

THE SECURITIES ACT

STATE OF TEXAS

Effective August 22, 1957

**As Amended, Including All Amendments
Effective as of September 1, 2019**

*Italic faced type indicates amendments
by the 86th Legislature*



TEXAS STATE SECURITIES BOARD

E. Wally Kinney - Chair
Comfort, Texas

Miguel Romano - Member
Austin, Texas

Kenny Koncaba - Member
Friendswood, Texas

Robert Belt - Member
Houston, Texas

Melissa Tyroch - Member
Belton, Texas

Travis J. Iles
Securities Commissioner

Clinton Edgar
Deputy Commissioner

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As Amended, Including All Amendments
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Senate Bill No. 294, Chapter 269, Acts of the 55th Legislature, Regular Session, 1957, as amended. Article 581-1, et seq., Vernon's Annotated Texas Statutes.

AMENDMENTS

Senate Bill No. 361, Chapter 88, Acts of the 56th Legislature, Regular Session, 1959.

House Bill No. 865, Chapter 457, Acts of the 56th Legislature, Regular Session, 1959.

House Bill No. 464, Chapter 466, Acts of the 57th Legislature, Regular Session, 1961.

House Bill No. 42, Chapter 170, Acts of the 58th Legislature, Regular Session, 1963.

Senate Bill No. 870, Chapter 235, Acts of the 62nd Legislature, Regular Session, 1971.

Senate Bill No. 71, Chapter 97, Acts of the 63rd Legislature, Regular Session, 1973.

Senate Bill No. 15, Chapter 78, Acts of the 64th Legislature, Regular Session, 1975.

Senate Bill No. 469, Chapter 170, Acts of the 65th Legislature, Regular Session, 1977.

House Bill No. 1158, Chapter 327, Acts of the 65th Legislature, Regular Session, 1977.

Senate Bill No. 54, Chapter 735, Acts of the 65th Legislature, Regular Session, 1977.

Senate Bill No. 293, Chapter 160, Acts of the 66th Legislature, Regular Session, 1979.

House Bill No. 1896, Chapter 839, Acts of the 67th Legislature, Regular Session, 1981.

House Bill No. 1867, Chapter 953, Acts of the 68th Legislature, Regular Session, 1983.

Senate Bill No. 106, Chapter 465, Acts of the 68th Legislature, Regular Session, 1983.

Senate Bill No. 289, Chapter 578, Acts of the 69th Legislature, Regular Session, 1985.

House Bill No. 1593, Chapter 239, Acts of the 69th Legislature, Regular Session, 1985.

Senate Bill No. 813, Chapter 479, Acts of the 69th Legislature, Regular Session, 1985.

House Bill No. 875, Chapter 732, Acts of the 70th Legislature, Regular Session, 1987.

House Bill No. 61, Chapter 5, Acts of the 70th Legislature, 2nd Called Session, 1987.

Senate Bill No. 785, Chapter 40, Acts of the 71st Legislature, Regular Session, 1989.

House Bill No. 2519, Chapter 584, Acts of the 71st Legislature, Regular Session, 1989.

House Bill No. 1213, Chapter 733, Acts of the 71st Legislature, Regular Session, 1989.

Senate Bill No. 4, Chapter 565, Acts of the 72nd Legislature, Regular Session, 1991.

House Bill No. 11, Chapter 5, Acts of the 72nd Legislature, 1st Called Session, 1991.

House Bill No. 222, Chapter 17, Acts of the 72nd Legislature, 1st Called Session, 1991.

House Bill No. 273, Chapter 917, Acts of the 73rd Legislature, Regular Session, 1993.

House Bill No. 1463, Chapter 300, Acts of the 73rd Legislature, Regular Session, 1993.

House Bill No. 1295, Chapter 228, Acts of the 74th Legislature, Regular Session, 1995.

House Bill No. 1507, Chapter 638, Acts of the 75th Legislature, Regular Session, 1997.

House Bill No. 1971, Chapter 1396, Acts of the 75th Legislature, Regular Session, 1997.

Senate Bill No. 1368, Chapter 62, Acts of the 76th Legislature, Regular Session, 1999.

House Bill No. 2255, Chapter 1091, Acts of the 77th Legislature, Regular Session, 2001.

House Bill No. 2728, Chapter 663, Acts of the 77th Legislature, Regular Session, 2001.

House Bill No. 3015, Chapter 561, Acts of the 77th Legislature, Regular Session, 2001.

Senate Bill No. 1060, Chapter 108, Acts of the 78th Legislature, Regular Session, 2003.

House Bill No. 1840, Chapter 1077, Acts of the 78th Legislature, Regular Session, 2003.

House Bill No. 2376, Chapter 285, Acts of the 78th Legislature, Regular Session, 2003.

House Bill No. 874, Chapter 614, Acts of the 81st Legislature, Regular Session, 2009.

Senate Bill No. 652, Chapter 1232, Acts of the 82nd Legislature, Regular Session, 2011.

House Bill No. 2342, Chapter 523, Acts of the 82nd Legislature, Regular Session, 2011.

House Bill No. 3174, Chapter 346, Acts of the 82nd Legislature, Regular Session, 2011.

House Bill No. 1675, Chapter 1279, Acts of the 83rd Legislature, Regular Session, 2013.

House Bill No. 7, Chapter 448, Acts of the 84th Legislature, Regular Session, 2015.

House Bill No. 1629, Chapter 652, Acts of the 84th Legislature, Regular Session, 2015.

House Bill No. 3921, Chapter 376, Acts of the 85th Legislature, Regular Session, 2017.

House Bill No. 1535, Chapter 772, Acts of the 86th Legislature, Regular Session, 2019.

House Bill No. 4170, Chapter 467, Acts of the 86th Legislature, Regular Session, 2019.



**TEXAS STATE SECURITIES BOARD
AUSTIN, TEXAS**

I, **TRAVIS J. ILES**, Securities Commissioner of the State of Texas, certify that the following pages constitute a copy of The Securities Act of the State of Texas which was effective August 22, 1957, as amended, including amendments effective September 1, 2019.

IN TESTIMONY WHEREOF, I have hereunto signed my name at Austin, Texas, this 1st day of September, 2019.

A handwritten signature in black ink, appearing to read "T.J. Iles".

SECURITIES COMMISSIONER
THE STATE OF TEXAS

TABLE OF CONTENTS

Sec. 1.	Short Title of Act.	1
Sec. 2.	Creating the State Securities Board and Providing for Appointment of Securities Commissioner.	1
Sec. 2-1.	Conflict of Interest.	3
Sec. 2-2.	Information about Standards of Conduct.	4
Sec. 2-3.	Training.	4
Sec. 2-4.	Division of Policy and Management Responsibilities.	5
Sec. 2-5.	Public Testimony.	5
Sec. 2-6.	Complaints Information.	5
Sec. 2-7.	Equal Employment Opportunity Policy Statement.	5
Sec. 2-8.	<i>Alternative Rulemaking and Dispute Resolution.</i>	6
Sec. 3.	Administration and Enforcement by the Securities Commissioner and the Attorney General and Local Law Enforcement Officials.	6
Sec. 3-1.	Nonexclusivity of Means of Enforcement.	8
Sec. 4.	Definitions.	8
Sec. 5.	Exempt Transactions.	11
Sec. 6.	Exempt Securities.	16
Sec. 7.	Permit or Registration for Issue by Commissioner; Information for Issuance of Permit or Registration.	19
Sec. 8.	Consent to Service.	25
Sec. 9.	Protection to Purchasers of Securities.	25
Sec. 10.	Examination of Application; Permit.	26
Sec. 10-1.	Purposes.	27
Sec. 11.	Papers Filed with Commissioner; Records Open to Inspection.	27

Sec. 12.	Registration of Persons Selling Securities or Rendering Investment Advice. . .	27
Sec. 12-1.	Notice Filing for Federal Covered Investment Advisers and Representatives of Federal Covered Investment Advisers.	28
Sec. 13.	Method and Condition of Registration Required for Dealer, Agent, Investment Adviser, or Investment Adviser Representative.	28
Sec. 13-1.	Inspection.	30
Sec. 14.	Denial, Suspension or Revocation of Registration as Dealer, Agent, Investment Adviser, or Investment Adviser Representative.	30
Sec. 15.	Issuance of Registration Certificates to Dealers and Investment Advisers. . . .	32
Sec. 16.	Repealed.	33
Sec. 17.	Form of Certificates to Dealers and Investment Advisers.	33
Sec. 18.	Registration of Agents of Dealers or of Representatives of Investment Advisers.	33
Sec. 19.	Annual Registration; Renewals.	33
Sec. 20.	Display or Advertisement of Fact of Registration Unlawful.	34
Sec. 21.	Posting Registration Certificates.	34
Sec. 22.	Regulation of Offers.	35
Sec. 23.	Cease and Desist Orders; Cease Publication Orders; List of Securities Offered.	36
Sec. 23-1.	Assessment of Administrative Fines.	37
Sec. 23-2.	Emergency Cease and Desist Order.	38
Sec. 24.	Hearings upon Exception to Actions of Commissioner.	39
Sec. 25.	Revocation of Registration of Any Dealer, Agent, Investment Adviser, or Investment Adviser Representative.	40
Sec. 25-1.	Receiverships of Persons or Assets.	40
Sec. 26.	Notices by Registered Mail.	41
Sec. 27.	Judicial Review.	41

Sec. 28.	Investigations, Investigatory Materials, and Registration Related Materials . .	42
Sec. 28-1.	Adoption of Rules and Regulations.	43
Sec. 29.	Penal Provisions.	44
Sec. 29-1.	Limitation.	46
Sec. 29-2.	Aggregation of Amounts Involved in Securities Fraud.	46
Sec. 29-3.	Criminal Responsibility of Corporation or Association.	46
Sec. 30.	Certified Copies of Papers Filed with Commissioner as Evidence.	47
Sec. 31.	Construction.	47
Sec. 32.	Injunctions, Restitution, and Civil Penalties.	47
Sec. 32-1.	<i>Refund.</i>	48
Sec. 33.	Civil Liability with Respect to Issuance or Sale of a Security.	49
Sec. 33-1.	Civil Liability of Investment Advisers and Investment Adviser Representatives.	55
Sec. 33-2.	Stay of Recognition or Enforcement of Foreign Country Judgment.	56
Sec. 34.	Actions for Commission; Allegations and Proof of Compliance.	57
Sec. 35.	Fees.	57
Sec. 35-1.	Fees for Sales of Excess Securities.	59
Sec. 35-2.	Fees for Sales of Unregistered Securities.	59
Sec. 36.	Deposit to General Revenue Fund.	59
Sec. 37.	Pleading Exemptions.	59
Sec. 38.	Partial Invalidity; Severability.	60
Sec. 39.	Repeal of Securities Act and Insurance Securities Act Now in Effect; Saving Clause as to Pending Proceedings.	60
Sec. 40.	Repealed.	60
Sec. 41.	Repealed.	60

Sec. 42. Reduced Fees.....	60
Sec. 43. Investor Education.	61
Sec. 44. Crowdfunding.	61
Sec. 45. Protection of Vulnerable Adults from Financial Exploitation.	62
Declaration of Emergency and Effective Date of the Act	65
INDEX	67

THE SECURITIES ACT OF TEXAS

Sec. 1. Short Title of Act. This Act shall be known and may be cited as “The Securities Act.”

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

A. The State Securities Board is hereby created. The Board shall consist of five citizens of the state appointed by the governor with the advice and consent of the Senate. Members of the Board serve for staggered terms of six years, with as near as possible to one-third of the members' terms expiring January 20 of each odd-numbered year. Vacancies shall be filled by the Governor for the unexpired term. Members shall be eligible for reappointment. Appointments to the Board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

B. Board members must be members of the general public. A person is not eligible for appointment as a member if the person or the person's spouse:

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

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

(3) is employed by or participates in the management of a business entity engaged in business as a securities dealer or investment adviser; or

(4) has, other than as a consumer, a financial interest in a business entity engaged in business as a securities dealer or investment adviser.

C. Repealed. House Bill 2255, Chapter 1091, Acts of the 77th Legislature, Regular Session, 2001.

D. Each member of the Board is entitled to per diem as set by legislative appropriation for each day that the member engages in the business of the Board. The Governor shall designate a member of the Board as the presiding officer of the Board to serve in that capacity at the will of the Governor. A majority of the members shall constitute a quorum for the transaction of any business.

E. It is a ground for removal from the Board that a member:

(1) does not have at the time of taking office the qualifications required by Subsection A or B of this section for appointment to the Board;

(2) does not maintain during service on the Board the qualifications required by Subsection A or B of this section for appointment to the Board;

(3) is ineligible for membership under Subsection B of this section or Subsection B or C of Section 2-1 of this Act;

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

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

F. The validity of an action of the Board is not affected by the fact that it is taken when a ground for removal of a Board member exists. If the Commissioner has knowledge that a potential ground for removal exists, the Commissioner shall notify the presiding officer of the Board of the potential ground. The presiding officer shall then notify the Governor and the Attorney General that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the Commissioner shall notify the next highest ranking officer of the Board, who shall then notify the Governor and the Attorney General that a potential ground for removal exists.

G. The Board shall appoint a Securities Commissioner who serves at the pleasure of the Board and who shall, under the supervision of the Board, administer the provisions of this Act. Each member of the Board shall have access to all offices and records under his supervision, and the Board, or a majority thereof, may exercise any power or perform any act authorized to the Securities Commissioner by the provisions of this Act.

H. The Commissioner, with the consent of the Board, may designate a Deputy Securities Commissioner who shall perform all the duties required by law to be performed by the Securities Commissioner when the said Commissioner is absent or unable to act for any reason. The Commissioner shall appoint other persons as necessary to carry out the powers and duties of the Commissioner under this Act and other laws granting jurisdiction or applicable to the Board or the Commissioner. The Commissioner may delegate to the other persons appointed under this subsection powers and duties of the Commissioner as the Commissioner considers necessary.

I. Repealed. House Bill 2376, Chapter 285, Acts of the 78th Legislature, Regular Session, 2003.

J. On or before January 1 of each year, the Board, with the advice of the Commissioner, shall report to the Governor and the presiding officer of each house of the Legislature as to its administration of this Act, as well as plans and needs for future securities regulation. The report must include:

(1) a detailed accounting of all funds received and disbursed by the Board during the preceding year, *including the amount spent by the Board assisting in the criminal prosecution of cases under Subsection B of Section 3 of this Act; and*

(2) *with respect to cases referred during the preceding year by the Board under Subsection A of Section 3 of this Act, a breakdown by county and district attorney of the number of cases where:*

- (A) *criminal charges were filed;*
- (B) *prosecution is ongoing; or*
- (C) *prosecution was completed.*

K. The Commissioner or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least ten (10) days before any public posting. The Commissioner or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for Board employees must be based on the system established under this section.

L. The Board shall prepare information of consumer interest describing the regulatory functions of the Board and Commissioner and describing the Board's and Commissioner's procedures by which consumer complaints are filed with and resolved by the Board or Commissioner. The Board shall make the information available to the general public and appropriate state agencies. There shall be prominently displayed at all times in the place of business of each dealer, agent, investment adviser, or investment adviser representative regulated under this Act, a sign containing the name, mailing address, and telephone number of the Board and a statement informing consumers that complaints against a dealer, agent, investment adviser, or investment adviser representative may be directed to the Board.

M. The financial transactions of the Board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

N. The Board and Commissioner are subject to Chapters 551, 2001, and 2002, Government Code.

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, 2031.

Sec. 2-1. Conflict of Interest.

A. In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

B. A person may not be a member of the Board and may not be a Board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

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

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

C. A person may not be a member of the Board or act as the general counsel to the Board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the Board.

Sec. 2-2. Information about Standards of Conduct. The Commissioner or the Commissioner's designee shall provide to members of the Board and to Board employees, as often as necessary, information regarding the requirements for office or employment under this Act, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 2-3. Training.

A. A person who is appointed to and qualifies for office as a member of the Board may not vote, deliberate, or be counted as a member in attendance at a meeting of the Board until the person completes a training program that complies with this section.

B. The training program must provide the person with information regarding:

- (1) the *law governing Board operations*;
- (2) the programs, functions, *rules, and budget* of the Board;
- (3) *the scope of and limitations on the rulemaking authority* of the Board;
- (4) *the types of Board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the Board regulates, including any rule, interpretation, or enforcement action that:*
 - (A) *regulates the scope of practice of persons in a profession or business the Board regulates;*
 - (B) *restricts advertising by persons in a profession or business the Board regulates;*
 - (C) *affects the price of goods or services provided by persons in a profession or business the Board regulates; or*
 - (D) *restricts participation in a profession or business the Board regulates;*
- (5) the results of the most recent formal audit of the Board;
- (6) the requirements of:
 - (A) *laws relating to open meetings, public information, administrative procedure, and disclosing conflicts-of-interest; and*

(B) other laws *applicable to members of a state policymaking body in performing their duties*; and

(7) any applicable ethics policies adopted by the Board or the Texas Ethics Commission.

C. A person appointed to the Board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

D. *The Commissioner shall create a training manual that includes the information required by Subsection B of this section. The Commissioner shall distribute a copy of the training manual annually to each member of the Board. Each member of the Board shall sign and submit to the Commissioner a statement acknowledging that the member received and has reviewed the training manual.*

Sec. 2-4. Division of Policy and Management Responsibilities. The Board shall develop and implement policies that clearly separate the policymaking responsibilities of the Board and the management responsibilities of the Commissioner and employees of the Board.

Sec. 2-5. Public Testimony. The Board by rule shall develop and implement policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under the jurisdiction of the Board.

Sec. 2-6. Complaints Information.

A. The Commissioner or the Commissioner's designee shall maintain a *system to promptly and efficiently act on complaints* filed with the Commissioner or Board. *The Commissioner or the Commissioner's designee shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.*

B. The Commissioner or the Commissioner's designee shall *make information available describing* the Board's procedures *for* complaint investigation and resolution.

C. The Commissioner or the Commissioner's designee shall *periodically* notify the complaint *parties* of the status of the *complaint until final disposition* unless the notice would jeopardize a *law enforcement* investigation.

Sec. 2-7. Equal Employment Opportunity Policy Statement.

A. The Commissioner or the Commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

B. The policy statement must include:

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

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

C. The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection B(1) of this section; and

(3) be filed with the Governor's office.

Sec. 2-8. Alternative Rulemaking and Dispute Resolution.

A. The Board shall develop a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of Board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the Board's jurisdiction.

B. The Board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

C. The Board shall:

(1) coordinate the implementation of the policy adopted under Subsection A of this section;

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolutions; and

(3) collect data concerning the effectiveness of those procedures.

Sec. 3. Administration and Enforcement by the Securities Commissioner and the Attorney General and Local Law Enforcement Officials.

A. The administration of the provisions of this Act shall be vested in the Securities Commissioner. It shall be the duty of the Securities Commissioner and the Attorney General to see that its provisions 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 shall at once lay before the District or County Attorney of the proper county any evidence which shall come to his knowledge of criminality under this Act. In the event of the neglect or refusal of such attorney to institute and prosecute such violation, the Commissioner shall submit such evidence to the Attorney General, who is hereby authorized to proceed therein with all the rights, privileges and powers conferred by law upon district or county attorneys, including the power to appear before grand juries and to interrogate witnesses before such grand juries.

B. Subject to Subsection E of this section, the Board may provide assistance to a county or district attorney who requests assistance in a criminal prosecution involving an alleged violation of this Act that is referred by the Board to the attorney under Subsection A of this section.

C. Before referring a case to a county or district attorney for prosecution as required by Subsection A of this section, the Commissioner shall make a determination of:

(1) the potential resources of the Board, including the number and types of Board employees, that would be needed to assist in the prosecution of the case; and

(2) the availability of Board employees and other resources necessary to carry out any request for assistance.

D. The Board by rule shall establish a process to enable the Commissioner to determine whether to provide any requested assistance to the appropriate prosecuting attorney following referral of a case under Subsection A of this section and, if so, the appropriate amount of such assistance. The rules must require the Commissioner to consider:

(1) whether resources are available after taking into account any ongoing Board investigations, investigations under Section 28 of this Act, and criminal prosecutions for which assistance is being provided;

(2) the seriousness of the alleged violation or violations in the case, including the severity of the harm and number of victims involved; and

(3) the state's interest in the prosecution of a particular case and the availability of other methods of redress for the alleged violations, including the pursuit of a civil action.

E. In response to a request for assistance under Subsection B of this section, the Board may provide only those Board employees or resources, if any, determined to be available for that case in accordance with Subsection C of this section. If a change in circumstances occurs after the time of the determination under Subsection C of this section, the Commissioner may reconsider the Commissioner's determination under that subsection and may increase or reduce the number of Board employees or other resources to be made available for a case using the process established under Subsection D of this section.

F. The Attorney General, at least biennially, shall review a sample of criminal cases for which the Board provided requested assistance to county or district attorneys under this section. The review must include an evaluation of the pre-referral determination of available resources to support each case being reviewed as required by Subsection C of this section and any subsequent determination of those resources

made by the Commissioner as authorized under Subsection E of this section. The Attorney General may report any concerns the Attorney General has in connection with the Board's provision of assistance to the standing committee of each house of the legislature with primary jurisdiction over Board matters.

Sec. 3-1. Nonexclusivity of Means of Enforcement. The Commissioner may utilize any or all penalties, sanctions, remedies, or relief as the Commissioner deems necessary.

Sec. 4. Definitions. The following terms shall, unless the context otherwise indicates, have the following respective meanings:

A. The term “security” or “securities” shall include any limited partner interest in a limited partnership, share, stock, treasury stock, stock certificate under a voting trust agreement, collateral trust certificate, equipment trust certificate, preorganization certificate or receipt, subscription or reorganization certificate, note, bond, debenture, mortgage certificate or other evidence of indebtedness, any form of commercial paper, certificate in or under a profit sharing or participation agreement, certificate or any instrument representing any interest in or under an oil, gas or mining lease, fee or title, or any certificate or instrument representing or secured by an interest in any or all of the capital, property, assets, profits or earnings of any company, investment contract, or any other instrument commonly known as a security, whether similar to those herein referred to or not. The term applies regardless of whether the “security” or “securities” are evidenced by a written instrument. Provided, however, that this definition shall not apply to any insurance policy, endowment policy, annuity contract, optional annuity contract, or any contract or agreement in relation to and in consequence of any such policy or contract, issued by an insurance company subject to the supervision or control of the Texas Department of Insurance when the form of such policy or contract has been duly filed with the Department as now or hereafter required by law.

B. The terms “person” and “company” shall include a corporation, person, joint stock company, partnership, limited partnership, association, company, firm, syndicate, trust, incorporated or unincorporated, heretofore or hereafter formed under the laws of this or any other state, country, sovereignty or political subdivision thereof, and shall include a government, or a political subdivision or agency thereof. As used herein, the term “trust” shall be deemed to include a common law trust, but shall not include a trust created or appointed under or by virtue of a last will and testament or by a court of law or equity.

C. The term “dealer” shall include every person or company other than an agent, who engages in this state, either for all or part of his or its time, directly or through an agent, in selling, offering for sale or delivery or soliciting subscriptions to or orders for, or undertaking to dispose of, or to invite offers for any security or securities and every person or company who deals in any other manner in any security or securities within this state. Any issuer other than a registered dealer of a security or securities, who, directly or through any person or company, other than a registered dealer, offers for sale, sells or makes sales of its own security or securities shall be deemed a dealer and shall be required to comply with the provisions hereof; provided, however, this section or provision shall not apply to such issuer when such security or securities are offered for sale or sold either to a registered dealer or only by or through a registered dealer acting as fiscal agent for the issuer; and provided further, this section or provision shall not apply to such issuer if the transaction is within the exemptions contained in the provisions of Section 5 of this Act.

D. The term “agent” shall include every person or company employed or appointed or authorized by a dealer to sell, offer for sale or delivery, or solicit subscriptions to or orders for, or deal in any other manner, in securities within this state, whether by direct act or through subagents; provided, that the officers of a corporation or partners of a partnership shall not be deemed agents solely because of their status as officers or partners, where such corporation or partnership is registered as a dealer hereunder.

E. The terms “sale” or “offer for sale” or “sell” shall include every disposition, or attempt to dispose of a security for value. The term “sale” means and includes contracts and agreements whereby securities are sold, traded or exchanged for money, property or other things of value, or any transfer or agreement to transfer, in trust or otherwise. Any security given or delivered with or as a bonus on account of any purchase of securities or other thing of value, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. The term “sell” means any act by which a sale is made, and the term “sale” or “offer for sale” shall include a subscription, an option for sale, a solicitation of sale, a solicitation of an offer to buy, an attempt to sell, or an offer to sell, directly or by an agent, by a circular, letter, or advertisement or otherwise, including the deposit in a United States Post Office or mail box or in any manner in the United States mails within this State of a letter, circular or other advertising matter. Nothing herein shall limit or diminish the full meaning of the terms “sale,” “sell” or “offer for sale” as used by or accepted in courts of law or equity. The sale of a security under conditions which entitle the purchaser or subsequent holder to exchange the same for, or to purchase some other security, shall not be deemed a sale or offer for sale of such other security; but no exchange for or sale of such other security shall ever be made unless and until the sale thereof shall have been first authorized in Texas under this Act, if not exempt hereunder, or by other provisions of law.

F. The terms “fraud” or “fraudulent practice” shall include any misrepresentations, in any manner, of a relevant fact; any promise or representation or prediction as to the future not made honestly and in good faith, or an intentional failure to disclose a material fact; the gaining, directly or indirectly, through the sale of any security, of an underwriting or promotion fee or profit, selling or managing commission or profit, so gross or exorbitant as to be unconscionable; any scheme, device or other artifice to obtain such profit, fee or commission; provided, that nothing herein shall limit or diminish the full meaning of the terms “fraud,” “fraudulent,” and “fraudulent practice” as applied or accepted in courts of law or equity.

G. “Issuer” shall mean and include every company or person who proposes to issue, has issued, or shall hereafter issue any security.

H. “Broker” shall mean dealer as herein defined.

I. “Mortgage” shall be deemed to include a deed of trust to secure a debt.

J. If the sense requires it, words in the present tense include the future tense, in the masculine gender include the feminine and neuter gender, in the singular number include the plural number, and in the plural number include the singular number; “and” may be read “or” and “or” may be read “and”.

K. “No par value” or “non-par” as applied to shares of stock or other securities shall mean that such shares of stock or other securities are without a given or specified par value. Whenever any classification or computation in this Act mentioned is based upon “par value” as applied to shares of stock or other securities of no par value, the amount for which such securities are sold or offered for sale to the public shall be used as a basis of such classification or computation.

L. The term “include” when used in a definition contained in this Act shall not be deemed to exclude other things or persons otherwise within the meaning of the term defined.

M. “Registered dealer” shall mean a dealer as hereinabove defined who has been duly registered by the Commissioner as in Section 15 of this Act provided.

N. “Investment adviser” includes a person who, for compensation, engages in the business of advising another, 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, as may be further defined by Board rule. The term does not include:

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

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

(3) 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;

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

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

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

(B) 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 Section 3(a)(12), Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(12)), as amended, as an exempt security for purposes of that Act.

O. “Federal covered investment adviser” means an investment adviser who is registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.), as amended.

P. “Investment adviser representative” or “representative of an investment adviser” includes 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, as defined by Board rule, 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 this Act solely because of the person’s status as an officer or partner of that entity.

Q. “Registered investment adviser” means an investment adviser who has been issued a registration certificate by the Commissioner under Section 15 of this Act.

Sec. 5. Exempt Transactions. Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to the sale of any security when made in any of the following transactions and under any of the following conditions, and the company or person engaged therein shall not be deemed a dealer within the meaning of this Act; that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

A. At any judicial, executor’s, administrator’s, guardian’s or conservator’s sale, or any sale by a receiver or trustee in insolvency or bankruptcy.

B. The sale by or for the account of a pledge holder or mortgagee, selling or offering for sale or delivery in the ordinary course of business to liquidate a bona fide debt, of a security pledged in good faith as security for such debt.

C. (1) Sales of securities made by or in behalf of a vendor, whether by dealer or other agent, in the ordinary course of bona fide personal investment of the personal holdings of such vendor, or change in such investment, if such vendor is not engaged in the business of selling securities and the sale or sales are isolated transactions not made in the course of repeated and successive transactions of a like character; provided, that in no event shall such sales or offerings be exempt from the provisions of this Act when made or intended by the vendor or his agent, for the benefit, either directly or indirectly, of any company or corporation except the individual vendor (other than a usual commission to said agent), and provided further, that any person acting as agent for said vendor shall be registered pursuant to this Act;

(2) Sales by or on behalf of any insurance company subject to the supervision or control of the Texas Department of Insurance of any security owned by such company as a legal and bona fide investment, provided that in no event shall any such sale or offering be exempt from the provisions of this Act when made or intended, either directly or indirectly, for the benefit of any other company as that term is defined in this Act.

D. The distribution by a corporation of securities direct to its stockholders as a stock dividend or other distribution paid out of earnings or surplus.

E. Any offer and any transaction pursuant to any offer by the issuer of its securities to its existing security holders (including persons who at the time of the transaction are holders of convertible securities or nontransferable warrants) if no commission or other remuneration

(other than a stand-by commission) is paid or given directly or indirectly for soliciting any security holder in this State.

F. The issue in good faith of securities by a company to its security holders, or creditors, in the process of a bona fide reorganization of the company made in good faith, or the issue in good faith of securities by a company, organized solely for the purpose of taking over the assets and continuing the business of a predecessor company, to the security holders or creditors of such predecessor company, provided that in either such case such securities are issued in exchange for the securities of such holders or claims of such creditors, or both, and in either such case security holders or creditors do not pay or give or promise and are not obligated to pay or give any consideration for the securities so issued other than the securities of or claims against said company or its predecessor then held or owned by them.

G. The issue or sale of securities (a) by one corporation to another corporation or the security holders thereof pursuant to a vote by one or more classes of such security holders, as required by the certificate of incorporation or the applicable corporation statute, in connection with a merger, consolidation or sale of corporate assets, or (b) by one corporation to its own stockholders in connection with the change of par value stock to no par value stock or vice versa, or the exchange of outstanding shares for the same or a greater or smaller number of shares; provided that in any such case such security holders do not pay or give or promise and are not obligated to pay or give any consideration for the securities so issued or sold other than the securities of the corporation then held by them.

H. The sale of any security to any bank, trust company, building and loan association, insurance company, surety or guaranty company, savings institution, investment company as defined in the Investment Company Act of 1940, small business investment company as defined in the Small Business Investment Act of 1958, as amended, or to any registered dealer actually engaged in buying and selling securities.

I. Provided such sale is made without any public solicitation or advertisements:

(a) the sale of any security by the issuer thereof so long as the total number of security holders of the issuer thereof does not exceed thirty-five (35) persons after taking such sale into account;

(b) the sale or distribution by an issuer or a participating subsidiary of the issuer, if any, of a security under a bona fide thrift, savings, stock purchase, retirement, pension, profit-sharing, option, bonus, appreciation right, incentive, or similar written compensation plan or written compensation contract established by the issuer or its subsidiary for the benefit of employees, directors, general partners, managers, or officers of the issuer or subsidiary, for the benefit of its trustees if the issuer or subsidiary is a business trust, or for the benefit of consultants or advisors who provide to the issuer or subsidiary bona fide services unrelated to the offer or sale of securities in a capital-raising transaction; or

(c) the sale by an issuer of its securities during the period of twelve (12) months ending with the date of the sale in question to not more than fifteen (15) persons (excluding, in determining such fifteen (15) persons, purchasers of securities in transactions exempt under other provisions of this Section 5, purchasers of securities exempt under Section 6 hereof and

purchasers of securities which are part of an offering registered under Section 7 hereof), provided such persons purchased such securities for their own account and not for distribution.

J. Wherein the securities disposed of consist exclusively of notes or bonds secured by mortgage or vendor's lien upon real estate or tangible personal property, and the entire mortgage is sold or transferred with all of the notes or bonds secured thereby in a single transaction.

K. Any security or membership issued by a corporation or association, organized exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any stockholder, shareholder, or individual members, and where no commission or remuneration is paid or given or is to be paid or given in connection with the disposition thereof.

L. The sale by the issuer itself, or by a registered dealer, of any security issued or guaranteed by any bank organized and subject to regulation under the laws of the United States or under the laws of any State or territory of the United States, or any insular possession thereof, or by any savings and loan association organized and subject to regulation under the laws of this State, or the sale by the issuer itself of any security issued by any federal savings and loan association.

M. The sale by the issuer itself, or by a registered dealer, of any security either issued or guaranteed by the United States or by any territory or insular possession thereof, or by the District of Columbia, or by any state of the United States, or political subdivision thereof (including but not limited to any county, city, municipal corporation, district, or authority), or by any public or governmental agency or instrumentality of any of the foregoing.

N. The sale and issuance of any securities issued by any farmers' cooperative marketing association organized under Chapter 52, Agriculture Code, or the predecessor of that law (Article 5737 et seq., Revised Statutes); the sale and issuance of any securities issued by any mutual loan corporation organized under Chapter 54, Agriculture Code, or the predecessor of that law (Article 2500 et seq., Revised Statutes); the sale and issuance of any equity securities issued by any cooperative association organized under the Cooperative Association Act, as amended (Article 1396-50.01, Vernon's Texas Civil Statutes); and the sale of any securities issued by any farmers' cooperative society organized under Chapter 51, Agriculture Code, or the predecessor of that law (Article 2514 et seq., Revised Statutes). Provided, however, this exemption shall not be applicable to agents of any farmers' cooperative marketing association, mutual loan corporation, cooperative association, or farmers' cooperative society when the sale of such securities is made to non-members, or when the sale of such securities is made to members or non-members and a commission is paid or contracted to be paid to the said agents.

O. The sale by a registered dealer of outstanding securities provided that:

(1) Such securities form no part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer thereof; and

(2) Securities of the same class, of the same issuer, are outstanding in the hands of the public; and

(3) Such securities are offered for sale, in good faith, at prices reasonably related to the current market price of such securities at the time of such sale; and

(4) No part of the proceeds of such sale are paid directly or indirectly to the issuer of such securities; and

(5) Such sale is not directly or indirectly for the purposes of providing or furthering any scheme to violate or evade any provision of this Act; and

(6) The right to sell or resell such securities has not been enjoined by any court of competent jurisdiction in this State by proceedings instituted by an officer or agency of this State charged with enforcement of this Act; and

(7) The right to sell such securities has not been revoked or suspended by the Commissioner under any of the provisions of this Act, or, if so, revocation or suspension is not in force and effect; and

(8) At the time of such sale, the issuer of such securities shall be a going concern actually engaged in business and shall then be neither in an organization stage nor in receivership or bankruptcy; and

(9) Such securities or other securities of the issuer of the same class have been registered by qualification, notification or coordination under Section 7 of this Act; or at the time of such sale at least the following information about the issuer shall appear in a recognized securities manual or in a statement, in form and extent acceptable to the Commissioner, filed with the Commissioner by the issuer or by a registered dealer:

(a) A statement of the issuer's principal business;

(b) A balance sheet as of a date within eighteen (18) months of the date of such sale; and

(c) Profit and loss statements and a record of the dividends paid, if any, for a period of not less than three (3) years prior to the date of such balance sheet or for the period of existence of the issuer, if such period of existence is less than three (3) years.

The term "recognized securities manual" means a nationally distributed manual of securities that is approved for use hereunder by the Board.

The Commissioner may issue a stop order or by order prohibit, revoke or suspend the exemption under this Subsection O with respect to any security if the Commissioner has reasonable cause to believe that the plan of business of the issuer of such security, the security, or the sale thereof would tend to work a fraud or deceit upon any purchaser or purchasers thereof, such order to be subject to review in the manner provided by Section 24 of this Act. Notice of any court injunction enjoining the sale, or resale, of any such security, or of an order

revoking or suspending the exemption under this subdivision with respect to any security, shall be delivered or shall be mailed by certified or registered mail with return receipt requested, to any dealers believed to be selling, or offering for sale, securities of the type referred to in the notice; and the prohibitions of (6) and (7) above of this Subsection O shall be inapplicable to any dealer until the dealer has received actual notice from the Commissioner of such revocation or suspension.

The Board may for cause shown revoke or suspend the recognition hereunder of any manuals previously approved under this Subsection but no such action may be taken unless upon notice and opportunity for hearing before the Board or a hearings officer as now or hereafter required by law. A judgment sustaining the Board in the action complained of shall not bar after one year an application by the plaintiff for approval of its manual or manuals hereunder, nor shall a judgment in favor of the plaintiff prevent the Board from thereafter revoking such recognition for any proper cause which may thereafter accrue or be discovered.

P. The execution by a dealer of an unsolicited order for the purchase of securities, where the initial offering of such securities has been completed and provided that the dealer acts solely as an agent for the purchaser, has no direct or indirect interest in the sale or distribution of the security ordered, and receives no commission, profit, or other compensation from any source other than the purchaser.

Q. The sales of interests in and under oil, gas or mining leases, fees or titles, or contracts relating thereto, where (1) the total number of sales by any one owner of interests, whether whole, fractional, segregated or undivided in any single oil, gas or mineral lease, fee or title, or contract relating thereto, shall not exceed thirty-five (35) within a period of twelve (12) consecutive months and (2) no use is made of advertisement or public solicitation; provided, however, if such sale or sales are made by an agent for such owner or owners, such agent shall be licensed pursuant to this Act. No oil, gas or mineral unitization or pooling agreement shall be deemed a sale under this Act.

R. The sale by the issuer itself, or by a subsidiary of such issuer, of any securities which would be exempt if sold by a registered dealer under Section 6 (other than Section 6E) of this Act.

S. The sale by or through a registered dealer of any option if at the time of the sale of the option:

(1) the performance of the terms of the option is guaranteed by any broker-dealer registered under the federal Securities Exchange Act of 1934, as amended, which guaranty and broker-dealer are in compliance with such requirements or regulations as may be approved or adopted by the Board;

(2) the option is not sold by or for the benefit of the issuer of the security which may be purchased or sold upon exercise of the option;

(3) the security which may be purchased or sold upon exercise of the option is either (a) exempted under Subsection F of Section 6 of this Act or (b) quoted on the NASDAQ

stock market and meets the requirements of Paragraphs (1), (6), (7), and (8) of Subsection O of Section 5 of this Act; and

(4) such sale is not directly or indirectly for the purposes of providing or furthering any scheme to violate or evade any provisions of this Act.

For purposes of this subsection the term “option” shall mean and include any put, call, straddle, or other option or privilege of buying or selling a specified number of securities at a specified price from or to another person, without being bound to do so, on or prior to a specified date, but such term shall not include any option or privilege which by its terms may terminate prior to such specified date upon the occurrence of a specified event.

T. Such other transactions or conditions as the Board by rule, regulation, or order may define or prescribe, conditionally or unconditionally.

U. The issuance or transfer of securities by the issuer of its securities to a corporation or association, organized exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, only if:

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

(b) the issuance or transfer of securities is not made for the purpose of raising capital for the issuer;

(c) no commission or other form of consideration is paid or provided to a third party with respect to the issuance or transfer; and

(d) the issuance or transfer is not directly or indirectly for the purpose of providing or furthering a scheme in violation of or to evade this Act.

Sec. 6. Exempt Securities. Except as hereinafter in this Act expressly provided, the provisions of this Act shall not apply to any of the following securities when offered for sale, or sold, or dealt in by a registered dealer or agent of a registered dealer:

A. Repealed. Senate Bill 293, Chapter 160, Acts of the 66th Legislature, Regular Session, 1979.

B. Repealed. Senate Bill 293, Chapter 160, Acts of the 66th Legislature, Regular Session, 1979.

C. Repealed. Senate Bill 293, Chapter 160, Acts of the 66th Legislature, Regular Session, 1979.

D. Any security issued or guaranteed either as to principal, interest, or dividend, by a corporation owning or operating a railroad or any other public service utility; provided, that

such corporation is subject to regulation or supervision either as to its rates and charges or as to the issue of its own securities by the Railroad Commission of Texas, or by a public commission, agency, board or officers of the Government of the United States, or of any territory or insular possession thereof, or of any state or municipal corporation, or of the District of Columbia, or of the Dominion of Canada, or any province thereof; also equipment trust certificates or equipment notes or bonds based on chattel mortgages, leases or agreements for conditional sale of cars, motive power or other rolling stock mortgages, leased or sold to or furnished for the use of or upon a railroad or other public service utility corporation, provided that such corporation is subject to regulation or supervision as above; or equipment trust certificates, or equipment notes or bonds where the ownership or title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States, or of any state, territory or insular possession thereof, or of the District of Columbia, or the Dominion of Canada, or any province thereof, to secure the payment of such equipment trust certificates, bonds or notes.

E. Any security issued and sold by a domestic corporation without capital stock and not organized and not engaged in business for profit.

F. Securities which at the time of sale have been fully listed upon the American Stock Exchange, the Boston Stock Exchange, the Chicago Stock Exchange or the New York Stock Exchange, have been designated or approved for designation on notice of issuance on the national market system of the NASDAQ stock market, or have been fully listed upon any recognized and responsible stock exchange approved by the Commissioner as hereinafter in this section provided, and also all securities senior to, or if of the same issues, upon a parity with, any securities so listed or designated or represented by subscription rights which have been so listed or designated, or evidence of indebtedness guaranteed by any company, any stock of which is so listed or designated, such securities to be exempt only so long as the exchange upon which such securities are so listed remains approved under the provisions of this Section. Application for approval by the Commissioner may be made by any organized stock exchange in such manner and upon such forms as may be prescribed by the Commissioner, but no approval of any exchange shall be given unless the facts and data supplied with the application shall be found to establish:

(1) That the requirements for the listing of securities upon the exchange so seeking approval are such as to effect reasonable protection to the public;

(2) That the governing constitution, by-laws or regulations of such exchange shall require:

1st: An adequate examination into the affairs of the issuer of the securities which are to be listed before permitting trading therein;

2nd: That the issuer of such securities, so long as they be listed, shall periodically prepare, make public and furnish promptly to the exchange, appropriate financial, income, and profit and loss statements;

3rd: Securities listed and traded in on such exchange to be restricted to those of ascertained, sound asset or income value;

4th: A reasonable surveillance of its members, including a requirement for periodical financial statements and a determination of the financial responsibility of its members and the right and obligation in the governing body of such exchange to suspend or expel any member found to be financially embarrassed or irresponsible or found to have been guilty of misconduct in his business dealings, or conduct prejudicial of the rights and interests of his customers;

The approval of any such exchange by the Commissioner shall be made only after a reasonable investigation and hearing, and shall be by a written order of approval upon a finding of fact substantially in accordance with the requirements hereinabove provided. The Commissioner, upon ten (10) days notice and hearing, shall have power at any time to withdraw approval theretofore granted by him to any such stock exchange which does not at the time of hearing meet the standards of approval under this Act, and thereupon securities so listed upon such exchange shall be no longer entitled to the benefit of such exemption except upon the further order of said Commissioner approving such exchange.

By the same procedure set out in the preceding paragraph with respect to exchanges approved by the Commissioner, the Commissioner may suspend the exempt status of any trading system exempted by the Legislature on or after January 1, 1989, if that system does not at the time of hearing meet the applicable standards for approval of exchanges prescribed by this Act. The suspension has the same effect as the removal of approval of an exchange. The suspension remains in effect until the Commissioner by order determines that the trading system has corrected the deficiency or deficiencies on which the suspension was based and maintains standards and procedures that provide reasonable protection to the public.

G. Repealed. Senate Bill 293, Chapter 160, Acts of the 66th Legislature, Regular Session, 1979.

H. Any commercial paper that arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and that evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper that is likewise limited, or any guarantee of such paper or of any such renewal.

I. Notes, bonds, or other evidence of indebtedness or certificates of ownership which are equally and proportionately secured without reference of priority of one over another, and which, by the terms of the instrument creating the lien, shall continue to be so secured by the deposit with a trustee of recognized responsibility approved by the Commissioner of any of the securities specified in Subsection M of Section 5 or Subsection D of Section 6; such deposited securities, if of the classes described in Subsection M of Section 5, having an aggregate par value of not less than one hundred and ten per cent (110%) of the par value of the securities thereby secured, and if of class specified in Subsection D of Section 6, having an aggregate par value of not less than one hundred and twenty five per cent (125%) of the par value of the securities thereby secured.

J. Notes, bonds or other evidence of indebtedness of religious, charitable or benevolent corporations.

Sec. 7. Permit or Registration for Issue by Commissioner; Information for Issuance of Permit or Registration.

A. Qualification of Securities.

(1) No dealer or agent shall sell or offer for sale any securities issued after September 6, 1955, except those which shall have been registered by Notification under subsection B or by Coordination under subsection C of this Section 7 and except those which come within the classes enumerated in Section 5 or Section 6 of this Act, until the issuer of such securities or a dealer registered under the provisions of this Act shall have been granted a permit by the Commissioner; and no such permit shall be granted by the Commissioner until the issuer of such securities or a dealer registered under the provisions of this Act shall have filed with the Commissioner a sworn statement verified under the oath of an executive officer or partner of the issuer, or of such registered dealer, and attested by the secretary or partner thereof, setting forth the following information:

a. The names, residences and post office addresses of the officers and directors of the company;

b. The location of its principal office and of all branch offices in this State, if any;

c. A copy of its articles of incorporation or partnership or association, as the case may be, and of any amendments thereto, if any; if a corporation, a copy of all minutes of any proceedings of its directors, stockholders or members relating to or affecting the issue of said security; if a corporation, a copy of its bylaws and of any amendments thereto; if a trustee, a copy of all instruments by which the trust is created and in which it is accepted, acknowledged or declared;

d. A statement showing the amount of capital stock, if any, and if no capital stock, the amount of capital of the issuer that is contemplated to be employed; the number of shares into which such stock is divided, or if not divided into shares of stock, what division is to be made or is contemplated; the par value of each share, or if no par stock, the price at which such security is proposed to be sold; the promotional fees or commissions to be paid for the sale of same, including any and all compensations of every nature that are in any way to be allowed the promoters or allowed for the sale of same; and how such compensation is to be paid, whether in cash, securities, service or otherwise, or partly of either or both; also, the amount of cash to be paid, or securities to be issued, given, transferred or sold to promoters for promotion or organization services and expenses, and the amount of promotion or organization services and expenses which will be assumed or in any way paid by the issuer;

e. Copies of certificates of the stock and all other securities to be sold, or offered for sale, together with application blanks therefor; a copy of any contract it proposes to make concerning such security; a copy of any prospectus or advertisement or other description of security prepared by or for it for distribution or publication;

f. 1. A detailed statement prepared in accordance with generally accepted auditing standards and procedures and generally accepted accounting principles, showing all

the assets and all the liabilities of the issuer, said statement to reflect the financial condition of the issuer on a day not more than ninety (90) days prior to the date such statement is filed. Such statement shall list all assets in detail and shall show how the value of such assets was determined, that is, whether the value set forth in said statement represents the actual cost in money of such assets, or whether such value represents their present market value, or some other value than the actual cost in money, and shall show the present actual value of said assets; also, whether the value set forth in the statement is greater or less than the actual cost value in money and greater or less than the present market value of such assets. If any of the assets consist of real estate, then said statement shall show the amount for which said real estate is rendered for State and county taxes, or assessed for taxes. If any such assets listed shall consist of anything other than cash and real estate, same shall be set out in detail so as to give the Commissioner the fullest possible information concerning same, and the Commissioner shall have the power to require the filing of such additional information as the Commissioner may deem necessary to determine whether or not the true value of said assets are reflected in the statement filed. Should any of the assets listed in said statement be subject to any repurchase agreement, or any other agreement of like character, by the terms of which the absolute ownership of, or title to said assets is qualified or limited in any way, then the terms and conditions of said agreement by which the absolute ownership of, or title to said assets is qualified or limited, as well as the amount and character of the assets subject thereto shall be fully stated. Said statement shall list all current liabilities, that is, all liabilities which will mature and become due within one year from the date of such application, and shall list separately from such current liabilities, all other liabilities, contingent or otherwise, showing the amount of those which are secured by mortgage or otherwise, the assets of the issuer which are subject to such mortgage, and the dates of maturity of any such mortgage indebtedness. Such application shall also include a detailed income statement, prepared in accordance with generally accepted auditing standards and procedures and generally accepted accounting principles, which shall cover the last three (3) years' operations of the issuer, if such issuer has been in operation for three (3) years, but if not, said income statement shall cover the time that said issuer has been operating. If said issuer has not been operating, but is taking over a concern of any kind which has been previously operating, an income statement showing the operations of the concern thus taken over for a period of the last three (3) years next preceding the taking over of said concern shall be included in said statement; said income statement shall clearly reflect the amount of net income or net loss incurred during each of the years shown.

2. The financial statements required in subparagraph (1) of this paragraph for a small business issuer, as defined by Board rule, may be reviewed by an independent certified public accountant in accordance with the Statements on Standards for Accounting and Review Services promulgated by the American Institute of Certified Public Accountants in lieu of being audited and certified, provided that the small business issuer otherwise meets all of the requirements that the Board by rule, regulation, or order may prescribe, conditionally or unconditionally.

B. Registration by Notification.

(1) Securities may be registered by notification under this subsection B if they are issued by an issuer which has been in continuous operation for not less than three (3) years and which has shown, during the period of not less than three (3) years next prior to the date of registration under this section, average annual net earnings after deducting all prior charges

including income taxes except charges upon securities to be retired out of the proceeds of sale, as follows:

a. In the case of interest-bearing securities, not less than one and one-half times the annual interest charges on such securities and on all other outstanding interest-bearing securities of equal rank;

b. In the case of securities having a specified dividend rate, not less than one and one-half times the annual dividend requirements on such securities and on all outstanding securities of equal rank;

c. In the case of securities wherein no dividend rate is specified, not less than five percent (5%) on all outstanding securities of equal rank, together with the amount of such securities then offered for sale, based upon the maximum price at which such securities are to be offered for sale. The ownership by an issuer of more than fifty percent (50%) of the outstanding voting stock of a corporation shall be construed as the proportionate ownership of such corporation and shall permit the inclusion of the earnings of such corporation applicable to the payment of dividends upon the stock so owned in the earnings of the issuer of the securities being registered by notification.

(2) Securities entitled to registration by notification shall be registered by the filing with the Commissioner by the issuer or by a registered dealer of a registration statement as required by paragraph a of this subdivision, and completion of the procedures outlined in paragraph b of this subdivision:

a. A registration statement in a form prescribed by the Commissioner signed by the applicant filing such statement and containing the following information:

1. Name and business address of main office of issuer and address of issuer's principal office, if any, in this state;

2. Title of securities being registered and total amount of securities to be offered;

3. Price at which securities are to be offered for sale to the public, amount of securities to be offered in this state, and amount of registration fee, computed as hereinafter provided;

4. A brief statement of the facts which show that the securities are entitled to be registered by notification;

5. Name and business address of the applicant filing the statement;

6. Financial statements to include a certified income statement, a certified balance sheet, and a certified statement of stockholders' equity, each to be for a period of not less than three (3) years prior to the date of registration. These financial statements shall reflect the financial condition of the issuer as of a date not more than ninety (90) days prior to the date of such filing with the Commissioner;

7. A copy of the prospectus, if any, describing such securities;

8. Filing of a consent to service of process conforming to the requirements of Section 8 of this Act, if the issuer is registering the securities and is not a resident of this state or is not incorporated under the laws of this state.

b. Such filing with the Commissioner shall constitute the registration of securities by notification and such registration shall become effective five (5) days after receipt of the registration statement and all accompanying papers by the Commissioner; provided that the Commissioner may in his discretion waive or reduce the five (5) days waiting period in any case where he finds no injury to the public will result therefrom. Upon such registration by notification, securities may be sold in this state by registered dealers and registered salesmen. Upon the receipt of a registration statement, prospectus, if any, payment of the filing fee and registration fee, and, if required, a consent to service of process, the Commissioner shall record the registration by notification of the securities described. Such registration shall be effective for a period of one (1) year and may be renewed for additional periods of one (1) year, if the securities are entitled to registration under this subsection at the time of renewal, by a new filing under this section together with the payment of the renewal fee of Ten Dollars (\$10.00).

c. If at any time, before or after registration of securities under this section, in the opinion of the Commissioner the information in a registration statement filed with him is insufficient to establish the fact that the securities described therein are, or were, entitled to registration by notification under this section, or that the registration information contains, or contained, false, misleading or fraudulent facts, he may order the applicant who filed such statement to cease and desist from selling, or offering for sale, such securities registered, or proposed to be registered, under provisions of this section, until there is filed with the Commissioner such further information as may in his judgment be necessary to establish the fact that such securities are, or were, entitled to registration under this section. The provisions of Section 24 of this Act as to hearing shall be applicable to an order issued hereunder.

C. Registration by Coordination.

(1) Any security for which a registration statement has been filed under the federal Securities Act of 1933, as amended, in connection with the same offering, may be registered by coordination. A registration statement under this section shall be filed with the Commissioner by the issuer or any registered dealer, shall contain the following information, and shall be accompanied by the following documents:

a. One copy of the prospectus filed under the Securities Act of 1933 together with all amendments thereto;

b. The amount of securities to be offered in this state;

c. The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

d. Any adverse order, judgment or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;

e. A copy of the articles of incorporation and by-laws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

f. If the Commissioner requests any other information, or copies of any other documents, filed under the Federal Securities Act of 1933;

g. An undertaking to forward promptly all amendments to the federal registration statement, other than an amendment which merely delays the effective date; and

h. If the registration statement is filed by the issuer, or by a dealer who will offer such securities for sale as the agent of the issuer, and the issuer is not a resident of this state or is not incorporated under the laws of this state, a consent to service of process conforming to the requirements of Section 8.

(2) Upon receipt of a registration statement under this section the Commissioner shall examine such registration statement and he may enter an order denying registration of the securities described therein if he finds that the registrant has not proven the proposed plan of business of the issuer to be fair, just and equitable, and also that any consideration paid, or to be paid, for such securities by promoters is fair, just and equitable when such consideration for such securities is less than the proposed offering price to the public, and that the securities which it proposes to issue and the methods to be used by it in issuing and disposing of the same will be such as will not work a fraud upon the purchaser thereof. If the Commissioner enters an order denying the registration of securities under this section, he shall notify the registrant immediately. The provisions of Section 24 of this Act as to hearing shall be applicable to an order issued hereunder. A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

a. No order has been entered by the Commissioner denying registration of the securities;

b. The registration statement has been on file with the Commissioner for at least ten (10) days; and

c. A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or such shorter period as the Commissioner expressly permits and the offering is made within those limitations. The registrant shall promptly notify the Commissioner by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the Commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if he promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order is void as of the time of its entry. The Commissioner may waive either or both of the conditions specified in clauses b and c. If the federal registration statement becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the Commissioner of the date when the federal registration statement is expected to become effective the Commissioner shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the issuance of an order denying registration; but this advice by the Commissioner does not preclude the issuance of such an order at any time.

(3) Registration of securities under this subsection shall be effective for the following periods:

a. The initial registration of securities of an open-end investment company, as defined in the Investment Company Act of 1940, shall be effective until two (2) months after the end of the issuer's fiscal year. After the initial registration, the issuer or its agent may renew the registration by submitting the appropriate registration forms and renewal fees within two (2) months after the end of the issuer's fiscal year.

b. The registration of securities of a unit investment trust, as defined in the Investment Company Act of 1940, shall be effective until one (1) year from the date of effectiveness granted by the federal Securities and Exchange Commission.

c. Any other registration of securities shall be effective for a period of one (1) year from the date the registration is declared effective by the Commissioner.

(4) Registrations of securities under subdivision (3) may be renewed for additional periods of one (1) year if the appropriate registration forms and renewal fees are received prior to the expiration date. The same standards of fairness, justice and equity as prescribed by this subsection for original approval will apply to the renewal of all registrations.

D. Termination of Fiscal Year; Certification of Statements. If the fiscal year of the issuer terminated on a date more than 90 days prior to the date of the filing, then the financial statements required in Subsections A and B of this Section 7, which must be as of a date not more than 90 days prior to the date of filing, need not be certified by an independent certified public or independent public accountant if there are filed in addition thereto financial statements containing the information required by the applicable subdivision which are certified by an independent certified public or independent public accountant as of the end of the preceding fiscal year of the issuer.

Sec. 8. Consent to Service. Unless the Board by rule otherwise specifies, any application filed or notice filing submitted by an issuer, or by a dealer or investment adviser who is organized under the laws of any other state, territory, or government, or domiciled in any other state than Texas, shall contain a provision that appoints the Commissioner the issuer's, dealer's, or investment adviser's true and lawful attorney upon whom all process may be served in any action or proceedings against such issuer, dealer, or investment adviser arising out of any transaction subject to this Act with the same effect as if such issuer, dealer, or investment adviser were organized or created under the laws of this state and had been lawfully served with process therein. The provision shall be duly executed by an authorized agent of the issuer, dealer, or investment adviser. Whenever the Commissioner shall have been served with any process as is herein provided, it shall be the duty of the Commissioner to forward same by United States mail to the last known address of such issuer, dealer, or investment adviser.

Sec. 9. Protection to Purchasers of Securities.

A. In the event any company, as defined herein, shall sell, or offer for sale, any securities, as defined in this Act, the Commissioner, if he deems it necessary to protect the interests of prospective purchasers of such securities, may require the company so offering such securities for sale to deposit all, or any part, of the proposed securities, or all, or any part, of the moneys and funds received from the sale thereof, except such amounts thereof as the Commissioner deems necessary to be used, and not to exceed the amount allowed as expenses and commissions for the sale of such securities, to be deposited in a trust account in some bank or trust company approved by the Commissioner and doing business in the State of Texas, until such time as such proposed company or existing company shall have sold a specified monetary amount or number of shares of such securities as in his opinion will reasonably assure protection of the public. When the Commissioner makes a written finding that the terms of the escrow agreement have been fully met, the bank or trust company shall transfer such funds to the proposed or existing corporation and its executive officers for the purpose of permitting it to use such securities or money in its business. In the event such proposed or existing company shall fail within two (2) years to sell the minimum amount of capital necessary under the escrow agreement, the Commissioner may authorize, and the bank or trust company shall return to the subscribers, upon receipt of such authority from the Commissioner, that portion of the funds which were deposited or escrowed under such escrow agreement; provided, however, that any securities held by such bank or trust company under the escrow agreement shall be returned to the corporation only after the bank or trust company has received evidence of cancellation thereof from the issuer. At the time of making the deposits, as herein provided for, the dealer or issuer shall furnish to such bank or trust company, and to the Commissioner, the names of the persons purchasing or subscribing for such securities, and the amount of money paid in by each.

B. The total expenses for marketing securities, including all commissions for the sale of such securities, and all other incidental selling expenses, shall not in the aggregate exceed twenty per cent (20%) of the price at which the stock or other securities of any proposed or existing company are to be sold, or offered for sale, to the public of this State; and this amount may be limited by the Commissioner to a less percentage which is in his opinion fair, just and equitable under the facts of the particular case.

C. In connection with any permit to sell securities the Commissioner shall require all offers for sale of said securities to be made through and by prospectus which fairly discloses the material facts about the plan of finance and business. Said prospectus shall be filed with and approved by the Commissioner; provided, however, if the applicant files a prospectus or offering circular with the Commissioner which is also filed with the S.E.C. under the Securities Act of 1933, as amended, or the regulations thereunder, this subsection shall in all respects be satisfied. Failure to comply with this requirement shall be treated as a violation of this Act, subjecting the parties responsible to the consequences thereof as provided herein.

Sec. 10. Examination of Application; Permit.

A. Commissioner to Examine Application; Grant or Deny. Upon the filing of an application for qualifying securities under Section 7A, it shall be the duty of the Commissioner to examine the same and the papers and documents filed therewith. If he finds that the proposed plan of business of the applicant appears to be fair, just and equitable, and also that any consideration paid, or to be paid, for such securities by promoters is fair, just and equitable when such consideration for such securities is less than the proposed offering price to the public, and that the securities which it proposes to issue and the methods to be used by it in issuing and disposing of the same are not such as will work a fraud upon the purchaser thereof, the Commissioner shall issue to the applicant a permit authorizing it to issue and dispose of such securities. Should the Commissioner find that the proposed plan of business of the applicant appears to be unfair, unjust or inequitable, he shall deny the application for a permit and notify the applicant in writing of his decision.

B. Permit, Form and Contents; Term and Renewals. Every permit qualifying securities shall be in such form as the Commissioner may prescribe, and shall recite in bold type that the issuance thereof is permissive only, and does not constitute a recommendation or endorsement of the securities permitted to be issued. Such permit shall be for a period of one (1) year; provided, however, that if the securities authorized to be sold are not sold within the term provided by the permit, a renewal application may be filed with the Commissioner. Such renewal application shall recite the total number of shares sold in Texas, the total number of shares sold elsewhere, total number of shares outstanding, and shall contain a detailed balance sheet, an operating statement, and such other information as the Commissioner may require. The Commissioner shall examine applications for renewal by the same standards as stated in subsection A of this section for original applications and upon that basis issue or deny renewal permits; such permits, if issued, shall be for a period of one (1) year and be in such form as the Commissioner may prescribe. The Commissioner shall charge such fees for the issuance of permits to sell securities as are hereinafter provided. No permit instrument need be issued if securities are registered under Sections 7B or C of this Act, but the Commissioner will examine the registration papers to determine their sufficiency under the requirements there stated.

C. Use of Permit to Aid Sale of Securities Prohibited. It shall be unlawful for any dealer, issuer, or agent to use a permit authorizing the issuance of securities in connection with any sale or effort to sell any security.

D. Commissioner's Discretion. In applying the standards of this Act, the Commissioner may waive or relax any restriction or requirement in the Board's rules that, in his opinion, is unnecessary for the protection of investors in a particular case.

Sec. 10-1. Purposes.

A. This Act may be construed and implemented to effectuate its general purpose to maximize coordination with federal and other states' law and administration, particularly with respect to:

- (1) procedure, reports, and forms; and
- (2) exemptions.

B. This Act may be construed and implemented to effectuate its general purposes to protect investors and consistent with that purpose, to encourage capital formation, job formation, and free and competitive securities markets and to minimize regulatory burdens on issuers and persons subject to this Act, especially small businesses.

Sec. 11. Papers Filed with Commissioner; Records Open to Inspection. All information, papers, documents, instruments and affidavits required by this Act to be filed with the Commissioner shall be deemed public records of this state, and shall be open to the inspection and examination of any purchaser or prospective purchaser of said securities or the agent or representative of such purchaser or prospective purchaser; and the Commissioner shall give out to any such purchaser or prospective purchaser or his agent or representative any information required to be filed with him under the provisions of this section, or any other part of this Act, and shall furnish any such purchaser, prospective purchaser, or his agent or representative requesting it, certified copies of any and all papers, documents, instruments and affidavits filed with him under the provisions of this section or of any part of this Act. The Commissioner shall maintain a record, which shall be open for public inspection, upon which shall be entered the names and addresses of all registered dealers, registered agents, registered investment advisers, registered investment adviser representatives, and persons who have submitted a notice filing under this Act, and all orders of the Commissioner denying, suspending or revoking registration. This section does not affect information considered confidential by Section 13-1 or 28 of this Act or other law.

Sec. 12. Registration of Persons Selling Securities or Rendering Investment Advice.

A. Except as provided in Section 5 of this Act, no person, firm, corporation or dealer shall, directly or through agents, offer for sale, sell or make a sale of any securities in this state without first being registered as in this Act provided. No agent shall, in behalf of any dealer, sell, offer for sale, or make sale of any securities within the state unless registered as an agent for that particular registered dealer under the provisions of this Act.

B. Except as provided by Section 5 of this Act, a person may not, directly or through an investment adviser representative, render services as an investment adviser in this state unless the person is registered under this Act, submits a notice filing as provided by Section 12-1 of this Act, or is otherwise exempt under this Act. A person may not act or render services as an investment adviser representative for a certain investment adviser in this state unless the person is registered or submits a notice filing as an investment adviser representative for that particular investment adviser as provided in Section 18 or 12-1 of this Act.

C. The Board may adopt rules and regulations exempting certain classes of persons from the dealer, agent, investment adviser, and investment adviser representative registration requirements, or providing conditional exemptions from registration, if the Board determines that such rules and regulations are consistent with the purposes of this Act.

Sec. 12-1. Notice Filing for Federal Covered Investment Advisers and Representatives of Federal Covered Investment Advisers.

A. This section does not apply to an investment adviser or investment adviser representative that is exempt from registration under this Act or Board rule.

B. The Board by rule shall authorize a federal covered investment adviser or a representative of a federal covered investment adviser to engage in rendering services as an investment adviser in this state on submission to and receipt by the Commissioner of:

(1) a notice filing on the form and containing the information prescribed by the Commissioner and, if applicable, a consent to service appointing the Commissioner as the adviser's agent for service of process as required by Section 8 of this Act; and

(2) a fee in the amount determined under Sections 35 and 41 of this Act.

C. After the notice filing fee is paid and all the requirements for a notice filing under Subsection B of this section are met, a notice filing submitted under this section takes effect and is valid for the remainder of the calendar year. A federal covered investment adviser or federal covered investment adviser representative may renew a notice filing on or before its expiration date on submission to and receipt by the Commissioner of:

(1) a renewal notice filing; and

(2) a renewal fee in the amount determined under Sections 35 and 41 of this Act.

Sec. 13. Method and Condition of Registration Required for Dealer, Agent, Investment Adviser, or Investment Adviser Representative.

A. A dealer or investment adviser to be registered must submit a sworn application therefor to the Commissioner, which shall be in such form as the Commissioner may determine and which shall state:

(1) The principal place of business of the applicant wherever situated;

(2) The location of the principal place of business and all branch offices in this state, if any;

(3) The name or style of doing business and the address of the applicant;

(4) The names, residences and the business addresses of all persons interested in the business as principal, officer, director or managing agent, specified as to each his capacity and title; and

(5) The general plan and character of business of such applicant and the length of time during and the places at which the applicant has been engaged in the business.

B. An application filed by a dealer or investment adviser shall also contain such additional information as to the applicant's previous history, record, associations and present financial condition as may be required by the Commissioner, or as is necessary to enable the Commissioner to determine whether the sale of any securities proposed to be issued or dealt in by such applicant would result in fraud.

C. Each application shall be accompanied by certificates or other evidences satisfactory to the Commissioner establishing the good reputation of the applicant, his directors, officers, copartners or principals.

D. The Commissioner shall require as a condition of registration for all registrations granted after the effective date of this Subsection D that the applicant (and, in the case of a corporation or partnership, the officers, directors or partners to be licensed by the applicant) pass successfully a written examination to determine the applicant's qualifications and competency to engage in the business of dealing in and selling securities as a dealer or agent, or rendering services as an investment adviser or investment adviser representative. This condition may be waived as to any applicant or class of applicants by action of the State Securities Board.

E. Not later than the 30th day after the date a person takes a registration examination under this Act, the Board shall notify the person of the results of the examination. If the examination is graded or reviewed by a testing service:

(1) the Board shall notify the person of the results of the examination not later than the 14th day after the date the Board receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the Board shall notify the person of the reason for the delay before the 90th day.

F. The Board may require a testing service to notify a person of the results of the person's examination. If requested in writing by a person who fails a registration examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination.

G. If the applicant is a corporation organized under the laws of any other state or territory or government or shall have its principal place of business therein, it shall accompany the application with a copy of its Articles of Incorporation and all amendments thereto, certified by the proper officer of such state or government or of the corporation, and its regulations and by laws.

H. If a limited partnership, either a copy of its Articles of Copartnership or a verified statement of the plan of doing business.

I. If an unincorporated association or organization under the laws of any other state, territory or government, or having its principal place of business therein, a copy of its Articles of Association, Trust Agreement or other form of organization.

J. It shall be the duty of the Commissioner to prepare a proper form to be used by the applicant under the terms of this Section, and the Commissioner shall furnish copies thereof to all persons desiring to make application to be registered as a dealer or investment adviser.

K. The Commissioner may accept some or all of the examinations administered by securities self-regulatory organizations to fulfill the examination requirements of Subsection D.

Sec. 13-1. Inspection.

A. The Commissioner, without notice, may inspect a registered dealer or registered investment adviser as necessary to ensure compliance with this Act and Board rules.

B. The Commissioner, during regular business hours, may:

(1) enter the business premises of a registered dealer or registered investment adviser; and

(2) examine and copy books and records pertinent to the inspection.

C. During the inspection, the dealer or 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. A dealer or investment adviser may not charge a fee for copying information under this section.

E. Information obtained under this section and any intra-agency or interagency notes, memoranda, reports, or other communications consisting of advice, analyses, opinions, or recommendations that are made in connection with the inspection are confidential and may not be disclosed to the public or released by the Commissioner except to the same extent provided for the release or disclosure of confidential documents or other information made or obtained in connection with an investigation under Section 28 of this Act.

Sec. 14. Denial, Suspension or Revocation of Registration as Dealer, Agent, Investment Adviser, or Investment Adviser Representative.

A. The Commissioner may deny, revoke, or suspend a registration issued under this Act, place on probation a dealer, agent, investment adviser, or investment adviser representative

whose registration has been suspended under this Act, or reprimand a person registered under this Act if the person:

- (1) has been convicted of any felony;
- (2) has been convicted of any misdemeanor which directly relates to the person's securities-related duties and responsibilities;
- (3) has engaged in any inequitable practice in the sale of securities or in rendering services as an investment adviser, or in any fraudulent business practice;
- (4) is a dealer or investment adviser who is insolvent;
- (5) meets one of the following criteria:
 - (a) is a dealer who is selling or has sold securities in this state through an agent other than a registered agent;
 - (b) is an investment adviser who is engaging or has engaged in rendering services as an investment adviser in this state through a representative who is not registered to perform services for that investment adviser as required by this Act;
 - (c) is an agent who is selling or has sold securities in this state for a dealer, issuer or controlling person with knowledge that such dealer, issuer or controlling person has not complied with the provisions of this Act; or
 - (d) is an investment adviser representative who is rendering or has rendered services as an investment adviser for an investment adviser in this state for whom the representative is not or was not registered to represent as required by this Act;
- (6) has violated any of the provisions of this Act or a rule of the Board;
- (7) has made any material misrepresentation to the Commissioner or Board in connection with any information deemed necessary by the Commissioner or Board to determine a dealer's or investment adviser's financial responsibility or a dealer's, agent's, investment adviser's or investment adviser representative's business repute or qualifications, or has refused to furnish any such information requested by the Commissioner or Board;
- (8) became registered as a dealer, agent, investment adviser, or investment adviser representative after August 23, 1963, and has not complied with a condition imposed by the Commissioner under Section 13-D;
- (9) is the subject of any of the following orders that are currently effective and were issued within the last five years:
 - (a) an order by the securities agency or administrator of any state, by the financial regulatory authority of a foreign country, or by the Securities and Exchange Commission, entered after notice and opportunity for hearing, denying, suspending, or revoking

the person's license as a dealer, agent, investment adviser, or investment adviser representative or the substantial equivalent of those terms;

(b) a suspension or expulsion from membership in or association with a member of a self-regulatory organization;

(c) a United States Postal Service fraud order;

(d) an order by the securities agency or administrator of any state, the financial regulatory authority of a foreign country, the Securities and Exchange Commission, or by the Commodity Futures Trading Commission, finding, after notice and opportunity for hearing, that the person engaged in acts involving fraud, deceit, false statements or omissions, or wrongful taking of property;

(e) an order by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act;

(10) is subject to any order, judgment, or decree entered by any court of competent jurisdiction which permanently restrains or enjoins such person from engaging in or continuing any conduct, action, or practice in connection with any aspect of the purchase or sale of securities or the rendering of security investment advice; or

(11) has violated any provision of any order issued by the Commissioner or has violated any provision of any undertaking or agreement with the Commissioner.

B. If the Commissioner proposes to suspend or revoke a person's registration, the person is entitled to a hearing before the Commissioner or a hearings officer as now or hereafter required by law. Proceedings for the suspension or revocation of a registration are governed by Chapter 2001, Government Code.

C. This section does not affect the confidentiality of investigative records maintained by the Commissioner or Board.

Sec. 15. Issuance of Registration Certificates to Dealers and Investment Advisers. If the Commissioner is satisfied that the applicant for a dealer's or investment adviser's certificate of registration has complied with the requirements of the Act above, that the applicant has filed a written consent to service as and when required by Section 8 of this Act, and upon the payment of the fees required by Section 35 of this Act, the Commissioner shall register the applicant and issue to it or him a registration certificate, stating the principal place of business and address of the dealer or investment adviser, the names and business addresses of all persons interested in the business as principals, officers, directors or managing agents, and the fact that the dealer or investment adviser has been registered for a current calendar year as a dealer in securities or as an investment adviser. Pending final disposition of an application, the Commissioner may, for special cause shown, grant temporary permission, revocable at any time and subject to such terms and conditions as the Commissioner may prescribe, to transact business as a dealer or investment adviser under this Act. Any dealer or investment adviser acting under such a temporary permission, shall be considered a registered dealer or investment adviser for all purposes of this Act.

Sec. 16. Repealed. House Bill 2255, Chapter 1091, Acts of the 77th Legislature, Regular Session, 2001.

Sec. 17. Form of Certificates to Dealers and Investment Advisers. The certificate shall be in such form as the Commissioner may determine. Any changes in the personnel of a partnership or in the principals, officers, directors or managing agents of any dealer or investment adviser shall be immediately certified under oath to the Commissioner and any change in the certificate necessitated thereby may be made at any time, upon written application setting forth the fact necessitating the change. Upon the issue of the amended certificates, the original certificate and the certified copies thereof outstanding shall be promptly surrendered to the Commissioner.

Sec. 18. Registration of Agents of Dealers or of Representatives of Investment Advisers. Upon written application by a registered dealer or investment adviser, and upon satisfactory compliance with the requirements of the Act above, the Commissioner shall register as an agent of such dealer or as a representative of the investment adviser such persons as the dealer or investment adviser may request. The application shall be in such form as the Commissioner may prescribe and shall state the residences and addresses of the persons whose registration is requested, together with such information as to such agent's or investment adviser representative's previous history, record and association as may be required by the Commissioner. Such application shall also be signed and sworn to by the agent or investment adviser representative for whom registration is requested. The Commissioner shall issue to such dealer or investment adviser, to be retained by such dealer or investment adviser for each person so registered, evidence of registration stating the person's name, the address of the dealer or investment adviser, and the fact that the person is registered for the current calendar year as an agent or investment adviser representative of the dealer or investment adviser, as appropriate. The evidence of registration shall be in such form as the Commissioner shall determine. Upon application by the dealer or the investment adviser, the registration of any agent or investment adviser representative shall be cancelled.

Sec. 19. Annual Registration; Renewals.

A. Except as provided in Subsections B and C of this section, all registrations shall expire at the close of the calendar year, but new registrations for the succeeding year shall be issued upon written application and upon payment of the fees as hereinafter provided, without filing of further statements or furnishing any further information unless specifically requested by the Commissioner. If any applicant is registered after December 1st of any year, he may immediately apply for a renewal of his registration for the ensuing year.

B. The Board by rule may adopt a system under which registrations expire on various dates during the year. For the year in which the registration expiration date is changed, registration fees payable after the 60th day and before the 30th day before January 1st of the next year shall be prorated on a monthly basis so that each person shall pay only that portion of the registration fee that is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration renewal fee is payable.

C. Renewal of Registration.

(1) A person may renew an unexpired registration by filing a renewal application in the form prescribed by the Commissioner and paying to the Board, before the expiration date of the registration, the required renewal fee.

(2) If a person's registration has been expired for ninety (90) days or less, the person may renew the registration by filing a renewal application with the Commissioner and paying to the Board the required renewal fee and a fee that is equal to one-half of the original application fee for the registration.

(3) If a person's registration has been expired for longer than ninety (90) days but less than two years, the person may renew the registration by filing a renewal application with the Commissioner and paying to the Board all unpaid renewal fees and a fee that is equal to the original application fee for the registration.

(4) If a person's registration has been expired for two years or more, the person may not renew the registration. The person may obtain a new registration by submitting to reexamination and complying with the requirements and procedures for obtaining an original registration. The person must pay to the Board a fee that is equal to the original application fee.

(5) At least thirty (30) days before the expiration of a person's registration, the Commissioner shall send to the person at the person's last known address according to the records of the Board a written notice of the impending expiration of the registration.

(6) A person who sells securities or renders investment advisory services after the person's registration has expired and before it is renewed is subject to the sanctions provided by this Act for selling securities or rendering investment advice without being registered.

D. The Board may recognize, prepare, or administer continuing education programs for a person who is registered under this Act. If participation is required by the Board as a condition of maintaining the certificate or evidence of registration, a person who is registered under this Act must participate in the continuing education programs.

Sec. 20. Display or Advertisement of Fact of Registration Unlawful. It shall be unlawful for any dealer, agent, investment adviser, or investment adviser representative to use the fact of his registry, by public display or advertisement, except as hereinafter expressly provided, for the registration certificate or evidence of registration or any certified copy thereof, in connection with any sale or effort to sell any security or any rendering of services as an investment adviser.

Sec. 21. Posting Registration Certificates. Immediately upon receipt of the dealer's or investment adviser's registration certificate issued pursuant to the authority of this Act, the dealer or investment adviser named therein shall cause such certificate to be posted and at all times conspicuously displayed in such dealer's or investment adviser's principal place of business, if one is maintained in this state, and shall likewise forthwith cause a duplicate of such certificate to be posted and at all times conspicuously displayed in each branch office located within this state.

Sec. 22. Regulation of Offers.

A. Permitted Written, Pictorial, or Broadcast Offers. A written or printed offer (including a pictorial demonstration with any accompanying script) or a broadcast offer (i.e., an offer disseminated by radio, television, recorded telephone presentation, or other mass media) to sell a security may be made in this State if:

(1) a copy of the offer is filed with the Commissioner within 10 days after the date of its first use in this State; and

(2) the person making or distributing the offer in this State is a registered dealer or a registered agent of a registered dealer, as required by this Act; and

(3) either:

(a) the security is registered under Subsection B or C of Section 7 or a permit has been granted for the security under Section 10, or

(b) an application for registration under Subsection B or C of Section 7 or for a permit under Section 10 has been filed with the Commissioner; and

(4) if registration has not become effective under Subsection B or C of Section 7 or a permit has not been granted under Section 10, the offer prominently states on the first page of a written or printed offer or as a preface to any pictorial or broadcast offer either:

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

(b) other language required by the United States Securities and Exchange Commission that in the Commissioner's opinion will inform investors that the securities may not yet be sold; and

(5) the person making or distributing the offer in this State;

(a) has not received notice in writing of an order prohibiting the offer under Subsection A or B of Section 23, or

(b) has received such notice but the order is no longer in effect; and

(6) payment is not accepted from the offeree and no contract of sale is made before registration is effective under Subsection B or C of Section 7 or a permit is granted under Section 10.

B. Permitted Oral Offers. An oral offer (not broadcast, i.e., not disseminated by radio, television, recorded telephone presentation, or other mass media) to sell a security may be made in this State in person, by telephone, or by other direct individual communication if:

(1) the person making the offer in this State is a registered dealer or a registered agent of a registered dealer, as required by this Act; and

(2) either:

(a) the security is registered under Subsection B or C of Section 7 or a permit has been granted for the security under Section 10, or

(b) an application for registration under Subsection B or C of Section 7 or for a permit under Section 10 has been filed with the Commissioner; and

(3) the person making or distributing the offer in this State:

(a) has not received notice in writing of an order prohibiting the offer under Subsection A or B of Section 23, or

(b) has received such notice but the order is no longer in effect; and

(4) payment is not accepted from the offeree and no contract of sale is made before registration is effective under Subsection B or C of Section 7 or before a permit is granted under Section 10.

C. Effect of Compliance. An offer in compliance with Subsection A or B of Section 22 is not a violation of Section 7.

D. Effect of Noncompliance. An offer not in compliance with Subsection A or B of Section 22 is unlawful and a violation of this Act.

E. Applicability. Section 22 does not apply to transactions or securities exempt under Section 5 or Section 6.

F. Dealers Named in Offer. A dealer whose name is included in a written or printed or broadcast offer along with the name of a registered dealer is not deemed to make an offer in this State by that fact alone.

Sec. 23. Cease and Desist Orders; Cease Publication Orders; List of Securities Offered. Anything in this Act to the contrary notwithstanding,

A. If it appears to the Commissioner at any time that the sale or proposed sale or method of sale of any securities, whether exempt or not, is a fraudulent practice or would not be in compliance with this Act or would tend to work a fraud on any purchaser thereof or would not be fair, just or equitable to any purchaser thereof, the Commissioner may hold a hearing on a date determined by the Commissioner within 30 days after the date of receipt of actual notice by, or notice by registered or certified mail to the person's last known address is

given to, the issuer, the registrant, the person on whose behalf such securities are being or are to be offered, or any person acting as a dealer or agent in violation of this Act. If the Commissioner shall determine at such hearing that such sale would not be in compliance with the Act, is a fraudulent practice, or would tend to work a fraud on any purchaser thereof or would not be fair, just or equitable to any purchaser thereof, the Commissioner may issue a written cease and desist order, prohibiting or suspending the sale of such securities or denying or revoking the registration of such securities, prohibiting an unregistered person from acting as a dealer or an agent, or prohibiting the fraudulent conduct. No dealer or agent shall thereafter knowingly sell or offer for sale any security named in such cease and desist order.

B. If it appears to the Commissioner at any time that an investment adviser or investment adviser representative is engaging or is likely to engage in fraud or a fraudulent practice with respect to rendering services as an investment adviser or investment adviser representative or that a person is acting as an investment adviser or investment adviser representative in violation of this Act, the Commissioner may hold a hearing not later than the 30th day after the date on which the person receives actual notice or is provided notice by registered or certified mail, return receipt requested, to the person's last known address. After the hearing, the Commissioner shall issue or decline to issue a cease and desist order. An order issued under this subsection must:

(1) require the investment adviser or investment adviser representative to immediately cease and desist from the fraudulent conduct; or

(2) prohibit an unregistered or other unauthorized person who is not exempt from the registration or notice filing requirements of this Act from acting as an investment adviser or investment adviser representative in violation of this Act.

C. If it appears to the Commissioner at any time that an offer contains any statement that is materially false or misleading or is otherwise likely to deceive the public, the Commissioner may issue a cease publication order. No person shall make an offer prohibited by such cease publication order.

D. The Commissioner may, in the exercise of reasonable discretion hereunder, at any time, require a dealer to file with the Commissioner a list of securities which he has offered for sale or has advertised for sale within this State during the preceding six months, or which he is at the time offering for sale or advertising, or any portion thereof.

Sec. 23-1. Assessment of Administrative Fines.

A. After giving notice and opportunity for a hearing, the Commissioner may, in addition to any other remedies, issue an order which assesses an administrative fine against any person or company found to have:

(1) engaged in fraud or a fraudulent practice in connection with:

(A) the offer for sale or sale of a security; or

(B) the rendering of services as an investment adviser or investment adviser representative;

(2) made an offer containing a statement that is materially misleading or is otherwise likely to deceive the public;

(3) engaged in an act or practice that violates this Act or a Board rule or order; or

(4) with intent to deceive or defraud or with reckless disregard for the truth or the law, materially aided any person in engaging in an act or practice described by Subdivision (1), (2), or (3) of this subsection.

B. Any administrative fine assessed under this Section, together with the amount of any civil penalty already awarded under Subsection C of Section 32, must be in an amount not to exceed:

(1) the greater of:

(A) \$20,000 per violation; or

(B) the gross amount of any economic benefit gained by the person or company as a result of the act or practice for which the fine was assessed; and

(2) if the act or practice was committed against a person 65 years of age or older, an additional amount of not more than \$250,000.

C. For purposes of determining the amount of an administrative fine assessed under this Section, the Commissioner shall consider factors set out in guidelines established by the Board.

D. For purposes of private civil litigation, the payment of a fine assessed in an agreed order under this Act shall not constitute an admission of any misconduct described in the agreed order.

E. Any proceeding for the assessment of an administrative fine must be commenced within five years after the violation occurs.

Sec. 23-2. Emergency Cease and Desist Order.

A. On the Commissioner's determination that the conduct, act, or practice threatens immediate and irreparable public harm, the Commissioner may issue an emergency cease and desist order to a person whom the Commissioner reasonably believes:

(1) is engaging in or is about to engage in fraud or a fraudulent practice in connection with:

(A) the offer for sale or sale of a security; or

(B) the rendering of services as an investment adviser or investment adviser representative;

(2) has made an offer containing a statement that is materially misleading or is otherwise likely to deceive the public; or

(3) is engaging or is about to engage in an act or practice that violates this Act or a Board rule.

B. The order must:

(1) be sent on issuance to each person affected by the order by personal delivery or registered or certified mail, return receipt requested, to the person's last known address;

(2) state the specific charges and require the person to immediately cease and desist from the unauthorized activity; and

(3) contain a notice that a request for hearing may be filed under this section.

C. Unless a person against whom the emergency order is directed requests a hearing in writing before the 31st day after the date it is served on the person, the emergency order is final and nonappealable as to that person. A request for a hearing must:

(1) be in writing and directed to the Commissioner; and

(2) state the grounds for the request to set aside or modify the order.

D. On receiving a request for a hearing, the Commissioner shall serve notice of the time and place of the hearing by personal delivery or registered or certified mail, return receipt requested. The hearing must be held not later than the 10th day after the date the Commissioner receives the request for a hearing unless the parties agree to a later hearing date. At the hearing, the Commissioner has the burden of proof and must present evidence in support of the order.

E. After the hearing, the Commissioner shall affirm, modify, or set aside in whole or part the emergency order. An order affirming or modifying the emergency order is immediately final for purposes of enforcement and appeal.

F. An emergency order continues in effect unless the order is stayed by the Commissioner. The Commissioner may impose any condition before granting a stay of the order.

Sec. 24. Hearings upon Exception to Actions of Commissioner.

A. If any person or company should take exception to the action of the Commissioner in failing or refusing to register and issue certificate for a dealer or investment adviser or evidence of registration for an investment adviser representative or agent under Section 15 or 18 of this Act, in issuing an order under Section 23 or 23-2 of this Act, or in any other particular

where this Act specifies no other procedure, the complaining party may request a hearing before the Commissioner or before a hearings officer as now or hereafter required by law.

B. On complaint by a person aggrieved by a denial of a permit for the sale of securities under Section 10 of this article or a failure or refusal to register securities under Section 7 of this article, the Board or a hearings officer as now or hereafter required by law shall conduct a hearing.

C. Hearings under this Section are subject to the requirements of Chapter 2001, Government Code.

Sec. 25. Revocation of Registration of Any Dealer, Agent, Investment Adviser, or Investment Adviser Representative. The revocation of a dealer's or investment adviser's registration shall constitute a revocation of the registration of any agent of the dealer or any investment adviser representative of the investment adviser and notice of its operation on such agent or investment adviser representative shall be forthwith sent by the Commissioner to each of such agents or investment adviser representatives. All registrations and evidences of registration revoked shall at once be surrendered to the Commissioner upon request.

Sec. 25-1. Receiverships of Persons or Assets.

A. Whenever it shall appear to the Commissioner, either upon complaint or otherwise, that:

(1) any person or company acting as a dealer, agent, investment adviser, investment adviser representative, or issuer (as defined in Section 4 of this Act), or an affiliate of a dealer, agent, investment adviser, investment adviser representative, or issuer, whether or not required to be registered by the Commissioner as in this Act provided, shall have engaged in any act, transaction, practice, or course of business declared by Section 32 of this Act to be a fraudulent practice;

(2) such person or company shall have acted as a dealer, agent, investment adviser, investment adviser representative, or issuer or an affiliate of a dealer, agent, investment adviser, investment adviser representative, or issuer in connection with such fraudulent practice; and

(3) the appointment of a receiver for such person or company, or the assets of such a person or company is necessary in order to conserve and protect the assets of such person or company for the benefit of customers, security holders, and other actual and potential claimants of such person or company the Commissioner may request the Attorney General to bring an action for the appointment of a receiver for such person or company or the assets of such person or company.

B. Upon request by the Commissioner pursuant to Subsection A of this Section 25-1, and if it appears to the Attorney General that the facts enumerated in Paragraphs (1) through (3) of Subsection A of this Section 25-1 exist with respect to any person or company, the Attorney General may bring an action in the name and on behalf of the State of Texas for the appointment of a receiver for such person or company. The facts set forth in the petition for such relief shall be verified by the Commissioner upon information and belief. Such action may

be brought in a district court of any county wherein the fraudulent practice complained of has been committed in whole or part, or of any county wherein any defendant with respect to whom appointment of a receiver is sought has its principal place of business, and such district court shall have jurisdiction and venue of such action; this provision shall be superior to any other provision of law fixing jurisdiction or venue with regard to suits for receivership. In any such action the Attorney General may apply for and on due showing be entitled to have issued the court's subpoena requiring the forthwith appearance of any defendant and his employees, investment adviser representatives, or agents and the production of documents, books, and records as may appear necessary for any hearing, to testify and give evidence concerning matters relevant to the appointment of a receiver.

C. In any action brought by the Attorney General pursuant to Subsection B of this Section 25-1, the court, upon a proper showing by the Attorney General of the existence of the facts enumerated in Paragraphs (1) through (3) of Subsection A of this Section 25-1 with respect to any person or company, may appoint a receiver for such person or company or the assets of such person or company. If such receiver is appointed without notice to and opportunity to be heard for such person or company, such person or company shall be entitled to apply in writing to the court for an order dissolving the receivership, and, if such application is made within 30 days after service upon such person or company of the court's order making such appointment, shall be entitled to a hearing thereon upon 10 days written notice to the Attorney General.

D. No person shall be appointed a receiver pursuant to this Section 25-1 unless such person be found by the court, after hearing the views of the Attorney General, the Commissioner, and, if deemed by the court to be practicable, the person or company against whom such relief is sought, to be qualified to discharge the duties of receiver giving due consideration to the probable nature and magnitude of the duties of receiver in the particular case. No bond for receivership shall be required of the Commissioner or Attorney General in any proceeding under this Section 25-1, but the court shall require a bond of any receiver appointed hereunder, conditioned upon faithful discharge of the receiver's duties, in an amount found by the court to be sufficient giving due consideration to the probable nature and magnitude of the duties of receiver in the particular case.

E. The remedy of receivership provided by this Section 25-1 shall be in addition to any and all other remedies afforded the Commissioner or the Attorney General by other provisions of statutory or decisional law of this state, including, without limitation of the generality of the foregoing, any such provision authorizing receiverships.

Sec. 26. Notices by Registered Mail. Any notice required by this Act shall be sufficient if sent by registered or certified mail unless otherwise specified in this Act, addressed to a person at the address designated in any filings submitted by the person to the Commissioner or the person's last known address. A full and complete record shall be kept of all proceedings had before the Commissioner on any hearing or investigation.

Sec. 27. Judicial Review. Judicial review of a decision of the Commissioner or Board is under the substantial evidence rule.

Sec. 28. Investigations, Investigatory Materials, and Registration Related Materials.

A. Investigations by Commissioner. The Commissioner shall conduct investigations as the Commissioner considers necessary to prevent or detect the violation of this Act or a Board rule or order. For this purpose, the Commissioner may require, by subpoena or summons issued by the Commissioner, the attendance and testimony of witnesses and the production of all records, whether maintained by electronic or other means, relating to any matter which the Commissioner has authority by this Act to consider or investigate, and may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence; provided, however, that all information of every kind and nature received in connection with an investigation and all internal notes, memoranda, reports, or communications made in connection with an investigation shall be treated as confidential by the Commissioner and shall not be disclosed to the public except under order of court for good cause shown. 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 if disclosure is made, in the discretion of the Commissioner, as part of an administrative proceeding or a civil or criminal action to enforce this Act. In case of disobedience of any subpoena, or of the contumacy of any witness appearing before the Commissioner, the Commissioner may invoke the aid of the District Court within whose jurisdiction any witness may be found, and such court may thereupon issue an order requiring the person subpoenaed to obey the subpoena or give evidence, or produce books, accounts, records, papers, and correspondence touching the matter in question. Any failure to obey such order of the court may be punished by such court as contempt thereof.

In the course of an investigation looking to the enforcement of this Act, or in connection with the application of a person or company for registration or to qualify securities, the Commissioner or Deputy Commissioner shall have free access to all records and reports of and to any department or agency of the state government. In the event, however, that the Commissioner or Deputy Commissioner should give out any information which the law makes confidential, the affected corporation, firm or person shall have a right of action on the official bond of the Commissioner or Deputy for the corporation's, firm's, or person's injuries, in a suit brought in the name of the state at the relation of the injured party.

The Commissioner may in any investigation cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed for depositions in civil actions under the laws of Texas.

Each witness required to attend before the Commissioner shall receive a fee, for each day's attendance, in an amount set by Board rule. All disbursements made in the payment of such fees shall be made in accordance with Board rule and shall be included in, and paid in the same manner as is provided for, the payment of other expenses incident to the administration and enforcement of this Act.

The sheriff's or constable's fee for serving the subpoena shall be the same as those paid the sheriff or constable for similar services. The fees, expenses and costs incurred at or in connection with any hearing may be imposed by the Commissioner upon any party to the record, or may be divided between any and all parties to the record in such proportions as the Commissioner may determine.

Any subpoena, summons, or other process issued by the Commissioner may be served, at the Commissioner's discretion, by the Commissioner, the Commissioner's authorized agent, a sheriff, or a constable.

The Commissioner may, at the Commissioner's discretion, disclose any confidential information in the Commissioner's possession to any governmental or regulatory authority or association of governmental or regulatory authorities approved by Board rule or to any receiver appointed under Section 25-1 of this Act. The disclosure does not violate any other provision of this Act or Chapter 552, Government Code.

B. Confidentiality of Certain Registration-Related and Other Materials. To the extent not already provided for by this Act, any intraagency or interagency notes, memoranda, reports, or other communications consisting of advice, analyses, opinions, or recommendations shall be treated as confidential by the Commissioner and shall not be disclosed to the public, except under order of court, for good cause shown. The Commissioner may, at the Commissioner's discretion, disclose any confidential information in the Commissioner's possession to any governmental or regulatory authority or association of governmental or regulatory authorities approved by Board rule or to any receiver appointed under Section 25-1 of this Act. The disclosure does not violate any other provision of this Act or Chapter 552, Government Code.

C. Assistance to Securities Regulator of Another Jurisdiction. The Commissioner may provide assistance to a securities regulator of another state or a foreign jurisdiction who requests assistance in conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to a securities matter the securities regulator is authorized to administer or enforce. The Commissioner may provide assistance by using the authority to investigate and any other power conferred by this section as the Commissioner determines is necessary and appropriate. In determining whether to provide the assistance, the Commissioner may consider:

(1) whether the securities regulator is permitted and has agreed to provide assistance within the regulator's jurisdiction to the Commissioner reciprocally and at the Commissioner's request concerning securities matters;

(2) whether compliance with the request for assistance would violate or otherwise prejudice the public policy of this state;

(3) whether the conduct described in the request would also constitute a violation of this Act or another law of this state had the conduct occurred in this state; and

(4) the availability of Board employees and resources of the Board or Commissioner necessary to carry out the request for assistance.

Sec. 28-1. Adoption of Rules and Regulations.

A. For purposes of this Section 28-1, the term "rule and regulation" shall mean any statement by the Board of general and future applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of the Board. The term includes the amendment or repeal of a prior rule or regulation, but does

not include statements concerning only the internal management of the Board not affecting private rights or procedures or forms or orders adopted or made by the Board or the Commissioner pursuant to other provisions of this Act.

B. The Board may, from time to time, in accordance with the provisions of this Section 28-1, make or adopt such rules and regulations as may be necessary to carry out and implement the provisions of this Act, including rules and regulations governing registration statements, applications, notices, and reports, and defining any terms, whether or not used in this Act, insofar as the definitions are not inconsistent with the purposes fairly intended by the policy and provisions of this Act. For the purpose of adoption of rules and regulations, the Board may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes. The Board may, in its discretion, waive any requirement of any rule or regulation in situations where, in its opinion, such requirement is not necessary in the public interest or for the protection of investors.

C. No rule or regulation may be made or adopted unless the Board finds, after notice and opportunity for comment in accordance with the provisions of this Section 28-1, that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this Act.

D. The Board may, by rule or regulation adopted in accordance with this Section 28-1, delegate to the Commissioner or the Deputy Commissioner such of the authority granted to the Board under this Section 28-1 to hold hearings for adoption of rules and regulations and to make or adopt rules and regulations, or to waive the requirements thereof, as it may, from time to time, deem appropriate. All rules and regulations made or adopted by the Commissioner or the Deputy Commissioner pursuant to such delegated authority shall be made or adopted in accordance with this Section 28-1.

E. No provision of this Act imposing any liability or penalty applies to any act done or omitted in good faith in conformity with any rule or regulation of the Board, notwithstanding that the rule or regulation may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

F. The Board may not adopt rules restricting competitive bidding or advertising by a person registered under this Act except to prohibit false, misleading, or deceptive practices by the person. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that restricts the person's use of any medium for advertising, restricts the person's personal appearance or use of his voice in an advertisement, relates to the size or duration of an advertisement by the person, or restricts the person's advertisement under a trade name. However, this section does not affect limitations on advertising contained in Subsections I or Q of Section 5 of this Act or in rules adopted by the Board under Subsection T of Section 5 of this Act.

Sec. 29. Penal Provisions. Any person who shall:

A. Sell, offer for sale or delivery, solicit subscriptions or orders for, dispose of, invite offers for, or who shall deal in any other manner in any security or securities without being a

registered dealer or agent as in this Act provided shall be deemed guilty of a felony of the third degree.

B. Sell, offer for sale or delivery, solicit subscriptions to and orders for, dispose of, invite orders for, or who shall deal in any other manner in any security or securities issued after September 6, 1955, unless said security or securities have been registered or granted a permit as provided in Section 7 of this Act, shall be deemed guilty of a felony of the third degree.

C. In connection with the sale, offering for sale or delivery of, the purchase, offer to purchase, invitation of offers to purchase, invitations of offers to sell, or dealing in any other manner in any security or securities, whether or not the transaction or security is exempt under Section 5 or 6 of this Act, or in connection with the rendering of services as an investment adviser or an investment adviser representative, directly or indirectly:

(1) engage in any fraud or fraudulent practice;

(2) employ any device, scheme, or artifice to defraud;

(3) knowingly make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(4) engage in any act, practice or course of business which operates or will operate as a fraud or deceit upon any person, is:

(a) guilty of a felony of the third degree, if the amount involved in the offense is less than \$10,000;

(b) guilty of a felony of the second degree, if the amount involved in the offense is \$10,000 or more but less than \$100,000; or

(c) guilty of a felony of the first degree, if the amount involved is \$100,000 or more.

D. Knowingly violate a cease and desist order issued by the Commissioner under the authority of Section 23A, 23B, or 23-2 of this Act shall be deemed guilty of a felony of the third degree.

E. Knowingly make or cause to be made, in any document filed with the Commissioner or in any proceeding under this Act, whether or not such document or proceeding relates to a transaction or security exempt under the provisions of Sections 5 or 6 of this Act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect shall be deemed guilty of a felony of the third degree.

F. Knowingly make any false statement or representation concerning any registration made or exemption claimed under the provisions of this Act shall be deemed guilty of a state jail felony.

G. Make an offer of any security within this State that is not in compliance with the requirements governing offers set forth in Section 22 of this Act shall be deemed guilty of a state jail felony.

H. Knowingly make an offer of any security within this State prohibited by a cease publication order issued by the Commissioner under Section 23C of this Act shall be deemed guilty of a state jail felony.

I. Render services as an investment adviser or an investment adviser representative without being registered as required by this Act shall be deemed guilty of a felony of the third degree.

J. A conviction of an offense under this section may be enhanced as provided by Section 12.42, Penal Code.

Sec. 29-1. Limitation. An indictment for an offense under Subsection C of Section 29 may be brought only before the fifth anniversary of the day on which the offense is committed.

Sec. 29-2. Aggregation of Amounts Involved in Securities Fraud. When amounts are obtained in violation of this Act under one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of the offense.

Sec. 29-3. Criminal Responsibility of Corporation or Association.

A. In this section:

(1) “Association” and “corporation” have the meanings assigned by Section 1.07, Penal Code.

(2) “High managerial agent” has the meaning assigned by Section 7.21, Penal Code.

B. If conduct constituting an offense under Section 29 of this Act is performed by an agent acting in behalf of a corporation or association and within the scope of the person’s office or employment, the corporation or association is criminally responsible for the offense only if its commission was authorized, requested, commanded, performed, or recklessly tolerated by:

(1) a majority of the governing board acting in behalf of the corporation or association; or

(2) a high managerial agent acting in behalf of the corporation or association and within the scope of the high managerial agent’s office or employment.

C. It is an affirmative defense to prosecution of a corporation or association under Subsection B of this section that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission.

Sec. 30. Certified Copies of Papers Filed with Commissioner as Evidence. Copies of all papers, instruments, or documents filed in the office of the Commissioner, certified by the Commissioner, shall be admitted to be read in evidence in all courts of law and elsewhere in this state in all cases where the original would be admitted in evidence; provided, that in any proceeding in the court having jurisdiction, the court may, on cause shown, require the production of the originals.

The Commissioner shall assume custody of all records of the Securities Divisions within the offices of the Secretary of State and of the Board of Insurance Commissioners, and henceforth these prior records shall be proven under certificate of the Commissioner.

In any prosecution, action, suit or proceeding before any of the several courts of this state based upon or arising out of or under the provisions of this Act, a certificate under the state seal, duly signed by the Commissioner, showing compliance or non-compliance with the provisions of this Act respecting compliance or non-compliance with the provisions of this Act by any dealer, agent, investment adviser, or investment adviser representative, shall constitute prima facie evidence of such compliance or of such non-compliance with the provisions of this Act, as the case may be, and shall be admissible in evidence in any action at law or in equity to enforce the provisions of this Act.

Sec. 31. Construction. Nothing herein contained shall limit or diminish the liability of any person or company, or of its officers or agents, now imposed by law to prevent the prosecution of any person or company, or of its officers or agents, for the violation of the provisions of any other statute.

Sec. 32. Injunctions, Restitution, and Civil Penalties.

A. Whenever it shall appear to the Commissioner either upon complaint or otherwise, that any person has engaged, is engaging, or is about to engage in fraud or a fraudulent practice in connection with the sale of a security, has engaged, is engaging, or is about to engage in fraud or a fraudulent practice in the rendering of services as an investment adviser or investment adviser representative, has made an offer containing a statement that is materially misleading or is otherwise likely to deceive the public, or has engaged, is engaging, or is about to engage in an act or practice that violates this Act or a Board rule or order, the Attorney General may, on request by the Commissioner, and in addition to any other remedies, bring action in the name and on behalf of the State of Texas against such person or company and any person who, with intent to deceive or defraud or with reckless disregard for the truth or the law, has materially aided, is materially aiding, or is about to materially aid such person and any other person or persons heretofore concerned in or in any way participating in or about to participate in such acts or practices, to enjoin such person or company and such other person or persons from continuing such acts or practices or doing any act or acts in furtherance thereof. The Commissioner shall verify, on information and belief, the facts contained in an application for injunction under this section. In any such court proceedings, the Attorney General may apply for and on due showing be entitled to have issued the court's subpoena requiring the forthwith appearance of any defendant and the defendant's employees or agents and the production of documents, books and records as may appear necessary for the hearing of such petition, to testify and give evidence concerning the acts or conduct or things complained of in such application for injunction. The District Court of any county, wherein it is shown that the acts

complained of have been or are about to be committed, or a district court in Travis County shall have jurisdiction of any action brought under this section, and this provision shall be superior to any provision fixing the jurisdiction or venue with regard to suits for injunction. No bond for injunction shall be required of the Commissioner or Attorney General in any such proceeding.

B. In addition to any other remedies, the Attorney General may, on the request of the Commissioner, either in an action under Subsection A of this section or in a separate action in District Court, seek equitable relief, including restitution, for a victim of fraudulent practices and may seek the disgorgement of any economic benefit gained by a defendant through an act or practice that violates this Act or for which this Act provides the Commissioner or the Attorney General with a remedy. The court may grant any equitable relief that the court considers appropriate and may order the defendant to deliver to each victim of any act or practice that violates this Act or for which this Act provides the Commissioner or the Attorney General with a remedy the amount of money or the property that the defendant obtained from the victim, including any bonus, fee, commission, option, proceeds, or profit from or loss avoided through the sale of the security or through the rendering of services as an investment adviser or investment adviser representative, or any other tangible benefit.

C. In addition to any other remedies, the Attorney General may, on the request of the Commissioner, either in an action under Subsection A of this section or in a separate action in District Court, seek a civil penalty to be paid to the State in an amount, together with the amount of any administrative fine already assessed under Subsection B of Section 23-1, not to exceed:

(1) the greater of:

(A) \$20,000 per violation; or

(B) the gross amount of any economic benefit gained by the person or company as a result of the commission of the act or practice; and

(2) if the act or practice was committed against a person 65 years of age or older, an additional amount of not more than \$250,000.

D. In an action brought under this section, the Attorney General may recover reasonable costs and expenses incurred by the Attorney General in bringing the action.

Sec. 32-1. Refund.

A. Subject to Subsection B of this section, the Commissioner may order a dealer, agent, investment adviser, or investment adviser representative regulated under this Act to pay a refund to a client or a purchaser of securities or services from the person or company as provided in an agreed order or an enforcement order instead of or in addition to imposing an administrative penalty or other sanctions.

B. The amount of a refund ordered as provided in an agreed order or an enforcement order may not exceed the amount the client or purchaser paid to the dealer, agent, investment adviser, or investment adviser representative for a service or transaction regulated by the Board. The Commissioner may not require payment of other damages or estimate harm in a refund order.

Sec. 33. Civil Liability with Respect to Issuance or Sale of a Security.

A. Liability of Sellers.

(1) **Registration and Related Violations.** A person who offers or sells a security in violation of Section 7, 9 (or a requirement of the Commissioner thereunder), 12, 23C, or an order under 23A or 23-2 of this Act is liable to the person buying the security from him, who may sue either at law or in equity for rescission or for damages if the buyer no longer owns the security.

(2) **Untruth or Omission.** A person who offers or sells a security (whether or not the security or transaction is exempt under Section 5 or 6 of this Act) by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, is liable to the person buying the security from him, who may sue either at law or in equity for rescission, or for damages if the buyer no longer owns the security. However, a person is not liable if he sustains the burden of proof that either (a) the buyer knew of the untruth or omission or (b) he (the offeror or seller) did not know, and in the exercise of reasonable care could not have known, of the untruth or omission. The issuer of the security (other than a government issuer identified in Section 5M) is not entitled to the defense in clause (b) with respect to an untruth or omission (i) in a prospectus required in connection with a registration statement under Section 7A, 7B, or 7C, or (ii) in a writing prepared and delivered by the issuer in the sale of a security.

B. Liability of Buyers. A person who offers to buy or buys a security (whether or not the security or transaction is exempt under Section 5 or 6 of this Act) by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, is liable to the person selling the security to him, who may sue either at law or in equity for rescission or for damages if the buyer no longer owns the security. However, a person is not liable if he sustains the burden of proof that either (a) the seller knew of the untruth or omission, or (b) he (the offeror or buyer) did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

C. Liability of Nonselling Issuers Which Register.

(1) This Section 33C applies only to an issuer which registers under Section 7A, 7B, or 7C of this Act, or under Section 6 of the U.S. Securities Act of 1933, its outstanding securities for offer and sale by or for the owner of the securities.

(2) If the prospectus required in connection with the registration contains, as of its effective date, an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the issuer is liable to a person buying the registered security, who may sue either at law or in equity for rescission or for damages if the buyer no longer owns the securities. However, an issuer is not liable if it sustains the burden of proof that the buyer knew of the untruth or omission.

D. Rescission and Damages. For this Section 33:

(1) On rescission, a buyer shall recover (a) the consideration he paid for the security plus interest thereon at the legal rate from the date of payment by him, less (b) the amount of any income he received on the security, upon tender of the security (or a security of the same class and series).

(2) On rescission, a seller shall recover the security (or a security of the same class and series) upon tender of (a) the consideration he received for the security plus interest thereon at the legal rate from the date of receipt by him, less (b) the amount of any income the buyer received on the security.

(3) In damages, a buyer shall recover (a) the consideration the buyer paid for the security plus interest thereon at the legal rate from the date of payment by the buyer, less (b) the greater of:

(i) the value of the security at the time the buyer disposed of it plus the amount of any income the buyer received on the security; or

(ii) the actual consideration received for the security at the time the buyer disposed of it plus the amount of any income the buyer received on the security.

(4) In damages, a seller shall recover (a) the value of the security at the time of sale plus the amount of any income the buyer received on the security, less (b) the consideration paid the seller for the security plus interest thereon at the legal rate from the date of payment to the seller.

(5) For a buyer suing under Section 33C, the consideration he paid shall be deemed the lesser of (a) the price he paid and (b) the price at which the security was offered to the public.

(6) On rescission or as a part of damages, a buyer or a seller shall also recover costs.

(7) On rescission or as a part of damages, a buyer or a seller may also recover reasonable attorney's fees if the court finds that the recovery would be equitable in the circumstances.

E. Time of Tender. Any tender specified in Section 33D may be made at any time before entry of judgment.

F. Liability of Control Persons and Aiders.

(1) A person who directly or indirectly controls a seller, buyer, or issuer of a security is liable under Section 33A, 33B, or 33C jointly and severally with the seller, buyer, or issuer, and to the same extent as if he were the seller, buyer, or issuer, unless the controlling person sustains the burden of proof that he did not know, and in the exercise of reasonable care

could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

(2) A person who directly or indirectly with intent to deceive or defraud or with reckless disregard for the truth or the law materially aids a seller, buyer, or issuer of a security is liable under Section 33A, 33B, or 33C jointly and severally with the seller, buyer, or issuer, and to the same extent as if he were the seller, buyer, or issuer.

(3) There is contribution as in cases of contract among the several persons so liable.

G. Survivability of Actions. Every cause of action under this Act survives the death of any person who might have been a plaintiff or defendant.

H. Statute of Limitations.

(1) No person may sue under Section 33A(1) or 33F so far as it relates to Section 33A(1):

(a) more than three years after the sale; or

(b) if he received a rescission offer (meeting the requirements of Section 33I) before suit unless he (i) rejected the offer in writing within 30 days of its receipt and (ii) expressly reserved in the rejection his right to sue; or

(c) more than one year after he so rejected a rescission offer meeting the requirements of Section 33I.

(2) No person may sue under Section 33A(2), 33C, or 33F so far as it relates to 33A(2) or 33C:

(a) more than three years after discovery of the untruth or omission, or after discovery should have been made by the exercise of reasonable diligence; or

(b) more than five years after the sale; or

(c) if he received a rescission offer (meeting the requirements of Section 33I) before suit, unless he (i) rejected the offer in writing within 30 days of its receipt, and (ii) expressly reserved in the rejection his right to sue; or

(d) more than one year after he so rejected a rescission offer meeting the requirements of Section 33I.

(3) No person may sue under Section 33B or 33F so far as it relates to Section 33B:

(a) more than three years after discovery of the untruth or omission, or after discovery should have been made by the exercise of reasonable diligence; or

(b) more than five years after the purchase; or

(c) if he received a rescission offer (meeting the requirements of Section 33J) before suit unless he (i) rejected the offer in writing within 30 days of its receipt, and (ii) expressly reserved in the rejection his right to sue; or

(d) more than one year after he so rejected a rescission offer meeting the requirements of Section 33J.

I. Requirements of a Rescission Offer to Buyers. A rescission offer under Section 33H(1) or (2) shall meet the following requirements:

(1) The offer shall include financial and other information material to the offeree's decision whether to accept the offer, and shall not contain an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

(2) The offeror shall deposit funds in escrow in a state or national bank doing business in Texas (or in another bank approved by the Commissioner) or receive an unqualified commitment from such a bank to furnish funds sufficient to pay the amount offered.

(3) The amount of the offer to a buyer who still owns the security shall be the amount (excluding costs and attorney's fees) he would recover on rescission under Section 33D(1).

(4) The amount of the offer to a buyer who no longer owns the security shall be the amount (excluding costs and attorney's fees) he would recover in damages under Section 33D(3).

(5) The offer shall state:

(a) the amount of the offer, as determined pursuant to Paragraph (3) or (4) above, which shall be given (i) so far as practicable in terms of a specified number of dollars and a specified rate of interest for a period starting at a specified date, and (ii) so far as necessary, in terms of specified elements (such as the value of the security when it was disposed of by the offeree) known to the offeree but not to the offeror, which are subject to the furnishing of reasonable evidence by the offeree.

(b) the name and address of the bank where the amount of the offer will be paid.

(c) that the offeree will receive the amount of the offer within a specified number of days (not more than 30) after receipt by the bank, in form reasonably acceptable to the offeror, and in compliance with the instructions in the offer, of:

(i) the security, if the offeree still owns it, or evidence of the fact and date of disposition if he no longer owns it; and

(ii) evidence, if necessary, of elements referred to in Paragraph (a)(ii) above.

(d) conspicuously that the offeree may not sue on his purchase under Section 33 unless:

(i) he accepts the offer but does not receive the amount of the offer, in which case he may sue within the time allowed by Section 33H(1)(a) or 33H(2)(a) or (b), as applicable; or

(ii) he rejects the offer in writing within 30 days of its receipt and expressly reserves in the rejection his right to sue, in which case he may sue within one year after he so rejects.

(e) in reasonable detail, the nature of the violation of this Act that occurred or may have occurred.

(f) any other information the offeror wants to include.

J. Requirements of a Rescission Offer to Sellers. A rescission offer under Section 33H(3) shall meet the following requirements:

(1) The offer shall include financial and other information material to the offeree's decision whether to accept the offer, and shall not contain an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

(2) The offeror shall deposit the securities in escrow in a state or national bank doing business in Texas (or in another bank approved by the Commissioner).

(3) The terms of the offer shall be the same (excluding costs and attorney's fees) as the seller would recover on rescission under Section 33D(2).

(4) The offer shall state:

(a) the terms of the offer, as determined pursuant to Paragraph (3) above, which shall be given (i) so far as practicable in terms of a specified number and kind of securities and a specified rate of interest for a period starting at a specified date, and (ii) so far as necessary, in terms of specified elements known to the offeree but not the offeror, which are subject to the furnishing of reasonable evidence by the offeree.

(b) the name and address of the bank where the terms of the offer will be carried out.

(c) that the offeree will receive the securities within a specified number of days (not more than 30) after receipt by the bank, in form reasonably acceptable to the offeror, and in compliance with the instructions in the offer, of:

(i) the amount required by the terms of the offer; and

above. (ii) evidence, if necessary, of elements referred to in Paragraph (a)(ii)

(d) conspicuously that the offeree may not sue on his sale under Section 33 unless:

(i) he accepts the offer but does not receive the securities, in which case he may sue within the time allowed by Section 33H(3)(a) or (b), as applicable; or

(ii) he rejects the offer in writing within 30 days of its receipt and expressly reserves in the rejection his right to sue, in which case he may sue within one year after he so rejects.

(e) in reasonable detail, the nature of the violation of this Act that occurred or may have occurred.

(f) any other information the offeror wants to include.

K. Unenforceability of Illegal Contracts. No person who has made or engaged in the performance of any contract in violation of any provision of this Act or any rule or order or requirement hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

L. Waivers Void. A condition, stipulation, or provision binding a buyer or seller of a security or a purchaser of services rendered by an investment adviser or investment adviser representative to waive compliance with a provision of this Act or a rule or order or requirement hereunder is void.

M. Saving of Existing Remedies. The rights and remedies provided by this Act are in addition to any other rights (including exemplary or punitive damages) or remedies that may exist at law or in equity.

N. Limitation of Liability in Small Business Issuances.

(1) For purposes of this Section 33N, unless the context otherwise requires, “small business issuer” means an issuer of securities that, at the time of an offer to which this Section 33N applies:

(a) has annual gross revenues in an amount that does not exceed \$25 million;
and

(b) does not have a class of equity securities registered, or required to be registered, with the Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Section 78l).

(2) This Section 33N applies only to:

(a) an offer of securities made by a small business issuer or by the seller of securities of a small business issuer that is in an aggregate amount that does not exceed \$5 million; and

(b) a person who has been engaged to provide services relating to an offer of securities described by Section 33N(2)(a), including an attorney, an accountant, a consultant, or the firm of the attorney, accountant, or consultant.

(3) The maximum amount that may be recovered against a person to which this Section 33N applies in any action or series of actions under Section 33 relating to an offer of securities to which this Section 33N applies is an amount equal to three times the fee paid by the issuer or other seller to the person for the services related to the offer of securities, unless the trier of fact finds the person engaged in intentional wrongdoing in providing the services.

(4) A small business issuer making an offer of securities shall provide to the prospective buyer a written disclosure of the limitation of liability created by this Section 33N and shall receive a signed acknowledgement that the disclosure was provided.

Sec. 33-1. Civil Liability of Investment Advisers and Investment Adviser Representatives.

A. Liability of Investment Advisers and Investment Adviser Representatives.

(1) An investment adviser or investment adviser representative who renders services as an investment adviser in violation of Section 12 or an order under Section 23B or 23-2 of this Act is liable to the purchaser, who may sue at law or in equity, for damages in the amount of any consideration paid for the services.

(2) Except as provided by Subsection C of this section, an investment adviser or investment adviser representative who commits fraud or engages in a fraudulent practice in rendering services as an investment adviser is liable to the purchaser, who may sue at law or in equity, for damages.

B. Damages. In damages under Subsection A(2) of this section, the purchaser is entitled to recover:

(1) the amount of any consideration paid for the services, less the amount of any income the purchaser received from acting on the services;

(2) any loss incurred by the person in acting on the services provided by the adviser or representative;

(3) interest at the legal rate for judgments accruing from the date of the payment of consideration; and

(4) to the extent the court considers equitable, court costs and reasonable attorney's fees.

C. Untruth or Omission. An investment adviser or investment adviser representative who in rendering services as an investment adviser makes a false statement of a material fact or omits to state a material fact necessary in order to make the statement made, in light of the circumstances under which the statement is made, not misleading, may not be found liable under Subsection A(2) of this section if the adviser or representative proves:

- (1) the purchaser knew of the truth or omission; or
- (2) the adviser or representative did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

D. Statute of Limitations.

(1) A person may not sue under Subsection A(1) of this section more than three years after the violation occurred.

(2) A person may not sue under Subsection A(2) of this section more than five years after the violation occurs or more than three years after the person knew or should have known, by the exercise of reasonable diligence, of the occurrence of the violation.

E. Liability of Control Persons and Assistants.

(1) A person who directly or indirectly controls an investment adviser is jointly and severally liable with the investment adviser under this section, and to the same extent as the investment adviser, unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which liability is alleged to exist.

(2) A person who directly or indirectly with intent to deceive or defraud or with reckless disregard for the truth or the law materially aids an investment adviser in conduct for which a cause of action is authorized by this section is jointly and severally liable with the investment adviser in an action to recover damages under this section.

F. A remedy provided by this section is not exclusive of any other applicable remedy provided by law.

Sec. 33-2. Stay of Recognition or Enforcement of Foreign Country Judgment.

(a) Prior to a court's recognition or enforcement of a foreign country judgment under Chapter 36, Civil Practice and Remedies Code, or otherwise, a party against whom recognition or enforcement of a foreign country judgment is sought is entitled to de novo review by a court in this state to determine whether a party, its successors, assigns, agents, or representatives seeking recognition or enforcement of a foreign country judgment has violated this Act or Chapter 17, Business & Commerce Code.

(b) A party seeking de novo review under this section must file with the court a verified pleading asserting a violation of this Act or Chapter 17, Business & Commerce Code, not later

than the 30th day after the date of service of the notice of filing of a foreign country judgment with the court for recognition or enforcement.

(c) A pleading filed in accordance with Subsection (b) operates as a stay of the commencement or continuation of a proceeding to recognize or enforce a foreign country judgment. The stay shall continue until the court completes its de novo review under this section and renders a final judgment.

(d) A finding by a court of a violation of this Act or Chapter 17, Business & Commerce Code, is a sufficient ground for nonrecognition of a foreign country judgment.

(e) This section applies to a foreign country judgment involving a contract or agreement for a sale, offer for sale, or sell as defined by this Act, or investment, that imposes an obligation of indemnification or liquidated damages upon a Texas resident.

Sec. 34. Actions for Commission; Allegations and Proof of Compliance. No person or company shall bring or maintain any action in the courts of this state for collection of a commission or compensation for services rendered in the sale or purchase of securities, as that term is defined in this Act, without alleging and proving that such person or company was duly registered under the provisions of this Act (or duly exempt from such registration pursuant to rules adopted under Section 12C of this Act) and the securities so sold were duly registered under the provisions of this Act at the time the alleged cause of action arose; provided, however, that this section shall not apply to any company or person that rendered services in connection with any transaction exempted by Section 5 of this Act or by any rule promulgated by the Board pursuant to Subsection T of Section 5 of this Act if the company or person was not required to be registered by the terms of the exemption.

Sec. 35. Fees.

A. The Board shall establish the following fees in amounts so that the aggregate amount that exceeds the amount of the fees on September 1, 2002, produces sufficient revenue to cover the costs of administering and enforcing this Act:

(1) for the filing of any original, amended, or renewal application to sell or dispose of securities, an amount not to exceed \$100;

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

(3) for the filing of any renewal application of a dealer or investment adviser or for the submission of a renewal notice filing for a federal covered investment adviser, an amount not to exceed \$100;

(4) for the filing of any original application for each agent, officer, or investment adviser representative or for the submission of a notice filing for each representative of a federal covered investment adviser, an amount not to exceed \$100; and

(5) for the filing of any renewal application for each agent, officer, or investment adviser representative or for the submission of a renewal notice filing for each representative of a federal covered investment adviser, an amount not to exceed \$100.

B. The Commissioner or Board shall charge and collect the following fees and shall daily pay all fees received into the State Treasury:

(1) for any filing to amend the registration certificate of a dealer or investment adviser or evidence of registration of an agent or investment adviser representative, *or* issue a duplicate certificate or evidence of registration, \$25;

(2) for the examination of any original or amended application filed under Subsection A, B, or C of Section 7 of this Act, regardless of whether the application is denied, abandoned, withdrawn, or approved, a fee of one-tenth (1/10) of one percent (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;

(3) for certified copies of any papers filed in the office of the Commissioner, the Commissioner shall charge such fees as are reasonably related to costs; however, in no event shall such fees be more than those which the Secretary of State is authorized to charge in similar cases;

(4) for the filing of any application for approval of a stock exchange so that securities fully listed thereon will be exempt, a fee of \$10,000;

(5) for the filing of a request to take the Texas Securities Law Examination, \$35;

(6) for the filing of an initial notice required by the Commissioner to claim a secondary trading exemption, a fee of \$500, and for the filing of a secondary trading exemption renewal notice, a fee of \$500;

(7) for the filing of an initial notice required by the Commissioner to claim a limited offering exemption, a fee of one-tenth (1/10) of one percent (1%) of the aggregate amount of securities described as being offered for sale, but in no case more than \$500; and

(8) for an interpretation by the Board's general counsel of this Act or a rule adopted under this Act, a fee of \$100, except that an officer or employee of a governmental entity and the entity that the officer or employee represents are exempt from the fee under this subsection when the officer or employee is conducting official business of the entity.

C. Subject to Subsection A of this section, the Board shall set a fee under this section in an amount that is reasonable and necessary to defray costs.

D. A cost incurred by the Board in administering this Act may be paid only from a fee collected under Subsection A of this section.

Sec. 35-1. Fees for Sales of Excess Securities.

A. An offeror who sells securities in this State in excess of the aggregate amount of securities registered for the offering may apply to register the excess securities by paying three times the difference between the initial fee paid and the fee required under Subsection B(2) of Section 35, plus, if the registration is no longer in effect, interest on that amount computed at the rate provided by Section 302.002, Finance Code, from the date the registration was no longer in effect until the date the subsequent application is filed, for the securities sold to persons within this State, plus the amendment fee prescribed by Subsection A(1) of Section 35. Registration of the excess securities, if granted, shall be effective retroactively to the effective date of the initial registration for the offering.

B. An offeror who has filed a notice to claim a limited offering exemption, who paid less than the maximum fee prescribed in Subsection B(7) of Section 35, and who offered a greater amount of securities in the offering than authorized pursuant to the formula prescribed in Subsection B(7) of Section 35, may file an amended notice disclosing the amount of securities offered and paying three times the difference between the fee initially paid and the fee which should have been paid, plus interest on that amount computed at the rate provided by Section 302.002, Finance Code, from the date the original notice was received by the Commissioner until the date the amended notice is received by the Commissioner. The amended notice shall be retroactive to the date of the initial filing.

Sec. 35-2. Fees for Sales of Unregistered Securities. If, after notice and hearing, the Commissioner or any court of competent jurisdiction finds that an offeror has sold securities in this State pursuant to an offering no part of which has been registered under Section 7 or 10 of this Act and for which the transactions or securities are not exempt under Section 5 or 6 of this Act, the Commissioner or said court may impose a fee equal to six times the amount that would have been paid if the issuer had filed an application to register the securities and paid the fee prescribed by Subsection B(2) of Section 35 based on the aggregate amount of sales made in this State within the prior three years, plus interest on that amount at the rate provided by Section 302.002, Finance Code, from the date of the first such sale made in this State until the date the fee is paid. The payment of the fee prescribed by this Section does not effect registration of the securities or affect the application of any other Section of this Act. The payment of the fee prescribed by this Section is not an admission that the transactions or securities were not exempt and is not admissible as evidence in a suit or proceeding for failure to register the securities.

Sec. 36. Deposit to General Revenue Fund. Upon and after the effective date of this Act all moneys received from fees, assessments, or charges under this Act shall be paid by the Commissioner or Board into the General Revenue Fund. If the Commissioner or Board determines that all or part of a registration fee should be refunded, the Commissioner may make the refund by warrant on the State Treasury from funds appropriated from the General Revenue Fund for that purpose.

Sec. 37. Pleading Exemptions. It shall not be necessary to negative any of the exemptions in this Act in any complaint, information or indictment, or any writ or proceeding laid or brought under this Act; and the burden of proof of any such exemption shall be upon the party claiming the same.

Sec. 38. Partial Invalidity; Severability. The provisions of this Act are severable, and in the event that any provision thereof should be declared void or unconstitutional, it is hereby declared that the remaining provisions would have been enacted notwithstanding such judicial determination of the invalidity of any particular provision or provisions in any respect, and said sections shall remain in full force and effect.

Sec. 39. Repeal of Securities Act and Insurance Securities Act Now in Effect; Saving Clause as to Pending Proceedings. The Acts now in effect being currently known as the Securities Act of Texas and the Insurance Securities Act of Texas, as embraced in Senate Bill No. 149, Chapter 67, and House Bill No. 39, Chapter 384, Acts of the 54th Legislature, 1955, and codified as Articles 579 and 580 of Vernon's Civil Statutes of Texas, be and the same are hereby repealed; provided, however, that all permits, orders, and licenses issued by the Secretary of State or Board of Insurance Commissioners pursuant to said laws prior to the effective date of this Act shall be valid during the period for which they were issued unless sooner revoked by the Commissioner for any cause for which the Commissioner is authorized by this Act to revoke hereunder; provided further, that all prosecutions and legal or other proceedings begun, and any violation of law whether prosecution or administrative action is commenced or not, and any cause of action of civil or criminal nature existing under the provisions of that law now in effect, shall continue in effect and remain in full force and effect until terminated as under the terms of the law now in force, notwithstanding the passage of this Act.

Sec. 40. Repealed. House Bill 11, Chapter 5, Acts of the 72nd Legislature, 1st Called Session, 1991.

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

Sec. 42. Reduced Fees.

A. The Board by rule may adopt reduced fees, under Sections 35 and 41 of this Act, for original and renewal applications of dealers, agents, officers, investment advisers, or investment adviser representatives who have assumed inactive status as defined by the Board.

B. The Board by rule may adopt reduced fees, under Sections 35 and 41 of this Act, as appropriate to accommodate a small business required by this Act to register in two or more of the following capacities:

- (1) dealer;
- (2) agent;
- (3) investment adviser;
- (4) investment adviser representative; or
- (5) officer.

C. Notwithstanding Sections 35 and 41 of this Act, 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 investment adviser representative.

Sec. 43. Investor Education.

A. The Commissioner, with Board approval, shall develop and implement investor education initiatives to inform the public about the basics of investing in securities, with a special emphasis placed on the prevention and detection of securities fraud. Materials developed for and distributed as part of the initiatives must be published in both Spanish and English.

B. In developing and implementing the initiatives, the Commissioner shall use the Commissioner's best efforts to collaborate with public or nonprofit entities with an interest in investor education.

C. Subject to Chapter 575, Government Code, the Commissioner may accept grants and donations from a person who is not affiliated with the securities industry or from a nonprofit association, regardless of whether the entity is affiliated with the securities industry, for use in providing investor education initiatives.

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.

Sec. 45. Protection of Vulnerable Adults from Financial Exploitation.

A. In this section:

- (1) “Department” means the Department of Family and Protective Services.
- (2) “Exploitation,” “financial exploitation,” and “vulnerable adult” have the meanings assigned by Section 281.001, Finance Code.
- (3) “Securities professional” means an agent, an investment adviser representative, or a person who serves in a supervisory or compliance capacity for a dealer or investment adviser.

B. If a securities professional or a person serving in a legal capacity for a dealer or investment adviser has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the dealer or investment adviser has occurred, is occurring, or has been attempted, the securities professional or person serving in a legal capacity for the dealer or investment adviser shall notify the dealer or investment adviser of the suspected financial exploitation.

C. If a dealer or investment adviser is notified of suspected financial exploitation under Subsection B of this section or otherwise has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the dealer or investment adviser has occurred, is occurring, or has been attempted, the dealer or investment adviser shall assess the suspected financial exploitation and submit a report to the Securities Commissioner, in accordance with rules adopted under Subsection N of this section, and the department in the same manner as and containing the same information required to be included in a report under Section 48.051, Human Resources Code. The dealer or investment adviser shall submit the reports required by this subsection not later than the earlier of:

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

(2) the fifth business day after the date the dealer or investment adviser is notified of the suspected financial exploitation under Subsection B of this section or otherwise has cause to believe that the suspected financial exploitation has occurred, is occurring, or has been attempted.

D. A dealer or investment adviser who submits a report to the department of suspected financial exploitation of a vulnerable adult under Subsection C of this section is not required to make an additional report of suspected abuse, neglect, or exploitation under Section 48.051, Human Resources Code, for the same conduct constituting the reported suspected financial exploitation.

E. Each dealer and investment adviser shall adopt internal policies, programs, plans, or procedures for the securities professionals or persons serving in a legal capacity for the dealer or investment adviser to make the notification required under Subsection B of this section and for the dealer or investment adviser to conduct the assessment and submit the reports required under Subsection C of this section. The policies, programs, plans, or procedures adopted under this subsection may authorize the dealer or investment adviser to report the suspected financial exploitation to other appropriate agencies and entities in addition to the Securities Commissioner and the department, including the attorney general, the Federal Trade Commission, and the appropriate law enforcement agency.

F. If a dealer or investment adviser submits reports of suspected financial exploitation of a vulnerable adult to the Securities Commissioner and the department under Subsection C of this section, the dealer or investment adviser may at the time the dealer or investment adviser submits the reports also notify a third party reasonably associated with the vulnerable adult of the suspected financial exploitation, unless the dealer or investment adviser suspects the third party of financial exploitation of the vulnerable adult.

G. Notwithstanding any other law, if a dealer or investment adviser submits reports of suspected financial exploitation of a vulnerable adult to the Securities Commissioner and the department under Subsection C of this section, the dealer or investment adviser:

- (1) may place a hold on any transaction that:
 - (A) involves an account of the vulnerable adult; and
 - (B) the dealer or investment adviser has cause to believe is related to the suspected financial exploitation; and

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

H. Subject to Subsection I of this section, a hold placed on any transaction under Subsection G of this section expires on the 10th business day after the date the dealer or investment adviser submits the reports under Subsection C of this section.

I. A dealer or investment adviser may extend a hold placed on any transaction under Subsection G of this section for a period not to exceed 30 business days after the expiration of the period prescribed by Subsection H of this section if requested by a state or federal agency or a law enforcement agency investigating the suspected financial exploitation. The dealer or investment adviser may also petition a court to extend a hold placed on any transaction under Subsection G of this section beyond the period prescribed by Subsection H of this section. A court may enter an order extending or shortening a hold or providing other relief.

J. Each dealer and investment adviser shall adopt internal policies, programs, plans, or procedures for placing a hold on a transaction involving an account of a vulnerable adult under Subsection G of this section.

K. A securities professional or person serving in a legal capacity for a dealer or investment adviser who makes a notification under Subsection B of this section, a dealer or investment adviser that submits a report under Subsection C of this section or makes a notification to a third party under Subsection F of this section, or a securities professional or person serving in a legal capacity who or dealer or investment adviser that testifies or otherwise participates in a judicial proceeding arising from a notification or report is immune from any civil or criminal liability arising from the notification, report, testimony, or participation in the judicial proceeding, unless the securities professional, person serving in a legal capacity for the dealer or investment adviser, or dealer or investment adviser acted in bad faith or with a malicious purpose.

L. A dealer or investment adviser that in good faith and with the exercise of reasonable care places or does not place a hold on any transaction under Subsection G(1) of this section is immune from civil or criminal liability or disciplinary action resulting from the action or failure to act.

M. To the extent permitted by state or federal law, a dealer or investment adviser, on request, shall provide access to or copies of records relevant to the suspected financial exploitation of a vulnerable adult to the Securities Commissioner, the department, a law enforcement agency, or a prosecuting attorney's office, either as part of a report to the Securities Commissioner, department, law enforcement agency, or prosecuting attorney's office or at the request of the Securities Commissioner, department, law enforcement agency, or prosecuting attorney's office in accordance with an investigation.

N. The Board by rule shall prescribe the form and content of the report required to be submitted by a dealer or investment adviser to the Securities Commissioner under Subsection C of this section.

Declaration of Emergency and Effective Date of the Act.

The fact that the administration of securities regulation should no longer be under the Secretary of State or the Board of Insurance Commissioners but should be a separate and consolidated agency of the government, and that there is now imperative need for clarification and strengthening of certain sections of existing law; the fact that The Securities Act must be made current in order to prevent fraud on the Texas public, and the fact that the summary action is needed under the police powers of the state in order that the Securities Commissioner may prevent contemplated sales or stop further sales of securities which are in his opinion fraudulent or illegal under this Act, creates an emergency and an imperative public necessity that the Constitutional Rule requiring Bills be read on three several days in each House be suspended; and said Rule is hereby suspended, and this Act shall be and become effective ninety (90) days after adjournment of this Session of the Legislature; and it is so enacted.

Passed the Senate, April 15, 1957, by a viva voce vote; Senate concurred in House amendments by viva voce vote on May 6, 1957; passed the House, May 1, 1957, with amendments, by a viva voce vote.

Approved by the Governor, May 21, 1957.

Effective August 22, 1957, under the provisions of Article III, Section 39, of the Constitution of Texas.

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INDEX

	Section
ACT	
See also CONSTRUCTION OF ACT, INTERPRETATION, and WORDS	
Cited as “The Securities Act”	1
Construction, cumulative	31
Contracts in violation of, unenforceable	33K
Coordination with federal law	10-1
Criminal violations	29
Definition of terms	4
Enforcement — See ENFORCEMENT	
Interpretation by General Counsel	35B(8)
Provisions severable	38
Purposes	10-1
Rulemaking authority	2-5, 3D, 4N, 4P, 5S, 5T, 7A, 8, 12C, 12-1B, 19B, 28, 28-1, 42, 44, 45N
Violation of as basis for	
Administrative fine	23-1A
Cease and desist order	23A, 23B, 23-2A
Civil liability	33
Civil penalties	32C
Denial, suspension, or revocation of license	14
Felony	29
Injunction	32A
Waivers void	33L
ADMINISTRATION OF ACT	
Costs of, paid only from fees	35A, 35C, 35D
Enforcement and investigations — See also ENFORCEMENT	3, 28
Inspections, authority to conduct	13-1
Power to prosecute	3
Rulemaking authority	2-5, 3D, 4N, 4P, 5S, 5T, 7A, 8, 12C, 12-1B, 19B, 28, 28-1, 42, 44, 45N
Vested in Commissioner	3
ADMINISTRATIVE PROCEDURE ACT	
See also OPEN GOVERNMENT and OPEN MEETINGS LAW	
Board and Commissioner subject to	2N
Hearings subject to	14B, 24
ADVERTISEMENT	
See also CEASE PUBLICATION ORDER, PUBLIC SOLICITATION, and PUBLICATION	
Application for securities registration, included with	7A
Cease publication order	23C, 23-2
Criminal sanction for violation of	29H
Persons not to publish after	22A, 23C
Criminal violations concerning	29G
Exempt sales made without advertisement or public solicitation to	
Not more than 15 persons within 12 months	5I(c)
Not more than 35 persons within 12 months of oil, gas, or mining interests	5Q
Not more than 35 security holders	5I(a)
Exemptions, effect on filing requirement	22E
Filing requirement	22A

	Section
Generally	22
Rules restricting	28-1F
Unlawful to use fact of registration in	10C, 20
 AGENT	
See also APPLICATION FOR REGISTRATION AS DEALER OR AGENT, DEALER, and REGISTRATION, DEALER OR AGENT	
Advertising	
Filing requirement	22A
Use of registration in, unlawful	20
Appeal from Commissioner's failure or refusal to register	24A
Application for registration	18
Denial of	14A
Cancellation of registration by dealer	18
Cease and desist order, sales prohibited after	23A
Civil liability of	33
Commission, action to collect	34
"Dealer" does not include "agent"	4C
Defined	4D
Evidence of registration	18
Examination	
Administered by securities self-regulatory organizations	13K
Required	13D, 19C
Waiver of	13D
Exemption from registration	12C
False statement in filing or proceeding a felony	29E, 29F
Fees for registration — See FEES	
Notification to dealer of suspected financial exploitation of vulnerable adult	45B
Immunity from civil or criminal liability	45K
Unless bad faith or malicious purpose	45K
Receivership of	25-1
Records, names and addresses of	11
Registration	
Appeal from Commissioner's failure or refusal	24A
Application for	18
Cancellation by dealer	18
Continuing education	19D
Denial, suspension, or revocation of	14
Evidence of	18
Examination required	13D, 19C
Exemption from	12C
Expired	19
Fees — See FEES	
Inactive status	42A
Multiple capacities	42B
Renewal of	19
Required	12A
Revoked by revocation of dealer's registration	25
Term of	19A
Unlawful use of	20
Waiver, examination requirement	13D

	Section
Reprimand	14A
Sale without registration prohibited	12A
Sanctions against, grounds for	14
Administrative orders	14A(9)
Court orders or injunctions	14A(10)
Criminal convictions	14A(1), 14A(2)
Examinations	14A(8)
Fraudulent business practices	14A(3)
Inequitable practices	14A(3)
Misrepresentations or failure to furnish information	14A(7)
Unregistered activity	14A(5)
Violations of Act, rules, orders, or undertakings	14A(6), 14A(11)
Securities registered prior to sale by	7
Sign informing customers where to direct complaints, display of	2L
Unregistered agent, penalty	29A
Violation of Act is a felony	29
Vulnerable adult, suspected financial exploitation of	
Immunity from civil or criminal liability	45K
Unless bad faith or malicious purpose	45K
Notification to dealer	45B

AGRICULTURE CODE

Certain transactions involving securities issued by farmers' cooperatives exempt	5N
--	----

AIDING

Administrative fine	23-1A
Control person	33F, 33-1E
Generally	33F, 33-1E
Injunction to prevent fraudulent practices	32A

AMERICAN STOCK EXCHANGE

Securities fully listed upon, exempt	6F
--	----

ANNUITY CONTRACT

When excluded from definition of security	4A
---	----

APPEAL

Hearing on Commissioner's actions or orders	24
Judicial review	27
Secondary trading exemption, revocation of	5O
Secondary trading exemption, suspension of	5O
Section 5O exemption, revocation of	5O
Securities manual, revocation of recognition	5O
Stop order	5O
Substantial evidence review	27

APPLICATION FOR REGISTRATION AS DEALER OR AGENT

See also **BROKER** and **REGISTRATION, DEALER OR AGENT**

Address in, sufficient for notice	19C, 26
Agent, defined	4D
Appeal from Commissioner's failure or refusal to register	24A

	Section
Application for registration, agent	18
Application for registration, requisites	
Additional information	13B
Evidence of good repute	13C
Examination	13D, 19C
Foreign (nonresident) corporations	13G
Foreign (nonresident) unincorporated associations or organizations	13I
Generally	13
Information required	13, 18
Limited partnerships	13H
Cancellation of agent registration	18
Certificate — See also CERTIFICATE	17
Certificate of registration, dealer	
Display of	21
Form	17
Issuance	15
Unlawful use of	20
Changes in personnel, report to Commissioner	17
Dealer, defined	4C
Does not include “agent”	4C
Denial of registration, grounds and procedure for	14
Evidence of registration, agent	18
Examinations	
Administered by securities self-regulatory organizations	13K
Analysis of performance	13F
Fee for Texas Securities Law Examination	35B(5)
Notification of results	13E, 13F
Required	13D, 19C
Waiver of requirement	13D
Exemptions from registration by	
Board rule	12C
Statute	5
False statement in filing a felony	29E, 29F
Fees — See FEES	
Filing made under oath	13A
Foreign (nonresident) applicants, additional requirements	
Consent to service	8
Corporations	13G
Unincorporated associations or organizations	13I
Form	
Prepared by Commissioner, furnished to applicants	13J
Prescribed by Commissioner	13A, 18
Inactive status	42A
Information required in	13A, 17, 18
Additional information required	13B, 18
Multiple capacities	42B
Records open to inspection	11
Registration	
Amendments to	17
Appeal from Commissioner’s failure or refusal to register	24A
Application contents	13, 18

	Section
Cancellation of agent's	18
Certificate of, dealer	15, 17
Continuing education	19D
Denial, suspension, or revocation of	14
Evidence of, agent.	18
Examination required	13D, 19C
Exemption from	5, 12C
Expired	19
Inactive status	42A
Multiple capacities	42B
Renewal of	19
Required	12A
Surrender of original certificate on amendment	17
Temporary	15
Term of	19A
Unlawful use of.	20
Waiver, examination requirement	13D
Reputation, evidence of.	13C
Sanctions, grounds for	14
Administrative orders	14A(9)
Court orders or injunctions	14A(10)
Criminal convictions.	14A(1), 14A(2)
Examinations	14A(8)
Fraudulent business practices	14A(3)
Inequitable practices	14A(3)
Insolvency.	14A(4)
Misrepresentations or failure to furnish information.	14A(7)
Sales through unregistered agent.	14A(5)
Unregistered activity	14A(5)
Violations of Act, rules, orders, or undertakings.	14A(6), 14A(11)
Service of process, foreign (nonresident) applicants	8
Temporary registration	15
Term of registration.	19A
Unregistered dealer or agent, penalty	29A

APPLICATION FOR REGISTRATION AS INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE

See also **NOTICE FILING** and **REGISTRATION, INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE**

Address in, sufficient for notice	19C, 26
Appeal from Commissioner's failure or refusal to register.	24A
Application for registration, investment adviser representative	18
Application for registration, requisites	
Additional information	13B
Evidence of good repute	13C
Examination	13D, 19C
Foreign (nonresident) corporations.	13G
Foreign (nonresident) unincorporated associations or organizations	13I
Generally	13
Information required.	13, 18
Limited partnerships	13H

	Section
Cancellation of investment adviser representative's registration	18
Certificate — See also CERTIFICATE	17
Certificate of registration, investment adviser	
Display of	21
Form	17
Issuance	15
Unlawful use of.	20
Changes in personnel, report to Commissioner.	17
Denial of registration, grounds and procedure for.	14
Evidence of registration, investment adviser representative.	18
Examinations	
Administered by securities self-regulatory organizations	13K
Analysis of performance	13F
Fee for Texas Securities Law Examination.	35B(5)
Notification of results	13E, 13F
Required	13D, 19C
Waiver of requirement	13D
Exemptions from registration, Board authority to adopt.	12C
False statement in, a felony	29E, 29F
Fees — See FEES	
Filing made under oath	13A
Foreign (nonresident) applicants, additional requirements	
Consent to service	8
Corporations	13G
Unincorporated associations or organizations	13I
Form	
Prepared by Commissioner, furnished to applicants.	13J
Prescribed by Commissioner.	13A, 18
Inactive status	42A
Information required in	13A, 17, 18
Additional information required.	13B, 18
Investment adviser, defined.	4N
Investment adviser representative, defined	4P
Multiple capacities.	42B
Records open to inspection	11
Registration	
Amendments to	17
Appeal from Commissioner's failure or refusal to register	24A
Application contents	13, 18
Cancellation of investment adviser representative's	18
Certificate of, investment adviser	15, 17
Continuing education	19D
Denial, suspension, or revocation of.	14
Evidence of, investment adviser representative.	18
Examination required.	13D, 19C
Exemption from	12C
Expired	19
Inactive status	42A
Multiple capacities	42B
Renewal of	19
Required	12B

	Section
Surrender of original certificate on amendment	17
Temporary	15
Term of	19A
Unlawful use of	20
Waiver, examination requirement	13D
Reputation, evidence of	13C
Sanctions, grounds for	14
Administrative orders	14A(9)
Court orders or injunctions	14A(10)
Criminal convictions	14A(1), 14A(2)
Examinations	14A(8)
Fraudulent business practices	14A(3)
Inequitable practices	14A(3)
Insolvency	14A(4)
Investment advisory services rendered through unregistered representative	14A(5)
Misrepresentations or failure to furnish information	14A(7)
Unregistered activity	14A(5)
Violations of Act, rules, orders, or undertakings	14A(6), 14A(11)
Service of process, foreign (nonresident) applicants	8
Temporary registration	15
Term of registration	19A
Unregistered investment adviser or investment adviser representative, penalty	29I

APPLICATION FOR REGISTRATION OF SECURITIES

See also **EXEMPT SECURITIES, EXEMPT TRANSACTIONS, LIMITED OFFERING EXEMPTION, PERMIT, SALES, and SECURITIES**

Address in, sufficient for notice	26
Excess sales	35-1
False statement in, a felony	29E, 29F
Fees — See FEES	
Foreign (nonresident) applicants, consent to service of process	8
Hearing when registration denied	24B
Plan must be fair, just and equitable	7A, 7C(2), 10A
Renewal of registration	7B(2), 7C(3), 10B
Requirements for registration by	
Coordination	7C
Notification	7B
Qualification	7A
Service of process, foreign (nonresident) applicants	8
Small business issuers	7A

ASSOCIATION

Articles of to accompany application to register securities	7A
Articles of to accompany certain applications for dealer or investment adviser registration	13I
Building and loan, exempt transaction involving	5H
Cooperative, exempt transaction involving	5N
Criminal responsibility of	29-3
Farmers' cooperative, exempt transaction involving	5N
Nonprofit, exempt transaction involving	5K, 5U
“Person” and “company” include	4B
Savings and loan, exempt transaction involving	5L

ATTORNEY GENERAL

Authority to seek	
Civil penalties	32C
Disgorgement	32B
Equitable relief	32B
Injunctions	32A
Restitution	32B
Biennial review of prosecutorial assistance	3F
Costs recoverable by	32D
Duty of enforcement	3

AUTHORIZED SMALL BUSINESS DEVELOPMENT ENTITY

As intrastate crowdfunding portal	44
---	----

BANKS

Escrow of funds for rescission offer	33I(2), 33J(2)
Escrow of securities	9A
Sales to, exempt transaction involving	5H
Securities of, exempt transaction involving	5L

BOARD OF INSURANCE COMMISSIONERS

See also **INSURANCE** and **TEXAS DEPARTMENT OF INSURANCE**

Custody of certain records, Commissioner to assume	30
Permits, orders, and licenses preserved	39

BOARD, STATE SECURITIES

See **STATE SECURITIES BOARD**

BOND

As a security	4A
Church and non-profit issues	5K, 6J
Confidential information, action for disclosure of	28A
Injunctions, not required of Commissioner or Attorney General	32A
Receiver appointed by court, required of	25-1D

BOOKS AND RECORDS

See **RECORDS**

BOSTON STOCK EXCHANGE

Securities fully listed upon, exempt	6F
--	----

BRANCH OFFICE

Disclosure in application	7A, 13A
Registration certificate to be posted in	21

BROKER

See also **DEALER**

“Dealer” synonymous	4H
-------------------------------	----

BUILDING AND LOAN ASSOCIATION

Sales to, exempt transaction involving	5H
--	----

BURDEN OF PROOF

Control persons	33F(1), 33-1E(1)
Exemption, on party claiming	37
Hearing, emergency cease and desist order	23-2D
Knowledge of untruth as defense in civil suit, burden of	
Buyer	33B
Investment adviser or investment adviser representative	33-1C
Issuer	33C(2)
Seller	33A(2)

CEASE AND DESIST ORDER

See also **EMERGENCY CEASE AND DESIST ORDER**

Appeal from	24A
Civil liability for sale in violation of	33A(1)
Emergency order	23-2
Issuance of	23A, 23B
Violation of, a felony	29D

CEASE PUBLICATION ORDER

See also **ADVERTISEMENT, PUBLIC SOLICITATION, and PUBLICATION**

Appeal from	24A
Civil liability for sale in violation of	33A(1)
Issuance of	23C
Violation of, a felony	29H

CERTIFICATE

As a security	4A
Dealer and investment adviser registration	
Change in	17
Display of	21
Form	17
Issuance	15
Surrender of	17
Unlawful use of	20
Of compliance and non-compliance	30

CERTIFIED COPIES

Records filed with Commissioner	30
---	----

CHICAGO STOCK EXCHANGE

Securities fully listed upon, exempt	6F
--	----

CITATION OF ACT

As "The Securities Act"	1
-----------------------------------	---

CITY

Securities issued or guaranteed by, exempt transaction involving	5M
--	----

CIVIL LIABILITY

See also **DAMAGES, ENFORCEMENT, RECOVERY, REMEDIES, and RESCISSION**

Aiders	32, 33F, 33-1E
------------------	----------------

	Section
Buyers	33B
Civil penalties	32
Conformity with rules, defense	28-1E
Control persons	33F, 33-1E
Generally	33
Immunity in situations involving suspected financial exploitation of vulnerable adult	45K, 45L
Investment advisers and investment adviser representatives	33-1A
Issuers	33A, 33C
Limitations, small business issuances	33N
Limitations, statute of	33H, 33-1D
Sellers	33A
Survivability of action	33G
 CIVIL PENALTIES	
See also ENFORCEMENT, RECOVERY, and REMEDIES	
Penalties to be assessed	32C
Power of Attorney General to seek	32C
 COLLATERAL TRUST CERTIFICATE	
As a security	4A
 COMMERCIAL PAPER	
As a security	4A
Short term paper exempt	6H
 COMMISSIONER	
See SECURITIES COMMISSIONER	
 COMMISSIONS	
Amount	
Maximum allowed for marketing securities	9B
Shown in securities registration application	7A, 7C
Bearing on exemptions	5C(1), 5E, 5F, 5G, 5K, 5N, 5P, 5U
Collection of, actions for	34
Proof of compliance with Act, prerequisite to collection of	34
Standby commissions	5E
Unconscionable commission fraudulent	4F
 COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION	
As intrastate crowdfunding portal	44
 COMPANY	
Defined	4B
 COMPENSATION PLAN OR CONTRACT	
Securities sold or distributed under, exempt transactions involving	5I(b)
 COMPLAINT	
Information maintained on	2-6
Sign informing customers where to direct	2L
Updates on status	2-6

CONFIDENTIAL INFORMATION

See also **DOCUMENTS, BOOKS, AND RECORDS, OPEN RECORDS LAW, and RECORDS**

Action on official bond for disclosure of	28A
Disclosure to	
Governmental or regulatory authorities, or association of	28
Receivers	28
Inspection information is	13-1E
Investigative records as	14C, 28A
Registration-related and other materials as	28B

CONFLICT OF INTEREST

State Securities Board members and employees	2-1
--	-----

CONSENT TO SERVICE OF PROCESS

See also **NOTICE, PROCESS, and SERVICE**

By foreign (nonresident)	
Dealers	8, 15
Federal covered investment adviser	8, 12-1B
Investment advisers	8, 15
Issuer	7B, 7C, 8

CONSTRUCTION OF ACT

See also **ACT, INTERPRETATION, and WORDS**

Definitions	4
Not exclusive	4L
Means of enforcement nonexclusive	3-1
Partial invalidity, effect of	38
Purposes	10-1
Rules interpreting Act	28-1
Saving of existing remedies	31, 33M, 33-1F
Severability of provisions	38

CONTROL PERSONS

See **AIDING**

COOPERATIVES

Securities issued by, exempt transaction involving	5N
--	----

COORDINATION

See also **REGISTRATION, SECURITIES**

Fee — See **FEES**

Registration of securities by	7C
Renewal	7C

COPIES

Books and records to be furnished by registered dealers or registered investment advisers

Inspections	13-1C
Investigations	28A

	Section
Certified by Commissioner	11, 30
Fee for	35B(3)
Of dealer’s or investment adviser’s registration, posting requirement	21
Records relevant to suspected financial exploitation of vulnerable adult	45M

CORPORATIONS

Articles of incorporation, required with registration application of	7A, 13G
Bylaws, copy of required with registration application	7A, 13G
Consolidation of, securities issued or sold in connection with, exempt transaction involving	5G
Criminal responsibility of	29-3
Domestic non-profit, exemption for securities issued by	6E
Merger of, securities issued or sold in connection with, exempt transaction involving	5G
Minutes affecting issue of proposed securities, copy of to accompany registration application	7A
Non-profit, exempt transaction involving	5K
“Person” and “company” include	4B
Service of process, nonresident appointment of Commissioner as agent for	8
Sworn application for registration	7A, 13A
Type A and B corporation as intrastate crowdfunding portal	44

COSTS

Assessment of hearing fees, expenses, and costs	28A
Of administering and enforcing The Act, paid only from fees	35A, 35C, 35D
Recoverable by Attorney General	32D
Recoverable in civil suit	33D(6), 33-1B(4)
Witness fees	28A

COUNTY

Securities issued or guaranteed by, exempt transaction involving	5M
Venue	
Actions for receivership	25-1B
Injunctive actions	32A

COUNTY ATTORNEY

Criminal prosecutions, assistance provided to	3
Criminal referrals to	3
Failure or refusal to prosecute, Attorney General to proceed	3

COURTS

See also **DISTRICT COURT**

Appeal from decision of Commissioner or Board	27
Certificate of Commissioner as evidence in	30
Civil penalties	32C
Disgorgement	32B
Foreign country judgment	33-2
Immunity in situations involving suspected financial exploitation of vulnerable adult	45K, 45L
Injunctions	32A
Receiverships	25-1
Restitution	32B

CRIMINAL ACTIVITY

Aggregation of amounts involved in fraud	29-2
Association responsible for	29-3
Corporate responsibility for	29-3
Criminal sanctions for	29
Defense, due diligence to prevent	29-3C
Defense, good faith compliance with rule	28-1E
Enhancement of conviction	29J
Immunity from criminal liability in certain situations involving suspected financial exploitation of vulnerable adults	45K, 45L
Limitation on indictment for certain criminal actions	29-1
Prosecutorial assistance provided	3
Referral to District or County Attorney	3

CROWDFUNDING PORTAL

See **INTRASTATE CROWDFUNDING PORTAL**

DAMAGES

See also **CIVIL LIABILITY, RECOVERY, REMEDIES, and RESCISSION**

Amount, determination of	33D, 33-1B
Civil liability for	33A, 33B, 33C, 33F, 33-1A
Exemplary	33M
Limitations, small business issuances	33N
Purchaser may recover when investment advisory services are rendered in violation of Act	33-1A
Purchaser may recover when sale is in violation of Act	33A
Seller may recover when purchase is in violation of Act	33B

DEALER

See also **APPLICATION FOR REGISTRATION AS DEALER OR AGENT, BROKER, REGISTERED DEALER, and REGISTRATION, DEALER OR AGENT**

Advertising,	
Filing requirement	22A
Use of registration in, unlawful	20
Appeal from Commissioner's failure or refusal to register	24A
Application for registration, requisites	
Additional information	13B
Corporations, foreign	13G
Evidence of good repute	13C
Examination	13D, 19C
Foreign (nonresident) applicants	8, 13G, 13I
Generally	13
Information required	13A
Limited partnerships	13H
Cancellation of agent's registration	18
Cease and desist order	
Appeal from	24A
Emergency	23-2
Sales prohibited after	23A
Certificate of registration	
Display of	21
Form	17

	Section
Issuance	15
Surrender of	17
Unlawful use of	20
Changes in personnel, report to Commissioner	17
Civil liability of	33
Commissions	
Amount, maximum allowed for marketing securities	9B
Collection of, actions for	34
Unconscionable commission fraudulent	4F
Defined	4C
Does not include agent	4C
Examinations	
Administered by securities self-regulatory organizations	13K
Required	13D, 19C
Waiver of requirement	13D
Exemptions from registration	
By Board rule	12C
By statute	5
Expiration of registration	19
False statement in filing or proceeding a felony	29E, 29F
Fees — See FEES	
Financial exploitation of vulnerable adult, suspected	
Hold on transaction	45G
Expiration of hold	45H
Extension of hold	45I
Immunity from civil or criminal liability	45L
Internal policies, programs, plans, or procedures	45J
Immunity from civil or criminal liability	45K, 45L
Unless bad faith or malicious purpose	45K
Internal policies, programs, plans, or procedures	45E, 45J
Notification to third parties	45F
Records access	45M
Reports	
Time to submit	45C
To Department of Family and Protective Services	45D
To other appropriate agencies and entities	45E
To Securities Commissioner	45C, 45N
Inspection of registered	13-1
Intrastate crowdfunding portal	44
List of sales, filing of	23D
Named in offer of securities	22F
Option, sale by registered dealer, exempt transaction involving	5S
Receivership of	25-1
Records, names and addresses of	11
Registered dealer, defined	4M
Registration	
Amendments to	17
Appeal from Commissioner's failure or refusal to register	24A
Application contents	13
Cancellation of agent's	18
Certificate of	15, 17

	Section
Continuing education	19D
Denial, suspension, or revocation of	14
Examination required	13D, 19C
Exemption from	5, 12C
Expired	19
Inactive status	42A
Multiple capacities	42B
Renewal of	19
Required	12A
Revocation or suspension of	14
Surrender of original certificate on amendment	17
Temporary	15
Term of	19A
Unlawful use of	20
Waiver, examination requirement	13D
Renewal of registration	19
Reprimand	14A
Revocation of registration	
Effect on registration of agent	25
Grounds and procedure for	14
Sale without registration prohibited	12A
Sales to registered dealer, exempt transaction involving	5H
Sanctions against, grounds for	14
Administrative orders	14A(9)
Court orders or injunctions	14A(10)
Criminal convictions	14A(1), 14A(2)
Examinations	14A(8)
Fraudulent business practices	14A(3)
Inequitable practices	14A(3)
Insolvency	14A(4)
Misrepresentations or failure to furnish information	14A(7)
Sales through unregistered agent	14A(5)
Violations of Act, rules, orders, or undertakings	14A(6), 14A(11)
Secondary market sales by a registered dealer, exempt transaction involving	5O
Securities registered prior to sale by	7
Service of process, nonresident dealers	8
Sign informing customers where to direct complaints, display of	2L
Temporary registration	15
Term of registration	19A
Transactional exemptions	5
Unregistered dealer, penalty	29A
Unsolicited order, exempt transaction involving	5P
Violation of Act is a felony	29
Waiver of examination requirement	13D
DEBENTURE	
As a security	4A
DEFINITIONS	
Agent	4D
Association	29-3A

	Section
Authorized small business development entity	44
Broker	4H
Company	4B
Corporation	29-3A
Dealer	4C
Department	45A
Exploitation	45A
Federal covered investment adviser	4O
Financial exploitation	45A
Fraud	4F
Fraudulent practice	4F
Generally	4
High managerial agent	29-3A
Investment adviser	4N
Investment adviser representative	4P
Issuer	4G
Mortgage	4I
No par value	4K
Non-par	4K
Not exclusive	4L
Option	5S
Person	4B
Price amendment	7C
Recognized securities manual	5O(9)(c)
Registered dealer	4M
Registered investment adviser	4Q
Rule and regulation	28-1A
Rules defining terms authorized	28-1B
Sale, sell, offer for sale	4E
Securities professional	45A
Security	4A
Trust	4B
Vulnerable adult	45A

DEFRAUD

See **FRAUD**

DEPOSITION

Investigations	28A
--------------------------	-----

DEPUTY SECURITIES COMMISSIONER

Appointment of	2H
Board delegation of authority to adopt rules, to	28-1D
Duties	2H

DISCLOSURE

Confidential information	28
Non-disclosure, civil liability for	33A(2), 33B, 33C(2), 33F, 33-1C
Non-disclosure, criminal sanction for	29C
Prospectus required	9C

	Section
Registration by	
Coordination	7C
Notification	7B
Qualification	7A
DISGORGEMENT	
Power of Attorney General to seek	32B
DISTRICT ATTORNEY	
Criminal prosecutions, assistance provided to	3
Criminal referrals to	3
Failure or refusal to prosecute, Attorney General to act	3
DISTRICT COURT	
See also COURTS	
Authority to	
Appoint receiver	25-1B, 25-1C
Enjoin fraudulent practices	32A
Order civil penalties	32C
Order disgorgement	32B
Order restitution	32B
Enforcement of Commissioner's subpoena	28A
DIVIDENDS	
Of stock paid from earnings or surplus, exempt transaction involving	5D
DOCUMENTS, BOOKS, AND RECORDS	
See also CONFIDENTIAL INFORMATION, OPEN RECORDS LAW, and RECORDS	
Filed with Commissioner are public	11
Subpoena for, by Commissioner	28A
Subpoena for, by court on request of Attorney General	
Injunctive proceeding	32A
Receivership proceeding	25-1B
EMERGENCY CEASE AND DESIST ORDER	
See also CEASE AND DESIST ORDER	
Appeal from	24A
Civil liability for sale in violation of	33A(1)
Hearing request	23-2C
Issuance of	23-2A, 23-2B
Notice of sent to last known address	23-2B
Violation of, a felony	29D
EMPLOYEE BENEFIT PLAN	
See COMPENSATION PLAN OR CONTRACT	
ENFORCEMENT	
See also CIVIL LIABILITY, CIVIL PENALTIES, PROCEDURE, RECOVERY, and REMEDIES	
Access to state agency records	28A

	Section
Administrative penalties	23-1B
Administrative sanctions	14
Assistance to prosecutors	3
Cease and desist orders	23A, 23B
Cease publication orders	23C
Civil penalties	32C
Disgorgement for victim of fraud	32B
Duty of Commissioner and Attorney General	3
Emergency cease and desist orders	23-2
Enhancement of conviction	29J
Fees to cover costs of	35A
Fines	23-1
Foreign country judgment	33-2
Injunctions	32A
Inspections	13-1
Investigations	28A, 28C
Means of, nonexclusive	3-1
Penal provisions	29
Receiverships	25-1
Restitution for victim of fraud	32B
Unregistered securities, sales of	35-1, 35-2

EQUIPMENT TRUST CERTIFICATE

As a security	4A
-------------------------	----

ESCROW

Of funds for rescission offer	33I(2), 33J(2)
Of securities	9A

EVIDENCE OF INDEBTEDNESS

As a security	4A
Exemptions involving	6F, 6I, 6J

EVIDENCE OF REGISTRATION

Agents and investment adviser representatives	18
---	----

EXAMINATION

Analysis of performance on	13F
Dealer, agent, investment adviser, and investment adviser representative registration, required for	13D
Examinations by securities self-regulatory organizations	13K
Fee for Texas Securities Law Examination	35B(5)
Notification of results	13E, 13F
Reexamination, when required	19C
Waiver of requirement for	13D

EXEMPT SECURITIES

See also **APPLICATION FOR REGISTRATION OF SECURITIES, EXEMPT
TRANSACTIONS, LIMITED OFFERING EXEMPTION, PERMIT, SALES, and
SECURITIES**

Burden of proof of exemption on party claiming	37
--	----

	Section
Commercial paper	6H
Evidence of indebtedness	
Benevolent, charitable, and religious corporation	6J
Guaranteed by company whose securities are listed	6F
Secured by deposit of securities of governmental entity	6I
Secured by deposit of securities of regulated public service utility	6I
Generally	6
Guaranteed by	
Company whose securities are listed	6F
Regulated public service utility	6D
Issued by regulated public service utility	6D
Listed on a recognized stock exchange, designated on NASDAQ national market system	6F
Listed securities, senior to or on a parity with	6F
Non-profit domestic corporations	6E
Sold by registered dealer, requirement	6

EXEMPT TRANSACTIONS

See also **APPLICATION FOR REGISTRATION OF SECURITIES, EXEMPT SECURITIES, LIMITED OFFERING EXEMPTION, PERMIT, SALES, and SECURITIES**

Burden of proof of exemption on party claiming	37
Change in par value	5G(b)
Charitable organizations	5K, 5U
Compensation plans or contracts	5I(b)
Consolidations, corporate	5G(a)
Direct obligation of	
Governmental agency	5M
Regulated bank	5L
Exchange of shares	5G(b)
Guaranteed or issued by	
Governmental agency	5M
Regulated bank	5L
Institutional purchasers	5H
Insurance company investments	5C(2)
Isolated sales	5C(1)
Mergers, corporate	5G(a)
Mortgages	5J
Non-public offerings	5I, 5Q
Oil, gas or mining interests	5Q
Options	5S
Other exemptions, Board authority to prescribe or define	5T
Personal holdings	5C
Religious organizations	5K, 5U
Reorganization	5F
Sales by	
Administrators	5A
Bankruptcy receivers or trustees	5A
Banks	5L
Benevolent organizations	5K
Charitable organizations	5K
Cities	5M

	Section
Cooperatives	5N
Corporation, of assets	5G(a)
Counties	5M
Educational organizations	5K
Executors	5A
Farmers' cooperatives	5N
Fraternal organizations	5K
Governmental agency or instrumentality	5M
Guardians	5A
Insurance companies.	5C
Issuers	
Of securities issued or guaranteed by a government agency or instrumentality	5M
Of securities issued or guaranteed by financial institutions	5L
When no public solicitation	5I
When sale would be exempt if sold by registered dealer under Section 6.	5R
When sold to existing security holders	5E
Mortgagees	5B
Municipalities	5M
Mutual loan corporations	5N
Pledge holders.	5B
Political subdivisions.	5M
District or authority	5M
Reform organizations	5K
Registered dealer	
Of options.	5S
Of outstanding securities	5O
Of securities issued or guaranteed by a government agency or instrumentality	5M
Of securities issued or guaranteed by financial institutions	5L
Unsolicited	5P
Religious organizations.	5K
Savings and loan associations	5L
States.	5M
United States.	5M
Sales to	
Banks	5H
Building and loan associations	5H
Charitable organizations.	5U
Dealers, registered.	5H
Existing security holders	5E
Institutional investors	5H
Insurance companies.	5H
Investment companies	5H
Not more than 15 persons within 12 months without advertisement or public solicitation	5I(c)
Not more than 35 persons within 12 months of oil, gas, or mining interests without advertisement or public solicitation	5Q
Not more than 35 security holders without advertisement or public solicitation	5I(a)
Registered dealers	5H
Savings institutions	5H
Small business investment companies.	5H
Surety or guaranty companies.	5H
Trust companies	5H

	Section
Secondary sales by registered dealer	5O
Stock dividend	5D
Stock split	5D
Unsolicited order for purchase of securities	5P
 EXPENSES OF MARKETING	
Limits	9B
 EXPLOITATION	
See FINANCIAL EXPLOITATION OF VULNERABLE ADULT	
 FAIR, JUST AND EQUITABLE	
Cease and desist order, if sale would not be	23A
Consideration by promoters must be	10A
Expenses of marketing securities, amount must be	9B
Plan of business must be	7A, 7C, 10A
Registration requirement	7A, 7C, 10A
 FARMERS' COOPERATIVES	
Securities issued by, exempt transaction involving	5N
 FEDERAL COVERED INVESTMENT ADVISER	
See also INVESTMENT ADVISER	
Authorization	12-1B
Defined	4O
Exemptions, effect on notice filing	12-1A
Fees — see FEES	
Notice filing	12-1
Consent to service of process, if applicable	8, 12-1B
Form prescribed by Commissioner	12-1B
Renewal of	12-1C
Term of	12-1C
When effective	12-1C
Rulemaking affecting	12-1B
 FEDERAL COVERED INVESTMENT ADVISER REPRESENTATIVE	
See FEDERAL COVERED INVESTMENT ADVISER	
 FEDERAL SECURITIES ACT	
Application to advertising in Texas	22A(4)
Coordination with this Act	10-1
Prospectus disclosure sufficient if also filed with SEC	9C
Registration by coordination	7C
Shelf registration	7C
 FEES	
Agent, officer, or investment adviser representative registrations	19C, 35A(4), 42
Amendments to agent or investment adviser representative evidence of registration	35B(1)
Amendments to dealer or investment adviser registration certificate	35B(1)
Board authority to establish	35A, 35C
Certified copies	35B(3)

Section

Dealer registration	19C, 35A(2), 42
Deposit to general revenue fund	36
Duplicate certificate of registration	35B(1)
Excess securities sales	35-1
Federal covered investment adviser, notice filing	12-1B, 35A(2)
Federal covered investment adviser representative, notice filing	12-1B, 35A(4)
Inactive status	42A
Interpretation of Act or rule by General Counsel	35B(8)
Investment adviser registration	19C, 35A(2), 42
Investment adviser representative registration	19C, 35A(4), 42
Limited offering	
Notice	35B(7)
Sales in excess of that authorized	35-1B
Multiple capacities	42B
Officer registration	19C, 35A(4), 42
Reduced fees, authority of Board to adopt	42
Registration of securities	
By coordination	35B(2)
By notification	35B(2)
By qualification	35B(2)
Examination of original or amended application	35B(2)
Filing of original, amended, or renewal application	35A(1)
Renewals of	7B, 7C, 35A(1)
Renewal of	
Agent, officer, or investment adviser representative registration	19C, 35A(5), 42
Dealer or investment adviser registration	19C, 35A(3), 42
Federal covered investment adviser notice filing	12-1C, 35A(3), 42
Federal covered investment adviser representative notice filing	12-1C, 35A(5), 42
Secondary trading notices	35B(6)
Securities law examination request	35B(5)
Small business, reduced fees to accommodate	42B
Stock exchange approval	35B(4)
Subpoena, serving of	28A
Sufficient to cover costs of administering The Act	35A, 35C, 35D
Texas Securities Law Examination, request to take	35B(5)
Unregistered securities sales	35-2
Witnesses	28A

FELONY

Aggregation of amounts involved in securities fraud	29-2
Conviction as grounds for administrative sanction	14A
Enhancement of conviction	29J
Violation of Act	29

FINANCIAL EXPLOITATION OF VULNERABLE ADULT

Dealer

Internal policies, programs, plans, or procedures	45E
Records access	45M

Definitions

Exploitation	45A
Financial exploitation	45A

	Section
Securities professional	45A
Vulnerable adult	45A
Hold on transaction	45G
Expiration of	45H
Extension of	45I
Immunity from civil or criminal liability	45L
Internal policies, programs, plans, or procedures	45J
Immunity from civil or criminal liability	45K, 45L
Unless bad faith or malicious purpose	45K
Internal policies, programs, plans, or procedures	45E, 45J
Investment adviser	
Internal policies, programs, plans, or procedures	45E
Records access	45M
Notification	
Immunity from civil or criminal liability	45K
Unless bad faith or malicious purpose	45K
To dealer	45B
To investment adviser	45B
To third parties	45F
Person serving in a legal capacity for a dealer or investment adviser	
Immunity from civil or criminal liability	45K
Notification to dealer or investment adviser	45B
Report	
Content and form	45N
Immunity from civil or criminal liability	45K
Unless bad faith or malicious purpose	45K
Time to submit	45C
To Department of Family and Protective Services	45D
To other appropriate agencies and entities	45E
To Securities Commissioner	45C, 45N
 FINANCIAL INSTITUTIONS	
Sale to, exempt transaction involving	5H
Securities of, exempt transaction involving	5L
 FINANCIAL STATEMENTS	
Application for registration of securities	
Audited, required for	
Registration by notification	7B
Registration by qualification, unless small business issuer	7A
Detailed income statement required	7A, 7B
Fiscal year ending more than 90 days before	7D
Renewal application, detailed balance sheet to accompany	10B
Rescission offer	33I(1), 33J(1)
Reviewed, if small business issuer	7A
 FINES	
Administrative	23-1
Civil penalties	32C
Conformity with rules, defense	28-1E
Criminal	29

FOREIGN COUNTRY JUDGMENT

Enforcement	33-2
Remedies	33-2

FOREIGN (NONRESIDENT) APPLICANTS

Special requirements	8, 13G, 13I
--------------------------------	-------------

FRAUD

Administrative fines	23-1A
Administrative sanctions	14A(3)
Aggregation of amounts	29-2
Appointment of receiver when	25-1A
Cease and desist order	23A, 23B
Civil penalties	32C
Consideration in review of dealer or investment adviser application.	13B
Control persons and aiders, civil liability.	33F
Criminal penalties	29C
Defined	4F
Disgorgement for victim of	32B
Emergency cease and desist order	23-2
Enhancement.	29J
Equitable relief for victim of	32B
Injunction	32A
Investor education, emphasis on prevention and detection of.	43
Issuer not to work a	7, 10A
Penal provisions	29C
Purchaser's civil action for.	33A, 33C
Receivership	25-1
Registration of dealer, agent, investment adviser, or investment adviser representative may be revoked, denied, or suspended for	14A(3)
Restitution for victim of.	32B
Secondary trading exemption revoked for.	5O
Seller's civil action for	33B
Unconscionable sales charges or commissions	4F

FRAUDULENT PRACTICESee **DEFINITIONS****GENERAL COUNSEL**

Fee for interpretation of Act or rule by	35B(8)
Lobbyist, not to serve as	2-1C

GOVERNOR OF THE STATE OF TEXAS

Annual report by Board to	2J
Appointment of State Securities Board members by	2A
Designation by, presiding officer of the Board.	2D

GRAND JURIES

Attorney General, authority to appear and interrogate witnesses before	3
--	---

Section

GUARANTEE

Of evidences of indebtedness by companies whose securities are listed. 6F
Of options 5S
Of securities by
 Financial institutions, exempt transaction involving. 5L
 Governmental entity, exempt transaction involving. 5M
 Regulated public service utilities. 6D

HEARINGS

Administrative fine, assessment of. 23-1A
Adoption of rules. 28-1D
Application for injunction 32A
Appointment of receiver 25-1
Before the
 Board 5O, 24B
 Commissioner. 6F, 14B, 23, 23-1A, 23-2, 24A, 35-2
 Hearings officer. 5O, 14B, 24
Burden of proof of exemption on party claiming. 37
Denial of registration. 7B, 7C, 14, 24
Exchanges, approval of 6F
Fees, expenses, and costs of. 28A
Record of proceedings 26
Refusal to register dealer, investment adviser, investment adviser representative, or agent. 24A
Request for 24
Revocation of
 Approval of securities manuals 5O
 Exchanges, approval of. 6F
 Registration of dealer, agent, investment adviser, or investment adviser representative 14B
 Registration of securities 7B, 7C
 Secondary trading exemption 5O
Rules 28-1D
Securities manuals, approval of. 5O
Substantial evidence appeal. 27
Suspension of
 Exchanges and trading systems. 6F
 Registration of dealer, agent, investment adviser, or investment adviser representative 14B
Unregistered securities, sales of 35-2

INDEBTEDNESS

Evidence thereof as a security 4A

INDICTMENT

Exemption, unnecessary to negative 37
Limitation on action for securities fraud 29-1

INJUNCTION

Availability of secondary trading exemption affected by 5O
Generally 32A

INSPECTIONS

Access to place of business and records. 13-1B, 13-1C

	Section
Authority for	13-1A
Copies of records	13-1C, 13-1D
Dealers, registered	13-1
Information relating to is confidential	13-1E
Investment advisers, registered	13-1
Purposes of	13-1A
 INSTRUMENTS	
Evidencing a security	4A
Representing any interest in or under oil, gas or mining lease, fee or title, as a security	4A
Representing interests in capital, property, assets, profits or earnings of any company, as a security	4A
 INSURANCE	
See also BOARD OF INSURANCE COMMISSIONERS and TEXAS DEPARTMENT OF INSURANCE	
Board of Insurance Commissioners	30, 39
Insurance products, when excluded from definition of security	4A
Insurance Securities Act repealed	39
Sales of securities owned by insurance companies, exempt transaction involving	5C(2)
Sales of securities to insurance companies, exempt transaction involving	5H
Texas Department of Insurance	4A, 5C(2)
 INTEREST	
At legal rate of, for rescission	33D
 INTERPRETATION	
See also ACT, CONSTRUCTION OF ACT, and WORDS	
By General Counsel	35B(8)
Definitions not exclusive	4L
Rules interpreting Act	28-1
Saving of existing remedies	31, 33M, 33-1F
Severability of provisions	38
 INTRASTATE CROWDFUNDING PORTAL	
By authorized small business development entity	44
 INVESTIGATIONS	
Assistance to securities regulator of another state or foreign jurisdiction	28C
By Attorney General, before seeking appointment of receiver	25-1B
By Commissioner and Attorney General to prevent or detect violations	3
By Commissioner to prevent or detect violations	28
Confidential information	28
Generally	28
Injunctions, detect fraudulent practices	32A
Investigatory power of Commissioner	3, 28
Record of proceeding before Commissioner	26
Stock exchanges, prior to approval	6F

INVESTMENT ADVISER

See also **APPLICATION FOR REGISTRATION AS INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE, FEDERAL COVERED INVESTMENT ADVISER, INVESTMENT ADVISER REPRESENTATIVE, NOTICE FILING, REGISTERED INVESTMENT ADVISER, and REGISTRATION, INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE**

Advertising, use of registration in, unlawful	20
Appeal from Commissioner's failure or refusal to register.	24A
Application for registration, requisites	
Additional information	13B
Corporations, foreign	13G
Evidence of good repute	13C
Examination	13D, 19C
Foreign (nonresident) applicants.	8, 13G, 13I
Generally	13
Information required.	13A
Limited partnerships	13H
Cancellation of investment adviser representative's registration	18
Cease and desist order	
Appeal from	24A
Emergency order.	23-2
Fraudulent or unauthorized conduct prohibited.	23B
Certificate of registration	
Display of	21
Form	17
Issuance	15
Surrender of	17
Unlawful use of.	20
Changes in personnel, report to Commissioner.	17
Civil liability of	33-1A
Collection of compensation for services, actions for	34
Defined	4N
Examinations	
Administered by securities self-regulatory organizations	13K
Required	13D, 19C
Waiver of requirement	13D
Exemption from registration	12C
Expiration of registration.	19
False statement in filing or proceeding a felony.	29E, 29F
Fee for registration as — See FEES	
Financial exploitation of vulnerable adults, suspected	
Hold on transaction	45G
Expiration of	45H
Extension of	45I
Immunity from civil or criminal liability	45L
Internal policies, programs, plans, or procedures	45J
Immunity from civil or criminal liability.	45K, 45L
Unless bad faith or malicious purpose	45K
Internal policies, programs, plans, or procedures	45E, 45J
Notification to third parties.	45F
Records access	45M

Section

Reports	
Time to submit	45C
To Department of Family and Protective Services	45D
To other appropriate agencies and entities	45E
To Securities Commissioner	45C, 45N
Inspection of registered	13-1
Receivership of	25-1
Records, names and addresses of	11
Registered investment adviser, defined	4Q
Registration	
Amendments to	17
Appeal from Commissioner's failure or refusal to register	24A
Application contents	13
Cancellation of investment adviser representative's	18
Certificate of	15, 17
Continuing education	19D
Denial, suspension, or revocation of	14
Examination required	13D, 19C
Exemption from	12C
Expired	19
Inactive status	42A
Multiple capacities	42B
Renewal of	19
Required	12B
Revocation or suspension of	14
Surrender of original certificate on amendment	17
Temporary	15
Term of	19A
Unlawful use of	20
Waiver, examination requirement	13D
Rendering services without registration prohibited	12B
Renewal of registration	19
Reprimand	14A
Revocation of registration	
Effect on registration of investment adviser representative	25
Grounds and procedure for	14
Sanctions against, grounds for	14
Administrative orders	14A(9)
Court orders or injunctions	14A(10)
Criminal convictions	14A(1), 14A(2)
Examinations	14A(8)
Fraudulent business practices	14A(3)
Inequitable practices	14A(3)
Insolvency	14A(4)
Misrepresentations or failure to furnish information	14A(7)
Services through unregistered investment adviser representative	14A(5)
Violation of Act, rules, orders, or undertakings	14A(6), 14A(11)
Service of process, nonresident	8
Sign informing customers where to direct complaints, display of	2L
Temporary registration	15
Term of registration	19A

Section

Unregistered investment adviser, penalty	29I
Violation of Act is a felony	29
Waiver of examination requirement	13D

INVESTMENT ADVISER REPRESENTATIVE

See also **APPLICATION FOR REGISTRATION AS INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE, FEDERAL COVERED INVESTMENT ADVISER, INVESTMENT ADVISER, NOTICE FILING, and REGISTRATION, INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE**

Advertising, use of registration in, unlawful	20
Appeal from Commissioner’s failure or refusal to register.	24A
Application for registration	18
Denial of	14A
Cancellation of registration by investment adviser	18
Cease and desist order, fraudulent or unauthorized conduct.	23B
Civil liability of	33-1A
Collection of compensation for services, actions for	34
Defined	4P
Evidence of registration	18
Examination	
Administered by securities self-regulatory organizations	13K
Required	13D, 19C
Waiver of	13D
Exemption from registration	12C
False statement in filing or proceeding a felony.	29E, 29F
Fees, registration — See FEES	
Notification to investment adviser of suspected financial exploitation of vulnerable adult	45B
Immunity from civil or criminal liability.	45K
Unless bad faith or malicious purpose	45K
Receivership of	25-1
Records, names and addresses of.	11
Registration	
Appeal from Commissioner’s failure or refusal.	24A
Application for	18
Cancellation of by investment adviser	18
Continuing education	19D
Denial, suspension, or revocation of.	14
Evidence of	18
Examination required	13D, 19C
Exemption from	12C
Expired	19
Inactive status	42A
Multiple capacities	42B
Renewal of	19
Required	12B
Revoked by revocation of investment adviser’s registration	25
Term of	19A
Unlawful use of.	20
Waiver, examination requirement	13D
Rendering services for investment adviser not registered to represent.	14A(5)
Rendering services without registration prohibited	12B

	Section
Sanctions against, grounds for	14
Administrative orders	14A(9)
Court orders or injunctions	14A(10)
Criminal convictions	14A(1), 14A(2)
Examinations	14A(8)
Fraudulent business practices	14A(3)
Inequitable practices	14A(3)
Misrepresentations or failure to furnish information.	14A(7)
Services for investment adviser not registered to represent	14A(5)
Violation of Act, rules, orders, or undertakings	14A(6), 14A(11)
Sign informing customers where to direct complaints, display of	2L
Unregistered investment adviser representative, penalty	29I
Violation of Act is a felony	29
Vulnerable adult, suspected financial exploitation of	
Immunity from civil or criminal liability.	45K
Unless bad faith or malicious purpose	45K
Notification to investment adviser	45B
Waiver of examination requirement	13D
 INVESTMENT COMPANY	
Expiration and renewals of registration of securities of	7C
Sales of securities to, exempt transaction involving.	5H
 INVESTMENT CONTRACT	
As a security	4A
 INVESTOR EDUCATION	
Bilingual materials required.	43A
Commissioner to develop and implement	43A
Grants and donations, acceptance of.	43C
Public or nonprofit entities, collaboration with	43B
 ISSUER	
Advertising filing requirement	22A
Defined	4G
Exempt transaction involving	5E, 5I, 5L, 5M, 5R, 5U
Liability of nonselling issuer which registers	33C, 33D(5)
Nonresident, consent to service	8
Receivership of	25-1
Unlawful to use registration to aid sale of securities	10C
 JUDICIAL REVIEW	
Of decision or order of the Commissioner or Board	27
Substantial evidence rule	27
 LIMITED OFFERING EXEMPTION	
See also APPLICATION FOR REGISTRATION OF SECURITIES, EXEMPT SECURITIES, EXEMPT TRANSACTIONS, PERMIT, SALES, and SECURITIES	
Fee for	
Amended notice	35-1B
Filing notice	35B(7)

LIMITED PARTNERSHIPSee also **PARTNERSHIP**

Dealer or investment adviser registration, copy of copartnership or statement of plan of business required	13H
Limited partner interest as a security	4A
“Person” and “company” include	4B

LISTED SECURITIESSee **STOCK EXCHANGES****MAIL**

Emergency cease and desist order	23-2B
Notice prior to cease and desist order	23A, 23B
Notice sufficient if sent certified or registered	26
Service of process, forwarded by Commissioner	8

MARKETING EXPENSES

Excessive expenses prohibited	9B
---	----

MIDWEST STOCK EXCHANGESee **CHICAGO STOCK EXCHANGE****MORTGAGE**

Deed of trust, term includes	4I
Defined	4I
Exempt transaction involving	5J
Mortgage certificate as a security	4A

MUNICIPAL CORPORATION

As intrastate crowdfunding portal	44
Securities issued or guaranteed by, exempt transaction involving	5M

MUTUAL LOAN CORPORATION

Securities issued by, exempt transaction involving	5N
--	----

NAME

Advertisement under trade name	28-1F
Officers’ and directors’ in registration applications	7A, 13A
Subscribers’ to be furnished	9A

NASDAQ STOCK MARKET

Options on securities quoted on, exempt transaction involving	5S
Securities designated on, exempt	6F

NEW YORK STOCK EXCHANGE

Securities fully listed upon, exempt	6F
--	----

NONPROFIT ORGANIZATION

As intrastate crowdfunding portal	44
---	----

NO PAR VALUESee **DEFINITIONS****NOTE**

As a security	4A
Exemptions involving	5J, 6I, 6J

NOTICESee also **CONSENT TO SERVICE OF PROCESS, PROCESS, and SERVICE**

Address in filings to Commissioner, or last known, sufficient for	26
Certified or registered mail	26
Changes in dealer or investment adviser personnel	17
Dealers in secondary market, of court injunction or order	5O
Emergency cease and desist order	23-2B, 23-2D
Examination results	13E, 13F
Expiration of registration	19C
Financial exploitation of vulnerable adults, suspected	45
Hearings	
Assessment of administrative fines	23-1A
Cease and desist order	23A, 23B
Emergency cease and desist order	23-2B, 23-2D
Limited offering exemption, claiming	35B(7)
Offers prohibited after notice of cease and desist or cease publication order	22A, 22B, 23
Penalty for sale after notice of order	29D, 29H
Proposed rule	28-1C
Receiver, action for appointment of	25-1C
Recognized manuals, suspension or revocation	5O
Revocation of dealer registration, to agent of dealer	25
Revocation of investment adviser registration, to investment adviser representative	25
Rules and regulations, prior to adoption of	28-1C
Secondary trading exemption, claiming	35B(6)
Status of complaint	2-6C
Stock exchange approval, withdrawal of	6F
Stop order	7C

NOTICE FILINGBy federal covered investment advisers and their representatives — See **FEDERAL COVERED INVESTMENT ADVISER****NOTIFICATION**See **REGISTRATION, SECURITIES****OATHS**

Application for registration of	
Agent or investment adviser representative	18
Dealer	13A
Investment adviser	13A
Securities	7A
Changes in dealer or investment adviser personnel, notice of	17
Commissioner may administer in investigations	28A

OFFER FOR SALESee also **SALES**

Defined	4E
Permitted offers, generally	22
Prohibited offers, generally	7A, 12A
Prospectus required	9C

OFFER TO REPURCHASESee **RESCISSION****OIL AND GAS**

Any instrument representing interest in or under lease, fee or title as a security	4A
Exemption for certain transactions involving	5Q

OPEN GOVERNMENTSee also **ADMINISTRATIVE PROCEDURE ACT, OPEN MEETINGS LAW, and OPEN RECORDS LAW**

Board and Commissioner subject to	
Open meetings law	2N
Open records law	2N

OPEN MEETINGS LAWSee also **ADMINISTRATIVE PROCEDURE ACT and OPEN GOVERNMENT**

Board and Commissioner subject to	2N
---	----

OPEN RECORDS LAWSee also **CONFIDENTIAL INFORMATION, DOCUMENTS, BOOKS AND RECORDS, OPEN GOVERNMENT, and RECORDS**

Authorized disclosure of confidential information does not violate	28
Board and Commissioner subject to	2N

OPTION

Defined	5S
Guarantee of, by a dealer	5S
Sale of, by or through a registered dealer, exempt transaction involving.	5S

ORDER

Appeal from Commissioner's orders, generally.	24
Cease and desist.	23A, 23B, 24A
Cease publication	23C, 24A
Contract in violation of, unenforceable	33K
Denying registration of securities	7B, 7C, 10A, 24B
Emergency cease and desist.	23-2, 24A
Judicial review of.	27
Penalty for violation of	29D, 29H
Prohibiting offer or sale of securities	23A, 23C, 24A
Refund.	32-1
Secondary trading, stop order	5O
Violation of, basis for	
Administrative sanction	14A
Civil penalties	32C

	Section
Fine	23-1A
Injunction	32A
Waivers void	33L
 ORGANIZATION EXPENSES	
Disclosed in application for securities registration	7A
Limitations on	9B
 PAR VALUE	
Change in, exempt transaction involving	5G
Disclosed in application for securities registration	7A
No par value defined	4K
 PARTICIPATION AGREEMENT	
As a security	4A
 PARTNERSHIP	
See also LIMITED PARTNERSHIP	
Articles of to accompany securities registration application	7A
Dealer or investment adviser, report of personnel changes	17
Limited partner's interest in, as a security	4A
"Person" and "company" include	4B
 PENALTY	
Civil penalties	32C
Criminal sanctions for violations of Act	29
 PERMIT	
See also APPLICATION FOR REGISTRATION OF SECURITIES, EXEMPT SECURITIES, EXEMPT TRANSACTIONS, LIMITED OFFERING EXEMPTION, SALES, and SECURITIES	
Appeal of Commissioner's action on	24
Application for registration of securities	7
Denial, suspension, or revocation of securities registration by Commissioner	7B, 7C, 10A, 23A, 24
Form and contents of	10B
Instrument unnecessary in certain cases	10B
Registration — See REGISTRATION	
Renewal of	10B
Use of to make a sale, prohibited	10C
 PERSON	
Defined	4B
 PLAN OF BUSINESS	
Dealer or investment adviser applicant must state	13A
Proposed plan must be fair, just and equitable	7A, 7C, 10A
 PREORGANIZATION CERTIFICATE	
As a security	4A
 PRINCIPAL PLACE OF BUSINESS	
Dealer's or investment adviser's registration application, included in	13A
Securities registration application, included in	7A, 7B
 PROCEDURE	
See also ENFORCEMENT	
Administrative Procedure Act, applicability of	2N, 14B, 24C

	Section
Adoption of rules	28-1
Alternative dispute resolution	2-8
Civil penalties	32C
Depositions	28A
Exemptions	
Burden on claimant to establish	37
Unnecessary to negative	37
Foreign country judgment, enforcement	33-2
Hearings — See HEARINGS	
Injunction	32A
Judicial review	27
Negotiated rulemaking	2-8
Notice of proposed rules	28-1C
Notice, sufficiency of	26
Rescission offer to	
Buyers	33I
Sellers	33J
Subpoena by Commissioner	28A
 PROCESS	
See also CONSENT TO SERVICE OF PROCESS, NOTICE, and SERVICE	
Commissioner as agent for service of, for foreign (nonresident) issuers, dealers or investment advisers	8
Subpoenas	28A
 PROFIT SHARING AGREEMENT	
As a security	4A
 PROSPECTUS	
Copy must accompany securities registration application	7A, 7B, 7C
Federal disclosure provisions	9C
Offers to sell securities by	9C
 PROTECTION OF INVESTORS	
Cease and desist orders	23
Civil liability	33
Civil penalties	32C
Consideration in rulemaking	28-1C
Criminal liability	29
Emergency cease and desist orders	23-2
Escrow as deemed necessary by Commissioner	9A
Financial exploitation of vulnerable adults, suspected	45
Injunction	32A
Purpose of the Act	10-1B
Receiver, appointment of	25-1A
Vulnerable adults from financial exploitation	45
Waiver of restrictions or requirements in rules if unnecessary for	
By Board	28-1B
By Commissioner	10D
 PUBLIC	
Inspection materials confidential	13-1E
Investigatory materials confidential	28A
Papers filed with Commissioner available to	11
Protection of	
Approval of stock exchange, requirement for	6F
Cease publication order	23C
Emergency cease and desist order	23-2

Section

Registration-related materials confidential 28B
Rules, notice and comment on 28-1C

PUBLIC INFORMATION LAW
See **OPEN RECORDS LAW**

PUBLIC SOLICITATION
See also **ADVERTISEMENT, CEASE PUBLICATION ORDER, and PUBLICATION**
Sales to not more than 15 persons within 12 months, must be without advertisement
or public solicitation 5I(c)
Sales to not more than 35 persons within 12 months of oil, gas, or mining interests,
must be without advertisement or public solicitation 5Q
Sales to not more than 35 securities holders, or of less than 35 interests, must be
without advertisement or public solicitation 5I(a), 5Q

PUBLIC TESTIMONY
Before the Board 2-5

PUBLICATION
See also **ADVERTISEMENT, CEASE PUBLICATION ORDER, and PUBLIC SOLICITATION**
Of offer prohibited after cease publication order 23C

PURCHASE
See also **SALES**
Liability for fraudulent purchases 33B
Offer to, invitation of offers to, fraud in connection with 29C
Rescission offers for fraudulent purchases 33J

PURCHASER
Civil liability of 33B
Examination of records 11
Issuer may be required to escrow stock or money 9A
Private right of action 33A

PURPOSES
Of Act 10-1
Rules consistent with Act 28-1B, 28-1C

QUALIFICATION
See **REGISTRATION, SECURITIES**

RECEIVERSHIP
Action brought in District Court 25-1B
Affiliates subject to 25-1A
Appointment of receiver by court 25-1C
Attorney General brings action 25-1B
Commissioner requests Attorney General to bring action 25-1A
Disclosure of confidential information to receiver 28
Evidence, Attorney General may obtain 25-1B
Qualification standards for receiver 25-1D
Receiver appointed without notice to affected person, opportunity for hearing 25-1C

	Section
Remedy not exclusive	25-1E
Requirements for appointment of receiver	25-1A, 25-1D
Venue	25-1B

RECOGNIZED SECURITIES MANUAL

Defined	5O
Listing in	5O(9)
Revocation or suspension of recognition	5O

RECORDS

See also **CONFIDENTIAL INFORMATION, DOCUMENTS, BOOKS AND RECORDS,**
and **OPEN RECORDS LAW**

Advice, analyses, opinions, or recommendations are confidential	13-1E, 28B
Administrative hearing	26
Board, access to	2G
Certified copies of, by Commissioner	11, 30
As evidence	30
Fee for	35B(3)
Complaints against employees, former employees, or registered persons	2-6A
Examination of, in	
Inspections	13-1
Investigations	28
Filings required are public	11
Financial exploitation of vulnerable adults, relevant to suspected	45M
Furnish copies to	
Commissioner	13-1B, 13-1C, 28A
Purchaser	11
In custody of Commissioner	30
Investigation, internal notes, memoranda, reports or communications confidential	28A
Production of, in connection with injunction	32A
Subpoena to produce	25-1B, 28A, 32A

RECOVERY

See also **CIVIL LIABILITY, CIVIL PENALTIES, ENFORCEMENT, REMEDIES,** and
RESCISSION

Attorney fees	33D(7), 33-1B(4)
Civil penalties	32C
Costs	32D, 33D(6), 33-1B(4)
Damages — See DAMAGES	
Defense, good faith compliance with rule	28-1E
Disgorgement	32B
Equitable relief	32B
Limitations, small business issuances	33N
Rescission — See RESCISSION	
Restitution	32B

REFUND

See also **RESCISSION**

Commissioner may order	32-1
Registration fees	36

REGISTERED AGENTSee **AGENT****REGISTERED DEALER**See also **DEALER**

Defined	4M
Inspections of	13-1

REGISTERED INVESTMENT ADVISERSee also **FEDERAL COVERED INVESTMENT ADVISER** and **INVESTMENT ADVISER**

Defined	4Q
Inspections of	13-1

REGISTERED INVESTMENT ADVISER REPRESENTATIVESee **INVESTMENT ADVISER REPRESENTATIVE****REGISTRATION, DEALER OR AGENT**See also **APPLICATION FOR REGISTRATION AS DEALER OR AGENT**

Administrative fines for violation of	23-1
Appeal from Commissioner's failure or refusal to register.	24A
Application for	13, 18
Cancellation of agent's	18
Certificate of, dealer	15, 17
Display of	21
Changes in dealer personnel	17
Civil liability for sale in violation of requirements.	33A(1)
Continuing education	19D
Denial, suspension, or revocation of	14
Evidence of, agent	18
Examination required	13D, 19C
Expired	19
False statement or representation concerning, penalty	29F
Fees — See FEES	
Inactive status	42A
Multiple capacities.	42B
Records open to public inspection.	11
Renewal of.	19
Required	12A
Exemption from	5, 12C
Revocation of	
Dealer's, effect on agent's	25
Grounds and procedure for	14
Sanctions, criminal	29
Sanctions, grounds for.	14
Surrender of original certificate	17, 25
Temporary.	15
Term of	19A
Unlawful use of	20
Unregistered dealer or agent, penalty	29A
Waiver, examination requirement.	13D

REGISTRATION, INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE

See also **APPLICATION FOR REGISTRATION AS INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE**

Administrative fines for violation of	23-1
Appeal from Commissioner's failure or refusal to register.	24A
Application for	13,18
Cancellation of investment adviser representative's	18
Certificate of, investment adviser	15, 17
Display of	21
Changes in investment adviser personnel	17
Civil liability for investment advisory services rendered in violation of requirements	33-1A
Civil penalties	32C
Continuing education	19D
Criminal liability for investment advisory services rendered in violation of requirements.	29C
Denial, suspension, or revocation of	14
Evidence of, investment adviser representative	18
Examination required	13D, 19C
Expired	19
False statement or representation concerning, penalty	29F
Fees — See FEES	
Inactive status	42A
Multiple capacities.	42B
Records open to public inspection	11
Renewal of.	19
Required	12B
Exemption from	12C
Revocation of	
Grounds and procedure for.	14
Investment adviser's, effect on investment adviser representative's	25
Sanctions, criminal	29
Sanctions, grounds for	14
Surrender of original certificate	17, 25
Temporary.	15
Term of	19A
Unlawful use of	20
Unregistered investment adviser or investment adviser representative, penalty	29I
Waiver, examination requirement.	13D

REGISTRATION, SECURITIES

See also **COORDINATION** and **QUALIFICATION**

Appeal from Commissioner's failure or refusal to register.	24B
Application to issue securities by	
Coordination.	7C
Notification.	7B
Qualification	7A
Civil liability for sale in violation of requirements.	33A(1)
Escrow	9A
Examination of application for	10A
Excess securities	35-1A
Fair, just and equitable	7A, 7C, 10A

	Section
False statement or representation concerning, penalty	29F
Fees — See FEES	
Financial statements	
Audited	7A, 7B
Reviewed, if issuer is “small business issuer”	7A
Marketing expenses	9B
Renewal of.	7B, 7C, 10B
Sale of unregistered securities, penalty	29B

REGULATED PUBLIC SERVICE UTILITY

Exemption for securities issued or guaranteed by	6D
--	----

REMEDIES

See also **CIVIL LIABILITY, CIVIL PENALTIES, DAMAGES, ENFORCEMENT, RECOVERY, and RESCISSION**

Civil liabilities, generally	33, 33-1
Civil penalties	32C
Cumulative	31, 33M, 33-1F
Disgorgement	32B
Enforcement of foreign country judgment.	33-2
Equitable relief	32B
Illegal contracts, unenforceable	33K
Injunction	32A
Limitations, small business issuances	33N
Nonexclusive, of Commissioner	3-1, 25-1E
Receivership	25-1
Refund.	32-1
Restitution	32B

RENEWAL

See **FEES** and **REGISTRATION, SECURITIES**

REORGANIZATION

Certificate as a security	4A
Issue of securities by company in process of, exempt transaction involving	5F

REPEALED LAWS

Insurance Securities Act of Texas (1955).	39
Securities Act of Texas (1955).	39

RESCISSION

See also **CIVIL LIABILITY, DAMAGES, RECOVERY, and REMEDIES**

Civil action for.	33
Legal rate of interest	33D
Requirements of offer to	
Buyers	33I
Sellers	33J

RESTITUTION

Power of Attorney General to seek	32B
---	-----

REVIEW

Administrative review of Commissioner's action	24
Judicial review of Commissioner or Board decision	27

REVOCAATION

Agent's registration	14, 25
Dealer's registration.	14, 25
Effect on agent's registration.	25
Investment adviser representative's registration	14, 25
Investment adviser's registration	14, 25
Effect on investment adviser representative's registration.	25
Recognition of securities manual.	50
Secondary trading exemption	50
Surrender of registration after	25

RULES AND REGULATIONS

Administrative Procedure Act, subject to	2N
Advertising	28-1F
Agent, Board authority to exempt from registration requirements	12C
Authority to adopt.	2-5, 4N, 4P, 5S, 5T, 7A, 8, 12C, 12-1B, 19B, 28, 28-1, 42, 44, 45N
Comment, notice and opportunity for.	28-1C
Competitive bidding	28-1F
Contracts in violation of are unenforceable.	33K
Dealer, Board authority to exempt from registration requirements.	12C
Defense to liability or penalty, act done in conformity with	28-1E
Defined	28-1A
Delegation of rulemaking power to Commissioner or Deputy Commissioner	28-1D
Disclosure of confidential information	28
Federal covered investment adviser or representative	12-1B
Hearing on proposed rules.	28-1D
Interpretation by General Counsel	35B(8)
Intrastate crowdfunding portal	44
Investment adviser, Board authority to exempt from registration requirements	12C
Investment adviser representative, Board authority to exempt from registration requirements	12C
Necessity for	28-1B, 28-1C
Notice of	28-1C
Protection of investors considered.	28-1B, 28-1C
Reliance on, as defense	28-1E
Report of suspected financial exploitation of vulnerable adult	45N
Small business issuer definition, Board authority to adopt	7A
Violation of, as grounds to	
Assess administrative fine	23-1A
Assess civil penalty	32C
Deny, revoke, or suspend registration.	14A
Enjoin activity.	32A
Pursue criminal conviction	29
Render contract unenforceable	33K
Waiver of compliance with	10D, 28-1B, 28-1D, 33L

SALES

See also **APPLICATION FOR REGISTRATION OF SECURITIES, LIMITED OFFERING EXEMPTION, OFFER FOR SALE, PERMIT, PURCHASE, and SECURITIES**

Defined	4E
During period between expiration and renewal of registration, consequences	19C
Excess securities	35-1
Exemptions — See EXEMPT SECURITIES and EXEMPT TRANSACTIONS	
Liability for fraudulent sales	23-1, 29, 32, 33A
Prohibited without registration	7A, 12A
Rescission offers for fraudulent sales	33I
Secondary, exemption for	5O
Unregistered securities	35-2
Use of registration to aid, prohibited	10C, 20

SALESMAN

See **AGENT** and **APPLICATION FOR REGISTRATION AS DEALER OR AGENT**

SECONDARY TRADING

Exemption	5O
Fee, notice filing for	35B(6)
Isolated transaction exemption	5C(1)
Listed securities	6F

SECRETARY OF STATE

Permits, orders, and licenses issued by, preserved	39
--	----

SECURITIES

See also **APPLICATION FOR REGISTRATION OF SECURITIES, EXEMPT SECURITIES, EXEMPT TRANSACTIONS, LIMITED OFFERING EXEMPTION, PERMIT, and SALES**

Advertising of	22
Defined	4A
Exemptions	5, 6
No par value and non-par defined	4K
Offers of	22
Registration by	
Coordination	7C
Notification	7B
Qualification	7A
Written instrument not required	4A

SECURITIES COMMISSIONER

Access to information of other governmental agencies	28A
Administration of Act, vested in	3
Administrative fines	23-1
Advertisements, filed with	22A
Agent for service of process	8
Annual report to Governor and Legislature	2J
Appeal from action of	24
Application by agent or investment adviser representative, additional information required	18

	Section
Application for securities registration	10A
Examination of	10A
Form prescribed	10B
Application of dealer or investment adviser, form prescribed	13J
Appointed by State Securities Board	2G
Assessment of administrative fines	23-1
Assistance to county or district attorneys	3
Authority to adopt rules	28-1D
Authority to inspect registered dealers and registered investment advisers	13-1A
Cease and desist order	23A, 23B
Cease publication order	23C
Certificate of compliance and non-compliance	30
Certified copies	11, 30
Civil penalties, request for	32C
Collaboration with public or nonprofit entities, investor education.	43B
Complaints information maintained	2-6
Confidential information, disclosure by	13-1E, 28
Criminal prosecution, assistance with	3
Delegation of powers and duties	2H
Depositions	28A
Discretion to waive or relax rules	10D
Duty of enforcement	3
Emergency cease and desist order	23-2
Enforcement, means of are nonexclusive	3-1
Equal employment opportunity policy statement	2-7
Examination, required of applicants for dealer, agent, investment adviser, and investment adviser representative registration.	13D
False filing with, penalty	29E
Fee for certified copies.	35B(3)
Form of, prescribed by	
Application for agent or investment adviser representative registration	18
Application for dealer or investment adviser registration	13A
Certificate of registration for dealers or investment advisers.	17
Permit registering securities	10B
Grants and donations for investor education, acceptance of	43C
Hearings — See HEARINGS	
Injunctive relief, request for	32A
Inspections — See INSPECTIONS	
Intraagency career ladder, development by	2K
Investigatory powers of	3, 28
Investor education, development and implementation by	43
Judicial review of decision.	27
Management and policy responsibilities, division of	2-4
Notice if investment adviser services are fraudulent	23B
Notice if offer or method of sale of a security is fraudulent	23A
Offers containing materially false or misleading statements, or likely to deceive the public prohibited by	23C
Permit, form prescribed by	10B
Receivership for assets of dealer, agent, investment adviser, investment advisor representative, issuer, or affiliate thereof, request for	25-1A
Records — See RECORDS	

	Section
Refund ordered by	32-1
Registrations, denial, revocation, or suspension of	14
Removal of Board member, notification of potential ground	2F
Renewal of registrations, filing additional information	19A
Report of suspected financial exploitation of vulnerable adult to	45C, 45N
Rulemaking power, delegation of authority to	28-1D
Standards of conduct, provide information to state officers and employees	2-2
Subpoena or summons power	28A
Temporary registration, dealer or investment adviser	15
Tenure of office	2G
Testimony in proceeding before, record of	26
Training manual for Board members.	2-3D
Verification of facts in petition for	
Injunction	32A
Receivership	25-1B
 SECURITIES MANUAL	
Must be “recognized” for exemption.	50
 SECURITY	
See also SECURITIES	
Defined	4A
 SELLING EXPENSES	
Maximum allowed	9B
 SERVICE	
See also CONSENT TO SERVICE OF PROCESS, NOTICE, and PROCESS	
Commissioner as agent for service of process for foreign (nonresident) issuers, dealers, or investment advisers.	8
Of subpoena	28A
 SHARE	
As a security	4A
 SMALL BUSINESS DEVELOPMENT ENTITY	
See INTRASTATE CROWDFUNDING PORTAL	
 SMALL BUSINESS INVESTMENT COMPANY	
Sales to, exempt transaction involving	5H
 SMALL BUSINESS ISSUANCES	
See INTRASTATE CROWDFUNDING PORTAL	
Limitation on liability	33N
 SOLICITATION	
Bearing on exemptions	5E, 5I, 5P, 5Q
 STATE	
Agency, of securities issued or guaranteed by, exempt transaction involving	5M
Securities issued or guaranteed by, exempt transaction involving	5M

STATE BOARD OF INSURANCESee **INSURANCE** and **TEXAS DEPARTMENT OF INSURANCE****STATE SECURITIES BOARD**

Administrative Procedure Act, subject to	2N
Advertising, may not restrict	28-1F
Agent registration, authority to adopt rules exempting persons from	12C
Agents may not be members	2B
Annual report to Governor and Legislature	2J
Appointment by Governor	2A
Audit by state auditor	2M
Board members, appointment	2A
Chairman of Board, designated by Governor	2D
Compensation of Board members	2D
Competitive bidding, may not restrict	28-1F
Complaints information	2-6
Composition	2A
Conflict of interest	2-1
Continuing education programs for persons registered under the Act	19D
Costs of administering The Act paid only from fees	35D
Creation of	2A
Dealer registration, authority to adopt rules exempting persons from	12C
Dealers may not be members	2B
Deputy Securities Commissioner, consent to appointment of	2H
Duties	2
Examination requirement, waiver by	13D
Exempt transactions, Board may prescribe	5T
Expenses, per diem	2D
Federal covered investment adviser or representative, rulemaking	12-1B
Fee reduction by rule	42
Fees, authority to establish	35A, 35C
Financial exploitation of vulnerable adults, report of suspected	45N
Information about standards of conduct	2-2
Information of consumer interest, preparation of	2L
Investment adviser registration, authority to adopt rules exempting persons from	12C
Investment adviser representative registration, authority to adopt rules exempting persons from	12C
Investment adviser representatives may not be members	2B
Investment advisers may not be members	2B
Investor education, approval of	43A
Judicial review of decision by	27
Lobbyists not to serve on	2-1C
Next highest ranking officer	2F
Office of Commissioner, access to	2G
Open meetings law, subject to	2N
Open records law, subject to	2N
Policy and management responsibilities, division of	2-4
Powers of Commissioner, exercise of	2G
Presiding officer, designated by Governor	2D
Public testimony before	2-5
Qualifications of members	2A, 2B, 2-1B, 2-1C, 2-3

	Section
Quorum	2D
Records of Commissioner, access to	2G
Removal of member	
Effect on validity of Board action	2F
Grounds for	2E
Rulemaking power 2-5, 3D, 4N, 4P, 5S, 5T, 7A, 8, 12C, 12-1B, 19B, 28, 28-1, 42, 45N	
Delegation to Commissioner	28-1D
Securities Commissioner, appointment of	2G
Securities manuals, to be approved by	5O
Sunset Act, subject to	2O
Term of members	2A
Time of expiration of registration, may vary	19B
Training manual, annual review of	2-3D
Training program	2-3
Travel expenses, training	2-3C
Validity of Board action when ground for removal of member exists	2F
Witness fees set by	28A
 STATUTE OF LIMITATIONS	
Administrative fines	23-1E
Civil	33H, 33-1D
Criminal	29-1
 STOCK	
As a security	4A
 STOCK CERTIFICATE	
To accompany application to register securities	7A
Under a voting trust agreement as a security	4A
 STOCK EXCHANGES	
Approval by Commissioner	6F
Evidences of indebtedness guaranteed by company whose securities are listed, exempt	6F
Options on listed securities, exempt transaction involving	5S
Securities senior to or on a parity with listed securities, exempt	6F
 STOP ORDER	
Prohibiting secondary trading	5O
Registration by coordination, denying or suspending	7C
 SUBPOENA	
Commissioner's power to issue	28A
Court to issue per Attorney General's request in	
Injunctive proceedings	32A
Receivership proceedings	25-1B
Service of	28A
 SUBSCRIPTION	
As a security	4A

TEMPORARY DEALER'S OR INVESTMENT ADVISER'S REGISTRATION

Authority for 15

TEXAS DEPARTMENT OF INSURANCE

See also **BOARD OF INSURANCE COMMISSIONERS** and **INSURANCE**

Insurance products not securities 4A

Exemption for insurance companies supervised by 5C

TEXAS SUNSET ACT

Board subject to 20

TEXAS VETERANS COMMISSION

As intrastate crowdfunding portal 44

TIME

Application for hearing on dissolution of receivership 25-1C

Hold on transaction involving suspected financial exploitation of vulnerable adult 45H, 45I

Limitation for assessment of administrative fines 23-1E

Limitation for indictment 29-1

Renewal of registrations of dealers, agents, investment advisers, and investment
adviser representatives 19

Renewal of securities registration 7B, 7C, 10B

Report of suspected financial exploitation of vulnerable adult 45C

Return of escrow money by bank 9A

Term of a registration 7B, 7C, 10B, 19A

TREASURY STOCK

As a security 4A

TRUST

Common law trust included in term 4B

Defined 4B

Equipment trust certificate as a security 4A

Equitable trust not included in term 4B

Instruments by which created must accompany securities registration application 7A

Testamentary trust not included in term 4B

TRUST COMPANY

Escrow of securities 9A

Sales to, exempt transaction involving 5H

UNITED STATES

Sale of securities issued or guaranteed by, exempt transaction involving 5M

VALUE

Ascertainment by Commissioner 7A

Bonus securities, presumption that sold for 4E

"Sale" or "offer for sale" or "sell" 4E

VOTING TRUST AGREEMENT

As a security 4A

VULNERABLE ADULT

See **FINANCIAL EXPLOITATION OF VULNERABLE ADULTS**

WAIVER

Compliance with rules or regulations by

Board 28-1B

Commissioner 10D, 28-1D

Examination requirements for dealers, agents, investment advisers, and investment

adviser representatives 13D

Void, of Act, Rule, order or requirement. 33L

Waiting period for registration of securities. 7B, 7C

WITHIN THIS STATE

Sale within this State 4D, 23D, 29G, 29H

WORDS

See also **ACT, CONSTRUCTION OF ACT, and INTERPRETATION**

Construction of, includes singular and plural 4J

Masculine includes feminine and neuter 4J