operated by the registered general dealer or registered portal consists of:

(A) a copy of the disclosure statement required by subsection (i) of this section;

(B) a summary of the offering, including:

(i) a description of the entity, its form of business; principal office, history, business plan, and the intended use of the offering proceeds, including compensation paid to any owner, executive officer, director, or manager;

(ii) the identity of the executive officers, directors, and managers, including their titles and their prior experience and the identity of all persons owning more than 20% of the ownership interests of any class of securities of the company; and

(iii) a description of the securities being offered and of any outstanding securities of the company, the amount of the offering, and the percentage ownership of the company represented by the offered securities.

(3) The information on the Internet website required by paragraph (2) of this subsection must be made available to the Commissioner and potential investors for a minimum of 21 days before any securities are sold in the offering.

(i) Disclosure statement. A disclosure statement must be made readily available and accessible to each prospective purchaser at the time the offer of securities is made to the prospective purchaser on the Internet website. The disclosure statement must contain all of the following:

(1) Material information and risk factors. All information material to the offering, including, where appropriate, a discussion of significant factors that make the offering speculative or risky. Guidance on the categories of information to include can be found by reviewing the small business offering information provided by the Texas State Securities Board on its Internet website. Topics to be addressed include, but are not limited to:

(A) general description of the issuer's business;

(B) history of the issuer's operations and organization;

(C) management of the company and principal stockholders;

(D) how the proceeds from the offering will be used;

(E) financial information about the issuer;

(F) description of the securities being offered; and

(G) litigation and legal proceedings.

(2) Disclosures. The issuer shall inform all prospective purchasers and investors of the following:

(A) There is no ready market for the sale of the securities acquired from this offering; it may be difficult or impossible for an investor to sell or otherwise dispose of this investment. An investor may be required to hold and bear the financial risks of this investment indefinitely;

(B) The securities have not been registered under federal or state securities laws and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under federal and state law.

(C) In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved; and

(D) No federal or state securities commission or regulatory authority has confirmed the accuracy or determined the adequacy of the disclosure statement or any other information on this Internet website.

(3) Financial statements. Issuers must provide current financial statements certified by the principal executive officer to be true and complete in all material respects. If the issuer has audited or reviewed financial statements, prepared within the last three years, such financial statements must also be provided to investors.

(j) **Notice filing.** Before using any publicly available Internet website in an offering of securities in reliance on this section, the issuer shall file with the Securities Commissioner:

(1) Form 133.17, Crowdfunding Exemption Notice;

(2) the disclosure statement, required by subsection (i) of this section; and

(3) the summary of the offering, required by subsection (h)(2)(B) of this section.

(k) **Resales of securities.** The issuer and all its officers, directors, and employees shall make the disclosures required by SEC Rule 147(e) and (f), 17 CFR §230.147(e) and (f). The issuer must place a legend on the certificate or other document evidencing that the securities have not been registered and setting forth the limitations on resale contained in SEC Rule 147(e), including that for a period of nine months from the date of last sale by the issuer of the securities in the offering, all resales by any person, shall be made only to Texas residents.

(l) **Commissions and remuneration.** A commission or other remuneration shall not be paid or given, directly or indirectly, for the offer or sale of the securities unless the person receiving such compensation is registered in Texas as a dealer or agent or as a Texas crowdfunding portal. The issuer may not list its securities on the Internet website of a general dealer or portal that holds an interest in the issuer. The issuer may not compensate a general dealer or a portal by providing a financial interest in the issuer as compensation for services provided to or on behalf of the issuer. A general dealer or portal may not be affiliated with or under common control with an issuer whose securities appear on its Internet website.

(m) **Disqualifications.**

(1) For purposes of this subsection, "control person" means an officer; director; other person having the power, directly or indirectly, to direct the management or policies of the issuer, whether by contract or otherwise; or a person that owns 20% or more of any class of the outstanding securities of the issuer.

(2) This exemption is not available if the issuer, the issuer's predecessors, any affiliated issuer, or any control person of the issuer:

(A) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(B) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

(C) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(D) is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining

or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(3) Paragraph (2) of this subsection shall not apply if:

(A) the party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;

(B) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(C) the issuer establishes it did not know and exercising reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subsection.

(4) This exemption is not available to an issuer if:

(A) a control person of the issuer is also a control person of another issuer that has made a securities offering in Texas within the previous 12-month period;

(B) a control person of the issuer is also a control person of another issuer that is concurrently conducting a securities offering in Texas; or

(C) the proceeds of the offering will be combined with the proceeds of a securities offering by another issuer as part of a single plan of financing.

Source Note: The provisions of this §139.25 adopted to be effective November 17, 2014, 39 TexReg 8967.

§139.26. Reserved for Expansion.

§139.27. Mergers and Acquisitions Dealer Exemption.

(a) **Dealer and agent exemption.** The State Securities Board, pursuant to the Texas Securities Act, Section 12.C, exempts a Mergers and Acquisitions (M&A) Dealer from registration as a dealer provided the conditions set forth in this section are met. The agents for the M&A Dealer are also exempt from registration provided the conditions set forth in this section are met.

(b) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) M&A Dealer--A person engaged in the business of effecting securities transactions solely in connection with a Qualifying M&A Transaction, as identified in subsection (c) of this section.

(2) Actively Operate--The power to elect executive officers and approve the annual budget or serving as an executive or other executive manager.

(3) Privately-Held Company--A company that does not have any class of securities registered or required to be registered with a securities regulator and is not required to file periodic information, documents, or reports under Section 15(d) of the Exchange Act. The company must be an operating company that is a going concern and not a shell company. For purposes of this definition, a "going concern" need not be profitable so long as it has actually been conducting business, including soliciting or effecting business transactions or engaging in research and development activities.

(4) Shell Company--A company that has no or nominal operations, and has:

(A) no or nominal assets;

(B) assets consisting solely of any amount of cash or cash equivalents; or

(C) assets consisting of any amount of cash and cash equivalents and nominal other assets.

(5) Business Combination Related Shell Company--a Shell Company (as defined in SEC Rule 405) that is:

(A) formed by an entity that is not a shell company solely for the purpose of changing the corporate domicile of that entity solely within the United States; or

(B) formed by an entity that is not a Shell Company solely for the purpose of completing a business combination transaction (as defined in SEC Rule 165(f)) among one or more entities other than the Shell Company, none of which is a Shell Company.

(c) Qualifying M&A Transactions. To be a Qualifying M&A Transaction, the transaction must meet all the following requirements.

(1) A Qualifying M&A Transaction is a transfer of ownership and control of a Privately-Held Company to a buyer through the purchase, sale, exchange, issuance, repurchase, or redemption of securities, or a business combination involving securities or assets of the company.

(2) Upon completion of the transaction, the buyer or group of buyers must actively operate the company or the business conducted with the assets of the company.

(3) No Qualifying M&A Transaction can involve a public offering of securities. Any offering or sale of securities will be conducted in compliance with an applicable exemption from registration under the Texas Securities Act.

(4) No party to any Qualifying M&A Transaction can be a Shell Company, other than a Business Combination Related Shell Company.

(5) The buyer, or group of buyers, in any Qualifying M&A Transaction must, upon completion of the transaction, control the company. A buyer, or group of buyers collectively, would have the necessary control if it has the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. The necessary control will be presumed to exist if, upon completion of the transaction, the buyer or group of buyers has the right to vote 25% or more of a class of voting securities; has the power to sell or direct the sale of 25% or more of a class of voting securities; or in the case of a partnership or limited liability company, has the right to receive upon dissolution or has contributed 25% or more of the capital.

(6) No Qualifying M&A Transaction can result in the transfer of securities to a passive buyer or group of passive buyers.

(7) Any securities received by the buyer or M&A Dealer in a Qualifying M&A Transaction are restricted securities within the meaning of the Securities Act of 1933, Rule 144(a)(3).

(d) **Permitted activities.** An M&A Dealer may:

(1) advertise a Privately-Held Company for sale with information such as the description of the business, general location, and price range, so long as the dealer does not include an offer for sale of securities; or

(2) facilitate a Qualifying M&A Transaction with a group of buyers only if the group is formed without the assistance of the M&A Dealer.

(e) **Prohibited activities.** An M&A Dealer may not:

(1) have the ability to bind a party to a Qualifying M&A Transaction;

(2) directly, or indirectly through any of its affiliates, provide financing for a Qualifying M&A Transaction; or

(3) have custody, control, or possession of or otherwise handle funds or securities issued or exchanged in connection with a Qualifying M&A Transaction or other securities transaction for the account of others.

(f) **Disclosures.**

(1) To the extent an M&A Dealer represents both buyers and sellers, it must provide clear written disclosure as to the parties it represents and obtain written consent from both parties to the joint representation.

(2) An M&A Dealer that assists buyers to obtain financing from unaffiliated third parties must comply with all applicable legal requirements and must disclose any compensation in writing to the buyer.

(g) Disqualifications.

(1) Except as provided in paragraph (2) of this subsection, the exemption in this section is not available if the M&A Dealer, or an officer, director, or employee of the M&A Dealer are subject to any of the following disqualifications:

(A) any of those described in Rule 262 of SEC Regulation A, 17 CFR §230.262;

(B) has been convicted within five years prior to the filing of the notice required under this exemption of any felony or misdemeanor involving the offer, purchase, or sale of any security or the rendering of investment advice, or any felony involving embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(C) is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of a security or the rendering of investment advice;

(D) is the subject of a United States Postal Service fraud order that is currently effective and was issued within the last five years;

(E) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of a security or the rendering of investment advice;

(F) is subject to an order issued by a state or federal authority that bars the person from association with an entity regulated by the authority that issued the order, or from engaging in the business of securities, insurance, or banking, or savings association or credit union activities; or

(G) is the subject of a suspension or expulsion from membership in or association with a member of a self-regulatory organization that is currently effective and was issued within the last five years.

(2) The prohibitions of paragraph (1) of this subsection shall not apply if:

(A) the party subject to the disqualification is duly licensed or registered to conduct securities-related business or render investment advisory services in the state in which the order, judgment, or decree creating the disqualification was entered against such party; or

(B) before services are rendered under this section, the Securities Commissioner, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification upon a showing of good cause.

(h) Recordkeeping and requests for records.

(1) An M&A Dealer shall maintain and preserve for a period of three (3) years records of all compensation received and communications, agreements, or contracts with buyers and/or sellers in connection with any transaction or transactions in which the dealer received compensation.

(2) Upon a written request from the Securities Commissioner or the Commissioner's authorized representative, an M&A Dealer relying on the exemption provided by this section shall make available to the Commissioner all records required to be maintained and preserved under this subsection. Failure to comply with this subsection will result in the loss of the exemption provided by this section.

Source Note: The provisions of this §139.27 adopted to be effective February 16, 2015, 40 TexReg 700.

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