

THE SECURITIES ACT

STATE OF TEXAS

Effective January 1, 2022

**As Amended, Including All Amendments
Effective as of January 1, 2022**

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House Bill 3607, Chapter 915, Acts of the 87th Legislature, Regular Session, 2021
House Bill 4477, Acts of the 87th Legislature, Regular Session, 2021
Senate Bill 1280, Acts of the 87th Legislature, Regular Session, 2021*



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**TEXAS GOVERNMENT CODE
TITLE 12. SECURITIES ACT**

*As Amended, Including All Amendments
Effective as of January 1, 2022*

House Bill 4171, Chapter 491, Acts of the 86th Legislature, Regular Session, 2019.

House Bill 3607, Chapter 915, Acts of the 87th Legislature, Regular Session, 2021.

House Bill 4477, Chapter 502, Acts of the 87th Legislature, Regular Session, 2021.

Senate Bill 1280, Chapter 41, Acts of the 87th Legislature, Regular Session, 2021.

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**HISTORICAL INFORMATION
TEXAS CIVIL STATUTES, ARTICLES 581-1 through 581-45**
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- Senate Bill 294, Chapter 269, Acts of the 55th Legislature, Regular Session, 1957.
- Senate Bill 361, Chapter 88, Acts of the 56th Legislature, Regular Session, 1959.
- House Bill 865, Chapter 457, Acts of the 56th Legislature, Regular Session, 1959.
- House Bill 464, Chapter 466, Acts of the 57th Legislature, Regular Session, 1961.
- House Bill 42, Chapter 170, Acts of the 58th Legislature, Regular Session, 1963.
- Senate Bill 870, Chapter 235, Acts of the 62nd Legislature, Regular Session, 1971.
- Senate Bill 71, Chapter 97, Acts of the 63rd Legislature, Regular Session, 1973.
- Senate Bill 15, Chapter 78, Acts of the 64th Legislature, Regular Session, 1975.
- Senate Bill 469, Chapter 170, Acts of the 65th Legislature, Regular Session, 1977.
- House Bill 1158, Chapter 327, Acts of the 65th Legislature, Regular Session, 1977.
- Senate Bill 54, Chapter 735, Acts of the 65th Legislature, Regular Session, 1977.
- Senate Bill 293, Chapter 160, Acts of the 66th Legislature, Regular Session, 1979.
- House Bill 1896, Chapter 839, Acts of the 67th Legislature, Regular Session, 1981.
- House Bill 1867, Chapter 953, Acts of the 68th Legislature, Regular Session, 1983.
- Senate Bill 106, Chapter 465, Acts of the 68th Legislature, Regular Session, 1983.
- Senate Bill 289, Chapter 578, Acts of the 69th Legislature, Regular Session, 1985.
- House Bill 1593, Chapter 239, Acts of the 69th Legislature, Regular Session, 1985.
- Senate Bill 813, Chapter 479, Acts of the 69th Legislature, Regular Session, 1985.
- House Bill 875, Chapter 732, Acts of the 70th Legislature, Regular Session, 1987.
- House Bill 61, Chapter 5, Acts of the 70th Legislature, 2nd Called Session, 1987.
- Senate Bill 785, Chapter 40, Acts of the 71st Legislature, Regular Session, 1989.
- House Bill 2519, Chapter 584, Acts of the 71st Legislature, Regular Session, 1989.
- House Bill 1213, Chapter 733, Acts of the 71st Legislature, Regular Session, 1989.
- Senate Bill 4, Chapter 565, Acts of the 72nd Legislature, Regular Session, 1991.
- House Bill 11, Chapter 5, Acts of the 72nd Legislature, 1st Called Session, 1991.
- House Bill 222, Chapter 17, Acts of the 72nd Legislature, 1st Called Session, 1991.
- House Bill 273, Chapter 917, Acts of the 73rd Legislature, Regular Session, 1993.
- House Bill 1463, Chapter 300, Acts of the 73rd Legislature, Regular Session, 1993.

House Bill 1295, Chapter 228, Acts of the 74th Legislature, Regular Session, 1995.
House Bill 1507, Chapter 638, Acts of the 75th Legislature, Regular Session, 1997.
House Bill 1971, Chapter 1396, Acts of the 75th Legislature, Regular Session, 1997.
Senate Bill 1368, Chapter 62, Acts of the 76th Legislature, Regular Session, 1999.
House Bill 2255, Chapter 1091, Acts of the 77th Legislature, Regular Session, 2001.
House Bill 2728, Chapter 663, Acts of the 77th Legislature, Regular Session, 2001.
House Bill 3015, Chapter 561, Acts of the 77th Legislature, Regular Session, 2001.
Senate Bill 1060, Chapter 108, Acts of the 78th Legislature, Regular Session, 2003.
House Bill 1840, Chapter 1077, Acts of the 78th Legislature, Regular Session, 2003.
House Bill 2376, Chapter 285, Acts of the 78th Legislature, Regular Session, 2003.
House Bill 874, Chapter 614, Acts of the 81st Legislature, Regular Session, 2009.
Senate Bill 652, Chapter 1232, Acts of the 82nd Legislature, Regular Session, 2011.
House Bill 2342, Chapter 523, Acts of the 82nd Legislature, Regular Session, 2011.
House Bill 3174, Chapter 346, Acts of the 82nd Legislature, Regular Session, 2011.
House Bill 1675, Chapter 1279, Acts of the 83rd Legislature, Regular Session, 2013.
House Bill 7, Chapter 448, Acts of the 84th Legislature, Regular Session, 2015.
House Bill 1629, Chapter 652, Acts of the 84th Legislature, Regular Session, 2015.
House Bill 3921, Chapter 376, Acts of the 85th Legislature, Regular Session, 2017.
House Bill 1535, Chapter 772, Acts of the 86th Legislature, Regular Session, 2019.
House Bill 4171, Chapter 491, Acts of the 86th Legislature, Regular Session, 2019.
House Bill 4477, Chapter 502, Acts of the 87th Legislature, Regular Session, 2021.
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CODIFICATION OF THE TEXAS SECURITIES ACT¹

TEXAS GOVERNMENT CODE TITLE 12. SECURITIES ACT

Chapter 4001. General Provisions.

Subchapter A. Short Title; Purposes; Construction.

Sec. 4001.001. Short Title.² This title may be cited as The Securities Act.

Sec. 4001.002. Purposes; Construction.³

- (a) The general purposes of this title are to:
- (1) protect investors and, consistent with that purpose, encourage capital formation, job formation, and free and competitive securities markets;
 - (2) maximize coordination with federal and other states' laws and administration, particularly with respect to procedure, reports, forms, and exemptions; and
 - (3) minimize regulatory burdens on issuers and other persons subject to this title, especially small businesses.
- (b) This title may be construed and implemented to effectuate the title's general purposes.

Sec. 4001.003. Severability.⁴ The provisions of this title are severable. If any provision of this title is declared void or unconstitutional, the remaining provisions of this title would have been enacted notwithstanding such judicial determination of the invalidity of the provision, and the remaining provisions shall remain in effect.

Subchapter B. Definitions.

Sec. 4001.051. Applicability of Definitions; Construction of Certain Conjunctions.⁵

- (a) The definition for a term provided by this chapter applies in this title unless the context in which the term is used indicates a different meaning.
- (b) The term "and" may be construed to mean "or," and the term "or" may be construed to mean "and."

Sec. 4001.052. Agent.⁶

- (a) Except as provided by Subsection (b), "agent" includes a person or company employed, appointed, or authorized by a dealer to sell, offer for sale or delivery, solicit

¹ Footnotes provide cross-references to the Texas Securities Act as it was effective on September 1, 2021, and contained in Texas Civil Statutes, articles 581-1 through 581-45.

² Section 1.

³ Section 10-1.

⁴ Section 38.

⁵ Section 4 (part); Section 4.J (part).

⁶ Section 4.D.

subscriptions to or orders for, or deal in any other manner in, securities in this state directly or through a subagent.

(b) If a corporation or partnership is registered as a dealer under this title, an officer of the corporation or partner of the partnership is not deemed an agent solely because of the officer's or partner's status as an officer or partner of that entity.

Sec. 4001.053. Board.⁷ "Board" means the State Securities Board.

Sec. 4001.054. Broker.⁸ "Broker" means "dealer" as defined in this title.

Sec. 4001.055. Commissioner.⁹ "Commissioner" means the Securities Commissioner.

Sec. 4001.056. Dealer.¹⁰

(a) "Dealer" includes:

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

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

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

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

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

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

(d) Except as expressly provided otherwise in this title, a person or company engaged in the sale of, offer for sale of, solicitation of, subscription to, dealing in, or delivery of a security made in a transaction or under a condition specified in Subchapter A, Chapter 4005, is not deemed a dealer within the meaning of this title.

Sec. 4001.057. Federal Covered Investment Adviser.¹¹ "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.).

Sec. 4001.058. Fraud; Fraudulent Practice.¹²

(a) "Fraud" and "fraudulent practice" include:

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

⁷ New.

⁸ Section 4.H.

⁹ New.

¹⁰ Section 4.C; Section 5 (part).

¹¹ Section 4.O.

¹² Section 4.F.

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

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

(4) a direct or indirect gain, through the sale of a security, of an underwriting or promotion fee or profit, or of a selling or managing commission or profit, that is so gross or exorbitant as to be unconscionable; and

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

(b) Nothing in this section limits the full meaning of “fraud,” “fraudulent,” or “fraudulent practice” as applied or accepted in courts.

Sec. 4001.059. Investment Adviser.¹³ “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.), 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 an exempt security for purposes of that Act.

Sec. 4001.060. Investment Adviser Representative.¹⁴

(a) Except as provided by Subsection (b), “investment adviser representative” includes a person or company who, for compensation, is employed, appointed, or authorized by an investment adviser to solicit clients for the investment adviser or who provides investment advice, directly or through subagents, as defined by Board rule, to an investment adviser’s clients on behalf of the investment adviser.

(b) “Investment adviser representative” does not include a partner of a partnership or officer of a corporation or other entity that is registered as an investment adviser under this title solely because of the person’s status as a partner or officer of that entity.

¹³ Section 4.N.

¹⁴ Section 4.P.

Sec. 4001.061. Issuer.¹⁵ “Issuer” means and includes a person or company who has issued, proposes to issue, or issues any security.

Sec. 4001.062. Mortgage.¹⁶ “Mortgage” includes a deed of trust to secure a debt.

Sec. 4001.063. No Par Value; Par Value.¹⁷

(a) “No par value” as applied to shares of stock or other securities means the securities are without a given or specified par value.

(b) For purposes of classifying or computing the par value of shares of stock or other securities of no par value, the amount for which the securities are sold or offered for sale to the public is used as a basis.

Sec. 4001.064. Person; Company.¹⁸

(a) The terms “person” and “company” include:

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

- (A) a corporation;
- (B) a person;
- (C) a company, including a joint stock company;
- (D) a partnership, including a limited partnership;
- (E) an association;
- (F) a firm;
- (G) a syndicate; or
- (H) a trust; and

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

(b) As used in Subsection (a), “trust”:

(1) is deemed to include a common law trust; and
(2) does not include a trust created or appointed under or by virtue of a last will and testament or by a court.

(c) The definition of “person” assigned by Section 311.005 does not apply to any provision in this title.

Sec. 4001.065. Registered Dealer.¹⁹ “Registered dealer” means a dealer the Commissioner has registered under Sections 4004.054 and 4004.055, or Section 4004.056.

¹⁵ Section 4.G

¹⁶ Section 4.I.

¹⁷ Section 4.K.

¹⁸ Section 4.B; New.

¹⁹ Section 4.M.

Sec. 4001.066. Registered Investment Adviser.²⁰ “Registered investment adviser” means an investment adviser to whom the Commissioner has issued a registration certificate under Sections 4004.054 and 4004.055, or Section 4004.056.

Sec. 4001.067. Sale; Offer for Sale; Sell.²¹

(a) “Sale,” “offer for sale,” and “sell” include every disposition or attempted disposition of a security for value.

(b) “Sale” means and includes:

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

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

(c) “Sale” or “offer for sale” includes 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 any manner in the United States mail within this state of a circular, letter, or other advertising matter.

(d) “Sell” means any act by which a sale is made.

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

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

(2) have been sold for value.

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

(g) This section does not limit the meaning of the terms “sale,” “offer for sale,” or “sell” as used by or accepted in courts.

Sec. 4001.068. Security.²²

(a) The term “security”:

(1) includes:

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

(B) a share;

(C) a stock;

(D) a treasury stock;

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

(F) a collateral trust certificate;

(G) an equipment trust certificate;

(H) a preorganization certificate or receipt;

(I) a subscription or reorganization certificate;

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

(K) any form of commercial paper;

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

²⁰ Section 4.Q.

²¹ Section 4.E (part).

²² Section 4.A.

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

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

(O) an investment contract; and

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

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

(b) "Security" does not include an insurance policy, endowment policy, annuity contract, or 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 filed with the department as required by law.

Subchapter C. General Administrative Provisions.

Sec. 4001.101. Sufficiency of Notice.²³ In this title unless otherwise specified, a notice required by this title is sufficient if sent by registered or certified mail addressed to a person at:

- (1) the address designated in any filing the person submitted to the Commissioner; or
- (2) the person's last known address.

Sec. 4001.102. Consent for Service of Process.²⁴

(a) This section applies only to an issuer, dealer, or investment adviser that is:

- (1) organized under the laws of any other state, territory, or government; or
- (2) domiciled in any other state.

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

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

(d) Service of process on the Commissioner in accordance with a provision executed under this section has the same effect as if the issuer, dealer, or investment adviser was created or formed under the laws of this state and served with process in this state.

(e) If the Commissioner is served with process in accordance with a provision executed under this section, the Commissioner shall forward the process by United States mail to the last known address of the issuer, dealer, or investment adviser.

Subchapter D. Other General Provisions.

Sec. 4001.151. Prosecution under Certain Other Law.²⁵ Nothing in Chapter 269 (S.B. 294), Acts of the 55th Legislature, Regular Session, 1957 (Article 581-1 et seq., Vernon's Texas Civil

²³ Section 26 (part).

²⁴ Section 8.

²⁵ Section 31.

Statutes), limits the liability of a person or company, or of its officers or agents, imposed by law as of August 22, 1957, so as to prevent the prosecution of the person or company, or of its officers or agents, for violating another statute.

Sec. 4001.152. Good Faith.²⁶

(a) A provision of this title that imposes liability or a penalty does not apply to an act or omission made in good faith in conformity with a Board rule.

(b) This section applies regardless of whether the rule is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Sec. 4001.153. Burden of Proof on Exemption.²⁷

(a) A complaint, information or indictment, or a writ or proceeding brought under this title is not required to negate an exemption under this title.

(b) A party claiming an exemption under this title has the burden of proof on the exemption.

Sec. 4001.154. Certified Copies of Certain Documents or Instruments as Evidence.²⁸

(a) Except as provided by Subsection (b), a copy of a paper, document, or instrument filed in the office of the Commissioner and certified by the Commissioner must be admitted in evidence in a court and elsewhere in this state in any case in which the original would be admitted in evidence.

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

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

- (1) is under the state seal; and
- (2) is signed by the Commissioner.

(d) A certificate described by Subsection (c) is admissible in evidence in an action to enforce this title.

Sec. 4001.155. Proof of Certain Records.²⁹ All records of the former securities divisions of the offices of the Secretary of State and the former Board of Insurance Commissioners for which custody was assumed by the Commissioner under Chapter 269, Acts of the 55th Legislature, Regular Session, 1957, shall be proven under the Commissioner's certificate.

²⁶ Section 28-1.E.

²⁷ Section 37.

²⁸ Section 30 (part).

²⁹ Section 30 (part).

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Chapter 4002. State Securities Board and Securities Commissioner.

Subchapter A. General Provisions.

Sec. 4002.001. Applicability of Other Law.³⁰ The Board and Commissioner are subject to Chapters 551, 2001, and 2002.

Sec. 4002.002. Sunset Provision.³¹ The State Securities Board is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the Board is abolished and this title expires September 1, 2031.

Subchapter B. State Securities Board.

Sec. 4002.051. Appointment of Board.³²

(a) The State Securities Board consists of five citizens of this state appointed by the Governor with the advice and consent of the Senate.

(b) Members of the Board must be members of the general public.

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

(d) A member of the Board is eligible for reappointment.

Sec. 4002.052. Membership Eligibility.³³ A person is not eligible for appointment to the Board 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 title 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.

Sec. 4002.053. Membership and Employee Restrictions.³⁴

(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 or an employee of the Board employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for

³⁰ Section 2.N.

³¹ Section 2.O. See also Section 9.101 of House Bill 3607 (2021).

³² Section 2.A (part), Section 2.B (part).

³³ Section 2.B (part).

³⁴ Section 2-1.

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.), 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 because of the person's activities for compensation on behalf of a profession related to the operation of the Board.

Sec. 4002.054. Terms; Vacancy.³⁵

(a) Members of the Board serve staggered six-year terms, with as near as possible to one-third of the members' terms expiring January 20 of each odd-numbered year.

(b) The Governor shall fill a vacancy on the Board for the unexpired term.

Sec. 4002.055. Presiding Officer.³⁶ The Governor shall designate a member of the Board as the Board's presiding officer to serve in that capacity at the will of the Governor.

Sec. 4002.056. Grounds for Removal.³⁷

(a) 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 Section 4002.051;

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

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

(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.

(b) 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.

(c) If the Commissioner has knowledge that a potential ground for removal exists, the Commissioner shall notify the Board's presiding officer 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 Board's next highest ranking officer, who shall then notify the Governor and the Attorney General that a potential ground for removal exists.

³⁵ Section 2.A (part).

³⁶ Section 2.D (part).

³⁷ Section 2.E, Section 2.F.

Sec. 4002.057. Per Diem.³⁸ A member of the Board is entitled to a per diem as set by legislative appropriation for each day the member engages in the business of the Board.

Sec. 4002.058. Board Member Training.³⁹

(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 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). 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.

³⁸ Section 2.D (part).

³⁹ Section 2-3. See also Section 9.101 of House Bill 3607 (2021).

Subchapter C. Securities Commissioner and Employees of Board.

Sec. 4002.101. Securities Commissioner.⁴⁰ The Board shall appoint a Securities Commissioner who serves at the pleasure of the Board and who, under the Board's supervision, shall administer this title.

Sec. 4002.102. Deputy Securities Commissioner; Securities Commissioner Appointees.⁴¹

(a) The Commissioner, with the consent of the Board, may designate a Deputy Securities Commissioner who shall perform all of the duties of the Commissioner required by law to be performed by the Commissioner when the Commissioner is absent or unable to act for any reason.

(b) The Commissioner shall appoint other persons as necessary to carry out the powers and duties of the Commissioner under this title and under other laws granting jurisdiction to or applicable to the Board or the Commissioner.

(c) The Commissioner may delegate to a person appointed under Subsection (b) powers and duties of the Commissioner as the Commissioner considers necessary.

Sec. 4002.103. Division of Responsibilities.⁴² The Board shall develop and implement policies that clearly separate the policy-making responsibilities of the Board and the management responsibilities of the Commissioner and Board employees.

Sec. 4002.104. Standards of Conduct Information.⁴³ 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 title, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 4002.105. Career Ladder Program; Performance Evaluations.⁴⁴

(a) The Commissioner or the Commissioner's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of each nonentry level position at least 10 days before the date of any public posting.

(b) The Commissioner or the Commissioner's 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 subsection.

Sec. 4002.106. Equal Employment Opportunity Policy.⁴⁵

(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

⁴⁰ Section 2.G (part).

⁴¹ Section 2.H.

⁴² Section 2-4.

⁴³ Section 2-2.

⁴⁴ Section 2.K.

⁴⁵ Section 2-7.

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 be:

(1) updated annually;

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

(3) filed with the Governor's office.

Sec. 4002.107. Written Employee Complaint Procedure.⁴⁶

(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 concerning an employee or former employee. The Commissioner or the Commissioner's designee shall maintain the information listed in Section 4007.051 for files maintained under that section for complaints against persons registered under this title.

(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.

Subchapter D. Powers and Duties of Board and Commissioner.

Sec. 4002.151. Rules.⁴⁷

(a) Subject to Subsection (b), the Board may adopt rules as necessary to implement this title, including rules:

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

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

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

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

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

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

⁴⁶ Section 2-6.A (part); Section 2-6.B; Section 2-6.C; New. See also Section 9.103 of House Bill 3607 (2021).

⁴⁷ Section 28-1.B; Section 28-1.C.

(d) The Board, in the Board's discretion, may waive a requirement of a rule in a situation in which, in the Board's opinion, the requirement is not necessary in the public interest or for the protection of investors.

Sec. 4002.152. Rules Regarding Competitive Bidding or Advertising.⁴⁸

(a) The Board may not adopt rules restricting competitive bidding or advertising by a person registered under this title except to prohibit false, misleading, or deceptive practices by the person.

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

- (1) restricts the person's use of any advertising medium;
- (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

(c) This section does not affect limitations on advertising in Section 4005.012, 4005.013, or 4005.021 or in rules adopted by the Board under Section 4005.024.

Sec. 4002.153. Board Delegation of Rulemaking Authority.⁴⁹

(a) The Board by rule may delegate to the Commissioner or the Deputy Securities Commissioner the authority granted to the Board under Section 4002.151 or 4002.152 to adopt rules or to waive the requirements of rules as the Board considers appropriate.

(b) Any rule adopted by the Commissioner or the Deputy Securities Commissioner based on the authority delegated under this section must be adopted in accordance with Sections 4002.151 and 4002.152.

Sec. 4002.1535. Alternative Rulemaking and Dispute Resolution.⁵⁰

(a) The Board shall develop a policy to encourage the use of:

- (1) negotiated rulemaking procedures under Chapter 2008 for the adoption of Board rules; and
- (2) appropriate alternative dispute resolution procedures under Chapter 2009 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);
- (2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and
- (3) collect data concerning the effectiveness of those procedures.

⁴⁸ Section 28-1.F.

⁴⁹ Section 28-1.D.

⁵⁰ Section 2-8. See also Section 9.104 of House Bill 3607 (2021).

Sec. 4002.154. Commissioner Discretion Regarding Rules.⁵¹ In applying the standards of this title, the Commissioner may waive or relax any restriction or requirement in a Board rule that, in the Commissioner's opinion, is unnecessary for the protection of investors in a particular case.

Sec. 4002.155. Deposit of Receipts to General Revenue Fund.⁵² The Commissioner or Board shall deposit money received from assessments or charges under this title to the credit of the general revenue fund.

Sec. 4002.156. Board Authority to Exercise Commissioner's Powers.⁵³ The Board may exercise any power or perform any act the Commissioner is authorized to exercise or perform under this title.

Sec. 4002.157. List of Securities Offered.⁵⁴ At any time, the Commissioner may, in the exercise of reasonable discretion under this title, require a dealer to file with the Commissioner a partial or complete list of securities that the dealer:

- (1) is offering or advertising for sale in this state at the time of the request; or
- (2) has offered or advertised for sale in this state during the six-month period preceding the date of the request.

Sec. 4002.158. Record of Proceedings.⁵⁵ A complete record shall be kept of all proceedings held before the Commissioner on any hearing or investigation.

Sec. 4002.159. Record of Certain Filings and Orders.⁵⁶

- (a) The Commissioner shall maintain a record of:
 - (1) 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 title; and
 - (2) all orders of the Commissioner denying, suspending, or revoking a registration.
- (b) A record maintained under Subsection (a) must be open for public inspection.
- (c) This section does not apply to information made confidential by Section 4002.161, 4007.052, or 4007.056 or other law.

Sec. 4002.160. Commissioner's Access to Records and Reports of Other State Agencies.⁵⁷

- (a) During an investigation for the purpose of enforcing this title or in connection with the application of a person or company for registration or for a permit qualifying securities for sale,

⁵¹ Section 10.D.

⁵² Section 36 (part).

⁵³ Section 2.G (part).

⁵⁴ Section 23.D.

⁵⁵ Section 26 (part).

⁵⁶ Section 11 (part).

⁵⁷ Section 28.A (part).

the Commissioner or Deputy Securities Commissioner shall have free access to all records of, all reports of, and all reports made to an agency or department of this state.

(b) If the Commissioner or Deputy Securities Commissioner discloses any information made confidential by law, the affected person or company has a right of action on the official bond of the Commissioner or Deputy Securities Commissioner for the person's or company's injuries in a suit brought in the name of the state at the relation of the person or company.

(c) This section may not be interpreted to prohibit or limit the publication of rulings or decisions of the Commissioner.

Sec. 4002.161. Confidentiality of Certain Information.⁵⁸

(a) To the extent not otherwise provided by this title, any intra-agency or interagency notes, memoranda, reports, or other communications consisting of advice, analyses, opinions, or recommendations are confidential.

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

(c) The Commissioner, at the Commissioner's discretion, may disclose confidential information in the Commissioner's possession to:

(1) a governmental or regulatory authority or any association of governmental or regulatory authorities approved by Board rule; or

(2) any receiver appointed under Section 4007.151.

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

(e) This section may not be interpreted to prohibit or limit the publication of rulings or decisions of the Commissioner.

Sec. 4002.162. Board Access to Offices and Records.⁵⁹ Each member of the Board shall have access to all of the offices and records under the Commissioner's supervision.

Sec. 4002.163. Annual Report.⁶⁰ 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 about the administration of this title and 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 Section 4007.001(e); and

(2) with respect to cases referred during the preceding year by the Board under Section 4007.001(c), 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.

⁵⁸ Section 28.A (part); Section 28.B; New.

⁵⁹ Section 2.G (part).

⁶⁰ Section 2.J. See also Section 9.105 of House Bill 3607 (2021).

Subchapter E. Consumer Interest and Other Public Interest Information.

Sec. 4002.201. Consumer Interest Information.⁶¹

- (a) The Board shall prepare information of consumer interest describing:
- (1) the regulatory functions of the Board and Commissioner; and
 - (2) the procedures by which consumer complaints are filed with and resolved by the Board or Commissioner.
- (b) The Board shall make the information available to the public and appropriate state agencies.

Sec. 4002.202. Public Participation.⁶² 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 Board's jurisdiction.

Sec. 4002.203. Documents and Other Information Filed with Commissioner; Public Records.⁶³

- (a) All information, papers, documents, instruments, and affidavits required by this title to be filed with the Commissioner are public records.
- (b) All information, papers, documents, instruments, and affidavits required by this title to be filed with the Commissioner must be open to inspection and examination by a purchaser or prospective purchaser of securities, or by the agent or representative of a purchaser or prospective purchaser of securities. The Commissioner shall:
- (1) provide to a purchaser or prospective purchaser of securities, or an agent or representative of those persons, any information required to be filed with the Commissioner under this title; and
 - (2) on request by a person described by Subdivision (1), provide a certified copy of any paper, document, instrument, or affidavit filed with the Commissioner under this title.
- (c) This section does not apply to information made confidential by Section 4002.161, 4007.052, or 4007.056 or other law.

⁶¹ Section 2.L (part).

⁶² Section 2-5.

⁶³ Section 11 (part).

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Chapter 4003. Securities.

Subchapter A. Permit Qualifying Securities for Sale.

Sec. 4003.001. Permit Required; Exceptions.⁶⁴

(a) A dealer or agent may not sell or offer for sale any securities issued after September 6, 1955, unless the Commissioner has issued a permit qualifying securities for sale for those securities to the issuer of the securities or a registered dealer.

(b) This section does not apply to:

- (1) securities that have been registered by notification under Subchapter B or by coordination under Subchapter C; or
- (2) transactions or securities that are exempt under Chapter 4005.

Sec. 4003.002. Permit Application to Qualify Securities for Sale.⁶⁵

(a) The Commissioner may not issue a permit qualifying securities for sale required by Section 4003.001 until the issuer of the securities or a registered dealer files with the Commissioner an application for the permit in the form of a statement containing the following information:

- (1) the name, residence, and post office address of each of the company's officers and directors;
- (2) the location of the company's principal office and each branch office in this state;
- (3) a copy of the company's certificate of formation or articles of incorporation or partnership or association and any amendments to those documents;
- (4) if the company is a corporation, a copy of:
 - (A) all minutes of any proceedings of the company's directors, stockholders, or members relating to or affecting the issuance of the securities; and
 - (B) the company's bylaws and any amendments to the bylaws;
- (5) if the company is a trustee, a copy of all instruments by which the trust is created and in which the trust is accepted, acknowledged, or declared;
- (6) a statement showing:
 - (A) the amount of capital stock and, if there is no capital stock, the amount of capital of the issuer that is contemplated to be employed;
 - (B) the number of shares into which the stock is divided or, if not divided into shares, what division is to be made or is contemplated;
 - (C) the par value of each share or, if there are shares with no par value, the price at which the security is proposed to be sold; and
 - (D) the promotional fees or commissions to be paid for the sale of the securities, including:
 - (i) all compensation of every nature allowed to be paid to the promoters or allowed for the sale of the securities;
 - (ii) how the compensation is to be paid, whether in cash, securities, service or otherwise, or partly of either or both;
 - (iii) 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

⁶⁴ Section 7.A(1) (part); Section 10.B (part).

⁶⁵ Section 7.A(1) (part).

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

(7) a copy of:

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

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

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

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

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

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

(2) attested by the secretary or partner of the issuer or registered dealer filing the application.

Sec. 4003.003. Statement of Financial Condition and Income Statement.⁶⁶

(a) In this section, “current liabilities” means all liabilities that will mature and become due not later than the first anniversary of the date the application listing the liabilities is filed under this subchapter.

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

(1) be detailed;

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

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

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

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

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

(A) the assets’ actual cost in money;

(B) the assets’ present market value; or

(C) some other value of the assets;

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

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

(A) actual cost value in money; and

(B) present market value.

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

(d) The statement under Subsection (b) must describe any assets consisting of anything other than cash or real property in detail to give the Commissioner the fullest possible

⁶⁶ Section 7.A(1) (part); Section 7.D (part).

information. The Commissioner may require the filing of additional information as the Commissioner considers necessary to determine whether the true value of those assets is reflected in the statement.

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

- (1) the terms of the agreement; and
- (2) the amount and character of the assets subject to the agreement.

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

- (1) be detailed;
- (2) be prepared in accordance with generally accepted auditing standards and procedures and generally accepted accounting principles; and
- (3) cover the lesser of:
 - (A) the preceding three years of the issuer's operations; or
 - (B) the period the issuer has been operating.

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

- (1) show the operations of the concern taken over for the three years preceding the taking over of the concern; and
- (2) clearly reflect the amount of net income or net loss incurred during each year shown.

Sec. 4003.004. Exceptions to Certification Requirement for Financial Statements.⁶⁷

(a) Financial statements filed as required by this subchapter are not required to be certified by an independent certified public accountant or independent public accountant if:

- (1) the fiscal year of the issuer of the securities to be qualified for sale ended on a date earlier than the 90th day before the date of the filing; and
- (2) financial statements in addition to those required by this subchapter are filed that:
 - (A) contain the information required by Section 4003.003; and
 - (B) are certified by an independent certified public accountant or independent public accountant as of the end of the issuer's preceding fiscal year.

(b) Instead of being audited and certified, the financial statements described by Section 4003.003 of a small business issuer, as defined by Board rule, that meets all other requirements the Board by rule or order prescribes, conditionally or unconditionally, 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.

Sec. 4003.005. Permit Fee.⁶⁸ The Commissioner shall charge the fees provided by Chapter 4006 for the issuance of a permit qualifying securities for sale.

⁶⁷ Section 7.A(1)(f)(2); Section 7.D (part).

⁶⁸ Section 10.B (part).

Sec. 4003.006. Examination of and Determination on Permit Application.⁶⁹

(a) On the filing of an application for a permit qualifying securities for sale under this subchapter, the Commissioner shall examine the application and the papers and documents filed with the application.

(b) After the examination, the Commissioner shall:

(1) issue a permit to the applicant authorizing the applicant to issue and dispose of the securities if the Commissioner determines that:

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

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

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

(2) deny the application for a permit and notify the applicant in writing of the Commissioner's decision if the Commissioner determines that the applicant's proposed plan of business appears to be unfair, unjust, or inequitable.

Sec. 4003.007. Form and Contents of Permit.⁷⁰ A permit qualifying securities for sale must:

(1) be in the form the Commissioner prescribes; and

(2) state in bold type that the issuance of the permit is permissive only and does not constitute a recommendation or endorsement of the securities permitted to be issued.

Sec. 4003.008. Term of Permit.⁷¹ A permit qualifying securities for sale that is issued under this subchapter is valid for one year.

Sec. 4003.009. Renewal of Permit.⁷²

(a) An issuer or registered dealer may file a renewal application with the Commissioner if the securities authorized to be sold under a permit qualifying securities for sale that is issued under this subchapter are not sold before the permit expires.

(b) The renewal application must:

(1) state:

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

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

(C) the total number of shares outstanding;

(2) contain a detailed balance sheet;

(3) contain an operating statement; and

(4) provide any other information the Commissioner may require.

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

⁶⁹ Section 10.A.

⁷⁰ Section 10.B (part).

⁷¹ Section 10.B (part).

⁷² Section 10.B (part).

- (d) If issued, a renewal permit:
 - (1) is valid for one year; and
 - (2) must be in the form the Commissioner prescribes.

Sec. 4003.010. Use of Permit for Certain Purposes Prohibited.⁷³ A dealer, issuer, or agent may not use a permit qualifying securities for sale in connection with a sale or effort to sell a security.

Subchapter B. Registration by Notification.

Sec. 4003.051. Eligibility for Registration by Notification.⁷⁴

(a) Securities may be registered by notification under this subchapter if the securities are issued by an issuer that:

- (1) has been in continuous operation for at least three years; and
- (2) has shown, during at least the three years preceding the date of registration under this subchapter, average annual net earnings after deducting all prior charges, including income taxes but not including charges on securities to be retired out of the proceeds of sale, as follows:
 - (A) for interest-bearing securities, not less than one and one-half times the annual interest charges on those securities and on all other outstanding interest-bearing securities of equal rank;

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

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

(b) For purposes of calculating average annual net earnings under Subsection (a)(2)(C), an issuer's ownership of more than 50 percent of the outstanding voting stock of a corporation:

- (1) is construed as the issuer's proportionate ownership of that corporation; and
- (2) permits the inclusion of that corporation's earnings applicable to the payment of dividends on the stock owned in the earnings of the issuer of the securities being registered by notification.

Sec. 4003.052. Registration Statement Required.⁷⁵

(a) To register securities by notification that are entitled to that registration, an issuer of the securities or a registered dealer must file with the Commissioner a registration statement that complies with this section.

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

- (1) be in the form the Commissioner prescribes;
- (2) be signed by the applicant filing the statement; and
- (3) contain the following information:
 - (A) the name and business address of the main office of the issuer of the securities to be registered and the address of the issuer's principal office, if any, in this state;

⁷³ Section 10.C.

⁷⁴ Section 7.B(1).

⁷⁵ Section 7.B(2) (part); Section 7.D (part).

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

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

(D) a brief statement of the facts showing that the securities are entitled to be registered by notification;

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

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

- (i) a certified income statement;
- (ii) a certified balance sheet; and
- (iii) a certified statement of stockholders' equity;

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

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

- (i) is registering the securities; and
- (ii) is not a resident of this state or incorporated or formed under the laws of this state.

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

(d) Filing a registration statement that complies with this section constitutes the registration of the securities by notification, subject to Section 4003.055.

Sec. 4003.053. Exception to Certification Requirement for Financial Statements.⁷⁶ Financial statements filed as required by this subchapter are not required to be certified by an independent certified public accountant or independent public accountant if:

- (1) the fiscal year of the issuer of the securities to be registered ended on a date earlier than the 90th day before the date of the filing; and
- (2) financial statements in addition to those required by this subchapter are filed that:
 - (A) contain the information required by Section 4003.052; and
 - (B) are certified by an independent certified public accountant or independent public accountant as of the end of the issuer's preceding fiscal year.

Sec. 4003.054. Registration Procedures.⁷⁷

(a) The Commissioner shall complete the procedures specified by this section to register securities entitled to registration by notification.

(b) The Commissioner shall:

- (1) examine the registration statement filed under Section 4003.052 and the accompanying papers to determine their sufficiency under the requirements of this subchapter; and
- (2) record the registration by notification of the securities described on receipt of:
 - (A) the registration statement;

⁷⁶ Section 7.D (part).

⁷⁷ Section 7.B(2)(b) (part); 10.B (part).

- (B) any prospectus;
- (C) payment of the filing fee and registration fee; and
- (D) a consent to service of process, if required.

Sec. 4003.055. Effective Date of Registration by Notification.⁷⁸

(a) Except as provided by Subsection (b), the registration of securities by notification takes effect five days after the date the Commissioner receives the registration statement filed under Section 4003.052 and all accompanying papers.

(b) The Commissioner may waive or reduce the five-day waiting period if the Commissioner determines that the public will not be injured by the waiver or reduction of the waiting period.

Sec. 4003.056. Effect of Registration by Notification.⁷⁹ On registration of securities by notification, the securities may be sold in this state by a registered dealer or a registered agent.

Sec. 4003.057. Term of Registration.⁸⁰ A registration of securities by notification is effective for one year.

Sec. 4003.058. Renewal of Registration.⁸¹ A registration of securities by notification may be renewed for additional periods of one year if:

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

(2) a new filing is made under this subchapter together with the payment of the renewal fee of \$10.

Sec. 4003.059. Insufficient or Fraudulent Registration Statement.⁸²

(a) If at any time, in the Commissioner's opinion, the information in a registration statement filed under this subchapter is insufficient to establish that the securities described in the statement are or were entitled to registration by notification under this subchapter, or that the registration information contains or contained false, misleading, or fraudulent facts, the Commissioner may order the applicant who filed the statement to cease and desist from selling or offering for sale the securities registered or proposed to be registered by notification under this subchapter until additional information is filed with the Commissioner that in the Commissioner's judgment is necessary to establish that those securities are or were entitled to registration by notification under this subchapter.

(b) The provisions of Section 4007.107 relating to hearings apply to an order entered under this section.

⁷⁸ Section 7.B(2)(b) (part).

⁷⁹ Section 7.B(2)(b) (part).

⁸⁰ Section 7.B(2)(b) (part).

⁸¹ Section 7.B(2)(b) (part).

⁸² Section 7.B(2)(c).

Subchapter C. Registration by Coordination.

Sec. 4003.101. Eligibility for Registration by Coordination.⁸³ A security may be registered by coordination if a registration statement has been filed under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) in connection with the same offering.

Sec. 4003.102. Registration Statement Required.⁸⁴ To register securities by coordination, an issuer of the securities or a registered dealer must file with the Commissioner a registration statement that contains:

- (1) the following information:
 - (A) the amount of securities to be offered in this state;
 - (B) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed; and
 - (C) any adverse order, judgment, or decree previously entered in connection with the offering by a court or the Securities and Exchange Commission;
- (2) one copy of the prospectus filed under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) together with all amendments to the prospectus;
- (3) a copy of:
 - (A) the articles of incorporation and bylaws, or their substantial equivalents, currently in effect;
 - (B) any agreements with or among underwriters; and
 - (C) any indenture or other instrument governing the issuance of the securities to be registered;
- (4) a specimen or copy of the security;
- (5) any other information or copies of any other documents filed under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) the Commissioner requests;
- (6) an undertaking to promptly forward all amendments to the federal registration statement other than an amendment that delays the effective date only; and
- (7) a consent to service of process conforming to the requirements of Section 4001.102 if:
 - (A) the registration statement is filed by the issuer or by a dealer that will offer the securities for sale as the issuer's agent; and
 - (B) the issuer is not a resident of this state or incorporated or formed under the laws of this state.

Sec. 4003.103. Examination of and Determination on Registration Statement.⁸⁵

(a) In this section, "price amendment" means the final federal amendment that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent on the offering price.

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

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

⁸³ Section 7.C(1) (part).

⁸⁴ Section 7.C(1) (part).

⁸⁵ Section 7.C(2) (part); Section 10.B (part).

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

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

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

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

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

(1) the Commissioner has not entered an order denying registration of the securities;

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

(3) 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 a shorter period as the Commissioner expressly permits and the offering is made within those limitations.

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

(g) The registrant shall promptly:

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

(2) file a post-effective amendment containing the information and documents in the price amendment.

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

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

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

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

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

(k) If the registrant advises the Commissioner of the date 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 the Commissioner then contemplates the issuance of an order denying registration. This advice by the Commissioner does not preclude the issuance of the order at any time.

Sec. 4003.104. Term of Registration.⁸⁶

(a) Except as provided by this section, a registration by coordination of securities under this subchapter is effective until the first anniversary of the date the Commissioner declares the registration to be effective.

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

(c) The registration by coordination of securities of a unit investment trust, as defined by the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), is effective until the first anniversary of the date of effectiveness granted by the Securities and Exchange Commission.

Sec. 4003.105. Renewal of Registration.⁸⁷

(a) Except as provided by Subsection (b) and subject to Subsection (c), a registration of securities under Section 4003.104 may be renewed for additional periods of one year if the appropriate registration forms and renewal fees are received before the expiration date of the registration to be renewed.

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

(c) The same standards of fairness, justice, and equity prescribed by this subchapter for original approval of a registration apply to the renewal of the registration.

Subchapter D. Prohibited Sales.

Sec. 4003.151. Certain Sales Prohibited.⁸⁸ If the sale of a security entitles the purchaser or subsequent holder to exchange that security for another, or to purchase another security, the sale of, including an exchange for, the other security may not be made unless the sale is authorized under this title, if not exempt under this title, or by another provision of law.

Subchapter E. Regulation of Offers.

Sec. 4003.201. Definition.⁸⁹ In this subchapter, "broadcast offer" means an offer disseminated by radio, television, recorded telephone presentation, or other mass media.

Sec. 4003.202. Applicability.⁹⁰ This subchapter does not apply to transactions or securities exempt under Chapter 4005.

⁸⁶ Section 7.C(3) (part).

⁸⁷ Section 7.C(3) (part); Section 7.C(4).

⁸⁸ Section 4.E (part).

⁸⁹ Section 22.A (part); Section 22.B (part).

⁹⁰ Section 22.E.

Sec. 4003.203. Authorized Written, Printed, or Broadcast Offers.⁹¹ A person may make in this state a written or printed offer, including a pictorial demonstration with any accompanying script, or broadcast offer to sell a security if:

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

(2) the person making or distributing the offer is a registered dealer or registered agent of a registered dealer;

(3) either:

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

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

(4) for a registration for the security that has not become effective under Subchapter B or C or for a permit that has not been issued under Subchapter A, 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) "INFORMATIONAL ADVERTISING ONLY. 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."; or

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

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

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

(B) has received notice of an order described by Paragraph (A) 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 of the security is effective under Subchapter B or C or a permit is issued under Subchapter A.

Sec. 4003.204. Authorized Oral Offers.⁹²

(a) In this section, "oral offer" means an offer that is not a broadcast offer.

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

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

(2) either:

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

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

(3) the person making or distributing the offer:

⁹¹ Section 22.A (part).

⁹² Section 22.B (part).

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

(B) has received notice of an order described by Paragraph (A) 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 of the security is effective under Subchapter B or C or a permit is issued under Subchapter A.

Sec. 4003.205. Dealer Named in Offer.⁹³ A dealer whose name is included in a written, printed, or broadcast offer along with the name of a registered dealer is not deemed, on that fact alone, to have made an offer in this state to sell a security.

Sec. 4003.206. Effect of Compliance or Noncompliance.⁹⁴

(a) An offer to sell a security that complies with Section 4003.203 or 4003.204 does not violate Subchapter A, B, or C.

(b) An offer to sell a security that does not comply with Section 4003.203 or 4003.204 violates this title.

Subchapter F. Crowdfunding.

Sec. 4003.251. Definition.⁹⁵ In this subchapter, “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. 4003.252. Crowdfunding.⁹⁶

(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 subchapter.

(b) The rules must:

- (1) allow an authorized small business development entity to list on the entity’s web portal offerings of securities by issuers in which the entity is financially interested;
- (2) allow an authorized small business development entity and the entity’s web portal to list offerings of securities without offering investment advice;

⁹³ Section 22.F.

⁹⁴ Section 22.C; Section 22.D.

⁹⁵ Section 44(c).

⁹⁶ Section 44(a); Section 44(b).

- (3) allow an authorized small business development entity 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 entity.

Subchapter G. Protection for Purchasers of Securities.

Sec. 4003.301. Deposit in Trust Account.⁹⁷

(a) If the Commissioner considers it necessary to protect the interests of prospective purchasers of securities a company sells or offers for sale, the Commissioner may require the company to deposit in a trust account at a bank or trust company approved by the Commissioner and doing business in this state:

- (1) all or part of the proposed securities; or
- (2) subject to Subsection (b), all or part of the money and other funds received from the sale of those securities.

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

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

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

(e) If a proposed or existing company that deposits funds in a trust account as provided by this section does not sell the minimum amount of capital necessary under the escrow agreement within two years, the Commissioner may authorize the bank or trust company at which the funds are deposited to return to the subscribers the portion of the funds that were deposited or escrowed under the escrow agreement. The bank or trust company shall return the funds to the subscribers on receipt of authorization from the Commissioner under this subsection. If the bank or trust company holds securities under the escrow agreement, the bank or trust company may return the securities to the corporation only after the bank or trust company receives from the issuer evidence of cancellation thereof.

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

- (1) the names of the purchasers of or subscribers for the securities; and
- (2) the amount of money paid by each.

Sec. 4003.302. Marketing Expenses.⁹⁸

(a) Total expenses for marketing securities, including all commissions for the sale of the securities, and all other incidental selling expenses, may not in the aggregate exceed 20 percent

⁹⁷ Section 9.A.

⁹⁸ Section 9.B.

of the price at which the stock or other securities of a proposed or existing company are to be sold or offered for sale to the public of this state.

(b) The Commissioner may reduce the percentage listed in Subsection (a) to a percentage that in the Commissioner's opinion is fair, just, and equitable under the facts of the particular case.

Sec. 4003.303. Prospectus Required for Certain Offers.⁹⁹

(a) Except as provided by Subsection (b), the Commissioner shall require that, in connection with a permit qualifying securities for sale, all offers for the sale of the securities be made through a prospectus that:

- (1) fairly discloses the material facts about the plan of finance and business; and
- (2) must be filed with and approved by the Commissioner.

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

(c) Failure to comply with the prospectus requirements of this section violates this title.

Sec. 4003.304. Investor Education.¹⁰⁰

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

(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) For use in providing investor education initiatives and subject to Chapter 575, the Commissioner may accept grants and donations from:

- (1) a person who is not affiliated with the securities industry; or
- (2) a nonprofit association, regardless of whether the entity is affiliated with the securities industry.

⁹⁹ Section 9.C.

¹⁰⁰ Section 43.

Chapter 4004. Regulation of Dealers, Investment Advisers, Dealers' Agents, and Investment Adviser Representatives.

Subchapter A. General Provisions.

Sec. 4004.001. Rules for Exemption from Registration Requirements.¹⁰¹ The Board may adopt rules that exempt certain classes of persons from the dealer, agent, investment adviser, and investment adviser representative registration requirements, or provide conditional exemptions from registration, if the Board determines that the rules are consistent with the purposes of this title.

Sec. 4004.002. Certain Displays or Advertisement of Registration Prohibited.¹⁰² Except as expressly provided by this title, a dealer, agent, investment adviser, or investment adviser representative may not by public display or advertisement use the fact that the person is registered under this title, the person's registration certificate or evidence of registration, or a certified copy of the certificate or evidence of registration in connection with any sale or effort to sell any security or any rendering of services as an investment adviser.

Sec. 4004.003. Display of Information Regarding Complaints.¹⁰³ A dealer, agent, investment adviser, or investment adviser representative regulated under this title shall prominently display at all times in the person's place of business:

- (1) a sign containing the name, mailing address, and telephone number of the Board; and
- (2) a statement informing consumers that complaints against a dealer, agent, investment adviser, or investment adviser representative may be directed to the Board.

Subchapter B. Registration of Dealers and Investment Advisers.

Sec. 4004.051. Registration of Dealers Required.¹⁰⁴ Except as provided by Section 4001.056(d) or Subchapter A, Chapter 4005, a dealer or other person or company, including a corporation or firm, may not, directly or through the dealer's or other person's or company's agents, offer for sale, sell, or make a sale of any securities in this state unless the dealer or other person or company is first registered as provided by this chapter.

Sec. 4004.052. Registration of Investment Advisers Required.¹⁰⁵ Except as provided by Subchapter A, Chapter 4005, a person may not, directly or through the person's investment adviser representative, render services as an investment adviser in this state unless the person:

- (1) is registered under this chapter;
- (2) submits a notice filing as provided by Subchapter G; or
- (3) is otherwise exempt under this title.

¹⁰¹ Section 12.C.

¹⁰² Section 20.

¹⁰³ Section 2.L (part).

¹⁰⁴ Section 12.A (part).

¹⁰⁵ Section 12.B (part).

Sec. 4004.053. Application for Registration.¹⁰⁶

(a) To be registered, a dealer or investment adviser must submit to the Commissioner a sworn application that must be in the form the Commissioner prescribes and must state:

- (1) the applicant's principal place of business;
- (2) the location of the applicant's principal place of business and all branch offices of the applicant in this state;
- (3) the name or style of doing business and the address of the applicant;
- (4) the name, residence, and business address of each person interested in the business as a principal, officer, director, or managing agent of the applicant's business, specified by capacity and title;
- (5) the general plan and character of the applicant's business;
- (6) the period the applicant has been engaged in the business; and
- (7) the places at which the applicant has engaged in the business.

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

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

- (1) the applicant; and
- (2) the directors, officers, copartners, or principals of the applicant.

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

- (1) articles of incorporation or similar organizational instrument, and all amendments to the document or instrument, as applicable, certified by the appropriate officer of the corporation or of the state or other jurisdiction in which the corporation is organized;
- (2) regulations; and
- (3) bylaws.

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

- (1) a copy of the articles of copartnership or similar organizational instrument of the partnership; or
- (2) a verified statement of the partnership's plan of doing business.

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

(g) The Commissioner shall:

- (1) prescribe the application form to be used by an applicant under this section; and
- (2) provide copies of the application form for registration to all persons who seek to submit an application to register as a dealer or investment adviser.

¹⁰⁶ Section 13.A; Section 13.B; Section 13.C; Section 13.G; Section 13.H; Section 13.I; Section 13.J.

Sec. 4004.054. Issuance of Registration Certificate.¹⁰⁷ The Commissioner shall issue a certificate of registration to an applicant for registration as a dealer or investment adviser if:

- (1) the Commissioner is satisfied that the applicant has complied with the requirements of this chapter; and
- (2) the applicant:
 - (A) if applicable, has filed a written consent to service that complies with Section 4001.102; and
 - (B) has paid the fees required by Chapter 4006.

Sec. 4004.055. Form and Contents of Registration Certificate.¹⁰⁸ The registration certificate must be in the form the Commissioner prescribes and must state:

- (1) the principal place of business and address of the dealer or investment adviser;
- (2) the name and business address of each person interested in the business as a principal, officer, director, or managing agent of the dealer or investment adviser; and
- (3) that the dealer or investment adviser has been registered for a current calendar year as a dealer in securities or as an investment adviser, as appropriate.

Sec. 4004.056. Temporary Permission to Engage in Business as Dealer or Investment Adviser.¹⁰⁹

(a) Pending final disposition of an application under this subchapter, the Commissioner may, for special cause shown, grant an applicant temporary permission to engage in business as a dealer or investment adviser under this title, subject to any terms and conditions that the Commissioner prescribes.

(b) Temporary permission granted by the Commissioner under this section may be revoked at any time.

(c) A dealer or investment adviser acting under temporary permission granted under this section is considered to be a registered dealer or registered investment adviser for any purpose of this title.

Sec. 4004.057. Amendment of Registration Certificate.¹¹⁰

(a) A dealer or investment adviser shall immediately certify under oath to the Commissioner any change in the personnel of a partnership or in the principals, officers, directors, or managing agents of the dealer or investment adviser.

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

(c) On the issuance of an amended registration certificate, the dealer or investment adviser shall promptly surrender the original certificate and any outstanding certified copies of the original certificate to the Commissioner.

¹⁰⁷ Section 15 (part).

¹⁰⁸ Section 15 (part); Section 17 (part).

¹⁰⁹ Section 15 (part).

¹¹⁰ Section 17 (part).

Sec. 4004.058. Posting Registration Certificates.¹¹¹ On receipt of a registration certificate issued under this chapter, the dealer or investment adviser named in the certificate shall immediately post and conspicuously display the certificate at all times in the dealer's or investment adviser's principal place of business, if the dealer's or investment adviser's principal place of business is maintained in this state. The dealer or investment adviser shall similarly post and conspicuously display a duplicate copy of the dealer's or investment adviser's certificate in each branch office located in this state.

Subchapter C. Registration of Agents and Investment Adviser Representatives.

Sec. 4004.101. Registration of Agents.¹¹²

(a) An agent may not, on behalf of a registered dealer, sell, offer for sale, or make a sale of any securities in this state unless the agent is registered as an agent for that particular registered dealer under this chapter.

(b) On written application by a registered dealer, and on satisfactory compliance with the requirements of this title, the Commissioner shall register a person as an agent of the registered dealer.

Sec. 4004.102. Registration of Investment Adviser Representatives.¹¹³

(a) A person may not act or render services as an investment adviser representative for an 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 by this subchapter and Subchapter G.

(b) On written application by an investment adviser and on satisfactory compliance with the requirements of this title, the Commissioner shall register a person as an investment adviser representative of that investment adviser.

Sec. 4004.103. Application for Registration.¹¹⁴ The application described by Sections 4004.101 and 4004.102 must:

- (1) be in the form the Commissioner prescribes;
- (2) state:
 - (A) the residence and address of the person whose registration as an agent or investment adviser representative is requested through the application; and
 - (B) any other information relating to that person's previous history, record, and associations that the Commissioner may require; and
- (3) be signed and sworn to by the person whose registration as an agent or investment adviser representative is requested through the application.

¹¹¹ Section 21.

¹¹² Section 12.A (part); Section 18 (part).

¹¹³ Section 12.B (part); Section 18 (part).

¹¹⁴ Section 18 (part).

Sec. 4004.104. Issuance of Evidence of Registration.¹¹⁵ For each person registered under this subchapter, the Commissioner shall issue evidence of registration of the agent or investment adviser representative to the registered dealer or investment adviser who requested the person's registration, as appropriate. The registered dealer or investment adviser who requested the person's registration shall retain the evidence of registration for the dealer's agents or investment adviser's representatives, as appropriate.

Sec. 4004.105. Form and Contents of Evidence of Registration.¹¹⁶ The evidence of registration described by Section 4004.104 must:

- (1) be in the form the Commissioner prescribes; and
- (2) state:
 - (A) the name of the agent or investment adviser representative;
 - (B) the address of the registered dealer or investment adviser, as appropriate; and
 - (C) that the person is registered for the current calendar year as an agent of the dealer or as an investment adviser representative of the investment adviser, as appropriate.

Sec. 4004.106. Cancellation of Registration.¹¹⁷ On application by a registered dealer or investment adviser, the Commissioner shall cancel the registration of the registered dealer's agent or the investment adviser's representative.

Subchapter D. Examination Requirements.

Sec. 4004.151. Examination Requirements.¹¹⁸

(a) Except as provided by Subsection (c), the Commissioner shall require that, to be registered under this chapter, each applicant must pass a written examination to determine whether the applicant possesses the 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. If the applicant is a corporation or partnership, the officers, directors, or partners to be licensed by the corporation or partnership must pass the written examination described by this section.

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

(c) The Board may waive the examination requirement under Subsection (a) for any applicant or class of applicants.

Sec. 4004.152. Examination Results.¹¹⁹

(a) Except as provided by Subsection (b), the Board shall notify each examinee of the results of a registration examination required by this subchapter not later than the 30th day after the date the examinee takes the examination.

¹¹⁵ Section 18 (part).

¹¹⁶ Section 18 (part).

¹¹⁷ Section 18 (part).

¹¹⁸ Section 13.D; Section 13.K.

¹¹⁹ Section 13.E; Section 13.F.

- (b) If an examination is graded or reviewed by a testing service:
- (1) the Board shall notify each examinee 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 each examinee of the reason for the delay before the 90th day.
- (c) The Board may require a testing service to notify an examinee of the results of the examination.
- (d) If requested in writing by an examinee who fails an examination administered under this subchapter, the Board shall provide the examinee with an analysis of the examinee's performance on the examination.

Subchapter E. Denial or Revocation of Registration.

Sec. 4004.201. Denial of Registration.¹²⁰ The Commissioner may deny an application for registration under this chapter in accordance with Section 4007.105.

Sec. 4004.202. Automatic Revocation of Registration of Agents and Investment Adviser Representatives after Revocation of Registration of Dealer or Investment Adviser.¹²¹

(a) The revocation of the registration of a dealer or an investment adviser under Section 4007.105 constitutes a revocation of the registration of any agent of the dealer or of any investment adviser representative of the investment adviser, as appropriate.

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

(c) All evidences of registration that have been revoked shall be immediately surrendered to the Commissioner on request.

Subchapter F. Expiration and Renewal of Registration.

Sec. 4004.251. Expiration of Registration.¹²² Except as provided by Sections 4004.252(a) and 4004.253, all registrations expire at the end of the calendar year.

Sec. 4004.252. Renewal of Registration.¹²³

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

(b) New registrations for the year succeeding the expiration of registrations shall be issued on the filing of a written application and payment of the fee as provided by this subchapter. If an applicant registers after December 1 of any year, the applicant may immediately apply for a renewal of the applicant's registration for the ensuing year.

¹²⁰ New.

¹²¹ Section 25 (part).

¹²² Section 19.A (part).

¹²³ Section 19.A (part); Section 19.C(1).

(c) The filing of additional statements or the provision of additional information is not required for renewal unless specifically requested by the Commissioner.

Sec. 4004.253. Staggered Renewal; Proration of Registration Renewal Fee.¹²⁴

(a) The Board by rule may adopt a system under which registrations expire on various dates during the year.

(b) 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 1 of the next year shall be prorated on a monthly basis so that each person pays 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.

Sec. 4004.254. Notice of Expiration Required.¹²⁵ Not later than the 30th day before the date a person's registration is scheduled to expire, the Commissioner shall send written notice of the impending expiration to the person at the person's last known address according to the Board's records.

Sec. 4004.255. Renewal of Expired Registration.¹²⁶

(a) A person whose registration has been expired for 90 days or less may renew the registration by:

- (1) filing a renewal application with the Commissioner; and
- (2) paying to the Board:
 - (A) the required renewal fee; and
 - (B) a fee that is equal to one-half of the original registration application fee.

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

- (1) filing a renewal application with the Commissioner; and
- (2) paying to the Board:
 - (A) all unpaid renewal fees; and
 - (B) a fee that is equal to the original registration application fee.

(c) A person whose registration has been expired for two years or more may not renew the registration. The person may obtain a new registration by complying with the requirements and procedures, including the examination requirements, for obtaining an original registration. The person must pay to the Board a fee that is equal to the original registration application fee.

Sec. 4004.256. Effect of Expired Registration.¹²⁷ A person who sells securities or who renders investment advising services after the person's registration has expired but before the registration is renewed is subject to the sanctions provided by this title for selling securities or rendering investment advice without being registered.

¹²⁴ Section 19.B.

¹²⁵ Section 19.C(5).

¹²⁶ Section 19.C(2), (3), (4).

¹²⁷ Section 19.C(6).

Sec. 4004.257. Continuing Education.¹²⁸

(a) The Board may recognize, prepare, or administer continuing education programs for a person who is registered under this chapter.

(b) A person who is registered under this chapter must participate in continuing education programs if the Board requires participation as a condition of maintaining the person's certificate or evidence of registration.

Subchapter G. Notice Filings of Federal Covered Investment Advisers and Certain Representatives of Federal Covered Investment Advisers.

Sec. 4004.301. Applicability.¹²⁹ This subchapter does not apply to an investment adviser or investment adviser representative who is exempt from registration under this title or by Board rule.

Sec. 4004.302. Notice Filing.¹³⁰ The Board by rule shall authorize a federal covered investment adviser or a representative of a federal covered investment adviser to render services as an investment adviser in this state if the Commissioner receives:

- (1) a notice filing submitted by the adviser or representative that:
 - (A) is on the form and contains the information the Commissioner prescribes; and
 - (B) if applicable, contains a consent to service appointing the Commissioner as the adviser's attorney for service of process, as required by Section 4001.102; and
- (2) a notice filing fee in the amount determined under Chapter 4006.

Sec. 4004.303. Effective Date of Notice Filing.¹³¹ On the Commissioner's receipt of a notice filing and fee payment that meet the requirements of Section 4004.302, the notice filing takes effect and is valid for the remainder of the calendar year.

Sec. 4004.304. Renewal.¹³² A federal covered investment adviser or a representative of a federal covered investment adviser may renew a notice filing on or before the filing's expiration date if the Commissioner receives:

- (1) a renewal notice filing submitted by the adviser or representative; and
- (2) a renewal fee in the amount determined under Chapter 4006.

Subchapter H. Requirements for Protection of Vulnerable Adults from Financial Exploitation.

Sec. 4004.351. Definitions.¹³³ In this subchapter:

- (1) "Department" means the Department of Family and Protective Services.

¹²⁸ Section 19.D.

¹²⁹ Section 12-1.A.

¹³⁰ Section 12-1.B.

¹³¹ Section 12-1.C (part).

¹³² Section 12-1.C (part).

¹³³ Section 45.A. See also Section 9.106 of House Bill 3607 (2021).

(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.

Sec. 4004.352. Reporting Suspected Financial Exploitation of Vulnerable Adults.¹³⁴

(a) 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.

(b) If a dealer or investment adviser is notified of suspected financial exploitation under Subsection (a) 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 Commissioner, in accordance with rules adopted under Section 4004.353, 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 (a) or otherwise has cause to believe that the suspected financial exploitation has occurred, is occurring, or has been attempted.

(c) A dealer or investment adviser who submits a report to the department of suspected financial exploitation of a vulnerable adult under Subsection (b) 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.

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

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

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

(e) The policies, programs, plans, or procedures adopted under Subsection (d) may authorize the dealer or investment adviser to report the suspected financial exploitation to other appropriate agencies and entities in addition to the Commissioner and the department, including the Attorney General, the Federal Trade Commission, and the appropriate law enforcement agency.

¹³⁴ Section 45.B; Section 45.C; Section 45.D; Section 45.E.

Sec. 4004.353. Form and Content of Report.¹³⁵ 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 Commissioner under Section 4004.352(b).

Sec. 4004.354. Notifying Third Parties of Suspected Financial Exploitation of Vulnerable Adults.¹³⁶ If a dealer or investment adviser submits reports of suspected financial exploitation of a vulnerable adult to the Commissioner and the department under Section 4004.352(b), 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.

Sec. 4004.355. Temporary Hold on Transactions in Certain Cases of Suspected Financial Exploitation of Vulnerable Adults.¹³⁷

(a) Notwithstanding any other law, a dealer or investment adviser:

(1) may place a hold on any transaction that involves an account of a vulnerable adult if the dealer or investment adviser:

(A) submits a report of suspected financial exploitation of the vulnerable adult to the Commissioner and the department under Section 4004.352(b); and

(B) has cause to believe the transaction is related to the suspected financial exploitation alleged in the report; and

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

(b) Subject to Subsection (c), a hold placed on any transaction under Subsection (a) expires on the 10th business day after the date the hold is placed.

(c) A dealer or investment adviser may extend a hold placed on any transaction under Subsection (a) for a period not to exceed 30 business days after the expiration of the period prescribed by Subsection (b) 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 (a) beyond the period prescribed by Subsection (b). A court may enter an order extending or shortening a hold or providing other relief.

(d) 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 (a).

Sec. 4004.356. Immunity.¹³⁸

(a) A securities professional or person serving in a legal capacity for a dealer or investment adviser who makes a notification under Section 4004.352(a), a dealer or investment adviser that submits a report under Section 4004.352(b) or makes a notification to a third party under Section 4004.354, or a securities professional or person serving in a legal capacity who or dealer

¹³⁵ Section 45.N.

¹³⁶ Section 45.F.

¹³⁷ Section 45.G; Section 45.H; Section 45.I; Section 45.J. See also House Bill 4477 (2021).

¹³⁸ Section 45.K, Section 45.L.

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.

(b) 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 Section 4004.355(a)(1) is immune from civil or criminal liability or disciplinary action resulting from the action or failure to act.

Sec. 4004.357. Records.¹³⁹ 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 Commissioner, the department, a law enforcement agency, or a prosecuting attorney's office, either as part of a report to the Commissioner, department, law enforcement agency, or prosecuting attorney's office or at the request of the Commissioner, department, law enforcement agency, or prosecuting attorney's office in accordance with an investigation.

¹³⁹ Section 45.M.

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Chapter 4005. Exemptions.

Subchapter A. Exempt Transactions.

Sec. 4005.001. Scope of Exemption.¹⁴⁰ Except as expressly provided otherwise in this title, this title does not apply to any sale of, offer for sale of, solicitation of, subscription to, dealing in, or delivery of a security made in a transaction or under a condition specified in this subchapter.

Sec. 4005.002. Court Supervised Sales.¹⁴¹ The exemption provided by Section 4005.001 applies to the sale of a security made:

- (1) at a judicial, executor's, administrator's, guardian's, or conservator's sale; or
- (2) by a receiver or trustee in insolvency or bankruptcy.

Sec. 4005.003. Pledged Securities.¹⁴² The exemption provided by Section 4005.001 applies to the sale of a security pledged in good faith as security for a bona fide debt that is made by or for the account of a pledge holder or mortgagee that is selling the security or offering the security for sale or delivery in the ordinary course of business to liquidate the debt.

Sec. 4005.004. Isolated Transactions.¹⁴³

(a) The exemption provided by Section 4005.001 applies to the sale of a security that is made by a vendor or on a vendor's behalf by a dealer or other agent and is made in the ordinary course of a bona fide personal investment of the vendor's personal holdings or a change in the investment if:

- (1) the vendor is not engaged in the business of selling securities; and
- (2) the sale is an isolated transaction not made in the course of repeated and consecutive transactions of a like character.

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

(c) A person acting as an agent for a vendor in any sale or offer for sale under Subsection (a) must be registered under this title.

Sec. 4005.005. Insurance Company Sales.¹⁴⁴

(a) The exemption provided by Section 4005.001 applies to the sale of a security made by or on behalf of an insurance company that:

- (1) is subject to the supervision or control of the Texas Department of Insurance; and
- (2) owns the security as a legal and bona fide investment.

¹⁴⁰ Section 5 (part).

¹⁴¹ Section 5.A.

¹⁴² Section 5.B.

¹⁴³ Section 5.C(1).

¹⁴⁴ Section 5.C(2).

(b) A sale or offer for sale under Subsection (a) is not exempt from this title if the sale or offer is made or intended to be made directly or indirectly for the benefit of another company.

Sec. 4005.006. Stock Dividends.¹⁴⁵ The exemption provided by Section 4005.001 applies to a distribution of securities by a corporation directly to the corporation's stockholders as a stock dividend or other distribution paid out of earnings or surplus.

Sec. 4005.007. Existing Security Holders.¹⁴⁶

(a) In this section, "existing security holder" includes a person who is a holder of a convertible security or nontransferable warrant at the time of the transaction.

(b) The exemption provided by Section 4005.001 applies to an offer by the issuer of its securities to the issuer's existing security holders and to any transaction pursuant to the offer 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.

Sec. 4005.008. Financial Distress.¹⁴⁷

(a) The exemption provided by Section 4005.001 applies to the issuance in good faith of securities by a company:

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

(2) to the security holders or creditors of a predecessor company if the issuing company is organized solely for the purpose of taking over the assets and continuing the business of the predecessor company.

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

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

(2) the security holders or creditors do not pay, give, or promise any consideration, and are not obligated to pay or give any consideration, for the securities issued other than the securities of or claims against the company or the company's predecessor held or owned by the security holders or creditors at the time of the issuance.

Sec. 4005.009. Merger, Consolidation, and Asset Sales.¹⁴⁸

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

(1) a merger;

(2) a consolidation; or

(3) a sale of corporate assets.

¹⁴⁵ Section 5.D.

¹⁴⁶ Section 5.E.

¹⁴⁷ Section 5.F.

¹⁴⁸ Section 5.G (part).

(b) The exemption provided by Section 4005.001 applies to an issuance or sale described by Subsection (a) only if the security holders do not pay, give, or promise any consideration, and are not obligated to pay or give any consideration, for the securities issued or sold other than the corporation's securities held by the security holders at the time of the issuance or sale.

Sec. 4005.010. Exchange of Shares.¹⁴⁹

(a) The exemption provided by Section 4005.001 applies to the issuance or sale of securities by one corporation to the corporation's stockholders in connection with:

- (1) the change of par value stock to no par value stock or vice versa; or
- (2) the exchange of outstanding shares for the same or a greater or smaller number of shares.

(b) The exemption provided by Section 4005.001 applies to an issuance or sale described by Subsection (a) only if the security holders do not pay, give, or promise any consideration, and are not obligated to pay or give any consideration, for the securities issued or sold other than the corporation's securities held by the security holders at the time of the issuance or sale.

Sec. 4005.011. Institutional Investors.¹⁵⁰ The exemption provided by Section 4005.001 applies to the sale of a security to:

- (1) a bank;
- (2) a trust company;
- (3) a building and loan association;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a surety or guaranty company;
- (7) a savings institution;
- (8) an investment company as defined by the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.);
- (9) a small business investment company as defined by the Small Business Investment Act of 1958 (15 U.S.C. Section 661 et seq.); or
- (10) a registered dealer actually engaged in buying and selling securities.

Sec. 4005.012. Private Limited Offerings.¹⁵¹

(a) The exemption provided by Section 4005.001 applies to the following sales made without any public solicitation or advertisement:

- (1) the sale of a security by the issuer of the security if the total number of security holders of the issuer does not exceed 35 persons after the sale; or
- (2) the sale by an issuer of the issuer's securities to not more than 15 persons during the 12-month period ending with the date of the sale if the persons purchased the securities for their own account and not for distribution.

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

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

¹⁴⁹ Section 5.G (part).

¹⁵⁰ Section 5.H.

¹⁵¹ Section 5.I(a) and (c).

- (2) a purchaser of a security exempt under Subchapter B; and
- (3) a purchaser of a security that is part of an offering registered under Subchapter A, B, or C, Chapter 4003.

Sec. 4005.013. Compensation Plans and Contracts.¹⁵² The exemption provided by Section 4005.001 applies to the sale or distribution of a security without any public solicitation or advertisement if the sale or distribution is made:

- (1) by an issuer of the security or any participating subsidiary of the issuer; and
- (2) 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 the issuer's subsidiary for the benefit of:
 - (A) employees, directors, general partners, managers, or officers of the issuer or subsidiary;
 - (B) the issuer's or subsidiary's trustees, if the issuer or subsidiary is a business trust;or
 - (C) consultants or advisers who provide to the issuer or subsidiary bona fide services unrelated to the offer or sale of securities in a capital-raising transaction.

Sec. 4005.014. Mortgages and Liens.¹⁵³ The exemption provided by Section 4005.001 applies to a single transaction in which:

- (1) the securities disposed of consist exclusively of notes or bonds secured by a mortgage or vendor's lien on real property or tangible personal property; and
- (2) the entire mortgage or lien is sold or transferred with all of the notes or bonds secured by the mortgage or lien.

Sec. 4005.015. Nonprofits.¹⁵⁴ The exemption provided by Section 4005.001 applies to the disposition of a security or membership:

- (1) issued by a corporation or association:
 - (A) that is organized exclusively for a religious, educational, benevolent, fraternal, charitable, or reformatory purpose;
 - (B) that is not organized for pecuniary profit; and
 - (C) for which no part of the net earnings inures to the benefit of any stockholder, shareholder, or individual member of the corporation or association; and
- (2) for which no commission or remuneration is paid or given or is to be paid or given.

Sec. 4005.016. Financial Institutions.¹⁵⁵ The exemption provided by Section 4005.001 applies to:

- (1) the sale, by the issuer itself or by a registered dealer, of any security issued or guaranteed by:
 - (A) a bank organized and subject to regulation under the laws of:
 - (i) the United States; or

¹⁵² Section 5.I(b).

¹⁵³ Section 5.J.

¹⁵⁴ Section 5.K.

¹⁵⁵ Section 5.L.

(ii) a state, territory, or insular possession of the United States; or
(B) a savings and loan association organized and subject to regulation under the laws of this state; or

(2) the sale, by the issuer itself, of any security issued by a federal savings and loan association.

Sec. 4005.017. Government Issuance or Guarantee.¹⁵⁶ The exemption provided by Section 4005.001 applies to the sale, by the issuer itself or by a registered dealer, of any security either issued or guaranteed by:

- (1) the United States;
- (2) the District of Columbia, a state, territory, or insular possession of the United States;
- (3) a political subdivision of a state of the United States, including a county, city, municipal corporation, district, and authority; or
- (4) a public or governmental agency or instrumentality of an entity described by Subdivisions (1)-(3).

Sec. 4005.018. Cooperatives.¹⁵⁷

(a) The exemption provided by Section 4005.001 applies to:

(1) the sale and issuance of:
(A) any securities issued by a farmers' cooperative marketing association organized under Chapter 52, Agriculture Code, or the predecessor of that law (Article 5737 et seq., Revised Statutes);

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

(C) any equity securities issued by a cooperative association organized under the Texas Cooperative Association Law as described by Section 1.008(i), Business Organizations Code, or the predecessor of that law (Article 1396-50.01, Vernon's Texas Civil Statutes); or

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

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

- (1) nonmembers; or
- (2) members and a commission is paid or contracted to be paid to the agent.

Sec. 4005.019. Secondary Market Sales.¹⁵⁸

(a) In this section, "recognized securities manual" means a nationally distributed manual of securities that is approved by the Board for use under this section.

¹⁵⁶ Section 5.M.

¹⁵⁷ Section 5.N.

¹⁵⁸ Section 5.O.

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

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

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

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

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

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

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

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

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

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

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

(9) either:

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

(i) qualified for sale by a permit issued under Subchapter A, Chapter

4003;

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

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

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

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

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

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

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

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

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

(d) Notice of any court injunction enjoining the sale or resale of a security described by this section, or of an order revoking or suspending the exemption under Subsection (c) with respect to a security, shall be mailed by certified or registered mail with return receipt requested or otherwise delivered to any dealer believed to be selling or offering for sale the type of

securities referred to in the notice. Subsections (b)(6) and (7) do not apply to a dealer until the dealer has received from the Commissioner actual notice of the revocation or suspension.

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

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

(g) A judgment in favor of the plaintiff does not prevent the Board from revoking the recognition of a manual previously approved under this section for any proper cause that may accrue or be discovered.

Sec. 4005.020. Unsolicited Orders.¹⁵⁹ The exemption provided by Section 4005.001 applies to a dealer's execution of an unsolicited order for the purchase of securities for which the initial offering of the securities has been completed if the dealer:

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

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

(3) does not receive a commission, profit, or other compensation from any source other than the purchaser.

Sec. 4005.021. Oil, Gas, or Mining Interests.¹⁶⁰

(a) Subject to Subsection (b), the exemption provided by Section 4005.001 applies to the sales of interests in and under oil, gas, or mining leases, fees, or titles, or contracts relating to those interests in which:

(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 to those interests, is not more than 35 during a 12 consecutive month period; and

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

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

(c) An oil, gas, or mineral unitization or pooling agreement may not be considered a sale under this title.

Sec. 4005.022. Issuer Sales of Exempt Securities.¹⁶¹

(a) The exemption provided by Section 4005.001 applies to the sale by the issuer itself or by a subsidiary of the issuer of any securities that would be exempt under Subchapter B if sold by a registered dealer.

(b) This section does not apply to securities that would be exempt under Section 4005.053.

¹⁵⁹ Section 5.P.

¹⁶⁰ Section 5.Q.

¹⁶¹ Section 5.R.

Sec. 4005.023. Options.¹⁶²

(a) In this section, “option” means and includes a put, call, straddle, or other option or privilege of buying from another person or selling to another person a specified number of securities at a specified price, without being obligated to do so, on or before a specified date. The term does not include an option or privilege that by its terms may terminate before the specified date on the occurrence of a specified event.

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

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

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

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

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

(A) exempted under Section 4005.054; or

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

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

Sec. 4005.024. Exemptions by Rule or Order.¹⁶³ The exemption provided by Section 4005.001 applies to the sale of a security made in other transactions or under other conditions not specified in this subchapter as the Board by rule or order may define or prescribe, conditionally or unconditionally.

Sec. 4005.025. Issuance or Transfer to Nonprofits.¹⁶⁴ The exemption provided by Section 4005.001 applies to the issuance or transfer of securities by the issuer of its securities to a corporation or association organized exclusively for a religious, educational, benevolent, fraternal, charitable, or reformatory purpose and not for pecuniary profit, only if:

(1) the corporation or association does not provide anything of value for the securities other than, for a 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;

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

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

(4) the issuance or transfer is not directly or indirectly for the purposes of providing or furthering a scheme to violate or evade this title.

¹⁶² Section 5.S.

¹⁶³ Section 5.T.

¹⁶⁴ Section 5.U.

Subchapter B. Exempt Securities.

Sec. 4005.051. Scope of Exemption.¹⁶⁵ Except as expressly provided otherwise in this title, this title does not apply to a security described by this subchapter when offered for sale, sold, or dealt in by a registered dealer or a registered dealer's agent.

Sec. 4005.052. Railroads or Utilities.¹⁶⁶ The exemption provided by Section 4005.051 applies to:

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

(A) the Texas Department of Transportation; or

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

(i) the government of the United States;

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

(iii) Canada or a province of Canada; or

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

(A) that are based on chattel mortgages, leases or agreements for conditional sale of cars, motive power or other rolling stock mortgages, leased or sold to or provided for the use of or on a railroad or other public service utility corporation if the corporation is subject to regulation or supervision as described by Subdivision (1); or

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

(i) the United States;

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

(iii) Canada or a province of Canada.

Sec. 4005.053. Nonprofit Corporations.¹⁶⁷ The exemption provided by Section 4005.051 applies to a security issued and sold by a domestic corporation that:

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

(2) does not have capital stock.

Sec. 4005.054. Listed Securities.¹⁶⁸

(a) The exemption provided by Section 4005.051 applies to securities that at the time of sale:

(1) are fully listed on:

(A) the American Stock Exchange;

¹⁶⁵ Section 6 (part).

¹⁶⁶ Section 6.D.

¹⁶⁷ Section 6.E.

¹⁶⁸ Section 6.F (part).

(B) the Boston Stock Exchange;
(C) the Chicago Stock Exchange;
(D) the New York Stock Exchange; or
(E) a recognized and responsible stock exchange approved by the Commissioner, as provided by Subchapter C;

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

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

(b) Securities described by Subsection (a) are exempt only so long as the exchange on which the securities are listed remains approved under this section or Subchapter C.

Sec. 4005.055. Commercial Paper.¹⁶⁹ The exemption provided by Section 4005.051 applies to:

(1) commercial paper that:

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

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

(2) a renewal of commercial paper described by Subdivision (1) that is similarly limited; or

(3) a guarantee of commercial paper described by Subdivision (1) or of a renewal described by Subdivision (2).

Sec. 4005.056. Secured Debt.¹⁷⁰ The exemption provided by Section 4005.051 applies to notes, bonds, or other evidence of indebtedness or certificates of ownership that:

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

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

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

(B) Section 4005.052, if the deposited securities have an aggregate par value of not less than 125 percent of the par value of the securities being secured.

Sec. 4005.057. Nonprofit Debt.¹⁷¹ The exemption provided by Section 4005.051 applies to notes, bonds, or other evidence of indebtedness of a religious, charitable, or benevolent corporation.

¹⁶⁹ Section 6.H.

¹⁷⁰ Section 6.I.

¹⁷¹ Section 6.J.

Sec. 4005.058. Suspension of Exempt Status of Trading System.¹⁷²

(a) The Commissioner, by the same procedures described by Section 4005.105, may at any time suspend the exempt status of any trading system exempted by the legislature on or after January 1, 1989, if at the time of the hearing the trading system does not meet the applicable standards for approval of exchanges provided by this title.

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

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

- (1) has corrected each deficiency on which the suspension was based; and
- (2) maintains standards and procedures that provide reasonable protection to the public.

Subchapter C. Procedures for Approval of Stock Exchange.

Sec. 4005.101. Application for Approval.¹⁷³ An organized stock exchange may apply to the Commissioner for approval in the manner and on the forms the Commissioner prescribes.

Sec. 4005.102. Approval of Stock Exchange.¹⁷⁴ The Commissioner may approve a stock exchange only if the Commissioner finds that the facts and data provided with the application establish that:

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

(2) the governing constitution, bylaws, or regulations of the exchange require:

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

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

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

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

(i) to be financially embarrassed or irresponsible; or

(ii) guilty of misconduct in the member's business dealings or of conduct prejudicial to the rights and interests of the member's customers.

Sec. 4005.103. Investigation and Hearing.¹⁷⁵ The Commissioner may approve a stock exchange only after a reasonable investigation and hearing.

¹⁷² Section 6.F (part).

¹⁷³ Section 6.F (part).

¹⁷⁴ Section 6.F (part).

¹⁷⁵ Section 6.F (part).

Sec. 4005.104. Order of Approval.¹⁷⁶ The Commissioner's approval of a stock exchange must be made by a written order based on a finding of fact substantially in accordance with the requirements of Sections 4005.101 and 4005.102.

Sec. 4005.105. Withdrawal of Approval.¹⁷⁷ At any time, the Commissioner, on 10 days' notice and hearing, may withdraw approval of a stock exchange that at the time of the hearing does not meet the standards for approval under this title. On the withdrawal of approval, securities listed on the exchange are not exempt from this title until the Commissioner issues an order approving the exchange.

¹⁷⁶ Section 6.F (part).

¹⁷⁷ Section 6.F (part).

Chapter 4006. Fees.

Subchapter A. Certain Registration and Notice Filing Fees.

Sec. 4006.001. Certain Registration and Notice Filing Fees.¹⁷⁸ 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 title:

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

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

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

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

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

Subchapter B. Exemption Fees and Other Fees.

Sec. 4006.051. Notice for Secondary Trading Exemption.¹⁷⁹ The Commissioner or Board shall charge and collect:

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

(2) a fee of \$500 for filing a secondary trading exemption renewal notice.

Sec. 4006.052. Notice for Limited Offering Exemption.¹⁸⁰

(a) Subject to Subsection (b), for filing an initial notice required by the Commissioner to claim a limited offering exemption, the Commissioner or Board shall charge and collect a fee of one-tenth of one percent of the aggregate amount of securities described as being offered for sale.

(b) A fee charged under this section may not exceed \$500.

Sec. 4006.053. Application for Approval of Stock Exchange.¹⁸¹ The Commissioner or Board shall charge and collect a fee of \$10,000 for filing an application for approval of a stock exchange.

¹⁷⁸ Section 35.A.

¹⁷⁹ Section 35.B(6).

¹⁸⁰ Section 35.B(7).

¹⁸¹ Section 35.B(4).

Sec. 4006.054. Amendment or Duplicate of Registration Certificate or Evidence of Registration.¹⁸² The Commissioner or Board shall charge and collect a fee of \$25 for a filing to:

- (1) amend the registration certificate of a dealer or investment adviser or the evidence of registration of an agent or investment adviser representative; or
- (2) issue a duplicate certificate or evidence of registration.

Sec. 4006.055. Examination of Certain Applications or Registration Statements.¹⁸³

(a) For the examination of an original or amended application or registration statement filed under Subchapter A, B, or C, Chapter 4003, the Commissioner or Board shall charge and collect a fee of one-tenth of one percent of the aggregate amount of securities described and proposed to be sold to persons located in this state based on the price at which the securities will be offered to the public.

(b) A fee under this section applies regardless of whether the application or registration statement is denied, abandoned, withdrawn, or approved.

Sec. 4006.056. Certified Copies.¹⁸⁴

(a) For a certified copy of any papers filed in the office of the Commissioner, the Commissioner shall charge and collect a fee that is reasonably related to the costs of producing the certified copy.

(b) A fee charged under this section may not be more than a fee that the secretary of state is authorized to charge for a similar service.

Sec. 4006.057. Request to Take Examination.¹⁸⁵ The Commissioner or Board shall charge and collect a fee of \$35 for filing a request to take the Texas Securities Law Examination.

Sec. 4006.058. Interpretation by General Counsel.¹⁸⁶

(a) Except as provided by Subsection (b), the Commissioner or Board shall charge and collect a fee of \$100 for an interpretation by the Board's General Counsel of this title or a rule adopted under this title.

(b) An officer or employee of a governmental entity and the entity that the officer or employee represents are exempt from the fee under this section if the officer or employee is conducting official business of the entity.

¹⁸² Section 35.B(1). See also Section 9.107 of House Bill 3607 (2021).

¹⁸³ Section 35.B(2).

¹⁸⁴ Section 35.B(3).

¹⁸⁵ Section 35.B(5).

¹⁸⁶ Section 35.B(8).

Subchapter C. Provisions Applicable to Certain Fees.

Sec. 4006.101. Reasonable and Necessary Requirement.¹⁸⁷ Subject to Subchapter A, the Board shall set a fee under Subchapters A and B in an amount that is reasonable and necessary to defray costs.

Sec. 4006.102. Reduced Fees.¹⁸⁸

(a) The Board by rule may adopt reduced fees under Section 4006.001 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 Section 4006.001 as appropriate to accommodate a small business required by this title 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) A person is not required to pay more than one fee required under Section 4006.001 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. 4006.103. Payment of Certain Costs.¹⁸⁹ A cost incurred by the Board in administering this title may be paid only from a fee collected under Section 4006.001.

Sec. 4006.104. Refund of Registration Fee.¹⁹⁰ 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 money appropriated from the general revenue fund for that purpose.

Subchapter D. Fees for Certain Sales or Offers of Securities.

Sec. 4006.151. Fee for Sale of Excess Securities.¹⁹¹

(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:

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

¹⁸⁷ Section 35.C.

¹⁸⁸ Section 42.

¹⁸⁹ Section 35.D.

¹⁹⁰ Section 36 (part).

¹⁹¹ Section 35-1.A.

(2) 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; and

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

(b) If an application to register excess securities is granted under Subsection (a), the registration of the excess securities is effective retroactively to the effective date of the initial registration for the offering.

Sec. 4006.152. Fee for Exceeding Limited Offering Exemption.¹⁹²

(a) This section applies only to an offeror who:

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

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

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

(b) An offeror may:

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

(2) pay:

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

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

(c) An amended notice filed under Subsection (b) is retroactive to the date of the initial filing of the notice to claim the exemption.

Sec. 4006.153. Fee for Sales of Unregistered Securities.¹⁹³

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

(1) six times the amount that would have been paid if the issuer had filed an application or registration statement to register the securities and paid the fee required under Section 4006.055 based on the aggregate amount of sales made in this state in the preceding three years; and

(2) 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.

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

(c) 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.

¹⁹² Section 35-1.B.

¹⁹³ Section 35-2.

Subchapter E. Miscellaneous Fees.

Sec. 4006.201. Renewal of Registration by Notification.¹⁹⁴ A registration of securities by notification may be renewed as provided by Section 4003.058, which includes the payment of the renewal fee in the amount prescribed by that section.

Subchapter F. Deposit of Fees.

Sec. 4006.251. Deposit of Fees to General Revenue Fund.¹⁹⁵ The Commissioner or Board shall deposit money received from fees under this title to the credit of the general revenue fund.

Sec. 4006.252. Daily Deposit of Certain Fees.¹⁹⁶ The Commissioner or Board shall deposit daily all fees received under Subchapter B to the credit of the general revenue fund.

¹⁹⁴ New.

¹⁹⁵ Section 36 (part).

¹⁹⁶ Section 35.B (part).

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Chapter 4007. Enforcement.

Subchapter A. Authority to Enforce Title.

Sec. 4007.001. Enforcement by Commissioner, Attorney General, and District or County Attorney.¹⁹⁷

- (a) The administration of the provisions of this title is vested in the Commissioner.
- (b) The Commissioner and the Attorney General shall:
 - (1) ensure that the provisions of this title are obeyed; and
 - (2) conduct investigations and take measures to prevent or detect a violation of this title.
- (c) The Commissioner shall at once submit any evidence of a criminal violation of this title to the district or county attorney of the appropriate county after evidence comes to the Commissioner's knowledge.
- (d) If the district or county attorney neglects or refuses to prosecute the alleged criminal violation, the Commissioner shall submit the evidence of the alleged violation to the Attorney General. The Attorney General may proceed with the criminal prosecution of the alleged violation and has all the rights, privileges, and powers conferred by law on a district or county attorneys, including the authority to appear before a grand jury and to interrogate witnesses before a grand jury.
- (e) Subject to Subsection (h), the Board may provide assistance to a county or district attorney who requests assistance in a criminal prosecution involving an alleged violation of this title that is referred by the Board to the attorney under Subsection (c).
- (f) Before referring a case to a county or district attorney for prosecution as required by Subsection (c), 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.
- (g) 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 (c) 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 4007.053, 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.
- (h) In response to a request for assistance under Subsection (e), the Board may provide only those Board employees or resources, if any, determined to be available for that case in accordance with Subsection (f). If a change in circumstances occurs after the time of the determination under Subsection (f), the Commissioner may reconsider the Commissioner's determination under that subsection and may increase or reduce the number of Board

¹⁹⁷ Section 3. See also Section 9.108 of House Bill 3607 (2021).

employees or other resources to be made available for a case using the process established under Subsection (g).

(i) 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 (f) and any subsequent determination of those resources made by the Commissioner as authorized under Subsection (h). 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. 4007.002. Means of Enforcement Not Exclusive.¹⁹⁸ The Commissioner may use any or all penalties, sanctions, remedies, or relief that the Commissioner considers necessary.

Subchapter B. Inspections and Investigations.

Sec. 4007.051. Complaints Filed with Commissioner or Board.¹⁹⁹

(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 concerning a person registered under this title. 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. 4007.052. Inspections.²⁰⁰

(a) The Commissioner without notice may inspect a registered dealer or registered investment adviser as necessary to ensure compliance with this title and Board rules.

(b) The Commissioner, during regular business hours, may enter the business premises of a registered dealer or registered investment adviser and examine and copy books and records pertinent to the inspection.

(c) During the inspection, the registered dealer or registered investment adviser shall:

(1) provide to the Commissioner or the Commissioner's authorized representative immediate and complete access to the registered dealer's or registered investment adviser's office, place of business, files, safe, and any other location at 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 registered dealer or registered investment adviser may not charge a fee for copying information under this section.

¹⁹⁸ Section 3-1.

¹⁹⁹ Section 2-6.A (part); Section 2-6.B; Section 2-6.C. See also Section 9.103 of House Bill 3607 (2021).

²⁰⁰ Section 13-1.

(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. The Commissioner may not disclose to the public or release documents or other information made confidential by this subsection 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 4007.053.

Sec. 4007.053. Investigative Authority.²⁰¹

(a) The Commissioner shall conduct investigations as the Commissioner considers necessary to prevent or detect a violation of this title or a Board rule or order.

(b) For the purpose of conducting an investigation under this section, the Commissioner may:

- (1) administer oaths;
- (2) sign subpoenas;
- (3) issue subpoenas or summons to compel the attendance and testimony of witnesses and the production of all records, electronic or otherwise, relating to any matter that the Commissioner has the authority under this title to consider or investigate;
- (4) examine witnesses; and
- (5) receive evidence.

(c) During an investigation, the Commissioner may cause the deposition of witnesses residing inside or outside this state to be taken in the manner prescribed by the laws of this state for taking a deposition in a civil action.

Sec. 4007.054. Service of Subpoena, Summons, or Other Process.²⁰²

(a) The Commissioner may serve a subpoena, summons, or other process issued by the Commissioner or have the subpoena, summons, or other process served by an authorized agent of the Commissioner, a sheriff, or a constable.

(b) The sheriff's or constable's fee for serving the subpoena is the same as the fee paid the sheriff or constable for similar services.

Sec. 4007.055. Enforcement of Subpoena; Contempt.²⁰³

(a) If a person disobeys a subpoena or if a witness appearing before the Commissioner refuses to give evidence, the Commissioner may petition the district court of a jurisdiction in which the person or witness may be found, and the court on this petition may issue an order requiring the person or witness to, as applicable, obey the subpoena, testify, or produce a book, an account, a record, a paper, and correspondence relating to the matter in question.

(b) The district court may punish as contempt the failure to obey an order under Subsection (a).

²⁰¹ Section 28.A (part).

²⁰² Section 28.A (part).

²⁰³ Section 28.A (part).

Sec. 4007.056. Confidentiality of Investigative Information.²⁰⁴

(a) All information received in connection with an investigation under Section 4007.053 and all internal notes, memoranda, reports, or communications made in connection with an investigation under that section are confidential.

(b) The Commissioner may not disclose a document or other information made confidential by Subsection (a) unless the disclosure is made:

(1) to the public under court order for good cause shown; or

(2) at the Commissioner's discretion, as part of an administrative proceeding or a civil or criminal action to enforce this title.

(c) The Commissioner, at the Commissioner's discretion, may disclose confidential information in the Commissioner's possession to:

(1) a governmental or regulatory authority or any association of governmental or regulatory authorities approved by Board rule; or

(2) any receiver appointed under Section 4007.151.

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

(e) This section may not be interpreted to prohibit or limit the publication of rulings or decisions of the Commissioner.

Sec. 4007.057. Compensation of Witnesses.²⁰⁵

(a) A witness required to attend a hearing before the Commissioner shall receive for each day's attendance a fee in an amount set by Board rule.

(b) A disbursement made in payment of a fee under this section shall be:

(1) made in accordance with Board rule; and

(2) included in, and paid in the same manner that is provided for, the payment of other expenses incurred in the administration and enforcement of this title.

Sec. 4007.058. Imposition of Costs on Parties.²⁰⁶ The Commissioner may impose on a party of record fees, expenses, or costs incurred in connection with a hearing or may divide the fee, expense, or cost among any or all parties of record as determined by the Commissioner.

Sec. 4007.059. Assistance to Securities Regulators in Other Jurisdictions.²⁰⁷

(a) On request from a securities regulator of another state or of a foreign jurisdiction, the Commissioner may provide assistance to the regulator 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 that the regulator is authorized to administer or enforce.

(b) The Commissioner may provide assistance under this section through the use of the authority to investigate and any other power conferred by this section or Section 4007.054, 4007.055, 4007.056, or 4007.057, as the Commissioner determines to be necessary and appropriate.

²⁰⁴ Section 28.A (part).

²⁰⁵ Section 28.A (part).

²⁰⁶ Section 28.A (part).

²⁰⁷ Section 28.C.

(c) In determining whether to provide assistance under this section, the Commissioner may consider whether:

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

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

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

Subchapter C. Administrative Actions.

Sec. 4007.101. Cease and Desist Order: Offer or Sale of Securities.²⁰⁸

(a) The Commissioner may hold a hearing as provided by this section if at any time it appears to the Commissioner that the sale, proposed sale, or method of sale of securities, regardless of whether exempt:

(1) is a fraudulent practice;

(2) does not comply with this title;

(3) would tend to work a fraud on any purchaser of the securities; or

(4) would not be fair, just, or equitable to any purchaser of the securities.

(b) The Commissioner may hold a hearing under this section on a date set by the Commissioner that is not later than the 30th day after the date the issuer or registrant of the securities, the person on whose behalf the securities are being or will be offered, or any person that is acting as a dealer or agent in violation of this title, as applicable:

(1) receives actual notice; or

(2) is provided notice by registered or certified mail to the person's last known address.

(c) If the Commissioner determines at the hearing that the sale, proposed sale, or method of sale of the securities is a fraudulent practice, does not comply with this title, would tend to work a fraud on any purchaser of the securities, or would not be fair, just, or equitable to any purchaser of the securities, the Commissioner may issue a written cease and desist order:

(1) prohibiting or suspending the sale of the securities;

(2) denying or revoking the registration of the securities;

(3) prohibiting an unregistered person from acting as a dealer or agent; or

(4) prohibiting the fraudulent conduct.

(d) After the issuance of a cease and desist order under Subsection (c), a dealer or agent may not knowingly sell or offer for sale any security named in the order.

Sec. 4007.102. Cease and Desist Order: Investment Adviser or Investment Adviser Representative.²⁰⁹

(a) Notwithstanding any provision of this title to the contrary, the Commissioner may hold a hearing as provided by this section if at any time it appears to the Commissioner that:

²⁰⁸ Section 23.A.

²⁰⁹ Section 23.B.

(1) 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

(2) a person is acting as an investment adviser or investment adviser representative in violation of this title.

(b) A hearing under this section must be held not later than the 30th day after the date the person described by Subsection (a):

(1) receives actual notice; or

(2) is provided notice by registered or certified mail, return receipt requested, to the person's last known address.

(c) 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 title from acting as an investment adviser or investment adviser representative in violation of this title.

Sec. 4007.103. Cease Publication Order.²¹⁰

(a) Notwithstanding any provision of this title to the contrary, the Commissioner may issue a cease publication order if at any time it appears to the Commissioner that an offer contains any statement that is materially false or misleading or is otherwise likely to deceive the public.

(b) A person may not make an offer that is prohibited by an order issued under Subsection (a).

Sec. 4007.104. Emergency Cease and Desist Order.²¹¹

(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 who 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 title or a Board rule.

(b) The emergency 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

²¹⁰ Section 23.C.

²¹¹ Section 23-2.

(3) contain a notice that a request for a 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 the order 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 emergency order.

(e) After the hearing, the Commissioner shall affirm, modify, or set aside, wholly or partly, 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. 4007.105. Denial, Suspension, or Revocation of Registration.²¹²

(a) The Commissioner may deny an application for registration under this title, suspend or revoke a registration issued under this title, place on probation a dealer, agent, investment adviser, or investment adviser representative whose registration has been suspended under this title, or reprimand a person registered under this title if the person:

- (1) has been convicted of a felony;
- (2) has been convicted of a misdemeanor that directly relates to the person's securities-related duties and responsibilities;
- (3) has engaged in:
 - (A) an inequitable practice in the sale of securities or in rendering services as an investment adviser; or
 - (B) a fraudulent business practice;
- (4) is an insolvent dealer or investment adviser;
- (5) is a dealer and is selling or sold securities in this state through an agent other than a registered agent;
- (6) is an investment adviser and is engaging or 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;
- (7) is an agent and is selling or sold securities in this state for a dealer, issuer, or controlling person with knowledge that the dealer, issuer, or controlling person has not complied with this title;
- (8) is an investment adviser representative and is rendering or rendered services as an investment adviser for an investment adviser in this state whom the representative is not or was not registered to represent;
- (9) has:
 - (A) made a material misrepresentation to the Commissioner or Board in connection with information considered necessary by the Commissioner or Board to determine:

²¹² Section 14; Section 25 (part).

(i) a dealer's or investment adviser's financial responsibility; or
(ii) a dealer's, agent's, investment adviser's, or investment adviser representative's business repute or qualifications; or

(B) refused to provide information described by Paragraph (A) that the Commissioner or Board has requested;

(10) is registered as a dealer, agent, investment adviser, or investment adviser representative and has not complied with an applicable requirement under Section 4004.151(a);

(11) is the subject of any of the following orders issued within the preceding five years that remain effective:

(A) an order by the securities agency or administrator of any state, the financial regulatory authority of a foreign country, or 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) an order suspending or expelling 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 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; or

(E) an order by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act (7 U.S.C. Section 1 et seq.);

(12) is subject to any order, judgment, or decree entered by a court that permanently restrains or enjoins the 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 investment advice; or

(13) has violated:

(A) any provision of this title;

(B) a Board rule;

(C) any order issued by the Commissioner; or

(D) any undertaking or agreement with the Commissioner.

(b) If the Commissioner proposes the suspension or revocation of a person's registration, the person is entitled to a hearing before the Commissioner or a hearings officer as required by law.

(c) All registration certificates that have been revoked shall be immediately surrendered to the Commissioner on request.

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

Sec. 4007.106. Assessment of Administrative Fine.²¹³

(a) In addition to any other remedies, the Commissioner, after giving notice and opportunity for a hearing, may issue an order that assesses an administrative fine against a person or company found to have:

²¹³ Section 23-1.

- (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 title 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).
- (b) An administrative fine assessed under this section when added to the amount of any civil penalty previously awarded under Section 4007.154 must be in an amount that does not 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 title does not constitute an admission of any misconduct described in the order.
- (e) A proceeding for the assessment of an administrative fine must be commenced within five years after the violation occurs.

Sec. 4007.107. Hearings on Certain Matters.²¹⁴

- (a) A person or company may request a hearing to dispute the Commissioner's:
- (1) failure or refusal to:
 - (A) register and issue a certificate of registration for a dealer or investment adviser under Section 4004.054; or
 - (B) register and issue evidence of registration for an agent or investment adviser representative under Section 4004.104;
 - (2) issuance of an order under Section 4007.101, 4007.102, 4007.103, or 4007.104;
- or
- (3) taking of an action in any other particular matter for which no other procedure is specified by this title.
- (b) A hearing under Subsection (a) must be held before the Commissioner or a hearings officer as required by law.
- (c) On complaint by a person aggrieved by the denial of a permit qualifying securities for sale under Subchapter A, Chapter 4003, or by the failure or refusal to register securities under Subchapter B or C, Chapter 4003, the Board or a hearings officer, as required by law, shall conduct a hearing.
- (d) A hearing under this section is subject to Chapter 2001.

²¹⁴ Section 24.

Sec. 4007.108. Refund.²¹⁵

(a) Subject to Subsection (b), the Commissioner may order a dealer, agent, investment adviser, or investment adviser representative regulated under this title 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.

Subchapter D. Civil Proceedings.

Sec. 4007.151. Receivership.²¹⁶

(a) This section applies only to a person or company acting as a dealer, agent, investment adviser, investment adviser representative, or issuer or as an affiliate of a dealer, agent, investment adviser, investment adviser representative, or issuer, regardless of whether the person or company is required to be registered as provided in this title.

(b) The Commissioner may request the Attorney General to bring an action as provided by this section for the appointment of a receiver for a person or company to which this section applies or the assets of the person or company if it appears to the Commissioner, on complaint or otherwise, that:

(1) the person or company has:

(A) engaged in an act, transaction, practice, or course of business declared as a fraudulent practice under Section 4007.152 or 4007.153; and

(B) acted as a dealer, agent, investment adviser, investment adviser representative, or issuer or as an affiliate of a dealer, agent, investment adviser, investment adviser representative, or issuer in connection with the fraudulent practice; and

(2) the appointment of a receiver for the person or company or the assets of the person or company is necessary to conserve and protect the assets for the benefit of customers, security holders, and other claimants and potential claimants of the person or company.

(c) On the Commissioner's request under Subsection (b), the Attorney General may bring an action against a person or company in the name and on behalf of the state if it appears to the Attorney General that the facts described by that subsection exist with respect to the person or company. The facts contained in the petition for the appointment of a receiver must be verified by the Commissioner on information and belief.

(d) An action under this section may be brought in a district court of any county in which the fraudulent practice that is the subject of the petition was wholly or partly committed or in a county in which any defendant for whom the appointment of a receiver is sought has the defendant's principal place of business. A district court described by this subsection has jurisdiction and venue of the action. This subsection is superior to any other provision of law establishing jurisdiction or venue with regard to an action for receivership.

²¹⁵ Section 32-1. See also Section 9.109 of House Bill 3607 (2021).

²¹⁶ Section 25-1.

(e) The Attorney General may apply for and, on proper showing, is entitled to have a subpoena issued by the court that requires:

(1) the appearance, without delay, of a defendant or any employee, investment adviser representative, or agent of the defendant to testify and give evidence concerning a matter relevant to the appointment of a receiver; and

(2) the production of documents, books, and records that may be necessary for a hearing on the action.

(f) The court may appoint a receiver for the person or company or the person's or company's assets on the Attorney General's proper showing of the existence of the facts described by Subsection (b) with respect to the person or company.

(g) If the court appoints a receiver without providing the person or company with notice and an opportunity for hearing, the person or company may file with the court a written application for an order dissolving the receivership. If the application is filed not later than the 30th day after the date the person or company is served with the order appointing the receiver, the person or company is entitled to a hearing on the application not later than the 10th day after the date written notice is provided to the Attorney General.

(h) A person may not be appointed as a receiver under this section unless the court finds that the person is qualified to discharge the duties of receiver after:

(1) hearing the views of:

(A) the Attorney General;

(B) the Commissioner; and

(C) the defendant against whom the appointment of a receiver is sought, if the court considers it practicable; and

(2) considering the probable nature and magnitude of the receiver's duties in the particular case.

(i) The Commissioner or Attorney General may not be required to give a bond for receivership in an action brought under this section. The court shall require a person appointed as a receiver to give a bond that is:

(1) in an amount found by the court to be sufficient after considering the probable nature and magnitude of the receiver's duties in the particular case; and

(2) conditioned on the faithful discharge of the receiver's duties.

(j) The remedy provided by this section is in addition to any other remedy made available to the Commissioner or the Attorney General by statutory laws or case law of this state, including any provision authorizing receiverships.

Sec. 4007.152. Injunctive Relief.²¹⁷

(a) The Commissioner may request the Attorney General to bring an action as provided by this section against a person or company if it appears to the Commissioner, on complaint or otherwise, that the person or company:

(1) has engaged, is engaging, or is about to engage in fraud or a fraudulent practice in connection with the sale of a security;

(2) has engaged, is engaging, or is about to engage in fraud or a fraudulent practice in rendering services as an investment adviser or investment adviser representative;

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

²¹⁷ Section 32.A.

(4) has engaged, is engaging, or is about to engage in an act or practice that violates this title or a Board rule or order.

(b) On the Commissioner's request under Subsection (a), the Attorney General, in addition to other remedies, may bring an action in the name and on behalf of the state:

(1) against:

(A) a person or company described by Subsection (a);

(B) 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 the person or company; and

(C) any other person concerned with or in any manner participating in or about to participate in the acts or practices described by Subsection (a); and

(2) to enjoin the person or company and any other person described by Subdivision (1) from continuing the acts or practices that are the subject of the action for injunctive relief or from doing any act to further the acts or practices.

(c) The facts contained in an application for injunctive relief must be verified by the Commissioner on information and belief.

(d) The Attorney General may apply for and, on proper showing, is entitled to have a subpoena issued by the court that requires:

(1) the appearance, without delay, of a defendant and any employee or agent of the defendant to testify and give evidence concerning the acts, conduct, or other matters complained about in the application for injunctive relief; and

(2) the production of documents, books, and records that may be necessary for the hearing on the action.

(e) A district court in any county in which it is shown that the acts that are the subject of the application for injunctive relief have been or are about to be committed or a district court in Travis County has jurisdiction and venue of an action brought under this section. This subsection is superior to any provision establishing jurisdiction or venue with regard to an action for an injunction.

(f) The Commissioner or Attorney General shall not be required to give a bond for injunction in an action brought under this section.

Sec. 4007.153. Equitable Relief and Restitution.²¹⁸

(a) On the Commissioner's request, the Attorney General may, in addition to other remedies, seek:

(1) equitable relief, including restitution, for a victim of a fraudulent practice; and

(2) the disgorgement of any economic benefit gained by a defendant through an act or practice that violates this title or for which this title provides the Commissioner and Attorney General with a remedy.

(b) The Attorney General may seek the remedies described by Subsection (a) either in:

(1) an action under Section 4007.152; or

(2) a separate action brought in district court.

(c) The court may:

(1) grant any equitable relief the court considers appropriate; and

(2) order the defendant to deliver to each victim of an act or practice that violates this title, or for which this title provides the Commissioner or the Attorney General with a remedy, the amount of money or the property the defendant obtained from the victim, including any

²¹⁸ Section 32.B.

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.

Sec. 4007.154. Civil Penalty.²¹⁹

(a) On the Commissioner's request, the Attorney General may, in addition to other remedies, seek a civil penalty to be paid to the state in an amount that, when added to the amount of any administrative fine previously assessed under Section 4007.106(b), does not 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.

(b) The Attorney General may seek a civil penalty under this section either in:

- (1) an action under Section 4007.152; or
- (2) a separate action in district court.

Sec. 4007.155. Recovery of Costs.²²⁰ In an action brought under Section 4007.152, 4007.153, or 4007.154, the Attorney General may recover reasonable costs and expenses incurred by the Attorney General in bringing the action.

Subchapter E. Criminal Provisions.

Sec. 4007.201. Unauthorized Sale of Securities; Offense.²²¹

(a) A person commits an offense if the person sells, offers for sale or delivery, solicits subscriptions to or orders for, disposes of, invites orders for, or deals in any other manner in a security issued after September 6, 1955, unless:

- (1) the security has been registered under Subchapter B or C, Chapter 4003; or
- (2) a permit qualifying securities for sale has been issued under Subchapter A, Chapter 4003, with respect to the security.

(b) A person commits an offense if the person sells, offers for sale or delivery, solicits subscriptions to or orders for, disposes of, invites offers for, or deals in any other manner in a security without being a registered dealer or registered agent as provided in this title.

(c) An offense under this section is a felony of the third degree.

Sec. 4007.202. Unauthorized Rendering of Services as Investment Adviser or Investment Adviser Representative; Offense.²²²

(a) A person commits an offense if the person:

²¹⁹ Section 32.C.

²²⁰ Section 32.D.

²²¹ Section 29.A; Section 29.B.

²²² Section 29.I.

(1) renders services as an investment adviser or investment adviser representative;
and

(2) is not registered as an investment adviser or investment adviser representative as required by this title.

(b) An offense under this section is a felony of the third degree.

Sec. 4007.203. Fraudulent Conduct; Offense.²²³

(a) A person commits an offense if:

(1) the person directly or indirectly:

(A) engages in any fraud or fraudulent practice;

(B) employs any device, scheme, or artifice to defraud;

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

(D) engages in any act, practice, or course of business that operates or will operate as a fraud or deceit on any person; and

(2) the applicable conduct is committed in connection with:

(A) the sale of, the offering for sale or delivery of, the purchase of, the offer to purchase, invitation of offers to purchase, invitations of offers to sell, or dealing in any other manner in any security, regardless of whether the transaction or security is exempt under Chapter 4005; or

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

(b) An offense under this section is:

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

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

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

(c) An indictment for an offense under this section may be brought only before the fifth anniversary of the date the offense was committed.

Sec. 4007.204. Materially False Statement in Document or Proceeding; Offense.²²⁴

(a) A person commits an offense if the person knowingly makes or causes to be made any statement in a document filed with the Commissioner or in a proceeding under this title that is, at the time and in light of the circumstances under which the statement is made, false or misleading in any material respect.

(b) An offense is established under this section regardless of whether the document or proceeding relates to a transaction or security that is exempt under Chapter 4005.

(c) An offense under this section is a felony of the third degree.

²²³ Section 29.C; Section 29-1.

²²⁴ Section 29.E.

Sec. 4007.205. False Statement or Representation Concerning Registration; Offense.²²⁵

- (a) A person commits an offense if the person knowingly makes a false statement or representation concerning a registration made or an exemption claimed under this title.
- (b) An offense under this section is a state jail felony.

Sec. 4007.206. Violation of Cease and Desist Order; Offense.²²⁶

- (a) A person commits an offense if the person knowingly violates a cease and desist order issued by the Commissioner under Section 4007.101, 4007.102, or 4007.104.
- (b) An offense under this section is a felony of the third degree.

Sec. 4007.207. Noncompliant Offer or Offer Prohibited by Cease Publication Order; Offense.²²⁷

- (a) A person commits an offense if the person:
 - (1) makes an offer of a security in this state that does not comply with the requirements governing offers specified in Subchapter E, Chapter 4003; or
 - (2) knowingly makes an offer of a security in this state that is prohibited by a cease publication order issued by the Commissioner under Section 4007.103.
- (b) An offense under this section is a state jail felony.

Sec. 4007.208. Aggregation of Amounts.²²⁸ When amounts are obtained in violation of this title pursuant to 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. 4007.209. Liability of Corporation.²²⁹

- (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 this subchapter is performed by an agent acting on behalf of a corporation or association and within the scope of the agent’s office or employment, the corporation or association is criminally responsible for the offense only if the commission of the offense was authorized, requested, commanded, performed, or recklessly tolerated by:
 - (1) a majority of the governing Board acting on behalf of the corporation or association; or
 - (2) a high managerial agent acting on behalf of the corporation or association and within the scope of the high managerial agent’s office or employment.

²²⁵ Section 29.F.

²²⁶ Section 29.D.

²²⁷ Section 29.G; Section 29.H.

²²⁸ Section 29-2.

²²⁹ Section 29-3.

(c) It is an affirmative defense to prosecution of a corporation or association under Subsection (b) that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent the commission of the offense.

Chapter 4008. Private Rights of Action.

Subchapter A. General Provisions.

Sec. 4008.001. Unenforceability of Illegal Contracts.²³⁰ A person may not base a suit on a contract if the person:

- (1) made or engaged in the performance of the contract in violation of this title or a rule, order, or requirement under this title; or
- (2) acquired any purported right under the contract with knowledge of the facts by reason of which the contract's making or performance was in violation of this title or a rule, order, or requirement under this title.

Sec. 4008.002. Certain Waivers Void.²³¹ A condition, stipulation, or provision is void if it binds 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 this title or a rule, order, or requirement under this title.

Sec. 4008.003. Action for Collection of Commission or Compensation.²³²

(a) This section does not apply to a person or company that rendered services in connection with a transaction that is exempt under Subchapter A, Chapter 4005, or under a rule adopted by the Board under Section 4005.024 if the person or company was not required to be registered by the terms of the exemption.

(b) A person or company may not bring or maintain any action in a court of this state for collection of a commission or compensation for services rendered in the sale or purchase of securities unless the person or company alleges and proves that:

- (1) the person or company was:
 - (A) registered under this title; or
 - (B) exempt from registration under rules adopted under Section 4004.001; and
- (2) the securities sold were registered under this title at the time the alleged cause of action arose.

Sec. 4008.004. Stay of Recognition or Enforcement of Foreign-country Judgment.²³³

(a) Before a court's recognition or enforcement of a foreign-country judgment under Chapter 36A, Civil Practice and Remedies Code, or otherwise, a party against whom recognition or enforcement of the foreign-country judgment is sought is entitled to de novo review by a court in this state to determine whether a party, or the party's successors, assigns, agents, or representatives seeking recognition or enforcement of the foreign-country judgment have violated this title 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 title or Chapter 17, Business & Commerce Code, not later

²³⁰ Section 33.K.

²³¹ Section 33.L.

²³² Section 34.

²³³ Section 33-2.

than the 30th day after the date of service of the notice of filing of the 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 the foreign-country judgment 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 title 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 title, or investment, that imposes an obligation of indemnification or liquidated damages on a resident of this state.

Sec. 4008.005. Survivability of Action.²³⁴ A cause of action under this title survives the death of a person who might have been a plaintiff or defendant.

Sec. 4008.006. Saving of Existing Rights and Remedies.²³⁵ The rights and remedies provided by this title are in addition to any other rights, including exemplary damages, or remedies that exist.

Subchapter B. Civil Liability for Issuance, Sale, or Purchase of Securities.

Sec. 4008.051. Offeror or Seller Liability: Registration and Related Violations.²³⁶

(a) A person who offers or sells a security in violation of the following is liable to a person who buys the security from the offeror or seller:

- (1) Section 4003.001(a), 4004.051, 4004.052, 4004.101(a), 4004.102(a), or 4007.103;
- (2) Subchapter G, Chapter 4003, other than Section 4003.304, or a requirement of the Commissioner under Subchapter G, Chapter 4003, other than Section 4003.304; or
- (3) an order under Section 4007.101 or 4007.104.

(b) The buyer of the security may sue for:

- (1) rescission; or
- (2) damages if the buyer no longer owns the security.

Sec. 4008.052. Offeror or Seller Liability: Untruth or Omission.²³⁷

(a) Except as provided by Subsection (c), a person who offers or sells a security and from whom another person buys the security is liable to the buyer of the security, regardless of whether the security or transaction is exempt under Chapter 4005, if the person offers or sells the security 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 light of the circumstances under which they are made, not misleading.

(b) The buyer may sue for:

- (1) rescission; or

²³⁴ Section 33.G.

²³⁵ Section 33.M.

²³⁶ Section 33.A(1). See also House Bill 1280 (2021).

²³⁷ Section 33.A(2).

- (2) damages if the buyer no longer owns the security.
- (c) Except as provided by Subsection (d), a person offering or selling a security is not liable under Subsection (a) if the person sustains the burden of proof that either:
 - (1) the buyer knew of the untruth or omission; or
 - (2) the offeror or seller did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.
- (d) The issuer of the security, other than a government issuer identified in Section 4005.017, is not entitled to the defense in Subsection (c)(2) regarding an untruth or omission:
 - (1) in a prospectus required in connection with an application or registration statement under Subchapter A, B, or C, Chapter 4003; or
 - (2) in a writing prepared and delivered by the issuer in the sale of the security.

Sec. 4008.053. Buyer Liability.²³⁸

- (a) Except as provided by Subsection (c), a person who offers to buy or buys a security and to whom another person sells the security is liable to the seller, regardless of whether the security or transaction is exempt under Chapter 4005, if the person offers to buy or buys the security 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 light of the circumstances under which they are made, not misleading.
- (b) The seller may sue for:
 - (1) rescission; or
 - (2) damages if the buyer no longer owns the security.
- (c) A person who offers to buy or buys a security is not liable under Subsection (a) if the offeror or buyer sustains the burden of proof that either:
 - (1) the seller knew of the untruth or omission; or
 - (2) the offeror or buyer did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

Sec. 4008.054. Nonselling Issuer Liability.²³⁹

- (a) This section applies only to an issuer that registers under Subchapter A, B, or C, Chapter 4003, or under Section 6, Securities Act of 1933 (15 U.S.C. Section 77f), the issuer's outstanding securities for offer and sale by or for the owner of the securities.
- (b) Except as provided by Subsection (d), the issuer is liable to a person buying the registered security 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 light of the circumstances under which they are made, not misleading.
- (c) The buyer of the registered security may sue for:
 - (1) rescission; or
 - (2) damages if the buyer no longer owns the security.
- (d) The issuer is not liable under Subsection (b) if the issuer sustains the burden of proof that the buyer knew of the untruth or omission.

²³⁸ Section 33.B.

²³⁹ Section 33.C.

Sec. 4008.055. Controlling Person or Aider Liability.²⁴⁰

(a) Except as provided by Subsection (b), a person who directly or indirectly controls a seller, buyer, or issuer of a security is liable under Section 4008.051, 4008.052, 4008.053, or 4008.054 jointly and severally with the seller, buyer, or issuer and to the same extent as the seller, buyer, or issuer.

(b) The controlling person is not liable under Subsection (a) if the controlling person sustains the burden of proof that the controlling 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 the liability is alleged to exist.

(c) 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 4008.051, 4008.052, 4008.053, or 4008.054 jointly and severally with the seller, buyer, or issuer and to the same extent as the seller, buyer, or issuer.

(d) There is contribution under this section as in cases of contract among the several persons who are liable.

Sec. 4008.056. Rescission.²⁴¹

(a) On rescission under this subchapter, a buyer of a security shall, on tender of the security or a security of the same class and series, recover the consideration the buyer paid for the security plus interest on the consideration at the legal rate from the date the buyer made the payment, less the amount of any income the buyer received on the security.

(b) On rescission under this subchapter, a seller of a security shall recover the security or a security of the same class and series, on tender of the consideration the seller received for the security plus interest on the consideration at the legal rate from the date the seller received the payment, less the amount of any income the buyer received on the security.

(c) For a buyer suing under Section 4008.054, the consideration the buyer paid for the security is deemed to be the lesser of:

- (1) the price the buyer paid; or
- (2) the price at which the security was offered to the public.

(d) A tender specified in this section may be made at any time before a judgment is entered.

Sec. 4008.057. Damages.²⁴²

(a) In damages under this subchapter, a buyer of a security shall recover the consideration the buyer paid for the security plus interest on the consideration at the legal rate from the date the buyer made the payment, less the greater of:

- (1) the value of the security at the time the buyer disposed of the security plus the amount of any income the buyer received on the security; or
- (2) the actual consideration received for the security at the time the buyer disposed of the security plus the amount of any income the buyer received on the security.

(b) In damages under this subchapter, a seller of a security shall recover the value of the security at the time of sale plus the amount of any income the buyer received on the security,

²⁴⁰ Section 33.F.

²⁴¹ Section 33.D(1), (2), (5); Section 33.E.

²⁴² Section 33.D(3), (4), (5).

less the consideration paid to the seller for the security plus interest on the consideration at the legal rate from the date of payment to the seller.

(c) For a buyer suing under Section 4008.054, the consideration the buyer paid for the security is deemed to be the lesser of:

- (1) the price the buyer paid; or
- (2) the price at which the security was offered to the public.

Sec. 4008.058. Requirements of Rescission Offer to Buyers.²⁴³

(a) A rescission offer is sufficient for purposes of Section 4008.062(a) or (b) only if the offer meets the requirements of this section.

(b) The offer must include financial and other information material to the offeree's decision whether to accept the offer. The offer may 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 light of the circumstances under which they are made, not misleading.

(c) The offeror shall:

(1) deposit funds in escrow in a state or national bank doing business in this state, or in another bank approved by the Commissioner; or

(2) receive an unqualified commitment from a bank described by Subdivision (1) to provide funds sufficient to pay the amount offered.

(d) The amount of the offer to a buyer who still owns the security must be the amount, excluding costs and attorney's fees, the buyer would recover on rescission under Section 4008.056(a).

(e) The amount of the offer to a buyer who no longer owns the security must be the amount, excluding costs and attorney's fees, the buyer would recover in damages under Section 4008.057(a).

(f) The offer must state:

(1) the amount of the offer, as determined under Subsection (d) or (e), which must be given:

(A) to the extent practicable, in terms of a specified number of dollars and a specified rate of interest for a period starting at a specified date; and

(B) to the extent necessary, in terms of specified elements, such as the value of the security when the offeree disposed of the security, that are known to the offeree but not to the offeror, subject to the provision of reasonable evidence by the offeree;

(2) the name and address of the bank at which the amount of the offer will be paid;

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

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

(B) evidence, if necessary, of elements described by Subdivision (1)(B);

(4) in a conspicuous manner that the offeree may not sue on the offeree's purchase under this subchapter unless:

(A) the offeree accepts the offer but does not receive the amount of the offer, in which case the offeree may sue within the time allowed by Section 4008.062(a)(1), (b)(1), or (b)(2), as applicable; or

²⁴³ Section 33.I.

(B) the offeree rejects the offer in writing within 30 days of the date the offeree receives the offer and expressly reserves in the rejection the right to sue, in which case the offeree may sue not later than one year after the date of the rejection;

(5) in reasonable detail, the nature of the violation of this title that occurred or may have occurred; and

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

Sec. 4008.059. Requirements of Rescission Offer to Sellers.²⁴⁴

(a) A rescission offer is sufficient for purposes of Section 4008.062(c) only if the offer meets the requirements of this section.

(b) The offer must include financial and other information material to the offeree's decision whether to accept the offer. The offer may 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 light of the circumstances under which they are made, not misleading.

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

(d) The terms of the offer must be the same, excluding costs and attorney's fees, as the seller would recover on rescission under Section 4008.056(b).

(e) The offer must state:

(1) the terms of the offer, as determined under Subsection (d), which must be given:

(A) to the extent 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

(B) to the extent necessary, in terms of specified elements that are known to the offeree but not to the offeror, subject to the provision of reasonable evidence by the offeree;

(2) the name and address of the bank at which the terms of the offer will be carried out;

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

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

(B) evidence, if necessary, of elements described by Subdivision (1)(B);

(4) in a conspicuous manner that the offeree may not sue on the offeree's sale under this subchapter unless:

(A) the offeree accepts the offer but does not receive the securities, in which case the offeree may sue within the time allowed by Section 4008.062(c)(1) or (2), as applicable; or

(B) the offeree rejects the offer in writing within 30 days of the date the offeree receives the offer and expressly reserves in the rejection the right to sue, in which case the offeree may sue not later than one year after the date of the rejection;

(5) in reasonable detail, the nature of the violation of this title that occurred or may have occurred; and

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

²⁴⁴ Section 33.J.

Sec. 4008.060. Costs; Attorney's Fees.²⁴⁵

(a) On rescission or as a part of damages under this subchapter, a buyer or a seller of a security shall also recover costs.

(b) On rescission or as a part of damages under this subchapter, a buyer or a seller of a security may also recover reasonable attorney's fees if the court finds that the recovery is equitable under the circumstances.

Sec. 4008.061. Limitation of Liability in Small Business Issuances.²⁴⁶

(a) In this section, "small business issuer" means an issuer that, at the time of an offer to which this section applies:

(1) has annual gross revenues in an amount that does not exceed \$25 million; and
(2) does not have a class of equity securities registered, or required to be registered, with the Securities and Exchange Commission under Section 12, Securities Exchange Act of 1934 (15 U.S.C. Section 78l).

(b) This section applies only to:

(1) an offer of securities in an aggregate amount that does not exceed \$5 million made by a small business issuer or by the seller of securities of a small business issuer; and
(2) a person who has been engaged to provide services relating to an offer of securities described by Subdivision (1), including an attorney, an accountant, a consultant, or the firm of the attorney, accountant, or consultant.

(c) In an action or series of actions under this subchapter relating to an offer of securities to which this section applies, the maximum amount that may be recovered against a person to whom this section applies is three times the fee paid by the small business 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.

(d) A small business issuer making an offer of securities shall:

(1) provide to the prospective buyer a written disclosure of the limitation of liability created by this section; and
(2) receive a signed acknowledgment that the disclosure was provided.

Sec. 4008.062. Statute of Limitations.²⁴⁷

(a) A person may not sue under Section 4008.051 or 4008.055 to the extent that section relates to Section 4008.051:

(1) more than three years after the date of the sale;
(2) if the person received a rescission offer meeting the requirements of Section 4008.058 before suit, unless the person:

(A) rejected the offer in writing within 30 days of the date the person received the offer; and

(B) expressly reserved in the rejection the right to sue; or

(3) more than one year after the date the person so rejected a rescission offer meeting the requirements of Section 4008.058.

(b) A person may not sue under Section 4008.052, 4008.054, or 4008.055 to the extent that section relates to Section 4008.052 or 4008.054:

²⁴⁵ Section 33.D(6), (7).

²⁴⁶ Section 33.N.

²⁴⁷ Section 33.H.

- (1) more than three years after the date of discovery of the untruth or omission, or after the date discovery should have been made by the exercise of reasonable diligence;
 - (2) more than five years after the date of the sale;
 - (3) if the person received a rescission offer meeting the requirements of Section 4008.058 before suit, unless the person:
 - (A) rejected the offer in writing within 30 days of the date the person received the offer; and
 - (B) expressly reserved in the rejection the right to sue; or
 - (4) more than one year after the date the person so rejected a rescission offer meeting the requirements of Section 4008.058.
- (c) A person may not sue under Section 4008.053 or 4008.055 to the extent that section relates to Section 4008.053:
- (1) more than three years after the date of discovery of the untruth or omission, or after the date discovery should have been made by the exercise of reasonable diligence;
 - (2) more than five years after the date of the purchase;
 - (3) if the person received a rescission offer meeting the requirements of Section 4008.059 before suit, unless the person:
 - (A) rejected the offer in writing within 30 days of the date the person received the offer; and
 - (B) expressly reserved in the rejection the right to sue; or
 - (4) more than one year after the date the person so rejected a rescission offer meeting the requirements of Section 4008.059.

Subchapter C. Civil Liability of Investment Advisers and Investment Adviser Representatives.

Sec. 4008.101. Investment Adviser or Investment Adviser Representative Liability.²⁴⁸

(a) An investment adviser or investment adviser representative who renders services as an investment adviser in violation of Section 4004.052 or 4004.102(a) or an order under Section 4007.102 or 4007.104 is liable to the purchaser, who may sue for damages in the amount of any consideration paid for the services.

(b) Except as provided by Subsection (c), 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 for damages.

(c) An investment adviser or investment adviser representative who in rendering services as an investment adviser makes an untrue 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 is not liable under Subsection (b) 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.

²⁴⁸ Section 33-1.A; Section 33-1.C.

Sec. 4008.102. Controlling Person or Aider Liability.²⁴⁹

(a) Except as provided by Subsection (b), a person who directly or indirectly controls an investment adviser is jointly and severally liable with the investment adviser under this subchapter and to the same extent as the investment adviser.

(b) The controlling person is not liable under Subsection (a) if the controlling person sustains the burden of proof that the controlling 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.

(c) 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 subchapter is jointly and severally liable with the investment adviser in an action to recover damages under this subchapter.

Sec. 4008.103. Damages.²⁵⁰ In damages under Section 4008.101(b), 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 purchaser in acting on the services provided by the investment adviser or investment adviser representative;

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

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

Sec. 4008.104. Statute of Limitations.²⁵¹

(a) A person may not sue under Section 4008.101(a) more than three years after the date the violation occurs.

(b) A person may not sue under Section 4008.101(b) more than:

(1) five years after the date the violation occurs; or

(2) three years after the date the person knew or should have known, by the exercise of reasonable diligence, of the occurrence of the violation.

Sec. 4008.105. Remedy Not Exclusive.²⁵² A remedy provided by this subchapter is not exclusive of any other applicable remedy provided by law.

²⁴⁹ Section 33-1.E.

²⁵⁰ Section 33-1.B.

²⁵¹ Section 33-1.D.

²⁵² Section 33-1.F.

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