

MAR 1 2004
WAYS AND MEANS

Withdrawn
4/5/04

HOUSE FILE 2409
BY COMMITTEE ON COMMERCE,
REGULATION AND LABOR

(SUCCESSOR TO HSB 648)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for the regulation of securities, providing for
2 fees and penalties, and providing an effective date.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I
UNIFORM SECURITIES ACT
ARTICLE 1
GENERAL PROVISIONS

Section 1. Section 502.102, Code Supplement 2003, is amended by striking the section and inserting in lieu thereof the following:

502.102 DEFINITIONS.

In this chapter, unless the context otherwise requires:

1. "Administrator" means the commissioner of insurance or the deputy appointed pursuant to section 502.601.

2. "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions, is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this chapter.

2A. "Agricultural cooperative association" means an entity which is structured and operated on a cooperative basis pursuant to 26 U.S.C. § 1381(a) and which meets the definitional requirement of an association as provided in 12 U.S.C. § 1141j(c) or 7 U.S.C. § 291, if the association is organized as any one of the following:

a. A farmers cooperative association as defined in section 10.1.

b. An association of persons organized pursuant to chapter 497 for purposes of conducting an agricultural or dairy business on a cooperative plan, as described in section 497.1.

c. A cooperative association organized pursuant to chapter 498 for purposes of conducting an agricultural, livestock, horticultural, or dairy business on a cooperative plan and

1 acting as a cooperative selling agency, as described in
2 section 498.2.

3 d. An agricultural association as defined in section 499.2
4 and organized pursuant to chapter 499.

5 e. A cooperative organized under chapter 501 which may
6 acquire or otherwise obtain or lease agricultural land in this
7 state as provided in section 501.103.

8 f. Any other entity which is organized on a cooperative
9 basis under the laws of this state for the purpose of engaging
10 in the activities of an agricultural association as defined in
11 section 499.2.

12 3. "Bank" means any of the following:

13 a. A banking institution organized under the laws of the
14 United States.

15 b. A member bank of the United States federal reserve
16 system.

17 c. Any other banking institution, whether incorporated or
18 not, doing business under the laws of a state or of the United
19 States, a substantial portion of the business of which
20 consists of receiving deposits or exercising fiduciary powers
21 similar to those permitted to be exercised by national banks
22 under the authority of the office of the comptroller of the
23 currency of the United States pursuant to Pub. L. No. 87-722,
24 § 1, 12 U.S.C. § 92a, and which is supervised and examined by
25 a state or federal agency having supervision over banks, and
26 which is not operated for the purpose of evading this chapter.

27 d. A receiver, conservator, or other liquidating agent of
28 any institution or firm included in paragraph "a", "b", or
29 "c".

30 4. "Broker-dealer" means a person engaged in the business
31 of effecting transactions in securities for the account of
32 others or for the person's own account. The term does not
33 include any of the following:

34 a. An agent.

35 b. An issuer.

1 c. A bank or savings institution if its activities as a
2 broker-dealer are limited to those specified in section
3 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if
4 limited to unsolicited transactions, and in subsections
5 3(a)(5)(B), and 3(a)(5)(C) of the Securities Exchange Act of
6 1934, 15 U.S.C. § 78c(a)(4) and (5); or a bank that satisfies
7 the conditions described in section 3(a)(4)(E) of the
8 Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(4).

9 d. An international banking institution.

10 e. A person excluded by rule adopted or order issued under
11 this chapter.

12 5. "Depository institution" means any of the following:

13 a. A bank.

14 b. A savings institution, trust company, credit union, or
15 similar institution that is organized or chartered under the
16 laws of a state or of the United States, authorized to receive
17 deposits, and supervised and examined by an official or agency
18 of a state or the United States if its deposits or share
19 accounts are insured to the maximum amount authorized by
20 statute by the federal deposit insurance corporation, the
21 national credit union share insurance fund, or a successor
22 authorized by federal law. The term does not include any of
23 the following:

24 (1) An insurance company or other organization primarily
25 engaged in the business of insurance.

26 (2) A Morris plan bank.

27 (3) An industrial loan company.

28 6. "Federal covered investment adviser" means a person
29 registered under the Investment Advisers Act of 1940.

30 7. "Federal covered security" means a security that is, or
31 upon completion of a transaction will be, a covered security
32 under section 18(b) of the Securities Act of 1933, 15 U.S.C. §
33 77r(b), or rules or regulations adopted pursuant to that
34 provision.

35 8. "Filing" means the receipt under this chapter of a

1 record by the administrator or a designee of the
2 administrator.

3 9. "Fraud", "deceit", and "defraud" are not limited to
4 common law deceit.

5 10. "Guaranteed" means guaranteed as to payment of all
6 principal and all interest.

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

10 a. A depository institution or international banking
11 institution.

12 b. An insurance company.

13 c. A separate account of an insurance company.

14 d. An investment company as defined in the Investment
15 Company Act of 1940.

16 e. A broker-dealer registered under the Securities
17 Exchange Act of 1934.

18 f. An employee pension, profit-sharing, or benefit plan if
19 the plan has total assets in excess of five million dollars or
20 its investment decisions are made by a named fiduciary, as
21 defined in the Employee Retirement Income Security Act of
22 1974, that is a broker-dealer registered under the Securities
23 Exchange Act of 1934, an investment adviser registered or
24 exempt from registration under the Investment Advisers Act of
25 1940, an investment adviser registered under this chapter, a
26 depository institution, or an insurance company.

27 g. A plan established and maintained by a state, a
28 political subdivision of a state, or an agency or
29 instrumentality of a state or a political subdivision of a
30 state for the benefit of its employees, if the plan has total
31 assets in excess of five million dollars or its investment
32 decisions are made by a duly designated public official or by
33 a named fiduciary, as defined in the Employee Retirement
34 Income Security Act of 1974, that is a broker-dealer
35 registered under the Securities Exchange Act of 1934, an

1 investment adviser registered or exempt from registration
2 under the Investment Advisers Act of 1940, an investment
3 adviser registered under this chapter, a depository
4 institution, or an insurance company.

5 h. A trust, if it has total assets in excess of five
6 million dollars, its trustee is a depository institution, and
7 its participants are exclusively plans of the types identified
8 in paragraph "f" or "g", regardless of the size of their
9 assets, except a trust that includes as participants self-
10 directed individual retirement accounts or similar self-
11 directed plans.

12 i. An organization described in section 501(c)(3) of the
13 Internal Revenue Code, 26 U.S.C. § 501(c)(3), corporation,
14 Massachusetts trust or similar business trust, limited
15 liability company, or partnership, not formed for the specific
16 purpose of acquiring the securities offered, with total assets
17 in excess of five million dollars.

18 j. A small business investment company licensed by the
19 small business administration under section 301(c) of the
20 Small Business Investment Act of 1958, 15 U.S.C. § 681(c),
21 with total assets in excess of five million dollars.

22 k. A private business development company as defined in
23 section 202(a)(22) of the Investment Advisers Act of 1940, 15
24 U.S.C. § 80b-2(a)(22), with total assets in excess of five
25 million dollars.

26 l. A federal covered investment adviser acting for its own
27 account.

28 m. A "qualified institutional buyer" as defined in Rule
29 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted by the
30 securities and exchange commission under the Securities Act of
31 1933, 17 C.F.R. § 230.144A.

32 n. A "major U.S. institutional investor" as defined in
33 Rule 15a-6(b)(4)(i) adopted by the securities and exchange
34 commission under the Securities Exchange Act of 1934, 17
35 C.F.R. § 240.15a-6.

1 o. Any other person, other than an individual, of
2 institutional character with total assets in excess of five
3 million dollars not organized for the specific purpose of
4 evading this chapter.

5 p. Any other person specified by rule adopted or order
6 issued under this chapter.

7 12. "Insurance company" means a company organized as an
8 insurance company whose primary business is writing insurance
9 or reinsuring risks underwritten by insurance companies and
10 which is subject to supervision by the insurance commissioner
11 or a similar official or agency of a state.

12 13. "Insured" means insured as to payment of all principal
13 and all interest.

14 13A. "Interest at the legal rate" means the interest rate
15 for judgments specified in section 535.3.

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

20 15. "Investment adviser" means a person that, for
21 compensation, engages in the business of advising others,
22 either directly or through publications or writings, as to the
23 value of securities or the advisability of investing in,
24 purchasing, or selling securities or that, for compensation
25 and as a part of a regular business, issues or promulgates
26 analyses or reports concerning securities. The term includes
27 a financial planner or other person that, as an integral
28 component of other financially related services, provides
29 investment advice to others for compensation as part of a
30 business or that holds itself out as providing investment
31 advice to others for compensation. The term does not include
32 any of the following:

33 a. An investment adviser representative.

34 b. A lawyer, accountant, engineer, or teacher whose
35 performance of investment advice is solely incidental to the

1 practice of the person's profession.

2 c. A broker-dealer or its agents whose performance of
3 investment advice is solely incidental to the conduct of
4 business as a broker-dealer and who does not receive special
5 compensation for the investment advice.

6 d. A publisher of a bona fide newspaper, news magazine, or
7 business or financial publication of general and regular
8 circulation.

9 e. A federal covered investment adviser.

10 f. A bank or savings institution.

11 g. Any other person that is excluded by the Investment
12 Advisers Act of 1940 from the definition of investment
13 adviser.

14 h. Any other person excluded by rule adopted or order
15 issued under this chapter.

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

28 a. Performs only clerical or ministerial acts.

29 b. Is an agent whose performance of investment advice is
30 solely incidental to the individual acting as an agent and who
31 does not receive special compensation for investment advisory
32 services.

33 c. Is employed by or associated with a federal covered
34 investment adviser, unless the individual has a "place of
35 business" in this state as that term is defined by rule

1 adopted by the securities and exchange commission under
2 section 203A of the Investment Advisers Act of 1940, 15 U.S.C.
3 § 80b-3a, and is any of the following:

4 (1) An "investment adviser representative" as that term is
5 defined by rule adopted under section 203A of the Investment
6 Advisers Act of 1940, 15 U.S.C. § 80b-3a.

7 (2) Not a "supervised person" as that term is defined in
8 Section 202(a)(25) of the Investment Advisers Act of 1940, 15
9 U.S.C. § 80b-2(a)(25).

10 d. Is excluded by rule adopted or order issued under this
11 chapter.

12 17. "Issuer" means a person that issues or proposes to
13 issue a security, subject to all of the following:

14 a. The issuer of a voting trust certificate, collateral
15 trust certificate, certificate of deposit for a security, or
16 share in an investment company without a board of directors or
17 individuals performing similar functions is the person
18 performing the acts and assuming the duties of depositor or
19 manager pursuant to the trust or other agreement or instrument
20 under which the security is issued.

21 b. The issuer of an equipment trust certificate or similar
22 security serving the same purpose is the person by which the
23 property is or will be used or to which the property or
24 equipment is or will be leased or conditionally sold or that
25 is otherwise contractually responsible for assuring payment of
26 the certificate.

27 c. The issuer of a fractional undivided interest in an
28 oil, gas, or other mineral lease or in payments out of
29 production under a lease, right, or royalty is the owner of an
30 interest in the lease or in payments out of production under a
31 lease, right, or royalty, whether whole or fractional, that
32 creates fractional interests for the purpose of sale.

33 d. With respect to a viatical settlement contract,
34 "issuer" means a person involved in creating, transferring, or
35 selling to an investor any interest in such a contract,

1 including but not limited to fractional or pooled interests,
2 but does not include an agent or a broker-dealer.

3 18. "Nonissuer transaction" or "nonissuer distribution"
4 means a transaction or distribution not directly or indirectly
5 for the benefit of the issuer.

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

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

16 21. "Place of business" of a broker-dealer, an investment
17 adviser, or a federal covered investment adviser means any of
18 the following:

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

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

28 22. "Predecessor chapter" means this chapter as it existed
29 on December 31, 2004.

30 23. "Price amendment" means the amendment to a
31 registration statement filed under the Securities Act of 1933
32 or, if an amendment is not filed, the prospectus or prospectus
33 supplement filed under the Securities Act of 1933 that
34 includes a statement of the offering price, underwriting and
35 selling discounts or commissions, amount of proceeds,

1 conversion rates, call prices, and other matters dependent
2 upon the offering price.

3 24. "Principal place of business" of a broker-dealer or an
4 investment adviser means the executive office of the broker-
5 dealer or investment adviser from which the officers,
6 partners, or managers of the broker-dealer or investment
7 adviser direct, control, and coordinate the activities of the
8 broker-dealer or investment adviser.

9 25. "Record", except in the phrases "of record", "official
10 record", and "public record", means information that is
11 inscribed on a tangible medium or that is stored in an
12 electronic or other medium and is retrievable in perceivable
13 form.

14 26. "Sale" includes every contract of sale, contract to
15 sell, or disposition of, a security or interest in a security
16 for value, and "offer to sell" includes every attempt or offer
17 to dispose of, or solicitation of an offer to purchase, a
18 security or interest in a security for value. Both terms
19 include all of the following:

20 a. A security given or delivered with, or as a bonus on
21 account of, a purchase of securities or any other thing
22 constituting part of the subject of the purchase and having
23 been offered and sold for value.

24 b. A gift of assessable stock involving an offer and sale.

25 c. A sale or offer of a warrant or right to purchase or
26 subscribe to another security of the same or another issuer
27 and a sale or offer of a security that gives the holder a
28 present or future right or privilege to convert the security
29 into another security of the same or another issuer, including
30 an offer of the other security.

31 27. "Securities and exchange commission" means the United
32 States securities and exchange commission.

33 27A. "Securities bureau" means the securities bureau of
34 the insurance division of the department of commerce.

35 28. "Security" means a note; stock; treasury stock;

1 security future; bond; debenture; evidence of indebtedness;
2 certificate of interest or participation in a profit-sharing
3 agreement; collateral trust certificate; preorganization
4 certificate or subscription; transferable share; investment
5 contract; voting trust certificate; certificate of deposit for
6 a security; fractional undivided interest in oil, gas, or
7 other mineral rights; put, call, straddle, option, or
8 privilege on a security, certificate of deposit, or group or
9 index of securities, including an interest therein or based on
10 the value thereof; put, call, straddle, option, or privilege
11 entered into on a national securities exchange relating to
12 foreign currency; or, in general, an interest or instrument
13 commonly known as a "security"; or a certificate of interest
14 or participation in, temporary or interim certificate for,
15 receipt for, guarantee of, or warrant or right to subscribe to
16 or purchase, any of the foregoing. All of the following shall
17 apply to the term:

18 a. It includes both a certificated and an uncertificated
19 security.

20 b. It does not include an insurance or endowment policy or
21 annuity contract under which an insurance company promises to
22 pay a fixed or variable sum of money either in a lump sum or
23 periodically for life or other specified period.

24 c. It does not include any of the following:

25 (1) An interest in a contributory or noncontributory
26 pension or welfare plan subject to the Employee Retirement
27 Income Security Act of 1974.

28 (2) A certificate or tax credit issued or transferred
29 pursuant to chapter 15E, division VII.

30 d. It includes an investment in a common enterprise with
31 the expectation of profits to be derived primarily from the
32 efforts of a person other than the investor and a "common
33 enterprise" means an enterprise in which the fortunes of the
34 investor are interwoven with those of either the person
35 offering the investment, a third party, or other investors.

1 e. It includes as a security an interest in a limited
2 liability company or in a limited liability partnership or any
3 class or series of such interest, including any fractional or
4 other interest in such interest, provided "security" does not
5 include an interest in a limited liability company or a
6 limited liability partnership if the person claiming that such
7 an interest is not a security proves that all of the members
8 of the limited liability company or limited liability
9 partnership are actively engaged in the management of the
10 limited liability company or limited liability partnership;
11 provided that the evidence that members vote or have the right
12 to vote, or the right to information concerning the business
13 and affairs of the limited liability company or limited
14 liability partnership, or the right to participate in
15 management, shall not establish, without more, that all
16 members are actively engaged in the management of the limited
17 liability company or limited liability partnership.

18 f. It includes a viatical settlement investment contract.

19 29. "Self-regulatory organization" means a national
20 securities exchange registered under the Securities Exchange
21 Act of 1934, a national securities association of broker-
22 dealers registered under the Securities Exchange Act of 1934,
23 a clearing agency registered under the Securities Exchange Act
24 of 1934, or the municipal securities rulemaking board
25 established under the Securities Exchange Act of 1934.

26 30. "Sign" means, with present intent to authenticate or
27 adopt a record, to do any of the following:

28 a. To execute or adopt a tangible symbol.

29 b. To attach or logically associate with the record an
30 electronic symbol, sound, or process.

31 31. "State" means a state of the United States, the
32 District of Columbia, Puerto Rico, the United States Virgin
33 Islands, or any territory or insular possession subject to the
34 jurisdiction of the United States.

35 31A. "Viatical settlement investment contract" means a

1 contract entered into by a viatical settlement purchaser, to
2 which the viator is not a party, to purchase a life insurance
3 policy or an interest in the death benefits of a life
4 insurance policy, which contract is entered into for the
5 purpose of deriving economic benefit.

6 Sec. 2. NEW SECTION. 502.103 REFERENCES TO FEDERAL
7 STATUTES.

8 "Securities Act of 1933", 15 U.S.C. § 77a et seq. ;
9 "Securities Exchange Act of 1934", 15 U.S.C. § 78a et seq. ;
10 "Public Utility Holding Company Act of 1935", 15 U.S.C. § 79
11 et seq. ; "Investment Company Act of 1940", 15 U.S.C. § 80a-1
12 et seq. ; "Investment Advisers Act of 1940", 15 U.S.C. § 80b-1
13 et seq. ; "Employee Retirement Income Security Act of 1974", 29
14 U.S.C. § 1001 et seq. ; "National Housing Act", 12 U.S.C. §
15 1701; "Commodity Exchange Act", 7 U.S.C. § 1 et seq. ;
16 "Internal Revenue Code", 26 U.S.C. § 1 et seq. ; "Securities
17 Investor Protection Act of 1970", 15 U.S.C. § 78aaa et seq. ;
18 "Securities Litigation Uniform Standards Act of 1998", 112
19 Stat. 3227; "Small Business Investment Act of 1958", 15 U.S.C.
20 § 661 et seq. ; and "Electronic Signatures in Global and
21 National Commerce Act", 15 U.S.C. § 7001 et seq. mean those
22 federal statutes and the rules and regulations adopted under
23 those federal statutes, as in effect on the effective date of
24 this Act.

25 Sec. 3. NEW SECTION. 502.104 REFERENCES TO FEDERAL
26 AGENCIES.

27 A reference in this chapter to an agency or department of
28 the United States is also a reference to a successor agency or
29 department.

30 Sec. 4. NEW SECTION. 502.105 ELECTRONIC RECORDS AND
31 SIGNATURES.

32 This chapter modifies, limits, and supersedes the federal
33 Electronic Signatures in Global and National Commerce Act, but
34 does not modify, limit, or supersede § 101(c) of that Act, 15
35 U.S.C. § 7001(c), or authorize electronic delivery of any of

1 the notices described in section 103(b) of that Act, 15 U.S.C.
2 § 7003(b). This chapter authorizes the filing of records and
3 signatures, when specified by provisions of this chapter or by
4 a rule adopted or order issued under this chapter, in a manner
5 consistent with section 104(a) of that Act, 15 U.S.C. §
6 7004(a).

7
8 ARTICLE 2

9 EXEMPTIONS FROM REGISTRATION OF SECURITIES

10 Sec. 5. Section 502.201, Code 2003, is amended by striking
11 the section and inserting in lieu thereof the following:

12 502.201 EXEMPT SECURITIES.

13 All of the following securities are exempt from the
14 requirements of sections 502.301 through 502.306 and 502.504:

15 1. UNITED STATES GOVERNMENT AND MUNICIPAL SECURITIES. A
16 security, including a revenue obligation or a separate
17 security as defined in rule 131, 17 C.F.R. § 230.131, adopted
18 by the securities and exchange commission under the Securities
19 Act of 1933, issued, insured, or guaranteed by the United
20 States; by a state; by a political subdivision of a state; by
21 a public authority, agency, or instrumentality of one or more
22 states; by a political subdivision of one or more states; or
23 by a person controlled or supervised by and acting as an
24 instrumentality of the United States under authority granted
25 by the Congress; or a certificate of deposit for any of the
26 foregoing.

27 2. FOREIGN GOVERNMENT SECURITIES. A security issued,
28 insured, or guaranteed by a foreign government with which the
29 United States maintains diplomatic relations, or any of its
30 political subdivisions, if the security is recognized as a
31 valid obligation by the issuer, insurer, or guarantor.

32 3. DEPOSITORY INSTITUTION AND INTERNATIONAL BANKING
33 INSTITUTION SECURITIES. A security issued by and representing
34 or that will represent an interest in or a direct obligation
35 of, or be guaranteed by any of the following:

a. An international banking institution.

1 b. A banking institution organized under the laws of the
2 United States; a member bank of the United States federal
3 reserve system; or a depository institution, a substantial
4 portion of the business of which consists or will consist of
5 receiving deposits or share accounts that are insured to the
6 maximum amount authorized by statute by the federal deposit
7 insurance corporation, the national credit union share
8 insurance fund, or a successor authorized by federal law or
9 exercising fiduciary powers that are similar to those
10 permitted for national banks under the authority of the
11 comptroller of the currency pursuant to Pub. L. No. 87-722, §
12 1, 12 U.S.C. § 92a.

13 c. Any other depository institution, unless by rule or
14 order the administrator proceeds under section 502.204.

15 4. INSURANCE COMPANY SECURITIES. A security issued by and
16 representing an interest in, or a debt of, or insured or
17 guaranteed by, an insurance company authorized to do business
18 in this state.

19 5. COMMON CARRIER AND PUBLIC UTILITY SECURITIES. A
20 security issued or guaranteed by a railroad, other common
21 carrier, public utility, or public utility holding company
22 that is any of the following:

23 a. Regulated in respect to its rates and charges by the
24 United States or a state.

25 b. Regulated in respect to the issuance or guarantee of
26 the security by the United States, a state, Canada, or a
27 Canadian province or territory.

28 c. A public utility holding company registered under the
29 Public Utility Holding Company Act of 1935 or a subsidiary of
30 such a registered holding company within the meaning of that
31 Act.

32 6. CERTAIN OPTIONS AND RIGHTS. A federal covered security
33 specified in section 18(b)(1) of the Securities Act of 1933,
34 15 U.S.C. § 77r(b)(1), or by rule adopted under that provision
35 or a security listed or approved for listing on another

1 securities market specified by rule under this chapter; a put
2 or a call option contract; a warrant; a subscription right on
3 or with respect to such securities; or an option or similar
4 derivative security on a security or an index of securities or
5 foreign currencies issued by a clearing agency registered
6 under the Securities Exchange Act of 1934 and listed or
7 designated for trading on a national securities exchange, a
8 facility of a national securities exchange, or a facility of a
9 national securities association registered under the
10 Securities Exchange Act of 1934 or an offer or sale, of the
11 underlying security in connection with the offer, sale, or
12 exercise of an option or other security that was exempt when
13 the option or other security was written or issued; or an
14 option or a derivative security designated by the securities
15 and exchange commission under section 9(b) of the Securities
16 Exchange Act of 1934, 15 U.S.C. § 78i(b).

17 7. NONPROFIT SECURITIES. A security issued by a person
18 organized and operated exclusively for religious, educational,
19 benevolent, fraternal, charitable, social, athletic, or
20 reformatory purposes, or as a chamber of commerce, and not for
21 pecuniary profit, no part of the net earnings of which inures
22 to the benefit of a private stockholder or other person, or a
23 security of a company that is excluded from the definition of
24 an investment company under section 3(c)(10)(B) of the
25 Investment Company Act of 1940, 15 U.S.C. § 80a-3(c)(10)(B);
26 except that with respect to the offer or sale of a note, bond,
27 debenture, or other evidence of indebtedness issued by such a
28 person, a rule may be adopted under this chapter limiting the
29 availability of this exemption by classifying securities,
30 persons, and transactions, imposing different requirements for
31 different classes, specifying with respect to paragraph "b"
32 the scope of the exemption and the grounds for denial or
33 suspension, and requiring an issuer to do any of the
34 following:

35 a. File a notice specifying the material terms of the

1 proposed offer or sale and copies of any proposed sales and
2 advertising literature to be used and provide that the
3 exemption becomes effective if the administrator does not
4 disallow the exemption within the period established by the
5 rule.

6 b. File a request for exemption authorization for which a
7 rule under this chapter may specify the scope of the
8 exemption, the requirement of an offering statement, the
9 filing of sales and advertising literature, the filing of
10 consent to service of process complying with section 502.611,
11 and grounds for denial or suspension of the exemption.

12 c. Register under section 502.304.

13 8A. COOPERATIVE ASSOCIATIONS. A stock or similar
14 security, including a patronage refund certificate, issued by
15 any of the following:

16 a. A cooperative housing corporation described in
17 paragraph 1 of subsection "b" of section 216 of the Internal
18 Revenue Code, if its activities are limited to the ownership,
19 leasing, management, or construction of residential properties
20 for its members, and activities incidental thereto.

21 b. A mutual or cooperative organization, including a
22 cooperative association organized in good faith under and for
23 any of the purposes enumerated in chapter 497, 498, 499, or
24 501, that deals in commodities or supplies goods or services
25 in transactions primarily with and for the benefit of its
26 members, if all of the following apply:

27 (1) Such stock or similar security is part of a class
28 issuable only to persons who deal in commodities with, or
29 obtain goods or services from, the issuer.

30 (2) Such stock or similar security is transferable only to
31 the issuer or a successor in interest of the transferor who
32 qualifies for membership in such mutual or cooperative
33 organization.

34 (3) No dividends other than patronage refunds are payable
35 to holders of such stock or similar security except on a

1 complete or partial liquidation.

2 8B. AGRICULTURAL COOPERATIVE ASSOCIATIONS. A security
3 issued by an agricultural cooperative association, provided
4 all of the following conditions are satisfied:

5 a. A commission or remuneration must not be paid or
6 provided either directly or indirectly for the sale, except as
7 permitted by the administrator by rule or by order issued upon
8 written application showing good cause for allowance of a
9 commission or other remuneration.

10 b. If the securities to be issued are notes or other
11 evidences of indebtedness and are issued after July 1, 1991,
12 the issuer must file with the administrator a written notice
13 specifying the name of the issuer, the date of the issuer's
14 organization, the name of a contact person, a copy of the
15 issuer's current audited financial statement, the types of
16 security or securities to be offered, and the class of persons
17 to whom the offer will be made in accordance with such rules
18 as prescribed by the administrator.

19 9. EQUIPMENT TRUST CERTIFICATE. An equipment trust
20 certificate with respect to equipment leased or conditionally
21 sold to a person, if any security issued by the person would
22 be exempt under this section or would be a federal covered
23 security under section 18(b)(1) of the Securities Act of 1933,
24 15 U.S.C. § 77r(b)(1).

25 9A. ECONOMIC DEVELOPMENT CORPORATIONS. Any security
26 issued by a corporation formed under chapter 496B.

27 9B. AGRICULTURAL DEVELOPMENT AUTHORITY. Any security
28 issued by the agricultural development authority under chapter
29 175.

30 9C. MEMBERSHIP CAMPGROUNDS. Any security representing a
31 membership camping contract which is registered pursuant to
32 section 557B.2 or exempt under section 557B.4.

33 9D. TIME-SHARES. Any security representing a time-share
34 interval as defined in section 557A.2.

35 9E. VIATICAL SETTLEMENT CONTRACTS. A viatical settlement

1 contract, or fractional or pooled interest in such contract,
2 provided any of the following conditions are satisfied:

3 a. The assignment, transfer, sale, devise, or bequest of a
4 death benefit of a life insurance policy or contract is made
5 by the viator to an insurance company as provided under Title
6 XIII, subtitle 1.

7 b. The assignment, transfer, sale, devise, or bequest of a
8 life insurance policy or contract, for any value less than the
9 expected death benefit, is made by the viator to a family
10 member or other person who enters into no more than one such
11 agreement in a calendar year.

12 c. A life insurance policy or contract is assigned to a
13 bank, savings bank, savings and loan association, credit
14 union, or other licensed lending institution as collateral for
15 a loan.

16 d. Accelerated benefits are exercised as provided in the
17 life insurance policy or contract and consistent with
18 applicable law.

19 e. The assignment, transfer, sale, devise, or bequest of
20 the death benefit or ownership of a life insurance policy or
21 contract made by the policyholder or contract owner to a
22 viatical settlement provider, if the viatical settlement
23 transaction complies with chapter 508E, including rules
24 adopted pursuant to that chapter.

25 Sec. 6. Section 502.202, Code Supplement 2003, is amended
26 by striking the section and inserting in lieu thereof the
27 following:

28 NEW SECTION. 502.202 EXEMPT TRANSACTIONS.

29 The following transactions are exempt from the requirements
30 of sections 502.301 through 502.306 and 502.504:

31 1. ISOLATED NONISSUER TRANSACTIONS. An isolated nonissuer
32 transaction, whether effected by or through a broker-dealer or
33 not.

34 2. NONISSUER TRANSACTIONS IN SPECIFIED OUTSTANDING
35 SECURITIES. A nonissuer transaction by or through a broker-

1 dealer registered, or exempt from registration, under this
2 chapter, and a resale transaction by a sponsor of a unit
3 investment trust registered under the Investment Company Act
4 of 1940, provided that for either transaction, the security is
5 of a class that has been outstanding in the hands of the
6 public for at least ninety days, if, at the date of the
7 transaction, all of the following apply:

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

15 b. The security is sold at a price reasonably related to
16 its current market price.

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

21 d. A nationally recognized securities manual or its
22 electronic equivalent designated by rule adopted or order
23 issued under this chapter or a record filed with the
24 securities and exchange commission that is publicly available
25 contains all of the following:

26 (1) A description of the business and operations of the
27 issuer.

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

30 (3) An audited balance sheet of the issuer as of a date
31 within eighteen months before the date of the transaction or,
32 in the case of a reorganization or merger when the parties to
33 the reorganization or merger each had an audited balance
34 sheet, and a pro forma balance sheet for the combined
35 organization.

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

7 e. Any one of the following requirements is met:

8 (1) The issuer of the security has a class of equity
9 securities listed on a national securities exchange registered
10 under section 6 of the Securities Exchange Act of 1934 or
11 designated for trading on the national association of
12 securities dealers automated quotation system.

13 (2) The issuer of the security is a unit investment trust
14 registered under the Investment Company Act of 1940.

15 (3) The issuer of the security, including its
16 predecessors, has been engaged in continuous business for at
17 least three years.

18 (4) The issuer of the security has total assets of at
19 least two million dollars based on an audited balance sheet as
20 of a date within eighteen months before the date of the
21 transaction or, in the case of a reorganization or merger when
22 the parties to the reorganization or merger each had such an
23 audited balance sheet, and a pro forma balance sheet for the
24 combined organization.

25 3. NONISSUER TRANSACTIONS IN SPECIFIED FOREIGN
26 TRANSACTIONS. A nonissuer transaction by or through a broker-
27 dealer registered or exempt from registration under this
28 chapter in a security of a foreign issuer that is a margin
29 security defined in regulations or rules adopted by the board
30 of governors of the United States federal reserve system.

31 4. NONISSUER TRANSACTIONS IN SECURITIES SUBJECT TO
32 SECURITIES EXCHANGE ACT REPORTING. A nonissuer transaction by
33 or through a broker-dealer registered or exempt from
34 registration under this chapter in an outstanding security if
35 the guarantor of the security files reports with the

1 securities and exchange commission under the reporting
2 requirements of section 13 or 15(d) of the Securities Exchange
3 Act of 1934, 15 U.S.C. § 78m or 78o(d).

4 5. NONISSUER TRANSACTIONS IN SPECIFIED FIXED INCOME
5 SECURITIES. A nonissuer transaction by or through a broker-
6 dealer registered or exempt from registration under this
7 chapter in a security if any of the following apply:

8 a. It is rated at the time of the transaction by a
9 nationally recognized statistical rating organization in one
10 of its four highest rating categories.

11 b. It has a fixed maturity or a fixed interest or
12 dividend, if all of the following apply:

13 (1) A default has not occurred during the current fiscal
14 year or within the three previous fiscal years or during the
15 existence of the issuer and any predecessor if less than three
16 fiscal years, in the payment of principal, interest, or
17 dividends on the security.

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

25 6. UNSOLICITED BROKERAGE TRANSACTIONS. A nonissuer
26 transaction by or through a broker-dealer registered or exempt
27 from registration under this chapter effecting an unsolicited
28 order or offer to purchase.

29 7. NONISSUER TRANSACTION BY PLEDGEEES. A nonissuer
30 transaction executed by a bona fide pledgee without the
31 purpose of evading this chapter.

32 8. NONISSUER TRANSACTIONS WITH FEDERAL COVERED INVESTMENT
33 ADVISERS. A nonissuer transaction by a federal covered
34 investment adviser with investments under management in excess
35 of one hundred million dollars acting in the exercise of

1 discretionary authority in a signed record for the account of
2 others.

3 9. SPECIFIED EXCHANGE TRANSACTIONS. A transaction in a
4 security, whether or not the security or transaction is
5 otherwise exempt, in exchange for one or more bona fide
6 outstanding securities, claims, or property interests, or
7 partly in such exchange and partly for cash, if the terms and
8 conditions of the issuance and exchange or the delivery and
9 exchange and the fairness of the terms and conditions have
10 been approved by the administrator after a hearing.

11 10. UNDERWRITER TRANSACTIONS. A transaction between the
12 issuer or other person on whose behalf the offering is made
13 and an underwriter, or among underwriters.

14 11. UNIT SECURED TRANSACTIONS. A transaction in a note,
15 bond, debenture, or other evidence of indebtedness secured by
16 a mortgage or other security agreement if all of the following
17 apply:

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

21 b. A general solicitation or general advertisement of the
22 transaction is not made.

23 c. A commission or other remuneration is not paid or
24 given, directly or indirectly, to a person not registered
25 under this chapter as a broker-dealer or as an agent.

26 12. BANKRUPTCY, GUARDIAN, OR CONSERVATOR TRANSACTIONS. A
27 transaction by an executor, administrator of an estate,
28 sheriff, marshal, receiver, trustee in bankruptcy, guardian,
29 or conservator.

30 13. TRANSACTIONS WITH SPECIFIED INVESTORS. A sale or
31 offer to sell to any of the following:

32 a. An institutional investor.

33 b. A federal covered investment adviser.

34 c. Any other person exempted by rule adopted or order
35 issued under this chapter.

1 d. A person or class of persons who are granted this
2 exemption by the administrator. The administrator, by rule or
3 order, may grant this exemption to a person or class of
4 persons based upon the factors of financial sophistication,
5 net worth, and the amount of assets under investment.

6 14. LIMITED OFFERING TRANSACTIONS. A sale or an offer to
7 sell securities by or on behalf of an issuer, if the
8 transaction is part of a single issue in which all of the
9 following apply:

10 a. Not more than thirty-five purchasers are present in
11 this state during any twelve consecutive months, other than
12 those designated in subsection 13.

13 b. A general solicitation or general advertising is not
14 made in connection with the offer to sell or sale of the
15 securities.

16 c. A commission or other remuneration is not paid or
17 given, directly or indirectly, to a person other than a
18 broker-dealer registered under this chapter or an agent
19 registered under this chapter for soliciting a prospective
20 purchaser in this state.

21 d. The issuer reasonably believes that all the purchasers
22 in this state, other than those designated in subsection 13,
23 are purchasing for investment.

24 15. TRANSACTIONS WITH EXISTING SECURITY HOLDERS. A
25 transaction under an offer to existing security holders of the
26 issuer, including persons that at the date of the transaction
27 are holders of convertible securities, options, or warrants,
28 if a commission or other remuneration, other than a standby
29 commission, is not paid or given, directly or indirectly, for
30 soliciting a security holder in this state.

31 16. OFFERINGS REGISTERED UNDER THE CHAPTER AND THE
32 SECURITIES ACT OF 1933. An offer to sell, but not a sale, of
33 a security not exempt from registration under the Securities
34 Act of 1933 if all of the following apply:

35 a. A registration or offering statement or similar record

1 as required under the Securities Act of 1933 has been filed,
2 but is not effective, or the offer is made in compliance with
3 rule 165 adopted under the Securities Act of 1933, 17 C.F.R.
4 § 230.165.

5 b. A stop order of which the offeror is aware has not been
6 issued against the offeror by the administrator or the
7 securities and exchange commission, and an audit, inspection,
8 or proceeding that is public and that may culminate in a stop
9 order is not known by the offeror to be pending.

10 17. OFFERINGS WHEN REGISTRATION HAS BEEN FILED, BUT IS NOT
11 EFFECTIVE UNDER THIS CHAPTER AND EXEMPT FROM THE SECURITIES
12 ACT OF 1933. An offer to sell, but not a sale, of a security
13 exempt from registration under the Securities Act of 1933 if
14 all of the following apply:

15 a. A registration statement has been filed under this
16 chapter, but is not effective.

17 b. A solicitation of interest is provided in a record to
18 offerees in compliance with a rule adopted by the
19 administrator under this chapter.

20 c. A stop order of which the offeror is aware has not been
21 issued by the administrator under this chapter and an audit,
22 inspection, or proceeding that may culminate in a stop order
23 is not known by the offeror to be pending.

24 18. CONTROL TRANSACTIONS. A transaction involving the
25 distribution of the securities of an issuer to the security
26 holders of another person in connection with a merger,
27 consolidation, exchange of securities, sale of assets, or
28 other reorganization to which the issuer, or its parent or
29 subsidiary and the other person, or its parent or subsidiary,
30 are parties.

31 19. RECISION OFFERS. A recision offer, sale, or purchase
32 under section 502.510.

33 20. OUT-OF-STATE OFFERS OR SALES. An offer or sale of a
34 security to a person not a resident of this state and not
35 present in this state if the offer or sale does not constitute

1 a violation of the laws of the state or foreign jurisdiction
2 in which the offeree or purchaser is present and is not part
3 of an unlawful plan or scheme to evade this chapter.

4 21. EMPLOYEE BENEFIT PLANS. Employees' stock purchase,
5 savings, option, profit-sharing, pension, or similar
6 employees' benefit plan, including any securities, plan
7 interests, and guarantees issued under a compensatory benefit
8 plan or compensation contract, contained in a record,
9 established by the issuer, its parents, its majority-owned
10 subsidiaries, or the majority-owned subsidiaries of the
11 issuer's parent for the participation of their employees
12 including offers or sales of such securities to any of the
13 following:

14 a. Directors; general partners; trustees, if the issuer is
15 a business trust; officers; consultants; and advisers.

16 b. Family members who acquire such securities from those
17 persons through gifts or domestic relations orders.

18 c. Former employees, directors, general partners,
19 trustees, officers, consultants, and advisers if those
20 individuals were employed by or providing services to the
21 issuer when the securities were offered.

22 d. Insurance agents who are exclusive insurance agents of
23 the issuer, or the issuer's subsidiaries or parents, or who
24 derive more than fifty percent of their annual income from
25 those organizations.

26 22. SPECIFIED DIVIDENDS AND TENDER OFFERS AND JUDICIALLY
27 RECOGNIZED REORGANIZATIONS. A transaction involving any of
28 the following:

29 a. A stock dividend or equivalent equity distribution,
30 whether the corporation or other business organization
31 distributing the dividend or equivalent equity distribution is
32 the issuer or not, if nothing of value is given by
33 stockholders or other equity holders for the dividend or
34 equivalent equity distribution other than the surrender of a
35 right to a cash or property dividend if each stockholder or

1 other equity holder may elect to take the dividend or
2 equivalent equity distribution in cash, property, or stock.

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

7 c. The solicitation of tenders of securities by an offeror
8 in a tender offer in compliance with rule 162 adopted under
9 the Securities Act of 1933, 17 C.F.R. § 230.162.

10 23. NONISSUER TRANSACTIONS INVOLVING SPECIFIED FOREIGN
11 ISSUER SECURITIES TRADED ON DESIGNATED SECURITY EXCHANGES. A
12 nonissuer transaction in an outstanding security by or through
13 a broker-dealer registered or exempt from registration under
14 this chapter, if the issuer is a reporting issuer in a foreign
15 jurisdiction designated by this subsection or by rule adopted
16 or order issued under this chapter; has been subject to
17 continuous reporting requirements in the foreign jurisdiction
18 for not less than one hundred eighty days before the
19 transaction; and the security is listed on the foreign
20 jurisdiction's securities exchange that has been designated by
21 this subsection or by rule adopted or order issued under this
22 chapter, or is a security of the same issuer that is of senior
23 or substantially equal rank to the listed security or is a
24 warrant or right to purchase or subscribe to any of the
25 foregoing. For purposes of this subsection, Canada, together
26 with its provinces and territories, is a designated foreign
27 jurisdiction and the Toronto stock exchange, inc., is a
28 designated securities exchange. After an administrative
29 hearing in compliance with chapter 17A, the administrator, by
30 rule adopted or order issued under this chapter, may revoke
31 the designation of a securities exchange under this
32 subsection, if the administrator finds that revocation is
33 necessary or appropriate in the public interest and for the
34 protection of investors.

35 Sec. 7. Section 502.203, Code 2003, is amended by striking

1 the section and inserting in lieu thereof the following:

2 502.203 ADDITIONAL EXEMPTIONS AND WAIVERS.

3 A rule adopted or order issued under this chapter may
4 exempt a security, transaction, or offer; a rule under this
5 chapter may exempt a class of securities, transactions, or
6 offers from any or all of the requirements of sections 502.301
7 through 502.306 and 502.504; and an order under this chapter
8 may waive, in whole or in part, any or all of the conditions
9 for an exemption or offer under sections 502.201 and 502.202.

10 Sec. 8. Section 502.204, Code 2003, is amended by striking
11 the section and inserting in lieu thereof the following:

12 502.204 DENIAL, SUSPENSION, REVOCATION, CONDITION, OR
13 LIMITATION OF EXEMPTIONS.

14 1. ENFORCEMENT-RELATED POWERS. Except with respect to a
15 federal covered security or a transaction involving a federal
16 covered security, an order under this chapter may deny,
17 suspend application of, condition, limit, or revoke an
18 exemption created under section 502.201, subsection 3,
19 paragraph "c", or subsection 7 or 8, or section 502.202, or an
20 exemption or waiver created under section 502.203 with respect
21 to a specific security, transaction, or offer. An order under
22 this section may be issued only pursuant to the procedures in
23 section 502.306, subsection 4, or section 502.604, and only
24 prospectively.

25 2. KNOWLEDGE OF ORDER REQUIRED. A person does not violate
26 section 502.301, 502.303 through 502.306, 502.504, or 502.510
27 by an offer to sell, offer to purchase, sale, or purchase
28 effected after the entry of an order issued under this section
29 if the person did not know, and in the exercise of reasonable
30 care could not have known, of the order.

31 ARTICLE 3

32 REGISTRATION OF SECURITIES AND NOTICE FILING OF
33 FEDERAL COVERED SECURITIES

34 Sec. 9. Section 502.301, Code 2003, is amended by striking
35 the section and inserting in lieu thereof the following:

1 502.301 SECURITIES REGISTRATION REQUIREMENT.

2 It is unlawful for a person to offer or sell a security in
3 this state unless one of the following applies:

- 4 1. The security is a federal covered security.
5 2. The security, transaction, or offer is exempted from
6 registration under sections 502.201 through 502.203.
7 3. The security is registered under this chapter.

8 Sec. 10. Section 502.302, Code 2003, is amended by
9 striking the section and inserting in lieu thereof the
10 following:

11 502.302 NOTICE FILING.

12 1. REQUIRED FILING OF RECORDS. With respect to a federal
13 covered security, as defined in section 18(b)(2) of the
14 Securities Act of 1933, 15 U.S.C. § 77r(b)(2), that is not
15 otherwise exempt under sections 502.201 through 502.203, a
16 rule adopted or order issued under this chapter may require
17 the filing of any or all of the following records:

18 a. Before the initial offer of a federal covered security
19 in this state, all records that are part of a federal
20 registration statement filed with the securities and exchange
21 commission under the Securities Act of 1933 and a consent to
22 service of process complying with section 502.611 signed by
23 the issuer.

24 A person who is the issuer of a federal covered security
25 under section 18(b)(2) of the Securities Act of 1933 shall
26 initially make a notice filing and annually renew a notice
27 filing in this state for an indefinite amount or a fixed
28 amount. The fixed amount must be for two hundred fifty
29 thousand dollars. A notice filer shall pay a filing fee when
30 the notice is filed. If the amount covered by the notice is
31 indefinite, the notice filer shall pay a filing fee of one
32 thousand dollars. If the amount covered by the notice is
33 fixed, the notice filer shall pay a filing fee of two hundred
34 fifty dollars, and all of the following shall apply:

35 (1) The notice filer shall file a sales report with the

1 administrator or pay an additional filing fee of one thousand
2 two hundred fifty dollars within ninety days after the notice
3 filing's annual renewal date. If the notice filer files a
4 sales report with the administrator, the notice filer shall
5 pay an additional filing fee of one-tenth of one percent of
6 the amount of securities sold in excess of two hundred fifty
7 thousand dollars. The additional filing fee must be paid
8 within ninety days after the notice filing's annual renewal
9 date.

10 (2) The notice filing covering the additional securities
11 shall be effective retroactively as of the effective date of
12 the notice filing that is being amended.

13 b. After the initial offer of the federal covered security
14 in this state, all records that are part of an amendment to a
15 federal registration statement filed with the securities and
16 exchange commission under the Securities Act of 1933.

17 2. NOTICE FILING EFFECTIVENESS AND RENEWAL. A notice
18 filing under subsection 1 is effective for one year commencing
19 on the later of the notice filing or the effectiveness of the
20 offering filed with the securities and exchange commission.
21 On or before expiration, the issuer may renew a notice filing
22 by filing a copy of those records filed by the issuer with the
23 securities and exchange commission that are required by rule
24 or order under this chapter to be filed and by paying the
25 renewal fee required by subsection 1, paragraph "a". A
26 previously filed consent to service of process complying with
27 section 502.611 may be incorporated by reference in a renewal.
28 A renewed notice filing becomes effective upon the expiration
29 of the filing being renewed.

30 3. NOTICE FILINGS FOR FEDERAL COVERED SECURITIES UNDER
31 SECTION 18(b)(4)(D). With respect to a security that is a
32 federal covered security under section 18(b)(4)(D) of the
33 Securities Act of 1933, 15 U.S.C. § 77r(b)(4)(D), a rule under
34 this chapter may require a notice filing by or on behalf of an
35 issuer to include a copy of form D, including the appendix, as

1 promulgated by the securities and exchange commission, and a
2 consent to service of process complying with section 502.611
3 signed by the issuer not later than fifteen days after the
4 first sale of the federal covered security in this state and
5 the payment of a fee of one hundred dollars; and the payment
6 of a fee of two hundred fifty dollars for any late filing.

7 4. STOP ORDERS. Except with respect to a federal security
8 under section 18(b)(1) of the Securities Act of 1933, 15
9 U.S.C. § 77r(b)(1), if the administrator finds that there is a
10 failure to comply with a notice or fee requirement of this
11 section, the administrator may issue a stop order suspending
12 the offer and sale of a federal covered security in this
13 state. If the deficiency is corrected, the stop order is void
14 as of the time of its issuance and no penalty may be imposed
15 by the administrator.

16 Sec. 11. Section 502.303, Code 2003, is amended by
17 striking the section and inserting in lieu thereof the
18 following:

19 502.303 SECURITIES REGISTRATION BY COORDINATION.

20 1. REGISTRATION PERMITTED.

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

25 b. A proposed sale pursuant to the exemption contained in
26 "Regulation A" as adopted under section 3(b) of the Securities
27 Act of 1933 where such registration statement has not become
28 effective or notification of proposed sale has not been
29 qualified may be registered by coordination under this
30 section.

31 2. REQUIRED RECORDS. A registration statement and
32 accompanying records under this section must contain or be
33 accompanied by all of the following records in addition to the
34 information specified in section 502.305 and a consent to
35 service of process complying with section 502.611:

1 a. A copy of the latest form of prospectus filed under the
2 Securities Act of 1933.

3 b. A copy of the articles of incorporation and bylaws or
4 their substantial equivalents currently in effect; a copy of
5 any agreement with or among underwriters; a copy of any
6 indenture or other instrument governing the issuance of the
7 security to be registered; and a specimen, copy, or
8 description of the security that is required by rule adopted
9 or order issued under this chapter.

10 c. Copies of any other information or any other records
11 filed by the issuer under the Securities Act of 1933 requested
12 by the administrator.

13 d. An undertaking to forward each amendment to the federal
14 prospectus, other than an amendment that delays the effective
15 date of the registration statement, promptly after it is filed
16 with the securities and exchange commission.

17 3. CONDITIONS FOR EFFECTIVENESS OF REGISTRATION STATEMENT.
18 A registration statement under this section becomes effective
19 simultaneously with or subsequent to the federal registration
20 statement when all the following conditions are satisfied:

21 a. A stop order under subsection 4 or section 502.306 or
22 issued by the securities and exchange commission is not in
23 effect and a proceeding is not pending against the issuer
24 under section 502.306.

25 b. The registration statement has been on file for at
26 least twenty days or a shorter period provided by rule adopted
27 or order issued under this chapter.

28 4. NOTICE OF FEDERAL REGISTRATION STATEMENT EFFECTIVENESS.

29 The registrant shall promptly notify the administrator in a
30 record of the date when the federal registration statement
31 becomes effective and the content of any price amendment and
32 shall promptly file a record containing the price amendment.
33 If the notice is not timely received, the administrator may
34 issue a stop order, without prior notice or hearing,
35 retroactively denying effectiveness to the registration

1 statement or suspending its effectiveness until in compliance
2 with this section. The administrator shall promptly notify
3 the registrant of an order by telegram, telephone, or
4 electronic means and promptly confirm this notice by a record.
5 If the registrant subsequently complies with the notice
6 requirements of this section, the stop order is void as of the
7 date of its issuance.

8 5. EFFECTIVENESS OF REGISTRATION STATEMENT. If the
9 federal registration statement becomes effective before each
10 of the conditions in this section is satisfied or is waived by
11 the administrator, the registration statement is automatically
12 effective under this chapter when all the conditions are
13 satisfied or waived. If the registrant notifies the
14 administrator of the date when the federal registration
15 statement is expected to become effective, the administrator
16 shall promptly notify the registrant by telegram, telephone,
17 or electronic means and promptly confirm this notice by a
18 record, indicating whether all the conditions are satisfied or
19 waived and whether the administrator intends the institution
20 of a proceeding under section 502.306. The notice by the
21 administrator does not preclude the institution of such a
22 proceeding.

23 Sec. 12. Section 502.304, Code 2003, is amended by
24 striking the section and inserting in lieu thereof the
25 following:

26 502.304 SECURITIES REGISTRATION BY QUALIFICATION.

27 1. REGISTRATION PERMITTED. A security may be registered
28 by qualification under this section.

29 2. REQUIRED RECORDS. A registration statement under this
30 section must contain the information or records specified in
31 section 502.305, a consent to service of process complying
32 with section 502.611, and, if required by rule adopted under
33 this chapter, all of the following information or records:

34 a. With respect to the issuer and any significant
35 subsidiary, its name, address, and form of organization; the

1 state or foreign jurisdiction and date of its organization;
2 the general character and location of its business; a
3 description of its physical properties and equipment; and a
4 statement of the general competitive conditions in the
5 industry or business in which it is or will be engaged.

6 b. With respect to each director and officer of the
7 issuer, and other person having a similar status or performing
8 similar functions, the person's name, address, and principal
9 occupation for the previous five years; the amount of
10 securities of the issuer held by the person as of the
11 thirtieth day before the filing of the registration statement;
12 the amount of the securities covered by the registration
13 statement to which the person has indicated an intention to
14 subscribe; and a description of any material interest of the
15 person in any material transaction with the issuer or a
16 significant subsidiary effected within the previous three
17 years or proposed to be effected.

18 c. With respect to persons covered by paragraph "b", the
19 aggregate sum of the remuneration paid to those persons during
20 the previous twelve months and estimated to be paid during the
21 next twelve months, directly or indirectly, by the issuer, and
22 all predecessors, parents, subsidiaries, and affiliates of the
23 issuer.

24 d. With respect to a person owning of record or owning
25 beneficially, if known, ten percent or more of the outstanding
26 shares of any class of equity security of the issuer, the
27 information specified in paragraph "b" other than the person's
28 occupation.

29 e. With respect to a promoter, if the issuer was organized
30 within the previous three years, the information or records
31 specified in paragraph "b", any amount paid to the promoter
32 within that period or intended to be paid to the promoter, and
33 the consideration for the payment.

34 f. With respect to a person on whose behalf any part of
35 the offering is to be made in a nonissuer distribution, the

1 person's name and address; the amount of securities of the
2 issuer held by the person as of the date of the filing of the
3 registration statement; a description of any material interest
4 of the person in any material transaction with the issuer or
5 any significant subsidiary effected within the previous three
6 years or proposed to be effected; and a statement of the
7 reasons for making the offering.

8 g. The capitalization and long-term debt, on both a
9 current and pro forma basis, of the issuer and any significant
10 subsidiary, including a description of each security
11 outstanding or being registered or otherwise offered, and a
12 statement of the amount and kind of consideration, whether in
13 the form of cash, physical assets, services, patents,
14 goodwill, or anything else of value, for which the issuer or
15 any subsidiary has issued its securities within the previous
16 two years or is obligated to issue its securities.

17 h. The kind and amount of securities to be offered; the
18 proposed offering price or the method by which it is to be
19 computed; any variation at which a proportion of the offering
20 is to be made to a person or class of persons other than the
21 underwriters, with a specification of the person or class; the
22 basis on which the offering is to be made if otherwise than
23 for cash; the estimated aggregate underwriting and selling
24 discounts or commissions and finders' fees, including
25 separately cash, securities, contracts, or anything else of
26 value to accrue to the underwriters or finders in connection
27 with the offering or, if the selling discounts or commissions
28 are variable, the basis of determining them and their maximum
29 and minimum amounts; the estimated amounts of other selling
30 expenses, including legal, engineering, and accounting
31 charges; the name and address of each underwriter and each
32 recipient of a finder's fee; a copy of any underwriting or
33 selling group agreement under which the distribution is to be
34 made or the proposed form of any such agreement whose terms
35 have not yet been determined; and a description of the plan of

1 distribution of any securities that are to be offered
2 otherwise than through an underwriter.

3 i. The estimated monetary proceeds to be received by the
4 issuer from the offering; the purposes for which the proceeds
5 are to be used by the issuer; the estimated amount to be used
6 for each purpose; the order or priority in which the proceeds
7 will be used for the purposes stated; the amounts of any funds
8 to be raised from other sources to achieve the purposes
9 stated; the sources of the funds; and, if a part of the
10 proceeds is to be used to acquire property, including
11 goodwill, otherwise than in the ordinary course of business,
12 the names and addresses of the vendors, the purchase price,
13 the names of any persons that have received commissions in
14 connection with the acquisition, and the amounts of the
15 commissions and other expenses in connection with the
16 acquisition, including the cost of borrowing money to finance
17 the acquisition.

18 j. A description of any stock options or other security
19 options outstanding, or to be created in connection with the
20 offering, and the amount of those options held or to be held
21 by each person required to be named in paragraph "b", "d",
22 "e", "f", or "h" and by any person that holds or will hold ten
23 percent or more in the aggregate of those options.

24 k. The dates of, parties to, and general effect concisely
25 stated of each managerial or other material contract made or
26 to be made otherwise than in the ordinary course of business
27 to be performed in whole or in part at or after the filing of
28 the registration statement or that was made within the
29 previous two years, and a copy of the contract.

30 l. A description of any pending litigation, action, or
31 proceeding to which the issuer is a party and that materially
32 affects its business or assets, and any litigation, action, or
33 proceeding known to be contemplated by governmental
34 authorities.

35 m. A copy of any prospectus, pamphlet, circular, form

1 letter, advertisement, or other sales literature intended as
2 of the effective date to be used in connection with the
3 offering and any solicitation of interest used in compliance
4 with section 502.202, subsection 17, paragraph "b".

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

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

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

23 q. A balance sheet of the issuer as of a date within four
24 months before the filing of the registration statement; a
25 statement of income and a statement of cash flows for each of
26 the three fiscal years preceding the date of the balance sheet
27 and for any period between the close of the immediately
28 previous fiscal year and the date of the balance sheet, or for
29 the period of the issuer's and any predecessor's existence if
30 less than three years; and, if any part of the proceeds of the
31 offering is to be applied to the purchase of a business, the
32 financial statements that would be required if that business
33 were the registrant.

34 r. Any additional information or records required by rule
35 adopted or order issued under this chapter.

1 2A. REPORTS AND EXAMINATIONS. The administrator may by
2 rule or order require as a condition of registration by
3 qualification, and at the expense of the applicant or
4 registrant, that a report by an accountant, engineer,
5 appraiser, or other professional person be filed. The
6 administrator may also designate one or more employees of the
7 securities bureau to make an examination of the business and
8 records of an issuer of securities for which a registration
9 statement has been filed by qualification, at the expense of
10 the applicant or registrant.

11 3. CONDITIONS FOR EFFECTIVENESS OF REGISTRATION STATEMENT.
12 A registration statement under this section becomes effective
13 thirty days, or any shorter period provided by rule adopted or
14 order issued under this chapter, after the date the
15 registration statement or the last amendment other than a
16 price amendment is filed, if any of the following applies:

17 a. A stop order is not in effect and a proceeding is not
18 pending under section 502.306.

19 b. The administrator has not issued an order under section
20 502.306 delaying effectiveness.

21 c. The applicant or registrant has not requested that
22 effectiveness be delayed.

23 4. DELAY OF EFFECTIVENESS OF REGISTRATION STATEMENT. The
24 administrator may delay effectiveness once for not more than
25 ninety days if the administrator determines the registration
26 statement is not complete in all material respects and
27 promptly notifies the applicant or registrant of that
28 determination. The administrator may also delay effectiveness
29 for a further period of not more than thirty days if the
30 administrator determines that the delay is necessary or
31 appropriate.

32 5. PROSPECTUS DISTRIBUTION MAY BE REQUIRED. A rule
33 adopted or order issued under this chapter may require as a
34 condition of registration under this section that a prospectus
35 containing a specified part of the information or record

1 specified in subsection 2 be sent or given to each person to
2 whom an offer is made, before or concurrently, with the
3 earliest of any of the following:

4 a. The first offer made in a record to the person
5 otherwise than by means of a public advertisement, by or for
6 the account of the issuer or another person on whose behalf
7 the offering is being made or by an underwriter or broker-
8 dealer that is offering part of an unsold allotment or
9 subscription taken by the person as a participant in the
10 distribution.

11 b. The confirmation of a sale made by or for the account
12 of the person.

13 c. Payment pursuant to such a sale.

14 d. Delivery of the security pursuant to such a sale.

15 Sec. 13. NEW SECTION. 502.304A EXPEDITED REGISTRATION BY
16 FILING FOR SMALL ISSUERS.

17 1. REGISTRATION PERMITTED. A security meeting the
18 conditions set forth in this section may be registered by
19 filing as provided in this section.

20 2. CONDITIONS OF THE ISSUER. In order to register under
21 this section, the issuer must meet all of the following
22 conditions:

23 a. The issuer must be a corporation, limited liability
24 company, or partnership organized under the laws of one of the
25 states or possessions of the United States which engages in or
26 proposes to engage in a business other than petroleum
27 exploration or production mining or other extractive
28 industries.

29 b. The securities must be offered and sold only on behalf
30 of the issuer, and must not be used by any selling security
31 holder to register securities for resale.

32 3. CONDITIONS FOR EFFECTIVENESS OF REGISTRATION --
33 REQUIRED RECORDS AND FEE. In order to register under this
34 section, all of the following conditions must be satisfied:

35 a. The offering price for common stock, the exercise price

1 if the securities are options, warrants, or rights for common
2 stock, or the conversion price if the securities are
3 convertible into common stock must be equal to or greater than
4 one dollar per share. The issuer must not split its common
5 stock, or declare a stock dividend, for two years after
6 effectiveness of the registration, except that in connection
7 with a subsequent registered public offering, the issuer may
8 upon application and consent of the administrator take such
9 action.

10 b. A commission, fee, or other remuneration shall not be
11 paid or given, directly or indirectly, for the sale of the
12 securities, except for a payment to a broker-dealer or agent
13 registered under this chapter, or except for a payment as
14 permitted by the administrator by rule or by order issued upon
15 written application showing good cause for allowance of a
16 commission, fee, or other remuneration.

17 c. The issuer or a broker-dealer offering or selling the
18 securities is not or would not be disqualified under rule 505,
19 17 C.F.R. § 230.505(2)(iii), adopted under the Securities Act
20 of 1933.

21 d. The aggregate offering price of the offering of
22 securities by the issuer within or outside this state must not
23 exceed one million dollars, less the aggregate offering price
24 for all securities sold within twelve months before the start
25 of, and during the offering of, the securities under rule 504,
26 17 C.F.R. § 230.504, in reliance on any exemption under
27 section 3(b) of the Securities Act of 1933 or in violation of
28 section 5(a) of that Act; provided, that if rule 504, 17
29 C.F.R. § 230.504, adopted under the Securities Act of 1933, is
30 amended, that the administrator may by rule increase the limit
31 under this paragraph to conform to amendments to federal law,
32 including but not limited to modification in the amount of the
33 aggregate offering price.

34 e. An offering document meeting the disclosure
35 requirements of rule 502(b)(2), 17 C.F.R. § 230.502(b)(2),

1 adopted under the Securities Act of 1933, must be delivered to
2 each purchaser in the state prior to the sale of the
3 securities, unless the administrator by rule or order provides
4 for disclosure different from that rule.

5 f. The issuer must file with the administrator an
6 application for registration and the offering document to be
7 used in connection with the offer and sale of securities.

8 g. The issuer must pay to the administrator a fee of one
9 hundred dollars and is not required to pay the filing fee set
10 forth in section 502.305, subsection 2.

11 4. EFFECTIVENESS OF REGISTRATION. Unless the
12 administrator issues a stop order denying the effectiveness of
13 the registration, as provided in section 502.306, the
14 registration becomes effective on the fifth business day after
15 the registration has been filed with the administrator, or
16 earlier if the administrator permits a shorter time period
17 between registration and effectiveness.

18 5. AGENT REGISTRATION. In connection with an offering
19 registered under this section, a person may be registered as
20 an agent of the issuer under section 502.402 by the filing of
21 an application by the issuer with the administrator for the
22 registration of the person as an agent of the issuer and the
23 paying of a fee of ten dollars. Notwithstanding any other
24 provision of this chapter, the registration of the agent shall
25 be effective until withdrawn by the issuer or until the
26 securities registered pursuant to the registration statement
27 have all been sold, whichever occurs first. The registration
28 of an agent shall become effective when ordered by the
29 administrator or on the fifth business day after the agent's
30 application has been filed with the administrator, whichever
31 occurs first, and the administrator shall not impose further
32 conditions upon the registration of the agent. However, the
33 administrator may deny, revoke, suspend, or withdraw the
34 registration of the agent at any time as provided in section
35 502.412. An agent registered solely pursuant to this section

1 is entitled to sell only securities registered under this
2 section.

3 6. INAPPLICABLE ISSUERS. This section is not applicable
4 to any of the following issuers:

5 a. An investment company, including a mutual fund.

6 b. An issuer subject to the reporting requirements of
7 section 13 or 15(d) of the Securities Exchange Act of 1934.

8 c. A direct participation program, unless otherwise
9 permitted by the administrator by rule or order for good
10 cause.

11 d. A blind pool or other offering for which the specific
12 business or properties cannot now be described, unless the
13 administrator determines that the blind pool is a community
14 development, seed, or venture capital fund for which the
15 administrator permits a waiver.

16 7. LIMITS ON STOP ORDERS. Notwithstanding any other
17 provision of this chapter, the administrator shall not deny
18 effectiveness to or suspend or revoke the effectiveness of a
19 registration under this section on the basis of section
20 502.306, subsection 1, paragraph "h".

21 Sec. 14. Section 502.305, Code 2003, is amended by
22 striking the section and inserting in lieu thereof the
23 following:

24 502.305 SECURITIES REGISTRATION FILINGS.

25 1. WHO MAY FILE. A registration statement may be filed by
26 the issuer, a person on whose behalf the offering is to be
27 made, or a broker-dealer registered under this chapter.

28 2. FILING. Except as provided in subsection 10 and
29 section 502.304A, subsection 3, paragraph "g", a person who
30 files a registration statement or a notice filing shall pay a
31 filing fee of one-tenth of one percent of the proposed
32 aggregate sales price of the securities to be offered to
33 persons in this state pursuant to the registration statement
34 or notice filing. However, except as provided in subsection
35 10, section 502.302, subsection 1, paragraph "a", and section

1 502.304A, subsection 3, paragraph "g", the annual filing fee
2 shall not be less than fifty dollars or more than one thousand
3 dollars. The administrator shall retain the filing fee even
4 if the notice filing is withdrawn or the registration is
5 withdrawn, denied, suspended, revoked, or abandoned.

6 3. STATUS OF OFFERING. A registration statement filed
7 under section 502.303 or 502.304 must specify all of the
8 following:

9 a. The amount of securities to be offered in this state.

10 b. The states in which a registration statement or similar
11 record in connection with the offering has been or is to be
12 filed.

13 c. Any adverse order, judgment, or decree issued in
14 connection with the offering by a state securities regulator,
15 the securities and exchange commission, or a court.

16 4. INCORPORATION BY REFERENCE. A record filed under this
17 chapter or its predecessor chapter within five years preceding
18 the filing of a registration statement may be incorporated by
19 reference in the registration statement to the extent that the
20 record is currently accurate.

21 5. NONISSUER DISTRIBUTION. In the case of a nonissuer
22 distribution, information or a record shall not be required
23 under subsection 9 or section 502.304, unless it is known to
24 the person filing the registration statement or to the person
25 on whose behalf the distribution is to be made or unless it
26 can be furnished by those persons without unreasonable effort
27 or expense.

28 6. ESCROW AND IMPOUNDMENT. A rule adopted or order issued
29 under this chapter may require as a condition of registration
30 that a security issued within the previous five years or to be
31 issued to a promoter for a consideration substantially less
32 than the public offering price or to a person for a
33 consideration other than cash be deposited in escrow; and that
34 the proceeds from the sale of the registered security in this
35 state be impounded until the issuer receives a specified

1 amount from the sale of the security either in this state or
2 elsewhere. The conditions of any escrow or impoundment
3 required under this subsection may be established by rule
4 adopted or order issued under this chapter, but the
5 administrator shall not reject a depository institution solely
6 because of its location in another state.

7 7. FORM OF SUBSCRIPTION. A rule adopted or order issued
8 under this chapter may require as a condition of registration
9 that a security registered under this chapter be sold only on
10 a specified form of subscription or sale contract and that a
11 signed or conformed copy of each contract be filed under this
12 chapter or preserved for a period specified by the rule or
13 order, which shall not be longer than five years.

14 8. EFFECTIVE PERIOD. Except while a stop order is in
15 effect under section 502.306, a registration statement is
16 effective for one year after its effective date, or for any
17 longer period designated in an order issued under this chapter
18 during which the security is being offered or distributed in a
19 nonexempted transaction by or for the account of the issuer or
20 other person on whose behalf the offering is being made or by
21 an underwriter or broker-dealer that is still offering part of
22 an unsold allotment or subscription taken as a participant in
23 the distribution. For the purposes of a nonissuer
24 transaction, all outstanding securities of the same class
25 identified in the registration statement as a security
26 registered under this chapter are considered to be registered
27 while the registration statement is effective. If any
28 securities of the same class are outstanding, a registration
29 statement shall not be withdrawn until one year after its
30 effective date. A registration statement may be withdrawn
31 only with the approval of the administrator.

32 9. PERIODIC REPORTS. While a registration statement is
33 effective, a rule adopted or order issued under this chapter
34 may require the person that filed the registration statement
35 to file reports, not more often than quarterly, to keep the

1 information or other record in the registration statement
2 reasonably current and to disclose the progress of the
3 offering.

4 10. POSTEFFECTIVE AMENDMENTS. A registrant who sold
5 securities to persons in this state in excess of the amount of
6 securities registered in this state at the time of the sale
7 may file an amendment to its registration statement to
8 register the additional securities. All of the following
9 requirements shall apply:

10 a. If a registrant proposes to sell securities to persons
11 in this state pursuant to a registration statement that is
12 currently effective in this state in an amount that exceeds
13 the amount registered in this state, the registrant must do
14 all of the following:

15 (1) File an amendment to register the additional
16 securities.

17 (2) Pay an additional filing fee in the same amount as
18 specified by subsection 2 as though the amendment constitutes
19 a separate issue.

20 b. If a registrant sold securities to persons in this
21 state in excess of the amount registered in this state at that
22 time, the registrant must do all of the following:

23 (1) File an amendment to register the additional
24 securities.

25 (2) Pay an additional filing fee that is three times the
26 amount specified in subsection 2 as though the amendment
27 constitutes a separate issue.

28 The administrator may order the amendment effective
29 retroactively as of the effective date of the registration
30 statement that is being amended.

31 Sec. 15. NEW SECTION. 502.306 DENIAL, SUSPENSION, AND
32 REVOCATION OF SECURITIES REGISTRATION.

33 1. STOP ORDERS. The administrator may issue a stop order
34 denying effectiveness to, or suspending or revoking the
35 effectiveness of, a registration statement if the

1 administrator finds that the order is in the public interest
2 and that any of the following apply:

3 a. The registration statement as of its effective date or
4 before the effective date in the case of an order denying
5 effectiveness, an amendment under section 502.305, subsection
6 10, as of its effective date, or a report under section
7 502.305, subsection 9, is incomplete in a material respect or
8 contains a statement that, in the light of the circumstances
9 under which it was made, was false or misleading with respect
10 to a material fact.

11 b. This chapter or a rule adopted or order issued under
12 this chapter or a condition imposed under this chapter has
13 been willfully violated, in connection with the offering, by
14 the person filing the registration statement; by the issuer, a
15 partner, officer, or director of the issuer or a person having
16 a similar status or performing a similar function; a promoter
17 of the issuer; or a person directly or indirectly controlling
18 or controlled by the issuer; but only if the person filing the
19 registration statement is directly or indirectly controlled by
20 or acting for the issuer; or by an underwriter.

21 c. The security registered or sought to be registered is
22 the subject of a permanent or temporary injunction of a court
23 of competent jurisdiction or an administrative stop order or
24 similar order issued under any federal, foreign, or state law
25 other than this chapter applicable to the offering, but the
26 administrator shall not institute a proceeding against an
27 effective registration statement under this paragraph more
28 than one year after the date of the order or injunction on
29 which it is based, and the administrator shall not issue an
30 order under this paragraph on the basis of an order or
31 injunction issued under the securities act of another state
32 unless the order or injunction was based on conduct that would
33 constitute, as of the date of the order, a ground for a stop
34 order under this section.

35 d. The issuer's enterprise or method of business includes

1 or would include activities that are unlawful where performed.

2 e. With respect to a security sought to be registered
3 under section 502.303, there has been a failure to comply with
4 the undertaking required by section 502.303, subsection 2,
5 paragraph "d".

6 f. The applicant or registrant has not paid the filing
7 fee, but the administrator shall void the order if the
8 deficiency is corrected.

9 g. The offering is subject to any of the following:

10 (1) Will work or tend to work a fraud upon purchasers or
11 would so operate.

12 (2) Has been or would be made with unreasonable amounts of
13 underwriters' and sellers' discounts, commissions, or other
14 compensation, or promoters' profits or participations, or
15 unreasonable amounts or kinds of options.

16 h. The financial condition of the issuer affects or would
17 affect the soundness of the securities, except that
18 applications for registration of securities by companies which
19 are in the development stage shall not be denied based solely
20 upon the financial condition of the company. For purposes of
21 this rule, a "development stage company" is defined as a
22 company which has been in existence for five years or less.

23 i. A person who is an issuer, correspondent, or applicant,
24 as listed on the uniform application to register securities
25 form known as "Form U-1", has abandoned the registration
26 statement. The administrator may enter an order pursuant to
27 this paragraph if a notice of abandonment is sent to the last
28 known address of each person, and the person fails to take
29 corrective action within the time specified by the
30 administrator. The notice of abandonment shall state the
31 reasons for the administrator's action, specify the corrective
32 action required, and specify the time period for submitting a
33 response. However, the time specified shall not be less than
34 fifteen days.

35 2. ENFORCEMENT OF SUBSECTION 1, PARAGRAPH "G". To the

1 extent practicable, the administrator by rule adopted or order
2 issued under this chapter shall publish standards that provide
3 notice of conduct that violates subsection 1, paragraph "g".

4 3. INSTITUTION OF STOP ORDER. The administrator shall not
5 institute a stop order proceeding against an effective
6 registration statement on the basis of conduct or a
7 transaction known to the administrator when the registration
8 statement became effective unless the proceeding is instituted
9 within thirty days after the registration statement became
10 effective.

11 4. SUMMARY PROCESS. The administrator may summarily
12 revoke, deny, postpone, or suspend the effectiveness of a
13 registration statement pending final determination of an
14 administrative proceeding. Upon the issuance of the order,
15 the administrator shall promptly notify each person specified
16 in subsection 5 that the order has been issued, the reasons
17 for the revocation, denial, postponement, or suspension, and
18 that within fifteen days after the receipt of a request in a
19 record from the person the matter will be scheduled for a
20 hearing. If a hearing is not requested and none is ordered by
21 the administrator, within thirty days after the date of
22 service of the order, the order becomes final. If a hearing
23 is requested or ordered, the administrator, after notice of
24 and opportunity for hearing for each person subject to the
25 order, may modify or vacate the order or extend the order
26 until final determination.

27 5. PROCEDURAL REQUIREMENTS FOR STOP ORDER. A stop order
28 shall not be issued under this section without all of the
29 following:

30 a. An appropriate notice to the applicant or registrant,
31 the issuer, and the person on whose behalf the securities are
32 to be or have been offered.

33 b. An opportunity for hearing.

34 c. Findings of fact and conclusions of law in a record in
35 accordance with chapter 17A.

1 3. "Beneficial ownership" includes, but is not limited to,
2 the right, exercisable within sixty days, to acquire
3 securities through the exercise of options, warrants, or
4 rights or the conversion of convertible securities. The
5 securities subject to these options, warrants, rights, or
6 conversion privileges held by a person are outstanding for the
7 purpose of computing the percentage of outstanding securities
8 of the class owned by the person, but are not outstanding for
9 the purpose of computing the percentage of the class owned by
10 any other person.

11 4. "Equity security" means any stock or similar security
12 and includes any of the following:

13 a. Any security convertible, with or without
14 consideration, into a stock or similar security.

15 b. Any warrant or right to subscribe to or purchase a
16 stock or similar security.

17 c. Any security carrying a warrant or right to subscribe
18 to or purchase a stock or similar security.

19 d. Any other security which the administrator deems to be
20 of a similar nature and considers necessary or appropriate,
21 according to rules prescribed by the administrator for the
22 public interest and protection of investors, to be treated as
23 an equity security.

24 5. "Offeree" means the beneficial owner, who is a resident
25 of this state, of equity securities which an offeror offers to
26 acquire in connection with a takeover offer.

27 6. "Offeror" means a person who makes or in any manner
28 participates in making a takeover offer. It does not include
29 a supervised financial institution or broker-dealer loaning
30 funds to an offeror in the ordinary course of its business, or
31 any supervised financial institution, broker-dealer, attorney,
32 accountant, consultant, employee, or other person furnishing
33 information or advice to or performing ministerial duties for
34 an offeror, and who does not otherwise participate in the
35 takeover offer.

1 7. "Principal place of business" means the executive
2 office of a target company from which the officers, partners,
3 or managers of the target company direct, control, and
4 coordinate the activities of the target company.

5 8. a. "Takeover offer" means the offer to acquire any
6 equity securities of a target company from a resident of this
7 state pursuant to a tender offer or request or invitation for
8 tenders, if after the acquisition of all securities acquired
9 pursuant to the offer any of the following are true:

10 (1) The offeror would be directly or indirectly a
11 beneficial owner of more than ten percent of any class of the
12 outstanding equity securities of the target company.

13 (2) The beneficial ownership by the offeror of any class
14 of the outstanding equity securities of the target company
15 would be increased by more than five percent. However, this
16 subparagraph subdivision does not apply if after the
17 acquisition of all securities acquired pursuant to the offer,
18 the offeror would not be directly or indirectly a beneficial
19 owner of more than ten percent of any class of the outstanding
20 equity securities of the target company.

21 b. "Takeover offer" does not include any of the following:

22 (1) An offer in connection with the acquisition of a
23 security which, together with all other acquisitions by the
24 offeror of securities of the same class of equity securities
25 of the target company, would not result in the offeror having
26 acquired more than two percent of this class of securities
27 during the preceding twelve-month period.

28 (2) An offer by the target company to acquire its own
29 equity securities if such offer is subject to section 13(e) of
30 the Securities Exchange Act of 1934.

31 (3) An offer in which the target company is an insurance
32 company or insurance holding company subject to regulation by
33 the commissioner of insurance, a financial institution subject
34 to regulation by the superintendent of banking or the
35 superintendent of savings and loan associations, or a public

1 utility subject to regulation by the utilities division of the
2 department of commerce.

3 9. "Target company" means an issuer of publicly traded
4 equity securities that has at least twenty percent of its
5 equity securities beneficially held by residents of this state
6 and has substantial assets in this state. For the purposes of
7 this chapter, an equity security is publicly traded if a
8 trading market exists for the security. A trading market
9 exists if the security is traded on a national securities
10 exchange, whether or not registered pursuant to the Securities
11 Exchange Act of 1934, or on the over-the-counter market.

12 Sec. 18. NEW SECTION. 502.321B REGISTRATION REQUIREMENTS
13 -- HEARING.

14 1. TAKEOVER FILING REQUIRED. It is unlawful for a person
15 to make a takeover offer or to acquire any equity securities
16 pursuant to the offer unless the offer is valid under this
17 article. A takeover offer is effective when the offeror files
18 with the administrator a registration statement containing the
19 information prescribed in subsection 6. Not later than the
20 date of filing of the registration statement, the offeror
21 shall deliver a copy of the registration statement by
22 certified mail to the target company at its principal place of
23 business and publicly disclose the material terms of the
24 proposed offer. Public disclosure shall require, at a
25 minimum, that a copy of the registration statement be supplied
26 to all broker-dealers maintaining an office in this state
27 currently quoting the security.

28 2. REGISTRATION STATEMENT FILING. The registration
29 statement shall be filed on forms prescribed by the
30 administrator, and shall be accompanied by a consent by the
31 offeror to service of process and filing fee specified in
32 section 502.321G, and contain all of the following
33 information:

34 a. All information specified in subsection 6.

35 b. Two copies of all solicitation materials intended to be

1 used in the takeover offer, and in the form proposed to be
2 published, sent, or delivered to offerees.

3 c. Additional information as prescribed by the
4 administrator by rule, pursuant to chapter 17A, prior to the
5 making of the offer.

6 3. REGISTRATION NOT APPROVAL. Registration shall not be
7 considered approval by the administrator, and any
8 representation to the contrary is unlawful.

9 4. SUSPENSION AUTHORIZED. Within three calendar days of
10 the date of filing of the registration statement, the
11 administrator may, by order, summarily suspend the
12 effectiveness of the takeover offer if the administrator
13 determines that the registration does not contain all of the
14 information specified in subsection 6 or that the takeover
15 offer materials provided to offerees do not provide full
16 disclosure to offerees of all material information concerning
17 the takeover offer. The suspension shall remain in effect
18 only until the determination following a hearing held pursuant
19 to subsection 5.

20 5. HEARING PROCEDURES. A hearing shall be scheduled by
21 the administrator for each suspension provided under this
22 section. The hearing shall be held within ten calendar days
23 of the date of the suspension. The administrator's
24 determination following the hearing shall be made within three
25 calendar days after the hearing has been completed, but not
26 more than sixteen days after the date of the suspension.
27 However, the administrator may prescribe different time
28 periods than those specified in this subsection by rule or
29 order.

30 If, based upon the record of the hearing, the administrator
31 finds that the registration statement fails to provide for
32 full and fair disclosure of all material information
33 concerning the offer, or that the takeover is in violation of
34 any of the provisions of this article, the administrator shall
35 permanently suspend the effectiveness of the takeover offer.

1 The administrator may provide an opportunity for the offeror
2 to correct disclosure and other deficiencies identified by the
3 administrator and to reinstate the takeover offer by filing a
4 new or amended registration statement pursuant to this
5 section.

6 6. REQUIRED INFORMATION. The form required to be filed by
7 subsection 2, paragraph "a", shall contain all of the
8 following information:

9 a. The identity and background of all persons on whose
10 behalf the acquisition of any equity security of the target
11 company has been or is to be effected.

12 b. The source and amount of funds or other consideration
13 used or to be used in acquiring any equity security including,
14 if applicable, a statement describing any securities which are
15 being offered in exchange for the equity securities of the
16 target company. If any part of the acquisition price is or
17 will be represented by borrowed funds or other consideration,
18 the information shall also include a description of the
19 material terms of any financing arrangements and the names of
20 the parties from whom the funds were or are to be borrowed.

21 c. If the offeror is other than a natural person,
22 information concerning its organization and operations,
23 including all of the following:

24 (1) The year, form, and jurisdiction of its organization.

25 (2) A description of each class of equity security and
26 long-term debt.

27 (3) A description of the business conducted by the offeror
28 and its subsidiaries and any material changes in the offeror
29 or subsidiaries during the past three years.

30 (4) A description of the location and character of the
31 principal properties of the offeror and its subsidiaries.

32 (5) A description of any pending and material legal or
33 administrative proceedings in which the offeror or any of its
34 affiliates is a party.

35 (6) The names of all directors and executive officers of

1 the offeror and their material business activities and
2 affiliations during the past five years.

3 (7) The financial statements of the offeror in a form and
4 for periods of time as the administrator may prescribe by rule
5 pursuant to section 17A.4, subsection 1.

6 d. If the offeror is a natural person, information
7 concerning the offeror's identity and background, including
8 business activities and affiliations during the past five
9 years and a description of any pending and material legal or
10 administrative proceedings in which the offeror is a party.

11 e. If the purpose of the acquisition is to gain control of
12 the target company, the material terms of any plans or
13 proposals which the offeror has, upon gaining control, to do
14 any of the following:

15 (1) Liquidate the target company.

16 (2) Sell its assets.

17 (3) Effect its merger or consolidation.

18 (4) Change the location of its principal place of business
19 or of a material portion of its business activities.

20 (5) Change its management or policies of employment.

21 (6) Materially alter its relationship with suppliers or
22 customers or the community in which it operates.

23 (7) Make any other major changes in its business,
24 corporate structure, management, or personnel.

25 (8) Other information which would materially affect the
26 shareholders' evaluation of the acquisition.

27 f. The number of shares or units of any equity security of
28 the target company owned beneficially by the offeror and any
29 affiliate or associate of the offeror, together with the name
30 and address of each affiliate or associate.

31 g. The material terms of any contract, arrangement, or
32 understanding with any other person with respect to the equity
33 securities of the target company by which the offeror has or
34 will acquire any interest in additional equity securities of
35 the target company, or is or will be obligated to transfer any

1 interest in the equity securities to another.

2 h. Information required to be included in a tender offer
3 statement pursuant to section 14(d) of the Securities Exchange
4 Act of 1934 and the rules and regulations of the securities
5 and exchange commission issued pursuant to the Act.

6 Sec. 19. NEW SECTION. 502.321C FILING OF SOLICITATION
7 MATERIALS.

8 Copies of all advertisements, circulars, letters, or other
9 materials disseminated by the offeror or the target company,
10 soliciting or requesting the acceptance or rejection of a
11 takeover offer, shall be filed with the administrator and sent
12 to the target company or offeror not later than the time the
13 solicitation or request materials are first published, sent,
14 or given to the offerees. The administrator may prohibit the
15 use of any materials deemed false or misleading.

16 Sec. 20. NEW SECTION. 502.321D FRAUDULENT, DECEPTIVE, OR
17 MANIPULATIVE ACTS AND PRACTICES PROHIBITED.

18 An offeror, target company, affiliate or associate of an
19 offeror or target company, or broker-dealer acting on behalf
20 of an offeror or target company shall not engage in a
21 fraudulent, deceptive, or manipulative act or practice in
22 connection with a takeover offer. For purposes of this
23 section, a fraudulent, deceptive, or manipulative act or
24 practice includes, but is not limited to, any of the
25 following:

26 1. The publication or use in connection with a takeover
27 offer of a false statement of a material fact, or the omission
28 of a material fact which renders the statements made
29 misleading.

30 2. The purchase of any of the equity securities of an
31 officer, director, or beneficial owner of five percent or more
32 of the equity securities of the target company by the offeror
33 or the target company for a consideration greater than that to
34 be paid to other shareholders, unless the terms of the
35 purchase are disclosed in a registration statement filed

1 pursuant to section 502.321B.

2 3. The refusal by a target company to permit an offeror
3 who is a shareholder of record to examine or copy its list of
4 shareholders, pursuant to the applicable corporation statutes,
5 for the purpose of making a takeover offer.

6 4. The refusal by a target company to mail any
7 solicitation materials published by the offeror to its
8 security holders with reasonable promptness after receipt from
9 the offeror of the materials, together with the reasonable
10 expenses of postage and handling.

11 5. The solicitation of any offeree for acceptance or
12 rejection of a takeover offer, or acquisition of any equity
13 security pursuant to a takeover offer, when the offer is
14 suspended under section 502.321B, provided, however, that the
15 target company may communicate during a suspension with its
16 equity security holders to the extent required to respond to
17 the takeover offer made pursuant to the Securities Exchange
18 Act of 1934.

19 Sec. 21. NEW SECTION. 502.321E LIMITATIONS ON OFFERS AND
20 OFFERORS.

21 1. SAME TERMS REQUIRED. A takeover offer shall contain
22 substantially the same terms for shareholders residing within
23 and outside this state.

24 2. OFFEREE WITHDRAWAL OF SECURITIES. An offeror shall
25 provide that any equity securities of a target company
26 deposited or tendered pursuant to a takeover offer may be
27 withdrawn by or on behalf of an offeree within seven days
28 after the date the offer has become effective and after sixty
29 days from the date the offer has become effective, or as
30 otherwise determined by the administrator pursuant to a rule
31 or order issued for the protection of the shareholders.

32 3. PRO RATA ACCEPTANCE. If an offeror makes a takeover
33 offer for less than all the outstanding equity securities of
34 any class and, within ten days after the offer has become
35 effective and copies of the offer, or notice of any increase

1 in the consideration offered, are first published or sent or
2 given to equity security holders, the number of securities
3 deposited or tendered pursuant to the offer is greater than
4 the number of securities that the offeror has offered to
5 accept and pay for, the securities shall be accepted pro rata,
6 disregarding fractions, according to the number of securities
7 deposited or tendered for each offeree.

8 4. INCREASED CONSIDERATION. If an offeror varies the
9 terms of a takeover offer before the offer's expiration date
10 by increasing the consideration offered to equity security
11 holders, the offeror shall pay the increased consideration for
12 all equity securities accepted, whether the securities have
13 been accepted by the offeror before or after the variation in
14 the terms of the offer.

15 5. PROCEEDINGS -- STOP OFFERS OR ACQUISITIONS. An offeror
16 shall not make a takeover offer or acquire any equity
17 securities in this state pursuant to a takeover offer during
18 the period of time that an administrator's proceeding alleging
19 a violation of this chapter is pending against the offeror.

20 6. PROCEEDINGS -- HALT MOVING OF TARGET COMPANY ASSETS.
21 An offeror shall not acquire, remove, or exercise control,
22 directly or indirectly, over any target company assets located
23 in this state pursuant to a takeover offer during the period
24 of time that an administrator's proceeding alleging a
25 violation of this chapter is pending against the offeror.

26 7. ACQUISITIONS SUBSEQUENT TO TAKEOVER PURCHASES. An
27 offeror shall not acquire from a resident of this state an
28 equity security of any class of a target company at any time
29 within two years following the last purchase of securities
30 pursuant to a takeover offer with respect to that class,
31 including, but not limited to, acquisitions made by purchase,
32 exchange, merger, consolidation, partial or complete
33 liquidation, redemption, reverse stock split,
34 recapitalization, reorganization, or any other similar
35 transaction, unless the holders of the equity securities are

1 afforded, at the time of the acquisition, a reasonable
2 opportunity to dispose of the securities to the offeror upon
3 substantially equivalent terms as those provided in the
4 earlier takeover offer.

5 Sec. 22. NEW SECTION. 502.321F ADMINISTRATION -- RULES
6 AND ORDERS.

7 1. EXEMPTION AUTHORITY. The administrator may by rule or
8 order exempt from any provision of this article the following:

9 a. A proposed takeover offer or a category or type of
10 takeover offer which the administrator determines does not
11 have the purpose or effect of changing or influencing the
12 control of a target company.

13 b. A proposed takeover offer for which the administrator
14 determines that compliance with the sections is not necessary
15 for the protection of the offerees.

16 c. A person from the requirement of filing statements.

17 2. In the event of a conflict between the provisions of
18 chapter 17A and the provisions of this article, the provisions
19 of this article shall prevail.

20 Sec. 23. NEW SECTION. 502.321G FEES.

21 The administrator shall charge a nonrefundable filing fee
22 of two hundred fifty dollars for a registration statement
23 filed by an offeror.

24 Sec. 24. NEW SECTION. 502.321H NONAPPLICATION OF
25 CORPORATE TAKEOVER LAW.

26 If the target company is a public utility, public utility
27 holding company, national banking association, bank holding
28 company, or savings and loan association which is subject to
29 regulation by a federal agency and the takeover of such
30 company is subject to approval by the federal agency, this
31 article does not apply.

32 Sec. 25. NEW SECTION. 502.321I APPLICATION OF SECURITIES
33 LAW.

34 All of the provisions of this chapter which are not in
35 conflict with this article apply to any takeover offer

1 involving a target company.

2 ARTICLE 4

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

6 Sec. 26. Section 502.401, Code 2003, is amended by
7 striking the section and inserting in lieu thereof the
8 following:

9 502.401 BROKER-DEALER REGISTRATION REQUIREMENT AND
10 EXEMPTIONS.

11 1. REGISTRATION REQUIREMENT. It is unlawful for a person
12 to transact business in this state as a broker-dealer unless
13 the person is registered under this chapter as a broker-dealer
14 or is exempt from registration as a broker-dealer under
15 subsection 2 or 4.

16 2. EXEMPTIONS FROM REGISTRATION. The following persons
17 are exempt from the registration requirement of subsection 1:

18 a. A broker-dealer without a place of business in this
19 state if its only transactions effected in this state are with
20 any of the following:

21 (1) The issuer of the securities involved in the
22 transactions.

23 (2) A broker-dealer registered as a broker-dealer under
24 this chapter or not required to be registered as a broker-
25 dealer under this chapter.

26 (3) An institutional investor.

27 (4) A nonaffiliated federal covered investment adviser
28 with investments under management in excess of one hundred
29 million dollars acting for the account of others pursuant to
30 discretionary authority in a signed record.

31 (5) A bona fide preexisting customer whose principal place
32 of residence is not in this state and the broker-dealer is
33 registered as a broker-dealer under the Securities Exchange
34 Act of 1934 or not required to be registered under the
35 Securities Exchange Act of 1934 and is registered under the

1 securities act of the state in which the customer maintains a
2 principal place of residence.

3 (6) A bona fide preexisting customer whose principal place
4 of residence is in this state but was not present in this
5 state when the customer relationship was established, if all
6 of the following apply:

7 (a) The broker-dealer is registered under the Securities
8 Exchange Act of 1934 or not required to be registered under
9 the Securities Exchange Act of 1934 and is registered under
10 the securities laws of the state in which the customer
11 relationship was established and where the customer had
12 maintained a principal place of residence.

13 (b) Within forty-five days after the customer's first
14 transaction in this state, the broker-dealer files an
15 application for registration as a broker-dealer in this state
16 and a further transaction is not effected more than seventy-
17 five days after the date on which the application is filed,
18 or, if earlier, the date on which the administrator notifies
19 the broker-dealer that the administrator has denied the
20 application for registration or has stayed the pendency of the
21 application for good cause.

22 (7) Not more than three customers in this state during the
23 previous twelve months, in addition to those customers
24 specified in this paragraph "a", if the broker-dealer is
25 registered under the Securities Exchange Act of 1934 or not
26 required to be registered under the Securities Exchange Act of
27 1934 and is registered under the securities act of the state
28 in which the broker-dealer has its principal place of
29 business.

30 (8) Any other person exempted by rule adopted or order
31 issued under this chapter.

32 b. A person that deals solely in United States government
33 securities and is supervised as a dealer in government
34 securities by the board of governors of the federal reserve
35 system, the comptroller of the currency, the federal deposit

1 insurance corporation, or the office of thrift supervision.

2 3. LIMITS ON EMPLOYMENT OR ASSOCIATION. It is unlawful
3 for a broker-dealer, or for an issuer engaged in offering,
4 offering to purchase, purchasing, or selling securities in
5 this state, directly or indirectly, to employ or associate
6 with an individual to engage in an activity related to
7 securities transactions in this state if the registration of
8 the individual is suspended or revoked or the individual is
9 barred from employment or association with a broker-dealer, an
10 issuer, an investment adviser, or a federal covered investment
11 adviser by an order of the administrator under this chapter,
12 the securities and exchange commission, or a self-regulatory
13 organization. A broker-dealer or issuer does not violate this
14 subsection if the broker-dealer or issuer did not know, and in
15 the exercise of reasonable care could not have known, of the
16 suspension, revocation, or bar. Upon request from a broker-
17 dealer or issuer and for good cause, an order under this
18 chapter may modify or waive, in whole or in part, the
19 application of the prohibitions of this subsection to the
20 broker-dealer or issuer.

21 4. FOREIGN TRANSACTIONS. A rule adopted or order issued
22 under this chapter may permit any of the following:

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

28 (1) An individual from Canada or other foreign
29 jurisdiction who is temporarily present in this state and with
30 whom the broker-dealer had a bona fide customer relationship
31 before the individual entered the United States.

32 (2) An individual from Canada or other foreign
33 jurisdiction who is present in this state and whose
34 transactions are in a self-directed tax advantaged retirement
35 plan of which the individual is the holder or contributor in

1 that foreign jurisdiction.

2 (3) An individual who is present in this state, with whom
3 the broker-dealer customer relationship arose while the
4 individual was temporarily or permanently residing in Canada
5 or the other foreign jurisdiction.

6 b. An agent who represents a broker-dealer that is exempt
7 under this subsection to effect transactions in securities or
8 attempt to effect the purchase or sale of securities in this
9 state as permitted for a broker-dealer described in paragraph
10 "a".

11 Sec. 27. Section 502.402, Code 2003, is amended by
12 striking the section and inserting in lieu thereof the
13 following:

14 502.402 AGENT REGISTRATION REQUIREMENT AND EXEMPTIONS.

15 1. REGISTRATION REQUIREMENT. It is unlawful for an
16 individual to transact business in this state as an agent
17 unless the individual is registered under this chapter as an
18 agent or is exempt from registration as an agent under
19 subsection 2.

20 2. EXEMPTIONS FROM REGISTRATION. The following
21 individuals are exempt from the registration requirement of
22 subsection 1:

23 a. An individual who represents a broker-dealer in
24 effecting transactions in this state limited to those
25 described in section 15(h)(2) of the Securities Exchange Act
26 of 1934, 15 U.S.C. § 78(o)(2).

27 b. An individual who represents a broker-dealer that is
28 exempt under section 502.401, subsection 2 or 4.

29 c. An individual who represents an issuer with respect to
30 an offer or sale of the issuer's own securities or those of
31 the issuer's parent or any of the issuer's subsidiaries, and
32 who is not compensated in connection with the individual's
33 participation by the payment of commissions or other
34 remuneration based, directly or indirectly, on transactions in
35 those securities.

1 d. An individual who represents an issuer and who effects
2 transactions in the issuer's securities exempted by section
3 502.202, other than section 502.202, subsection 11 or 14.

4 e. An individual who represents an issuer that effects
5 transactions solely in federal covered securities of the
6 issuer, but an individual who effects transactions in a
7 federal covered security under section 18(b)(3) or 18(b)(4)(D)
8 of the Securities Act of 1933, 15 U.S.C. § 77r(b)(3) or
9 77r(b)(4)(D), is not exempt if the individual is compensated
10 in connection with the agent's participation by the payment of
11 commissions or other remuneration based, directly or
12 indirectly, on transactions in those securities.

13 f. An individual who represents a broker-dealer registered
14 in this state under section 502.401, subsection 1, or exempt
15 from registration under section 502.401, subsection 2, in the
16 offer and sale of securities for an account of a nonaffiliated
17 federal covered investment adviser with investments under
18 management in excess of one hundred million dollars acting for
19 the account of others pursuant to discretionary authority in a
20 signed record.

21 g. An individual who represents an issuer in connection
22 with the purchase of the issuer's own securities.

23 h. An individual who represents an issuer and who
24 restricts participation to performing clerical or ministerial
25 acts.

26 i. Any other individual exempted by rule adopted or order
27 issued under this chapter.

28 3. REGISTRATION EFFECTIVE ONLY WHILE EMPLOYED OR
29 ASSOCIATED. The registration of an agent is effective only
30 while the agent is employed by or associated with a broker-
31 dealer registered under this chapter or an issuer that is
32 offering, selling, or purchasing its securities in this state.

33 4. LIMIT ON EMPLOYMENT OR ASSOCIATION. It is unlawful for
34 a broker-dealer, or an issuer engaged in offering, selling, or
35 purchasing securities in this state, to employ or associate

1 with an agent who transacts business in this state on behalf
2 of broker-dealers or issuers unless the agent is registered
3 under subsection 1 or exempt from registration under
4 subsection 2.

5 5. LIMIT ON AFFILIATIONS. An individual shall not act as
6 an agent for more than one broker-dealer or one issuer at a
7 time, unless the broker-dealer or the issuer for which the
8 agent acts is affiliated by direct or indirect common control
9 or is authorized by rule or order under this chapter.

10 Sec. 28. Section 502.403, Code 2003, is amended by
11 striking the sections and inserting in lieu thereof the
12 following:

13 502.403 INVESTMENT ADVISER REGISTRATION REQUIREMENT AND
14 EXEMPTIONS.

15 1. REGISTRATION REQUIREMENT. It is unlawful for a person
16 to transact business in this state as an investment adviser
17 unless the person is registered under this chapter as an
18 investment adviser or is exempt from registration as an
19 investment adviser under subsection 2.

20 2. EXEMPTIONS FROM REGISTRATION. All of the following
21 persons are exempt from the registration requirement of
22 subsection 1:

23 a. A person without a place of business in this state that
24 is registered under the securities act of the state in which
25 the person has its principal place of business if its only
26 clients in this state are any of the following:

27 (1) Federal covered investment advisers, investment
28 advisers registered under this chapter, or broker-dealers
29 registered under this chapter.

30 (2) Institutional investors.

31 (3) Bona fide preexisting clients whose principal places
32 of residence are not in this state if the investment adviser
33 is registered under the securities act of the state in which
34 the clients maintain principal places of residence.

35 (4) Any other client exempted by rule adopted or order

1 issued under this chapter.

2 b. A person without a place of business in this state if
3 the person has had, during the preceding twelve months, not
4 more than five clients that are resident in this state in
5 addition to those specified under paragraph "a".

6 c. Any other person exempted by rule adopted or order
7 issued under this chapter.

8 3. LIMITS ON EMPLOYMENT OR ASSOCIATION. It is unlawful
9 for an investment adviser, directly or indirectly, to employ
10 or associate with an individual to engage in an activity
11 related to investment advice in this state if the registration
12 of the individual is suspended or revoked or the individual is
13 barred from employment or association with an investment
14 adviser, federal covered investment adviser, or broker-dealer
15 by an order under this chapter, the securities and exchange
16 commission, or a self-regulatory organization, unless the
17 investment adviser did not know, and in the exercise of
18 reasonable care could not have known, of the suspension,
19 revocation, or bar. Upon request from the investment adviser
20 and for good cause, the administrator, by order, may waive, in
21 whole or in part, the application of the prohibitions of this
22 subsection to the investment adviser.

23 4. INVESTMENT ADVISER REPRESENTATIVE REGISTRATION
24 REQUIRED. It is unlawful for an investment adviser to employ
25 or associate with an individual required to be registered
26 under this chapter as an investment adviser representative who
27 transacts business in this state on behalf of the investment
28 adviser unless the individual is registered under section
29 502.404, subsection 1, or is exempt from registration under
30 section 502.404, subsection 2.

31 Sec. 29. Section 502.404, Code 2003, is amended by
32 striking the section and inserting in lieu thereof the
33 following:

34 502.404 INVESTMENT ADVISER REPRESENTATIVE REGISTRATION
35 REQUIREMENT AND EXEMPTIONS.

1 1. REGISTRATION REQUIREMENT. It is unlawful for an
2 individual to transact business in this state as an investment
3 adviser representative unless the individual is registered
4 under this chapter as an investment adviser representative or
5 is exempt from registration as an investment adviser
6 representative under subsection 2.

7 2. EXEMPTIONS FROM REGISTRATION. All of the following
8 individuals are exempt from the registration requirement of
9 subsection 1:

10 a. An individual who is employed by or associated with an
11 investment adviser that is exempt from registration under
12 section 502.403, subsection 2, or a federal covered investment
13 adviser that is excluded from the notice filing requirements
14 of section 502.405.

15 b. Any other individual exempted by rule adopted or order
16 issued under this chapter.

17 3. REGISTRATION EFFECTIVE ONLY WHILE EMPLOYED OR
18 ASSOCIATED. The registration of an investment adviser
19 representative is not effective while the investment adviser
20 representative is not employed by or associated with an
21 investment adviser registered under this chapter or a federal
22 covered investment adviser that has made or is required to
23 make a notice filing under section 502.405.

24 4. LIMIT ON AFFILIATIONS. An individual may transact
25 business as an investment adviser representative for more than
26 one investment adviser or federal covered investment adviser
27 unless a rule adopted or order issued under this chapter
28 prohibits or limits an individual from acting as an investment
29 adviser representative for more than one investment adviser or
30 federal covered investment adviser.

31 5. LIMITS ON EMPLOYMENT OR ASSOCIATION. It is unlawful
32 for an individual acting as an investment adviser
33 representative, directly or indirectly, to conduct business in
34 this state on behalf of an investment adviser or a federal
35 covered investment adviser if the registration of the

1 individual as an investment adviser representative is
2 suspended or revoked or the individual is barred from
3 employment or association with an investment adviser or a
4 federal covered investment adviser by an order under this
5 chapter, the securities and exchange commission, or a self-
6 regulatory organization. Upon request from a federal covered
7 investment adviser and for good cause, the administrator, by
8 order issued, may waive, in whole or in part, the application
9 of the requirements of this subsection to the federal covered
10 investment adviser.

11 6. REFERRAL FEES. An investment adviser registered under
12 this chapter, a federal covered investment adviser that has
13 filed a notice under section 502.405, or a broker-dealer
14 registered under this chapter is not required to employ or
15 associate with an individual as an investment adviser
16 representative if the only compensation paid to the individual
17 for a referral of investment advisory clients is paid to an
18 investment adviser registered under this chapter, a federal
19 covered investment adviser who has filed a notice under
20 section 502.405, or a broker-dealer registered under this
21 chapter with whom the individual is employed or associated as
22 an investment adviser representative.

23 Sec. 30. Section 502.405, Code 2003, is amended by
24 striking the section and inserting in lieu thereof the
25 following:

26 502.405 FEDERAL COVERED INVESTMENT ADVISER NOTICE FILING
27 REQUIREMENT.

28 1. NOTICE FILING REQUIREMENT. Except with respect to a
29 federal covered investment adviser described in subsection 2,
30 it is unlawful for a federal covered investment adviser to
31 transact business in this state as a federal covered
32 investment adviser unless the federal covered investment
33 adviser complies with subsection 3.

34 2. NOTICE FILING REQUIREMENT NOT REQUIRED. The following
35 federal covered investment advisers are not required to comply

1 with subsection 3:

2 a. A federal covered investment adviser without a place of
3 business in this state if its only clients in this state are
4 any of the following:

5 (1) Federal covered investment advisers, investment
6 advisers registered under this chapter, and broker-dealers
7 registered under this chapter.

8 (2) Institutional investors.

9 (3) Bona fide preexisting clients whose principal places
10 of residence are not in this state.

11 (4) Other clients specified by rule adopted or order
12 issued under this chapter.

13 b. A federal covered investment adviser without a place of
14 business in this state if the person has had, during the
15 preceding twelve months, not more than five clients that are
16 resident in this state in addition to those specified under
17 paragraph "a".

18 c. Any other person excluded by rule adopted or order
19 issued under this chapter.

20 3. NOTICE FILING PROCEDURE. A person acting as a federal
21 covered investment adviser, not excluded under subsection 2,
22 shall file a notice, a consent to service of process complying
23 with section 502.611, and such records as have been filed with
24 the securities and exchange commission under the Investment
25 Advisers Act of 1940 required by rule adopted or order issued
26 under this chapter and pay the fees specified in section
27 502.410, subsection 5.

28 4. EFFECTIVENESS OF FILING. The notice under subsection 3
29 becomes effective upon its filing.

30 Sec. 31. Section 502.406, Code 2003, is amended by
31 striking the section and inserting in lieu thereof the
32 following:

33 502.406 REGISTRATION BY BROKER-DEALER, AGENT, INVESTMENT
34 ADVISER, AND INVESTMENT ADVISER REPRESENTATIVE.

35 1. APPLICATION FOR INITIAL REGISTRATION. A person shall

1 register as a broker-dealer, agent, investment adviser, or
2 investment adviser representative by filing an application and
3 a consent to service of process complying with section
4 502.611, and paying the fee specified in section 502.410 and
5 any reasonable fees charged by the designee of the
6 administrator for processing the filing. The application must
7 contain all of the following:

8 a. The information or record required for the filing of a
9 uniform application.

10 b. Upon request by the administrator, any other financial
11 or other information or record that the administrator
12 determines is appropriate.

13 2. AMENDMENT. If the information or record contained in
14 an application filed under subsection 1 is or becomes
15 inaccurate or incomplete in a material respect, the registrant
16 shall promptly file a correcting amendment.

17 3. EFFECTIVENESS OF REGISTRATION. If an order is not in
18 effect and a proceeding is not pending under section 502.412,
19 registration becomes effective at noon on the forty-fifth day
20 after a completed application is filed, unless the
21 registration is denied. A rule adopted or order issued under
22 this chapter may set an earlier effective date or may defer
23 the effective date until noon on the forty-fifth day after the
24 filing of any amendment completing the application.

25 4. REGISTRATION RENEWAL. A registration is effective
26 until midnight on December 31 of the year for which the
27 application for registration is filed. Unless an order is in
28 effect under section 502.412, a registration may be
29 automatically renewed each year by filing such records as are
30 required by rule adopted or order issued under this chapter,
31 by paying the fee specified in section 502.410, and by paying
32 costs charged by the designee of the administrator for
33 processing the filings.

34 5. ADDITIONAL CONDITIONS OR WAIVERS. A rule adopted or
35 order issued under this chapter may impose such other

1 conditions, not inconsistent with the National Securities
2 Markets Improvement Act of 1996. An order issued under this
3 chapter may waive, in whole or in part, specific requirements
4 in connection with registration as are in the public interest
5 and for the protection of investors.

6 Sec. 32. Section 502.407, Code 2003, is amended by
7 striking the section and inserting in lieu thereof the
8 following:

9 502.407 SUCCESSION AND CHANGE IN REGISTRATION OF BROKER-
10 DEALER OR INVESTMENT ADVISER.

11 1. SUCCESSION. A broker-dealer or investment adviser may
12 succeed to the current registration of another broker-dealer
13 or investment adviser or a notice filing of a federal covered
14 investment adviser, and a federal covered investment adviser
15 may succeed to the current registration of an investment
16 adviser or notice filing of another federal covered investment
17 adviser, by filing as a successor an application for
18 registration pursuant to section 502.401 or 502.403 or a
19 notice pursuant to section 502.405 for the unexpired portion
20 of the current registration or notice filing.

21 2. ORGANIZATIONAL CHANGE. A broker-dealer or investment
22 adviser that changes its form of organization or state of
23 incorporation or organization may continue its registration by
24 filing an amendment to its registration if the change does not
25 involve a material change in its financial condition or
26 management. The amendment becomes effective when filed or on
27 a date designated by the registrant in its filing. The new
28 organization is a successor to the original registrant for the
29 purposes of this chapter. If there is a material change in
30 financial condition or management, the broker-dealer or
31 investment adviser shall file a new application for
32 registration. A predecessor registered under this chapter
33 shall stop conducting its securities business other than
34 winding down transactions and shall file for withdrawal of
35 broker-dealer or investment adviser registration within forty-

1 five days after filing its amendment to effect succession.

2 3. NAME CHANGE. A broker-dealer or investment adviser
3 that changes its name may continue its registration by filing
4 an amendment to its registration. The amendment becomes
5 effective when filed or on a date designated by the
6 registrant.

7 4. CHANGE OF CONTROL. A change of control of a broker-
8 dealer or investment adviser may be made in accordance with a
9 rule adopted or order issued under this chapter.

10 Sec. 33. Section 502.408, Code 2003, is amended by
11 striking the section and inserting in lieu thereof the
12 following:

13 502.408 TERMINATION OF EMPLOYMENT OR ASSOCIATION OF AGENT
14 AND INVESTMENT ADVISER REPRESENTATIVE AND TRANSFER OF
15 EMPLOYMENT OR ASSOCIATION.

16 1. NOTICE OF TERMINATION. If an agent registered under
17 this chapter terminates employment by or association with a
18 broker-dealer or issuer, or if an investment adviser
19 representative registered under this chapter terminates
20 employment by or association with an investment adviser or
21 federal covered investment adviser, or if either registrant
22 terminates activities that require registration as an agent or
23 investment adviser representative, the broker-dealer, issuer,
24 investment adviser, or federal covered investment adviser
25 shall promptly file a notice of termination. If the
26 registrant learns that the broker-dealer, issuer, investment
27 adviser, or federal covered investment adviser has not filed
28 the notice, the registrant may do so.

29 2. TRANSFER OF EMPLOYMENT OR ASSOCIATION. If an agent
30 registered under this chapter terminates employment by or
31 association with a broker-dealer registered under this chapter
32 and begins employment by or association with another broker-
33 dealer registered under this chapter, or if an investment
34 adviser representative registered under this chapter
35 terminates employment by or association with an investment

1 adviser registered under this chapter or a federal covered
2 investment adviser that has filed a notice under section
3 502.405 and begins employment by or association with another
4 investment adviser registered under this chapter or a federal
5 covered investment adviser that has filed a notice under
6 section 502.405, then upon the filing by or on behalf of the
7 registrant, within thirty days after the termination, of an
8 application for registration that complies with the
9 requirement of section 502.406, subsection 1, and payment of
10 the filing fee required under section 502.410, the
11 registration of the agent or investment adviser representative
12 is one of the following:

13 a. Immediately effective as of the date of the completed
14 filing, if the agent's central registration depository record
15 or successor record or the investment adviser representative's
16 investment adviser registration depository record or successor
17 record does not contain a new or amended disciplinary
18 disclosure within the previous twelve months.

19 b. Temporarily effective as of the date of the completed
20 filing, if the agent's central registration depository record
21 or successor record or the investment adviser representative's
22 investment adviser registration depository record or successor
23 record contains a new or amended disciplinary disclosure
24 within the preceding twelve months.

25 3. WITHDRAWAL OF TEMPORARY REGISTRATION. The
26 administrator may withdraw a temporary registration if there
27 are or were grounds for discipline as specified in section
28 502.412 and the administrator does so within thirty days after
29 the filing of the application. If the administrator does not
30 withdraw the temporary registration within the thirty-day
31 period, registration becomes automatically effective on the
32 thirty-first day after filing.

33 4. POWER TO PREVENT REGISTRATION. The administrator may
34 prevent the effectiveness of a transfer of an agent or
35 investment adviser representative under subsection 2,

1 paragraph "a" or "b", based on the public interest and the
2 protection of investors.

3 5. TERMINATION OF REGISTRATION OR APPLICATION FOR
4 REGISTRATION. If the administrator determines that a
5 registrant or applicant for registration is no longer in
6 existence or has ceased to act as a broker-dealer, agent,
7 investment adviser, or investment adviser representative, or
8 is the subject of an adjudication of incapacity or is subject
9 to the control of a committee, conservator, or guardian, or
10 cannot reasonably be located, a rule adopted or order issued
11 under this chapter may require that the registration be
12 canceled or terminated or the application denied. The
13 administrator may reinstate a canceled or terminated
14 registration, with or without hearing, and may make the
15 registration retroactive.

16 Sec. 34. NEW SECTION. 502.409 WITHDRAWAL OF REGISTRATION
17 OF BROKER-DEALER, AGENT, INVESTMENT ADVISER, AND INVESTMENT
18 ADVISER REPRESENTATIVE.

19 1. WITHDRAWAL OF REGISTRATION. Withdrawal of registration
20 by a broker-dealer, agent, investment adviser, or investment
21 adviser representative becomes effective sixty days after the
22 filing of the application to withdraw or within any shorter
23 period as provided by rule adopted or order issued under this
24 chapter unless a revocation or suspension proceeding is
25 pending when the application is filed. If a proceeding is
26 pending, withdrawal becomes effective when and upon such
27 conditions as required by rule adopted or order issued under
28 this chapter. The administrator may institute a revocation or
29 suspension proceeding under section 502.412 within one year
30 after the withdrawal became effective automatically and issue
31 a revocation or suspension order as of the last date on which
32 registration was effective if a proceeding is not pending.

33 1A. CEASING TO DO BUSINESS AND ABANDONED FILINGS. If the
34 administrator finds that any registrant or applicant for
35 registration is no longer in existence or has ceased to do

1 business as a broker-dealer, agent, investment adviser, or
2 investment adviser representative, or is subject to an
3 adjudication of mental incompetence or to the control of a
4 committee, conservator, or guardian, or cannot be located
5 after search, the administrator may by order revoke the
6 registration or application. If the administrator finds that
7 the applicant for registration or registrant has abandoned the
8 application or registration, the administrator may enter an
9 order of abandonment, and limit or eliminate further
10 consideration of the application or registration, as provided
11 by the administrator. The administrator may enter an order
12 under this subsection if notice is sent to the applicant or
13 registrant, and either the administrator does not receive a
14 response by the applicant or registrant within forty-five days
15 from the date that the notice was delivered, or action is not
16 taken by the applicant or registrant within the time specified
17 by the administrator in the notice, whichever is later.

18 Sec. 35. NEW SECTION. 502.410 FILING FEES.

19 1. BROKER-DEALERS. A person shall pay a fee of two
20 hundred dollars when initially filing an application for
21 registration as a broker-dealer and a fee of two hundred
22 dollars when filing a renewal of registration as a broker-
23 dealer. If the filing results in a denial or withdrawal, the
24 administrator shall retain the fee.

25 2. AGENTS. The fee for an individual is thirty dollars
26 when filing an application for registration as an agent, a fee
27 of thirty dollars when filing a renewal of registration as an
28 agent, and a fee of thirty dollars when filing for a change of
29 registration as an agent. If the filing results in a denial
30 or withdrawal, the administrator shall retain the fee.

31 3. INVESTMENT ADVISERS. A person shall pay a fee of one
32 hundred dollars when filing an application for registration as
33 an investment adviser and a fee of one hundred dollars when
34 filing a renewal of registration as an investment adviser. If
35 the filing results in a denial or withdrawal, the

1 administrator shall retain the fee.

2 4. INVESTMENT ADVISER REPRESENTATIVES. The fee for an
3 individual is thirty dollars when filing an application for
4 registration as an investment adviser representative, a fee of
5 thirty dollars when filing a renewal of registration as an
6 investment adviser representative, and a fee of thirty dollars
7 when filing a change of registration as an investment adviser
8 representative. If the filing results in a denial or
9 withdrawal, the administrator shall retain the fee.

10 However, an investment adviser representative is not
11 required to pay a filing fee if the investment adviser is a
12 sole proprietorship or the substantial equivalent and the
13 investment adviser representative is the same individual as
14 the investment adviser.

15 5. FEDERAL COVERED INVESTMENT ADVISERS. A federal covered
16 investment adviser required to file a notice under section
17 502.405 shall pay an initial fee of one hundred dollars and an
18 annual notice fee of one hundred dollars.

19 6. PAYMENT. A person required to pay a filing or notice
20 fee under this section may transmit the fee through or to a
21 designee as a rule or order provides under this chapter.

22 Sec. 36. NEW SECTION. 502.411 POST-REGISTRATION
23 REQUIREMENTS.

24 1. FINANCIAL REQUIREMENTS. Subject to section 15(h) of
25 the Securities Exchange Act of 1934, 15 U.S.C. § 78o(h), or
26 section 222 of the Investment Advisers Act of 1940, 15 U.S.C.
27 § 80b-22, a rule adopted or order issued under this chapter
28 may establish minimum financial requirements for broker-
29 dealers registered or required to be registered under this
30 chapter and investment advisers registered or required to be
31 registered under this chapter.

32 2. FINANCIAL REPORTS. Subject to section 15(h) of the
33 Securities Exchange Act of 1934, 15 U.S.C. § 78o(h), or
34 section 222(b) of the Investment Advisers Act of 1940, 15
35 U.S.C. § 80b-22, a broker-dealer registered or required to be

1 registered under this chapter and an investment adviser
2 registered or required to be registered under this chapter
3 shall file such financial reports as are required by a rule
4 adopted or order issued under this chapter. If the
5 information contained in a record filed under this subsection
6 is or becomes inaccurate or incomplete in a material respect,
7 the registrant shall promptly file a correcting amendment.
8 The administrator may, by rule, assess a reasonable charge for
9 the late filing of a financial report under this subsection.

10 3. RECORDKEEPING. Subject to section 15(h) of the
11 Securities Exchange Act of 1934, 15 U.S.C. § 78o(h), or
12 section 222 of the Investment Advisers Act of 1940, 15 U.S.C.
13 § 80b-22, all of the following apply:

14 a. A broker-dealer registered or required to be registered
15 under this chapter and an investment adviser registered or
16 required to be registered under this chapter shall make and
17 maintain the accounts, correspondence, memoranda, papers,
18 books, and other records required by rule adopted or order
19 issued under this chapter.

20 b. Broker-dealer records required to be maintained under
21 paragraph "a" may be maintained in any form of data storage
22 acceptable under section 17(a) of the Securities Exchange Act
23 of 1934, 15 U.S.C. § 78q(a), if they are readily accessible to
24 the administrator.

25 c. Investment adviser records required to be maintained
26 under paragraph "a" may be maintained in any form of data
27 storage required by rule adopted or order issued under this
28 chapter.

29 4. AUDITS OR INSPECTIONS. The records of a broker-dealer
30 registered or required to be registered under this chapter and
31 of an investment adviser registered or required to be
32 registered under this chapter are subject to such reasonable
33 periodic, special, or other audits or inspections by a
34 representative of the administrator, within or without this
35 state, as the administrator considers necessary or appropriate

1 in the public interest and for the protection of investors.
2 An audit or inspection may be made at any time and without
3 prior notice. The administrator may copy, and remove for
4 audit or inspection copies of, all records the administrator
5 reasonably considers necessary or appropriate to conduct the
6 audit or inspection. The administrator may assess a
7 reasonable charge for conducting an audit or inspection under
8 this subsection.

9 5. CUSTODY AND DISCRETIONARY AUTHORITY BOND OR INSURANCE.
10 Subject to section 15(h) of the Securities Exchange Act of
11 1934, 15 U.S.C. § 78o(h), or section 222 of the Investment
12 Advisers Act of 1940, 15 U.S.C. § 80b-22, a rule adopted or
13 order issued under this chapter may require a broker-dealer or
14 investment adviser that has custody of or discretionary
15 authority over funds or securities of a customer or client to
16 obtain insurance or post a bond or other satisfactory form of
17 security in an amount the administrator shall prescribe. The
18 administrator may determine the requirements of the insurance,
19 bond, or other satisfactory form of security. Insurance or a
20 bond or other satisfactory form of security shall not be
21 required of a broker-dealer registered under this chapter
22 whose net capital exceeds, or of an investment adviser
23 registered under this chapter whose minimum financial
24 requirements exceed, the amounts required by rule or order
25 under this chapter. The insurance, bond, or other
26 satisfactory form of security must permit an action by a
27 person to enforce any liability on the insurance, bond, or
28 other satisfactory form of security if instituted within the
29 time limitations in section 502.509, subsection 10, paragraph
30 "b".

31 6. REQUIREMENTS FOR CUSTODY. Subject to section 15(h) of
32 the Securities Exchange Act of 1934, 15 U.S.C. § 78o(h), or
33 section 222 of the Investment Advisers Act of 1940, 15 U.S.C.
34 § 80b-22, an agent shall not have custody of funds or
35 securities of a customer except under the supervision of a

1 broker-dealer and an investment adviser representative shall
2 not have custody of funds or securities of a client except
3 under the supervision of an investment adviser or a federal
4 covered investment adviser. A rule adopted or order issued
5 under this chapter may prohibit, limit, or impose conditions
6 on a broker-dealer regarding custody of funds or securities of
7 a customer and on an investment adviser regarding custody of
8 securities or funds of a client.

9 7. INVESTMENT ADVISER BROCHURE RULE. With respect to an
10 investment adviser registered or required to be registered
11 under this chapter, a rule adopted or order issued under this
12 chapter may require that information or other records be
13 furnished or disseminated to clients or prospective clients in
14 this state as necessary or appropriate in the public interest
15 and for the protection of investors and advisory clients.

16 8. CONTINUING EDUCATION. A rule adopted or order issued
17 under this chapter may require an individual registered under
18 section 502.402 or 502.404 to participate in a continuing
19 education program approved by the securities and exchange
20 commission and administered by a self-regulatory organization
21 or, in the absence of such a program, a rule adopted or order
22 issued under this chapter may require continuing education for
23 an individual registered under section 502.404.

24 Sec. 37. NEW SECTION. 502.412 DENIAL, REVOCATION,
25 SUSPENSION, WITHDRAWAL, RESTRICTION, CONDITION, OR LIMITATION
26 OF REGISTRATION.

27 1. DISCIPLINARY CONDITIONS -- APPLICANTS. If the
28 administrator finds that the order is in the public interest
29 and subsection 4 authorizes the action, an order issued under
30 this chapter may deny an application, or may condition or
31 limit registration of an applicant to be a broker-dealer,
32 agent, investment adviser, or investment adviser
33 representative, and, if the applicant is a broker-dealer or
34 investment adviser, of a partner, officer, director, or person
35 having a similar status or performing similar functions, or a

1 person directly or indirectly in control, of the broker-dealer
2 or investment adviser.

3 2. DISCIPLINARY CONDITIONS -- REGISTRANTS. If the
4 administrator finds that the order is in the public interest
5 and subsection 4 authorizes the action, an order issued under
6 this chapter may revoke, suspend, condition, or limit the
7 registration of a registrant and, if the registrant is a
8 broker-dealer or investment adviser, of a partner, officer,
9 director, or person having a similar status or performing
10 similar functions, or a person directly or indirectly in
11 control, of the broker-dealer or investment adviser. However,
12 the administrator shall not do any of the following:

13 a. Institute a revocation or suspension proceeding under
14 this subsection based on an order issued under a law of
15 another state that is reported to the administrator or a
16 designee of the administrator more than one year after the
17 date of the order on which it is based.

18 b. Under subsection 4, paragraph "e", subparagraph (1) or
19 (2), issue an order on the basis of an order issued under the
20 securities act of another state unless the other order was
21 based on conduct for which subsection 4 would authorize the
22 action had the conduct occurred in this state.

23 3. DISCIPLINARY PENALTIES -- REGISTRANTS. If the
24 administrator finds that the order is in the public interest
25 and subsection 4, paragraphs "a" through "f", "h", "i", "j",
26 or "l", and "m", authorizes the action, an order under this
27 chapter may censure, impose a bar, or impose a civil penalty
28 in an amount not to exceed a maximum of five thousand dollars
29 for a single violation or five hundred thousand dollars for
30 more than one violation, on a registrant, and, if the
31 registrant is a broker-dealer or investment adviser, a
32 partner, officer, director, or person having a similar status
33 or performing similar functions, or a person directly or
34 indirectly in control, of the broker-dealer or investment
35 adviser.

1 4. GROUNDS FOR DISCIPLINE. A person may be disciplined
2 under subsections 1 through 3 if any of the following applies:

3 a. The person has filed an application for registration in
4 this state under this chapter or the predecessor chapter
5 within the previous ten years, which, as of the effective date
6 of registration or as of any date after filing in the case of
7 an order denying effectiveness, was incomplete in any material
8 respect or contained a statement that, in light of the
9 circumstances under which it was made, was false or misleading
10 with respect to a material fact.

11 b. The person willfully violated or willfully failed to
12 comply with this chapter or the predecessor chapter or a rule
13 adopted or order issued under this chapter or the predecessor
14 chapter within the previous ten years.

15 c. The person has been convicted of a felony or within the
16 previous ten years has been convicted of a misdemeanor
17 involving a security, a commodity future or option contract,
18 or an aspect of a business involving securities, commodities,
19 investments, franchises, insurance, banking, or finance.

20 d. The person is enjoined or restrained by a court of
21 competent jurisdiction in an action instituted by the
22 administrator under this chapter or the predecessor chapter, a
23 state, the securities and exchange commission, or the United
24 States from engaging in or continuing an act, practice, or
25 course of business involving an aspect of a business involving
26 securities, commodities, investments, franchises, insurance,
27 banking, or finance.

28 e. The person is the subject of an order, issued after
29 notice and opportunity for hearing, by any of the following:

30 (1) The securities or other financial services regulator
31 of a state or the securities and exchange commission or other
32 federal agency denying, revoking, barring, or suspending
33 registration as a broker-dealer, agent, investment adviser,
34 federal covered investment adviser, or investment adviser
35 representative.

1 (2) The securities regulator of a state or the securities
2 and exchange commission against a broker-dealer, agent,
3 investment adviser, investment adviser representative, or
4 federal covered investment adviser.

5 (3) The securities and exchange commission or a self-
6 regulatory organization suspending or expelling the registrant
7 from membership in the self-regulatory organization.

8 (4) A court adjudicating a United States postal service
9 fraud order.

10 (5) The insurance regulator of a state denying,
11 suspending, or revoking registration as an insurance agent or
12 insurance producer.

13 (6) A depository institution regulator or financial
14 services regulator suspending or barring the person from the
15 depository institution or other financial services business.

16 f. The person is the subject of an adjudication or
17 determination, after notice and opportunity for hearing, by
18 the securities and exchange commission, the commodity futures
19 trading commission, the federal trade commission, a federal
20 depository institution regulator, or a depository institution,
21 insurance, or other financial services regulator of a state
22 that the person willfully violated the Securities Act of 1933,
23 the Securities Exchange Act of 1934, the Investment Advisers
24 Act of 1940, the Investment Company Act of 1940, or the
25 Commodity Exchange Act, the securities or commodities law of a
26 state, or a federal or state law under which a business
27 involving investments, franchises, insurance, banking, or
28 finance is regulated.

29 g. The person is insolvent, either because the person's
30 liabilities exceed the person's assets or because the person
31 cannot meet the person's obligations as they mature, but the
32 administrator shall not enter an order against an applicant or
33 registrant under this paragraph without a finding of
34 insolvency as to the applicant or registrant.

35 h. The person refuses to allow or otherwise impedes the

1 administrator from conducting an audit or inspection under
2 section 502.411, subsection 4, or refuses access to a
3 registrant's office to conduct an audit or inspection under
4 section 502.411, subsection 4.

5 i. The person has failed to reasonably supervise an agent,
6 investment adviser representative, or other individual, if the
7 agent, investment adviser representative, or other individual
8 was subject to the person's supervision and committed a
9 violation of this chapter or the predecessor chapter or a rule
10 adopted or order issued under this chapter or the predecessor
11 chapter within the previous ten years.

12 j. The person has not paid the proper filing fee within
13 thirty days after having been notified by the administrator of
14 a deficiency, but the administrator shall vacate an order
15 under this paragraph when the deficiency is corrected.

16 k. The person after notice and opportunity for a hearing
17 has been found within the previous ten years to have done any
18 of the following:

19 (1) By a court of competent jurisdiction to have willfully
20 violated the laws of a foreign jurisdiction under which the
21 business of securities, commodities, investment, franchises,
22 insurance, banking, or finance is regulated.

23 (2) To have been the subject of an order of a securities
24 regulator of a foreign jurisdiction denying, revoking, or
25 suspending the right to engage in the business of securities
26 as a broker-dealer, agent, investment adviser, investment
27 adviser representative, or similar person.

28 (3) To have been suspended or expelled from membership by
29 or participation in a securities exchange or securities
30 association operating under the securities laws of a foreign
31 jurisdiction.

32 1. The person is the subject of a cease and desist order
33 issued by the securities and exchange commission or issued
34 under the securities, commodities, investment, franchise,
35 banking, finance, or insurance laws of a state.

1 m. The person has engaged in dishonest or unethical
2 practices in the securities, commodities, investment,
3 franchise, banking, finance, or insurance business within the
4 previous ten years.

5 n. The person is not qualified on the basis of factors
6 such as training, experience, and knowledge of the securities
7 business. However, in the case of an application by an agent
8 for a broker-dealer that is a member of a self-regulatory
9 organization or by an individual for registration as an
10 investment adviser representative, a denial order shall not be
11 based on this paragraph if the individual has successfully
12 completed all examinations required by subsection 5. The
13 administrator may require an applicant for registration under
14 section 502.402 or 502.404 who has not been registered in a
15 state within the two years preceding the filing of an
16 application in this state to successfully complete an
17 examination.

18 5. EXAMINATIONS. A rule adopted or order issued under
19 this chapter may require that an examination, including an
20 examination developed or approved by an organization of
21 securities regulators, be successfully completed by a class of
22 individuals or all individuals. An order issued under this
23 chapter may waive, in whole or in part, an examination as to
24 an individual and a rule adopted under this chapter may waive,
25 in whole or in part, an examination as to a class of
26 individuals if the administrator determines that the
27 examination is not necessary or appropriate in the public
28 interest and for the protection of investors.

29 6. SUMMARY PROCESS. The administrator may suspend or deny
30 an application summarily; restrict, condition, limit, or
31 suspend a registration; or censure, bar, or impose a civil
32 penalty on a registrant before final determination of an
33 administrative proceeding. Upon the issuance of an order, the
34 administrator shall promptly notify each person subject to the
35 order that the order has been issued, the reasons for the

1 action, and that within fifteen days after the receipt of a
2 request in a record from the person the matter will be
3 scheduled for a hearing. If a hearing is not requested and
4 none is ordered by the administrator within thirty days after
5 the date of service of the order, the order becomes final by
6 operation of law. If a hearing is requested or ordered, the
7 administrator, after notice of and opportunity for hearing to
8 each person subject to the order, may modify or vacate the
9 order or extend the order until final determination. Section
10 17A.18A is inapplicable to a summary order issued under this
11 subsection.

12 7. PROCEDURAL REQUIREMENTS. An order issued shall not be
13 issued under this section, except under subsection 6, without
14 all of the following:

- 15 a. Appropriate notice to the applicant or registrant.
- 16 b. Opportunity for hearing.
- 17 c. Findings of fact and conclusions of law in a record in
18 accordance with chapter 17A.

19 8. CONTROL PERSON LIABILITY. A person that controls,
20 directly or indirectly, a person not in compliance with this
21 section may be disciplined by order of the administrator under
22 subsections 1 through 3 to the same extent as the noncomplying
23 person, unless the controlling person did not know, and in the
24 exercise of reasonable care could not have known, of the
25 existence of conduct that is a ground for discipline under
26 this section.

27 9. LIMIT ON INVESTIGATION OR PROCEEDING. The
28 administrator shall not institute a proceeding under
29 subsection 1, 2, or 3 based solely on material facts actually
30 known by the administrator unless an investigation or the
31 proceeding is instituted within one year after the
32 administrator actually acquires knowledge of the material
33 facts.

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ARTICLE 5
FRAUD AND LIABILITIES

1 Sec. 38. Section 502.501, Code 2003, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 502.501 GENERAL FRAUD.

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

7 1. To employ a device, scheme, or artifice to defraud;

8 2. To make an untrue statement of a material fact or to
9 omit to state a material fact necessary in order to make the
10 statements made, in light of the circumstances under which
11 they were made, not misleading; or

12 3. To engage in an act, practice, or course of business
13 that operates or would operate as a fraud or deceit upon
14 another person.

15 Sec. 39. NEW SECTION. 502.501A PROHIBITED TRANSACTIONS
16 OF BROKER-DEALERS AND AGENTS.

17 A broker-dealer or agent shall not effect a transaction in,
18 or induce or attempt to induce the purchase or sale of, any
19 security in this state by means of any manipulative,
20 deceptive, or other fraudulent scheme, device, or contrivance,
21 fictitious quotation, or in violation of this chapter or any
22 rule adopted or order issued under this chapter. A broker-
23 dealer or agent shall not recommend to a customer the
24 purchase, sale, or exchange of a security without reasonable
25 grounds to believe that the transaction or recommendation is
26 suitable for the customer based upon reasonable inquiry
27 concerning the customer's investment objectives, financial
28 situation and needs, and other relevant information known by
29 the broker-dealer.

30 Sec. 40. Section 502.502, Code 2003, is amended by
31 striking the section and inserting in lieu thereof the
32 following:

33 502.502 PROHIBITED CONDUCT IN PROVIDING INVESTMENT ADVICE.

34 1. FRAUD IN PROVIDING INVESTMENT ADVICE. It is unlawful
35 for a person that advises others for compensation, either

1 directly or indirectly or through publications or writings, as
2 to the value of securities or the advisability of investing
3 in, purchasing, or selling securities or that, for
4 compensation and as part of a regular business, issues or
5 promulgates analyses or reports relating to securities to do
6 any of the following:

7 a. Employ a device, scheme, or artifice to defraud another
8 person.

9 b. Engage in an act, practice, or course of business that
10 operates or would operate as a fraud or deceit upon another
11 person.

12 2. RULES DEFINING FRAUD. A rule adopted under this
13 chapter may define an act, practice, or course of business of
14 an investment adviser or an investment adviser representative,
15 other than a supervised person of a federal covered investment
16 adviser, as fraudulent, deceptive, or manipulative, and
17 prescribe means reasonably designed to prevent investment
18 advisers and investment adviser representatives, other than
19 supervised persons of a federal covered investment adviser,
20 from engaging in acts, practices, and courses of business
21 defined as fraudulent, deceptive, or manipulative.

22 3. RULES SPECIFYING CONTENTS OF ADVISORY CONTRACT. A rule
23 adopted under this chapter may specify the contents of an
24 investment advisory contract entered into, extended, or
25 renewed by an investment adviser.

26 Sec. 41. Section 502.503, Code 2003, is amended by
27 striking the section and inserting in lieu thereof the
28 following:

29 502.503 EVIDENTIARY BURDEN.

30 1. CIVIL. In a civil action or administrative proceeding
31 under this chapter, a person claiming an exemption, exception,
32 preemption, or exclusion has the burden to prove the
33 applicability of the claim.

34 2. CRIMINAL. In a criminal proceeding under this chapter,
35 a person claiming an exemption, exception, preemption, or

1 exclusion has the burden of going forward with evidence of the
2 claim.

3 Sec. 42. Section 502.504, Code 2003, is amended by
4 striking the section and inserting in lieu thereof the
5 following:

6 502.504 FILING OF SALES AND ADVERTISING LITERATURE.

7 1. FILING REQUIREMENT. Except as otherwise provided in
8 subsection 2, a rule adopted or order issued under this
9 chapter may require the filing of a prospectus, pamphlet,
10 circular, form letter, advertisement, sales literature, or
11 other advertising record relating to a security or investment
12 advice, addressed or intended for distribution to prospective
13 investors, including clients or prospective clients of a
14 person registered or required to be registered as an
15 investment adviser under this chapter.

16 2. EXCLUDED COMMUNICATIONS. This section does not apply
17 to sales and advertising literature specified in subsection 1
18 which relates to a federal covered security, a federal covered
19 investment adviser, or a security or transaction exempted by
20 section 502.201, 502.202, or 502.203 except as required
21 pursuant to section 502.201, subsection 7.

22 2A. AUTHORITY TO PROHIBIT FALSE ADVERTISING. The
23 administrator may by rule or order prohibit the publication,
24 circulation, or use of any advertising deemed false or
25 misleading.

26 Sec. 43. Section 502.505, Code 2003, is amended by
27 striking the section and inserting in lieu thereof the
28 following:

29 502.505 MISLEADING FILINGS.

30 It is unlawful for a person to make or cause to be made, in
31 a record that is used in an action or proceeding or filed
32 under this chapter, a statement that, at the time and in the
33 light of the circumstances under which it is made, is false or
34 misleading in a material respect, or, in connection with the
35 statement, to omit to state a material fact necessary to make

1 the statement made, in the light of the circumstances under
2 which it was made, not false or misleading.

3 Sec. 44. Section 502.506, Code 2003, is amended by
4 striking the section and inserting in lieu thereof the
5 following:

6 502.506 MISREPRESENTATIONS CONCERNING REGISTRATION OR
7 EXEMPTION.

8 1. CERTAIN REPRESENTATIONS NOT ALLOWED. The filing of an
9 application for registration, a registration statement, a
10 notice filing under this chapter, the registration of a
11 person, the notice filing by a person, or the registration of
12 a security under this chapter does not constitute a finding by
13 the administrator that a record filed under this chapter is
14 true, complete, and not misleading. The filing or
15 registration or the availability of an exemption, exception,
16 preemption, or exclusion for a security or a transaction does
17 not mean that the administrator has passed upon the merits or
18 qualifications of, or recommended or given approval to, a
19 person, security, or transaction. It is unlawful to make, or
20 cause to be made, to a purchaser, customer, client, or
21 prospective customer or client a representation inconsistent
22 with this section.

23 1A. OFFICIAL ENDORSEMENT PROHIBITED. A state official or
24 employee of the state shall not use such person's name in an
25 official capacity in connection with the endorsement or
26 recommendation of the organization or the promotion of any
27 issuer or in the sale to the public of its securities, and no
28 one shall use the stationery of the state or of any official
29 thereof in connection with any such transaction.

30 Sec. 45. NEW SECTION. 502.506A MISSTATEMENTS IN
31 PUBLICITY PROHIBITED.

32 It is unlawful for any person to make or cause to be made,
33 in any public report or press release, or in other information
34 which is either made generally available to the public or used
35 in opposition to a tender offer, any statement of a material

1 fact relating to a target company or made in connection with a
2 takeover offer which is, at the time and in the light of the
3 circumstances under which it is made, false or misleading, if
4 it is reasonably foreseeable that such statement will induce
5 other persons to buy, sell, or hold securities of the target
6 company.

7 Sec. 46. Section 502.507, Code 2003, is amended by
8 striking the section and inserting in lieu thereof the
9 following:

10 502.507 QUALIFIED IMMUNITY.

11 A broker-dealer, agent, investment adviser, federal covered
12 investment adviser, or investment adviser representative is
13 not liable to another broker-dealer, agent, investment
14 adviser, federal covered investment adviser, or investment
15 adviser representative for defamation relating to a statement
16 that is contained in a record required by the administrator,
17 or designee of the administrator, the securities and exchange
18 commission, or a self-regulatory organization, unless the
19 person knew, or should have known at the time that the
20 statement was made, that it was false in a material respect or
21 the person acted in reckless disregard of the statement's
22 truth or falsity.

23 Sec. 47. NEW SECTION. 502.508 CRIMINAL PENALTIES.

24 1. CRIMINAL PENALTIES.

25 a. Except as provided in paragraph "b", a person who
26 willfully violates any provision of this chapter, or any rule
27 adopted or order issued under this chapter, is guilty of a
28 class "D" felony.

29 b. A person who willfully violates section 502.501 or
30 section 502.502, subsection 1, resulting in a loss of more
31 than ten thousand dollars is guilty of a class "C" felony.

32 2. CRIMINAL REFERENCE NOT REQUIRED. The attorney general
33 or the proper county, with or without a reference from the
34 administrator, may institute criminal proceedings under this
35 chapter.

1 3. NO LIMITATION ON OTHER CRIMINAL ENFORCEMENT. This
2 chapter does not limit the power of this state to punish a
3 person for conduct that constitutes a crime under other laws
4 of this state.

5 Sec. 48. NEW SECTION. 502.509 CIVIL LIABILITY.

6 1. SECURITIES LITIGATION UNIFORM STANDARDS ACT.

7 Enforcement of civil liability under this section is subject
8 to the Securities Litigation Uniform Standards Act of 1998.

9 2. LIABILITY OF SELLER TO PURCHASER. A person is liable
10 to the purchaser if the person sells a security in violation
11 of section 502.301 or, by means of an untrue statement of a
12 material fact or an omission to state a material fact
13 necessary in order to make the statement made, in light of the
14 circumstances under which it is made, not misleading, the
15 purchaser not knowing the untruth or omission and the seller
16 not sustaining the burden of proof that the seller did not
17 know and, in the exercise of reasonable care, could not have
18 known of the untruth or omission. An action under this
19 subsection is governed by the following:

20 a. The purchaser may maintain an action to recover the
21 consideration paid for the security, less the amount of any
22 income received on the security, and interest at the legal
23 rate from the date of the purchase, costs, and reasonable
24 attorney fees determined by the court, upon the tender of the
25 security, or for actual damages as provided in paragraph "c".

26 b. The tender referred to in paragraph "a" may be made any
27 time before entry of judgment. Tender requires only notice in
28 a record of ownership of the security and willingness to
29 exchange the security for the amount specified. A purchaser
30 that no longer owns the security may recover actual damages as
31 provided in paragraph "c".

32 c. Actual damages in an action arising under this
33 subsection are the amount that would be recoverable upon a
34 tender less the value of the security when the purchaser
35 disposed of it, and interest at the legal rate from the date

1 of the purchase, costs, and reasonable attorney fees
2 determined by the court.

3 3. LIABILITY OF PURCHASER TO SELLER. A person is liable
4 to the seller if the person buys a security by means of an
5 untrue statement of a material fact or omission to state a
6 material fact necessary in order to make the statement made,
7 in light of the circumstances under which it is made, not
8 misleading, the seller not knowing of the untruth or omission,
9 and the purchaser not sustaining the burden of proof that the
10 purchaser did not know, and in the exercise of reasonable
11 care, could not have known of the untruth or omission. An
12 action under this subsection is governed by all of the
13 following:

14 a. The seller may maintain an action to recover the
15 security, and any income received on the security, costs, and
16 reasonable attorney fees determined by the court, upon the
17 tender of the purchase price, or for actual damages as
18 provided in paragraph "c".

19 b. The tender referred to in paragraph "a" may be made any
20 time before entry of judgment. Tender requires only notice in
21 a record of the present ability to pay the amount tendered and
22 willingness to take delivery of the security for the amount
23 specified. If the purchaser no longer owns the security, the
24 seller may recover actual damages as provided in paragraph
25 "c".

26 c. Actual damages in an action arising under this
27 subsection are the difference between the price at which the
28 security was sold and the value the security would have had at
29 the time of the sale in the absence of the purchaser's conduct
30 causing liability, and interest at the legal rate from the
31 date of the sale of the security, costs, and reasonable
32 attorney fees determined by the court.

33 4. LIABILITY OF UNREGISTERED BROKER-DEALER AND AGENT. A
34 person acting as a broker-dealer or agent that sells or buys a
35 security in violation of section 502.401, subsection 1,

1 section 502.402, subsection 1, or section 502.506 is liable to
2 the customer. The customer, if a purchaser, may maintain an
3 action for recovery of actual damages as specified in
4 subsection 2, paragraphs "a" through "c", or, if a seller, for
5 a remedy as specified in subsection 3, paragraphs "a" through
6 "c".

7 5. LIABILITY OF UNREGISTERED INVESTMENT ADVISER AND
8 INVESTMENT ADVISER REPRESENTATIVE. A person acting as an
9 investment adviser or investment adviser representative that
10 provides investment advice for compensation in violation of
11 section 502.403, subsection 1, section 502.404, subsection 1,
12 or section 502.506 is liable to the client. The client may
13 maintain an action to recover the consideration paid for the
14 advice, interest at the legal rate from the date of payment,
15 costs, and reasonable attorney fees determined by the court
16 and taxed as court costs.

17 6. LIABILITY FOR INVESTMENT ADVICE. A person that
18 receives directly or indirectly any consideration for
19 providing investment advice to another person and that employs
20 a device, scheme, or artifice to defraud the other person or
21 engages in an act, practice, or course of business that
22 operates or would operate as a fraud or deceit on the other
23 person is liable to the other person. An action under this
24 subsection is governed by all of the following:

25 a. The person defrauded may maintain an action to recover
26 the consideration paid for the advice and the amount of any
27 actual damages caused by the fraudulent conduct, interest at
28 the legal rate from the date of the fraudulent conduct, costs,
29 and reasonable attorney fees determined by the court, less the
30 amount of any income received as a result of the fraudulent
31 conduct.

32 b. This subsection does not apply to a broker-dealer or
33 its agents if the investment advice provided is solely
34 incidental to transacting business as a broker-dealer and no
35 special compensation is received for the investment advice.

1 7. JOINT AND SEVERAL LIABILITY. The following persons are
2 liable jointly and severally with and to the same extent as
3 persons liable under subsections 2 through 6:

4 a. A person that directly or indirectly controls a person
5 liable under subsections 2 through 6, unless the controlling
6 person sustains the burden of proof that the person did not
7 know, and in the exercise of reasonable care could not have
8 known, of the existence of conduct by reason of which the
9 liability is alleged to exist.

10 b. An individual who is a managing partner, executive
11 officer, or director of a person liable under subsections 2
12 through 6, including an individual having a similar status or
13 performing similar functions, unless the individual sustains
14 the burden of proof that the individual did not know and, in
15 the exercise of reasonable care could not have known, of the
16 existence of conduct by reason of which the liability is
17 alleged to exist.

18 c. An individual who is an employee of or associated with
19 a person liable under subsections 2 through 6 or a person,
20 whether an employee of such person or otherwise, who
21 materially aids in the act or transaction constituting the
22 violation, and who materially aids the conduct giving rise to
23 the liability, unless the individual sustains the burden of
24 proof that the individual did not know and, in the exercise of
25 reasonable care could not have known, of the existence of
26 conduct by reason of which the liability is alleged to exist.

27 d. A person that is a broker-dealer, agent, investment
28 adviser, or investment adviser representative that materially
29 aids the conduct giving rise to the liability under
30 subsections 2 through 6, unless the person sustains the burden
31 of proof that the person did not know and, in the exercise of
32 reasonable care could not have known, of the existence of
33 conduct by reason of which liability is alleged to exist.

34 8. RIGHT OF CONTRIBUTION. A person liable under this
35 section has a right of contribution as in cases of contract

1 against any other person liable under this section for the
2 same conduct.

3 9. SURVIVAL OF CAUSE OF ACTION. A cause of action under
4 this section survives the death of an individual who might
5 have been a plaintiff or defendant.

6 10. STATUTE OF LIMITATIONS. A person shall not obtain
7 relief under any of the following:

8 a. Under subsection 2 for violation of section 502.301, or
9 under subsection 4 or 5, unless the action is instituted
10 within one year after the violation occurred.

11 b. Under subsection 2, other than for violation of section
12 502.301, or under subsection 3 or 6, unless the action is
13 instituted within the earlier of two years after discovery of
14 the facts constituting the violation or five years after the
15 violation.

16 11. NO ENFORCEMENT OF VIOLATIVE CONTRACT. A person that
17 has made, or has engaged in the performance of, a contract in
18 violation of this chapter or a rule adopted or order issued
19 under this chapter, or that has acquired a purported right
20 under the contract with knowledge of conduct by reason of
21 which its making or performance was in violation of this
22 chapter, shall not base an action on the contract.

23 12. NO CONTRACTUAL WAIVER. A condition, stipulation, or
24 provision binding a person purchasing or selling a security or
25 receiving investment advice to waive compliance with this
26 chapter or a rule adopted or order issued under this chapter
27 is void.

28 13. SURVIVAL OF OTHER RIGHTS OR REMEDIES. The rights and
29 remedies provided by this chapter are in addition to any other
30 rights or remedies that may exist, but this chapter does not
31 create a cause of action not specified in this section or
32 section 502.411, subsection 5.

33 13A. INFORMATIONAL FILING WITH THE ADMINISTRATOR. A copy
34 of any suit or arbitration action filed under this section
35 shall be served upon the administrator within twenty days of

1 the filing in the form and manner prescribed by the
2 administrator by rule or order, provided that all of the
3 following apply:

4 a. The failure to comply with this provision shall not
5 invalidate the action which is the subject of the suit.

6 b. The suit or arbitration action has not been filed in a
7 record with the central registration depository or the
8 investment adviser registration depository.

9 13B. LIABILITY FOR TAKEOVER VIOLATIONS. Any person who
10 violates section 502.321B shall be liable to the person
11 selling the security to such violator, which seller may sue
12 either at law or in equity to recover the security, costs, and
13 reasonable attorney fees, plus any income or distributions, in
14 cash or in kind, received by the purchaser thereon, upon
15 tender of the consideration received, or for damages if the
16 purchaser no longer owns the security. Damages shall be the
17 excess of the value of the security when the purchaser
18 disposed of it, plus interest at the legal rate from the date
19 of disposition, over the consideration paid for the security.
20 Tender requires only notice of willingness to pay the amount
21 specified in exchange for the security. Any notice may be
22 given by service as in civil actions or by certified mail to
23 the last known address of the person liable.

24 In addition to other remedies provided in this chapter, in
25 a proceeding alleging a violation of article 3A, the court may
26 provide that all shares acquired from a resident of this state
27 in violation of any provision of this chapter or rule or order
28 issued pursuant to this chapter be denied voting rights for
29 one year after acquisition, that the shares be nontransferable
30 on the books of the target company, or that during this one-
31 year period the target company have the option to call the
32 shares for redemption either at the price at which the shares
33 were acquired or at book value per share as of the last day of
34 the fiscal quarter ended prior to the date of the call for
35 redemption, which redemption shall occur on the date set in

1 the call notice but not later than sixty days after the call
2 notice is given.

3 Sec. 49. NEW SECTION. 502.510 RECISION OFFERS.

4 A purchaser, seller, or recipient of investment advice may
5 not maintain an action under section 502.509 if all of the
6 following apply:

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

10 a. An offer stating the respect in which liability under
11 section 502.509 may have arisen and fairly advising the
12 purchaser, seller, or recipient of investment advice of that
13 person's rights in connection with the offer, and any
14 financial or other information necessary to correct all
15 material misrepresentations or omissions in the information
16 that was required by this chapter to be furnished to that
17 person at the time of the purchase, sale, or investment
18 advice.

19 b. If the basis for relief under this section may have
20 been a violation of section 502.509, subsection 2, an offer to
21 repurchase the security for cash, payable on delivery of the
22 security, equal to the consideration paid, and interest at the
23 legal rate from the date of the purchase, less the amount of
24 any income received on the security; or, if the purchaser no
25 longer owns the security, an offer to pay the purchaser upon
26 acceptance of the offer damages in an amount that would be
27 recoverable upon a tender, less the value of the security when
28 the purchaser disposed of it, and interest at the legal rate
29 from the date of the purchase in cash equal to the damages
30 computed in the manner provided in this subsection.

31 c. If the basis for relief under this section may have
32 been a violation of section 502.509, subsection 3, an offer to
33 tender the security, on payment by the seller of an amount
34 equal to the purchase price paid, less income received on the
35 security by the purchaser and interest at the legal rate from

1 the date of the sale; or if the purchaser no longer owns the
2 security, an offer to pay the seller upon acceptance of the
3 offer, in cash, damages in the amount of the difference
4 between the price at which the security was purchased and the
5 value the security would have had at the time of the purchase
6 in the absence of the purchaser's conduct that may have caused
7 liability and interest at the legal rate of interest from the
8 date of the sale.

9 d. If the basis for relief under this section may have
10 been a violation of section 502.509, subsection 4; and if the
11 customer is a purchaser, an offer to pay as specified in
12 paragraph "b"; or, if the customer is a seller, an offer to
13 tender or to pay as specified in paragraph "c".

14 e. If the basis for relief under this section may have
15 been a violation of section 502.509, subsection 3, an offer to
16 reimburse in cash the consideration paid for the advice and
17 interest at the legal rate from the date of payment.

18 f. If the basis for relief under this section may have
19 been a violation of section 502.509, subsection 6, an offer to
20 reimburse in cash the consideration paid for the advice, the
21 amount of any actual damages that may have been caused by the
22 conduct, and interest at the legal rate from the date of the
23 violation causing the loss.

24 2. The offer under subsection 1 states that it must be
25 accepted by the purchaser, seller, or recipient of investment
26 advice within thirty days after the date of its receipt by the
27 purchaser, seller, or recipient of investment advice or any
28 shorter period, of not less than three days, that the
29 administrator, by order, specifies.

30 3. The offeror has the present ability to pay the amount
31 offered or to tender the security under subsection 1.

32 4. The offer under subsection 1 is delivered to the
33 purchaser, seller, or recipient of investment advice, or sent
34 in a manner that ensures receipt by the purchaser, seller, or
35 recipient of investment advice.

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

5 If the basis for relief under this section alleges a
6 violation of section 502.509 which employed a device, scheme,
7 or artifice to defraud, made an untrue statement of a material
8 fact necessary in order to make the statement made, in light
9 of the circumstances under which it was made, not misleading,
10 or engaged in an act, practice, or course of business that
11 operated or would operate as a fraud or deceit on another
12 person, the offer is filed with the administrator ten business
13 days before the offering and conforms in form and content with
14 a rule prescribed by the administrator.

15 ARTICLE 6

16 ADMINISTRATION AND JUDICIAL REVIEW

17 Sec. 50. Section 502.601, Code Supplement 2003, is amended
18 by striking the section and inserting in lieu thereof the
19 following:

20 502.601 ADMINISTRATION.

21 1. ADMINISTRATION. This chapter shall be administered by
22 the commissioner of insurance of this state. The
23 administrator shall appoint a deputy administrator who shall
24 be exempt from the merit system provisions of chapter 8A,
25 subchapter IV. The deputy administrator is the principal
26 operations officer of the securities bureau of the insurance
27 division of the department of commerce. The deputy
28 administrator is responsible to the administrator for the
29 routine administration of this chapter and the management of
30 the securities bureau. In the absence of the administrator,
31 whether because of vacancy in the office, by reason of
32 absence, physical disability, or other cause, the deputy
33 administrator shall be the acting administrator and shall, for
34 that period, have and exercise the authority conferred upon
35 the administrator. The administrator may by order delegate to

1 the deputy administrator any or all of the functions assigned
2 to the administrator under this chapter. The administrator
3 shall employ officers, attorneys, accountants, and other
4 employees as needed for the administration of the chapter.

5 2. UNLAWFUL USE OF RECORDS OR INFORMATION. It is unlawful
6 for the administrator or an officer, employee, or designee of
7 the administrator to use for personal benefit or the benefit
8 of others records or other information obtained by or filed
9 with the administrator that are not public under section
10 502.607, subsection 2. This chapter does not authorize the
11 administrator or an officer, employee, or designee of the
12 administrator to disclose the record or information, except in
13 accordance with section 502.602, section 502.607, subsection
14 3, or section 502.608.

15 3. NO PRIVILEGE OR EXEMPTION CREATED OR DIMINISHED. This
16 chapter does not create or diminish a privilege or exemption
17 that exists at common law, by statute or rule, or otherwise.

18 4. INVESTOR EDUCATION. The administrator may develop and
19 implement investor education initiatives to inform the public
20 about investing in securities, with particular emphasis on the
21 prevention and detection of securities fraud. In developing
22 and implementing these initiatives, the administrator may
23 collaborate with public and nonprofit organizations with an
24 interest in investor education. The administrator may accept
25 a grant or donation from a person that is not affiliated with
26 the securities industry or from a nonprofit organization,
27 regardless of whether the organization is affiliated with the
28 securities industry, to develop and implement investor
29 education initiatives. This subsection does not authorize the
30 administrator to require participation or monetary
31 contributions of a registrant in an investor education
32 program.

33 5. THE SECURITIES INVESTOR EDUCATION AND TRAINING FUND. A
34 securities investor education and training fund is created in
35 the state treasury under the control of the administrator to

1 provide moneys for the purposes specified in subsection 4.
2 All moneys received by the state by reason of civil penalties
3 pursuant to this chapter shall be deposited in the securities
4 investor education and training fund. Notwithstanding section
5 12C.7, interest or earnings on moneys deposited into the fund
6 shall be credited to the fund. Notwithstanding section 8.33,
7 unencumbered or unobligated moneys remaining in the fund shall
8 not revert but shall be available for expenditure for the
9 following fiscal year. However, if, on June 30, unencumbered
10 or unobligated moneys remaining in the fund exceed two hundred
11 thousand dollars, moneys in excess of that amount shall revert
12 to the general fund of the state in the same manner as
13 provided in section 8.33.

14 Sec. 51. Section 502.602, Code 2003, is amended by
15 striking the section and inserting in lieu thereof the
16 following:

17 502.602 INVESTIGATIONS AND SUBPOENAS.

18 1. AUTHORITY TO INVESTIGATE. The administrator may do any
19 of the following:

20 a. Conduct public or private investigations within or
21 outside of this state which the administrator considers
22 necessary or appropriate to determine whether a person has
23 violated, is violating, or is about to violate this chapter or
24 a rule adopted or order issued under this chapter, or to aid
25 in the enforcement of this chapter or in the adoption of rules
26 and forms under this chapter.

27 b. Require or permit a person to testify, file a
28 statement, or produce a record, under oath or otherwise as the
29 administrator determines, as to all the facts and
30 circumstances concerning a matter to be investigated or about
31 which an action or proceeding is to be instituted.

32 c. Notwithstanding section 502.607, subsection 2, publish
33 a record concerning an action, proceeding, or an investigation
34 under, or a violation of, this chapter or a rule adopted or
35 order issued under this chapter if the administrator

1 determines it is necessary or appropriate in the public
2 interest and for the protection of investors.

3 2. ADMINISTRATOR POWERS TO INVESTIGATE. For the purpose
4 of an investigation under this chapter, the administrator or
5 the administrator's designated officer may administer oaths
6 and affirmations, subpoena witnesses, seek compulsion of
7 attendance, take evidence, require the filing of statements,
8 and require the production of any records that the
9 administrator considers relevant or material to the
10 investigation, all of which may be enforced pursuant to
11 chapter 17A.

12 3. PROCEDURE AND REMEDIES FOR NONCOMPLIANCE. If a person
13 does not appear or refuses to testify, file a statement,
14 produce records, or otherwise does not obey a subpoena as
15 required by the administrator under this chapter, the
16 administrator may apply to district court or a court of
17 another state to enforce compliance. The court may do any of
18 the following:

- 19 a. Hold the person in contempt.
- 20 b. Order the person to appear before the administrator.
- 21 c. Order the person to testify about the matter under
22 investigation or in question.
- 23 d. Order the production of records.
- 24 e. Grant injunctive relief, including restricting or
25 prohibiting the offer or sale of securities or the providing
26 of investment advice.
- 27 f. Impose a civil penalty of an amount not to exceed a
28 maximum of five thousand dollars for a single violation or
29 five hundred thousand dollars for more than one violation.
- 30 g. Grant any other necessary or appropriate relief.

31 4. APPLICATION FOR RELIEF. This section does not preclude
32 a person from applying to district court or a court of another
33 state for relief from a request to appear, testify, file a
34 statement, produce records, or obey a subpoena.

35 5. USE IMMUNITY PROCEDURE. An individual is not excused

1 from attending, testifying, filing a statement, producing a
2 record or other evidence, or obeying a subpoena of the
3 administrator under this chapter or in an action or proceeding
4 instituted by the administrator under this chapter on the
5 ground that the required testimony, statement, record, or
6 other evidence, directly or indirectly, may tend to
7 incriminate the individual or subject the individual to a
8 criminal fine, penalty, or forfeiture. If the individual
9 refuses to testify, file a statement, or produce a record or
10 other evidence on the basis of the individual's privilege
11 against self-incrimination, the administrator may apply to the
12 district court to compel the testimony, the filing of the
13 statement, the production of the record, or the giving of
14 other evidence. The testimony, record, or other evidence
15 compelled under such an order shall not be used, directly or
16 indirectly, against the individual in a criminal case, except
17 in a prosecution for perjury or contempt or otherwise failing
18 to comply with the order.

19 6. ASSISTANCE TO SECURITIES REGULATOR OF ANOTHER
20 JURISDICTION. At the request of the securities regulator of
21 another state or a foreign jurisdiction, the administrator may
22 provide assistance if the requesting regulator states that it
23 is conducting an investigation to determine whether a person
24 has violated, is violating, or is about to violate a law or
25 rule of the other state or foreign jurisdiction relating to
26 securities matters that the requesting regulator administers
27 or enforces. The administrator may provide the assistance by
28 using the authority to investigate and the powers conferred by
29 this section as the administrator determines is necessary or
30 appropriate. The assistance may be provided without regard to
31 whether the conduct described in the request would also
32 constitute a violation of this chapter or other law of this
33 state if occurring in this state. In deciding whether to
34 provide the assistance, the administrator may consider whether
35 the requesting regulator is permitted and has agreed to

1 provide assistance reciprocally within its state or foreign
2 jurisdiction to the administrator on securities matters when
3 requested, whether compliance with the request would violate
4 or prejudice the public policy of this state, and the
5 availability of resources and employees of the administrator
6 to carry out the request for assistance.

7 Sec. 52. Section 502.603, Code 2003, is amended by
8 striking the section and inserting in lieu thereof the
9 following:

10 502.603 CIVIL ENFORCEMENT.

11 1. CIVIL ACTION INSTITUTED BY ADMINISTRATOR. If the
12 administrator believes that a person has engaged, is engaging,
13 or is about to engage in an act, practice, or course of
14 business constituting a violation of this chapter or a rule
15 adopted or order issued under this chapter or that a person
16 has, is, or is about to engage in an act, practice, or course
17 of business that materially aids a violation of this chapter
18 or a rule adopted or order issued under this chapter, the
19 administrator may maintain an action in the district court to
20 enjoin the act, practice, or course of business and to enforce
21 compliance with this chapter or a rule adopted or order issued
22 under this chapter.

23 2. RELIEF AVAILABLE. In an action under this section and
24 on a proper showing, the court may do any of the following:

25 a. Issue a permanent or temporary injunction, restraining
26 order, or declaratory judgment.

27 b. Order other appropriate or ancillary relief, which may
28 include any of the following:

29 (1) Ordering an asset freeze, accounting, writ of
30 attachment, writ of general or specific execution, and
31 appointment of a receiver or conservator, that may be the
32 administrator, for the defendant or the defendant's assets.

33 (2) Ordering the administrator to take charge and control
34 of a defendant's property, including investment accounts and
35 accounts in a depository institution, rents, and profits; to

1 collect debts; and to acquire and dispose of property.

2 (3) Imposing a civil penalty not to exceed a maximum of
3 five thousand dollars for a single violation or five hundred
4 thousand dollars for more than one violation; an order of
5 recision, restitution, or disgorgement directed to a person
6 that has engaged in an act, practice, or course of business
7 constituting a violation of this chapter or the predecessor
8 chapter or a rule adopted or order issued under this chapter
9 or the predecessor chapter.

10 (4) Ordering the payment of prejudgment and postjudgment
11 interest.

12 c. Order such other relief as the court considers
13 appropriate.

14 3. NO BOND REQUIRED. The administrator shall not be
15 required to post a bond in an action or proceeding under this
16 chapter.

17 Sec. 53. Section 502.604, Code 2003, is amended by
18 striking the section and inserting in lieu thereof the
19 following:

20 502.604 ADMINISTRATIVE ENFORCEMENT.

21 1. ISSUANCE OF AN ORDER OR NOTICE. If the administrator
22 determines that a person has engaged, is engaging, or is about
23 to engage in an act, practice, or course of business
24 constituting a violation of this chapter or a rule adopted or
25 order issued under this chapter or that a person has
26 materially aided, is materially aiding, or is about to
27 materially aid an act, practice, or course of business
28 constituting a violation of this chapter or a rule adopted or
29 order issued under this chapter, the administrator may do any
30 of the following:

31 a. Issue an order directing the person to cease and desist
32 from engaging in the act, practice, or course of business or
33 to take other action necessary or appropriate to comply with
34 this chapter.

35 b. Issue an order denying, suspending, revoking, or

1 conditioning the exemptions for a broker-dealer under section
2 502.401, subsection 2, paragraph "a", subparagraph (4) or (6),
3 or an investment adviser under section 502.403, subsection 2,
4 paragraph "a", subparagraph (3).

5 c. Issue an order under section 502.204.

6 2. SUMMARY PROCESS. An order under subsection 1 is
7 effective on the date of issuance. Upon issuance of the
8 order, the administrator shall promptly serve each person
9 subject to the order with a copy of the order and a notice
10 that the order has been entered. The order must include a
11 statement of any civil penalty or costs of investigation the
12 administrator will seek, a statement of the reasons for the
13 order, and notice that, within fifteen days after receipt of a
14 request in a record from the person, the matter will be
15 scheduled for a hearing. If a person subject to the order
16 does not request a hearing and none is ordered by the
17 administrator within thirty days after the date of service of
18 the order, the order, including the imposition of a civil
19 penalty or requirement for payment of costs of investigation
20 sought in the order, becomes final as to that person by
21 operation of law. If a hearing is requested or ordered, the
22 administrator, after notice of and opportunity for hearing to
23 each person subject to the order, may modify or vacate the
24 order or extend it until final determination.

25 3. PROCEDURE FOR FINAL ORDER. If a hearing is requested
26 or ordered pursuant to subsection 2, a hearing must be held
27 pursuant to chapter 17A. A final order shall not be issued
28 unless the administrator makes findings of fact and
29 conclusions of law in a record in accordance with chapter 17A.
30 The final order may make final, vacate, or modify the order
31 issued under subsection 1.

32 4. CIVIL PENALTY. In a final order under subsection 3,
33 the administrator may impose a civil penalty up to an amount
34 not to exceed a maximum of five thousand dollars for a single
35 violation or five hundred thousand dollars for more than one

1 violation.

2 5. COSTS. In a final order, the administrator may charge
3 the actual cost of an investigation or proceeding for a
4 violation of this chapter or a rule adopted or order issued
5 under this chapter.

6 6. FILING OF CERTIFIED FINAL ORDER WITH COURT -- EFFECT OF
7 FILING. If a petition for judicial review of a final order is
8 not filed in accordance with section 502.609, the
9 administrator may file a certified copy of the final order
10 with the clerk of a court of competent jurisdiction. The
11 order so filed has the same effect as a judgment of the court
12 and may be recorded, enforced, or satisfied in the same manner
13 as a judgment of the court.

14 7. ENFORCEMENT BY COURT -- FURTHER CIVIL PENALTY. If a
15 person does not comply with an order under this section, the
16 administrator may petition a court of competent jurisdiction
17 to enforce the order. The court shall not require the
18 administrator to post a bond in an action or proceeding under
19 this section. If the court finds, after service and
20 opportunity for hearing, that the person was not in compliance
21 with the order, the court may adjudge the person in civil
22 contempt of the order. The court may impose a further civil
23 penalty against the person for contempt in an amount not less
24 than three thousand dollars but not greater than ten thousand
25 dollars for each violation and may grant any other relief the
26 court determines is just and proper in the circumstances.

27 Sec. 54. Section 502.604A, Code 2003, is amended by
28 striking the section and inserting in lieu thereof the
29 following:

30 502.604A LIMITED LAW ENFORCEMENT AUTHORITY.

31 The administrator or the administrator's designee, when
32 carrying out the provisions of section 502.603 or 502.604, may
33 develop, share, and receive information related to any law
34 enforcement purpose, including any criminal investigation.
35 The administrator or designee shall not have the authority to

1 issue criminal subpoenas or make arrests. The administrator
2 or designee shall not be considered a peace officer, including
3 as provided in chapter 801.

4 Sec. 55. Section 502.605, Code 2003, is amended by
5 striking the section and inserting in lieu thereof the
6 following:

7 502.605 RULES, FORMS, ORDERS, INTERPRETATIVE OPINIONS, AND
8 HEARINGS.

9 1. ISSUANCE AND ADOPTION OF FORMS, ORDERS, AND RULES.

10 Pursuant to chapter 17A, the administrator may do any of the
11 following:

12 a. Issue forms and orders and, after notice and comment,
13 may adopt and amend rules necessary or appropriate to carry
14 out this chapter and may repeal rules, including rules and
15 forms governing registration statements, applications, notice
16 filings, reports, and other records.

17 b. Define terms, whether or not used in this chapter, but
18 those definitions shall not be inconsistent with this chapter.

19 c. Classify securities, persons, and transactions and
20 adopt different requirements for different classes.

21 2. FINDINGS AND COOPERATION. Under this chapter, a rule
22 or form shall not be adopted or amended, or an order issued or
23 amended, unless the administrator finds that the rule, form,
24 order, or amendment is necessary or appropriate in the public
25 interest or for the protection of investors and is consistent
26 with the purposes intended by this chapter. In adopting,
27 amending, and repealing rules and forms, section 502.608
28 applies in order to achieve uniformity among the states and
29 coordination with federal laws in the form and content of
30 registration statements, applications, reports, and other
31 records, including the adoption of uniform rules, forms, and
32 procedures.

33 3. FINANCIAL STATEMENTS. Subject to section 15(h) of the
34 Securities Exchange Act and section 222 of the Investment
35 Advisers Act of 1940, the administrator may require that a

1 financial statement filed under this chapter be prepared in
2 accordance with generally accepted accounting principles in
3 the United States and comply with other requirements specified
4 by rule adopted or order issued under this chapter. A rule
5 adopted or order issued under this chapter may establish any
6 of the following:

7 a. Subject to section 15(h) of the Securities Exchange Act
8 and section 222 of the Investment Advisers Act of 1940, the
9 form and content of financial statements required under this
10 chapter.

11 b. Whether unconsolidated financial statements must be
12 filed.

13 c. Whether required financial statements must be audited
14 by an independent certified public accountant.

15 4. INTERPRETATIVE OPINIONS. The administrator may provide
16 interpretative opinions or issue determinations that the
17 administrator will not institute a proceeding or an action
18 under this chapter against a specified person for engaging in
19 a specified act, practice, or course of business if the
20 determination is consistent with this chapter. A rule adopted
21 or order issued under this chapter may establish a reasonable
22 charge for interpretative opinions or determinations that the
23 administrator will not institute an action or a proceeding
24 under this chapter.

25 5. EFFECT OF COMPLIANCE. A penalty under this chapter
26 shall not be imposed for, and liability does not arise from,
27 conduct that is engaged in or omitted in good faith believing
28 it conforms to a rule, form, or order of the administrator
29 under this chapter.

30 6. PRESUMPTION FOR PUBLIC HEARINGS. A hearing in an
31 administrative proceeding under this chapter must be conducted
32 in public unless the administrator for good cause consistent
33 with this chapter determines that the hearing will not be so
34 conducted.

35 Sec. 56. Section 502.606, Code 2003, is amended by

1 striking the section and inserting in lieu thereof the
2 following:

3 502.606 ADMINISTRATIVE FILES AND OPINIONS.

4 1. PUBLIC REGISTER OF FILINGS. The administrator shall
5 maintain, or designate a person to maintain, a register of
6 applications for registration of securities; registration
7 statements; notice filings; applications for registration of
8 broker-dealers, agents, investment advisers, and investment
9 adviser representatives; notice filings by federal covered
10 investment advisers that are or have been effective under this
11 chapter or the predecessor chapter; notices of claims of
12 exemption from registration or notice filing requirements
13 contained in a record; orders issued under this chapter or the
14 predecessor chapter; and interpretative opinions or no action
15 determinations issued under this chapter.

16 2. PUBLIC AVAILABILITY. The administrator shall make all
17 rules, forms, interpretative opinions, and orders available to
18 the public.

19 3. COPIES OF PUBLIC RECORDS. The administrator shall
20 furnish a copy of a record that is a public record or a
21 certification that the public record does not exist to a
22 person that so requests. A rule adopted under this chapter
23 may establish a reasonable charge for furnishing the record or
24 certification. A copy of the record certified or a
25 certificate by the administrator of a record's nonexistence is
26 prima facie evidence of a record or its nonexistence.

27 Sec. 57. Section 502.607, Code 2003, is amended by
28 striking the section and inserting in lieu thereof the
29 following:

30 502.607 PUBLIC RECORDS -- CONFIDENTIALITY.

31 1. PRESUMPTION OF PUBLIC RECORDS. Except as otherwise
32 provided in subsection 2, records obtained by the
33 administrator or filed under this chapter, including a record
34 contained in or filed with a registration statement,
35 application, notice filing, or report, are public records and

1 are available for public examination.

2 2. NONPUBLIC RECORDS. Notwithstanding chapter 22, the
3 following records are not public records and are not available
4 for public examination under subsection 1:

5 a. A record obtained by the administrator in connection
6 with an audit or inspection under section 502.411, subsection
7 4, or an investigation under section 502.602.

8 b. A part of a record filed in connection with a
9 registration statement under sections 502.301 and 502.303
10 through 502.305 or a record under section 502.411, subsection
11 4, that contains trade secrets or confidential information if
12 the person filing the registration statement or report has
13 asserted a claim of confidentiality or privilege that is
14 authorized by law.

15 c. A record that is not required to be provided to the
16 administrator or filed under this chapter and is provided to
17 the administrator only on the condition that the record will
18 not be subject to public examination or disclosure.

19 d. A nonpublic record received from a person specified in
20 section 502.608, subsection 1.

21 e. Any social security number, residential address unless
22 used as a business address, and residential telephone number
23 unless used as a business telephone number, contained in a
24 record that is filed.

25 f. A record obtained by the administrator through a
26 designee that the administrator determines by rule or order
27 has been appropriately expunged from its own records by that
28 designee, if the administrator finds that such expungement is
29 in the public interest and does not impair investor
30 protection.

31 3. ADMINISTRATOR DISCRETION TO DISCLOSE. If disclosure is
32 for the purpose of a civil, administrative, or criminal
33 investigation, action, or proceeding or to a person specified
34 in section 502.608, subsection 1, the administrator may
35 disclose a record obtained in connection with an audit or

1 inspection under section 502.411, subsection 4, or a record
2 obtained in connection with an investigation under section
3 502.602.

4 Sec. 58. Section 502.608, Code 2003, is amended by
5 striking the section and inserting in lieu thereof following:

6 502.608 UNIFORMITY AND COOPERATION WITH OTHER AGENCIES.

7 1. OBJECTIVE OF UNIFORMITY. The administrator shall, in
8 its discretion, cooperate, coordinate, consult, and, subject
9 to section 502.607, share records and information with the
10 securities regulator of another state, Canada, a Canadian
11 province or territory, a foreign jurisdiction, the securities
12 and exchange commission, the United States department of
13 justice, the commodity futures trading commission, the federal
14 trade commission, the securities investor protection
15 corporation, a self-regulatory organization, a national or
16 international organization of securities regulators, a federal
17 or state banking and insurance regulator, and a governmental
18 law enforcement agency to effectuate greater uniformity in
19 securities matters among the federal government, self-
20 regulatory organizations, states, and foreign governments.

21 2. POLICIES TO CONSIDER. In cooperating, coordinating,
22 consulting, and sharing records and information under this
23 section and in acting by rule, order, or waiver under this
24 chapter, the administrator shall, in its discretion, take into
25 consideration in carrying out the public interest, all of the
26 following general policies:

27 a. Maximizing effectiveness of regulation for the
28 protection of investors.

29 b. Maximizing uniformity in federal and state regulatory
30 standards.

31 c. Minimizing burdens on the business of capital
32 formation, without adversely affecting essentials of investor
33 protection.

34 3. SUBJECTS FOR COOPERATION. The cooperation,
35 coordination, consultation, and sharing of records and

1 information authorized by this section includes all of the
2 following:

- 3 a. Establishing or employing one or more designees as a
4 central depository for registration and notice filings under
5 this chapter and for records required or allowed to be
6 maintained under this chapter.
- 7 b. Developing and maintaining uniform forms.
- 8 c. Conducting a joint examination or investigation.
- 9 d. Holding a joint administrative hearing.
- 10 e. Instituting and prosecuting a joint civil or
11 administrative proceeding.
- 12 f. Sharing and exchanging personnel.
- 13 g. Coordinating registrations under sections 502.301 and
14 502.401 through 502.404 and exemptions under section 502.203.
- 15 h. Sharing and exchanging records, subject to section
16 502.607.
- 17 i. Formulating rules, statements of policy, guidelines,
18 forms, and interpretative opinions and releases.
- 19 j. Formulating common systems and procedures.
- 20 k. Notifying the public of proposed rules, forms,
21 statements of policy, and guidelines.
- 22 l. Attending conferences and other meetings among
23 securities regulators, which may include representatives of
24 governmental and private sector organizations involved in
25 capital formation, deemed necessary or appropriate to promote
26 or achieve uniformity.
- 27 m. Developing and maintaining a uniform exemption from
28 registration for small issuers, and taking other steps to
29 reduce the burden of raising investment capital by small
30 businesses.

31 Sec. 59. Section 502.609, Code 2003, is amended by
32 striking the section and inserting in lieu thereof the
33 following:

34 502.609 JUDICIAL REVIEW OF ORDERS.

35 A final order issued by the administrator under this

1 chapter is subject to judicial review in accordance with
2 chapter 17A.

3 Sec. 60. Section 502.610, Code 2003, is amended by
4 striking the section the inserting in lieu thereof the
5 following:

6 502.610 JURISDICTION.

7 1. SALES AND OFFERS TO SELL. Sections 502.301, 502.302,
8 502.401, subsection 1, 502.402, subsection 1, 502.403,
9 subsection 1, 502.404, subsection 1, 502.501, 502.506,
10 502.509, and 502.510 do not apply to a person that sells or
11 offers to sell a security unless the offer to sell or the sale
12 is made in this state or the offer to purchase or the purchase
13 is made and accepted in this state.

14 2. PURCHASES AND OFFERS TO PURCHASE. Sections 502.401,
15 subsection 1, 502.402, subsection 1, 502.403, subsection 1,
16 502.404, subsection 1, 502.501, 502.506, 502.509, and 502.510
17 do not apply to a person that purchases or offers to purchase
18 a security unless the offer to purchase or the purchase is
19 made in this state or the offer to sell or the sale is made
20 and accepted in this state.

21 3. OFFERS IN THIS STATE. For the purpose of this section,
22 an offer to sell or to purchase a security is made in this
23 state, whether or not either party is then present in this
24 state, if any of the following apply to the offer:

25 a. The offer originates from within this state.

26 b. The offer is directed by the offeror to a place in this
27 state and received at the place to which it is directed.

28 4. ACCEPTANCES IN THIS STATE. For the purpose of this
29 section, an offer to purchase or to sell is accepted in this
30 state, whether or not either party is then present in this
31 state, if all of the following apply to the acceptance:

32 a. The acceptance is communicated to the offeror in this
33 state and the offeree reasonably believes the offeror to be
34 present in this state and the acceptance is received at the
35 place in this state to which it is directed.

1 b. The acceptance has not previously been communicated to
2 the offeror, orally or in a record, outside this state.

3 5. PUBLICATIONS, RADIO, TELEVISION, OR ELECTRONIC
4 COMMUNICATIONS. An offer to sell or to purchase is not made
5 in this state when a publisher circulates or there is
6 circulated on the publisher's behalf in this state a bona fide
7 newspaper or other publication of general, regular, and paid
8 circulation that is not published in this state, or that is
9 published in this state but has had more than two-thirds of
10 its circulation outside this state during the previous twelve
11 months or when a radio or television program or other
12 electronic communication originating outside this state is
13 received in this state. A radio or television program, or
14 other electronic communication, is considered as having
15 originated in this state if either the broadcast studio or the
16 originating source of transmission is located in this state,
17 unless any of the following apply:

18 a. The program or communication is syndicated and
19 distributed from outside this state for redistribution to the
20 general public in this state.

21 b. The program or communication is supplied by a radio,
22 television, or other electronic network with the electronic
23 signal originating from outside this state for redistribution
24 to the general public in this state.

25 c. The program or communication is an electronic
26 communication that originates outside this state and is
27 captured for redistribution to the general public in this
28 state by a community antenna or cable, radio, cable
29 television, or other electronic system.

30 d. The program or communication consists of an electronic
31 communication that originates in this state, but which is not
32 intended for distribution to the general public in this state.

33 6. INVESTMENT ADVICE AND MISREPRESENTATIONS. Sections
34 502.403, subsection 1, 502.404, subsection 1, 502.405,
35 subsection 1, 502.502, 502.505, and 502.506 apply to a person

1 if the person engages in an act, practice, or course of
2 business instrumental in effecting prohibited or actionable
3 conduct in this state, whether or not either party is then
4 present in this state.

5 Sec. 61. Section 502.611, Code 2003, is amended by
6 striking the section and inserting in lieu thereof the
7 following:

8 502.611 SERVICE OF PROCESS.

9 1. SIGNED CONSENT TO SERVICE OF PROCESS. A consent to
10 service of process required by this chapter must be signed and
11 filed in the form required by a rule or order under this
12 chapter. A consent appointing the administrator the person's
13 agent for service of process in a noncriminal action or
14 proceeding against the person, or the person's successor or
15 personal representative under this chapter or a rule adopted
16 or order issued under this chapter after the consent is filed,
17 has the same force and validity as if the service were made
18 personally on the person filing the consent. A person that
19 has filed a consent complying with this subsection in
20 connection with a previous application for registration or
21 notice filing need not file an additional consent.

22 2. CONDUCT CONSTITUTING APPOINTMENT OF AGENT FOR SERVICE.

23 If a person, including a nonresident of this state, engages in
24 an act, practice, or course of business prohibited or made
25 actionable by this chapter or a rule adopted or order issued
26 under this chapter and the person has not filed a consent to
27 service of process under subsection 1, the act, practice, or
28 course of business constitutes the appointment of the
29 administrator as the person's agent for service of process in
30 a noncriminal action or proceeding against the person or the
31 person's successor or personal representative.

32 3. PROCEDURE FOR SERVICE OF PROCESS. Service under
33 subsection 1 or 2 may be made by providing a copy of the
34 process to the office of the administrator, but it is not
35 effective unless all of the following apply:

1 a. The plaintiff, which may be the administrator, promptly
2 sends notice of the service and a copy of the process, return
3 receipt requested, to the defendant or respondent at the
4 address set forth in the consent to service of process or, if
5 a consent to service of process has not been filed, at the
6 last known address, or takes other reasonable steps to give
7 notice.

8 b. The plaintiff files an affidavit of compliance with
9 this subsection in the action or proceeding on or before the
10 return day of the process, if any, or within the time that the
11 court, or the administrator in a proceeding before the
12 administrator, allows.

13 4. SERVICE IN ADMINISTRATIVE PROCEEDINGS OR CIVIL ACTIONS
14 BY ADMINISTRATOR. Service pursuant to subsection 3 may be
15 used in a proceeding before the administrator or by the
16 administrator in a civil action in which the administrator is
17 the moving party.

18 5. OPPORTUNITY TO DEFEND. If process is served under
19 subsection 3, the court, or the administrator in a proceeding
20 before the administrator, shall order continuances as are
21 necessary or appropriate to afford the defendant or respondent
22 reasonable opportunity to defend.

23 Sec. 62. NEW SECTION. 502.612 SEVERABILITY CLAUSE.

24 If any provision of this chapter or its application to any
25 person or circumstances is held invalid, the invalidity does
26 not affect other provisions or applications of this chapter
27 that can be given effect without the invalid provision or
28 application, and to this end the provisions of this chapter
29 are severable.

30 Sec. 63. Sections 502.205 through 502.218, 502.502A,
31 502.603A, and 502.604B, Code 2003, are repealed.

32 DIVISION II

33 TRANSITION PROVISIONS

34 Sec. 64. APPLICATION OF ACT TO EXISTING PROCEEDING AND
35 EXISTING RIGHTS AND DUTIES.

1 1. APPLICABILITY OF PREDECESSOR CHAPTER TO PENDING
2 PROCEEDINGS AND EXISTING RIGHTS. The predecessor chapter 502
3 exclusively governs all actions or proceedings that are
4 pending on the effective date of this Act or may be instituted
5 on the basis of conduct occurring before the effective date of
6 this Act, but a civil action shall not be maintained to
7 enforce any liability under the predecessor chapter unless
8 instituted within any period of limitation that applied when
9 the cause of action accrued or within five years after the
10 effective date of this Act, whichever is earlier.

11 2. CONTINUED EFFECTIVENESS UNDER PREDECESSOR CHAPTER. All
12 effective registrations under the predecessor chapter 502, all
13 administrative orders relating to the registrations, rules,
14 statements of policy, interpretative opinions, declaratory
15 rulings, no action determinations, and conditions imposed on
16 the registrations under the predecessor chapter 502 remain in
17 effect while they would have remained in effect if this Act
18 had not been enacted. They are considered to have been filed,
19 issued, or imposed under chapter 502 as amended by this Act,
20 but are exclusively governed by the predecessor chapter 502.

21 3. APPLICABILITY OF PREDECESSOR CHAPTER TO OFFERS OR
22 SALES. The predecessor chapter 502 exclusively applies to an
23 offer or sale made within one year after the effective date of
24 this Act pursuant to an offering made in good faith before the
25 effective date of this Act on the basis of an exemption
26 available under the predecessor chapter 502.

27 DIVISION III

28 CONFORMING CHANGES

29 Sec. 65. Section 22.7, subsection 42, Code Supplement
30 2003, is amended to read as follows:

31 42. Information obtained by the commissioner of insurance
32 in the course of an investigation as provided in section
33 ~~502-603~~, 523B.87 or 523C.23.

34 42A. Information obtained by the commissioner of insurance
35 pursuant to section 502.607.

1 Sec. 66. Section 507B.14, unnumbered paragraph 1, Code
2 2003, is amended to read as follows:

3 When a controlling interest in two or more corporations, at
4 least one of which is an insurance company domiciled in this
5 state, is held by any person, group of persons, firm, or
6 corporation, no exchange of stock, transfer or sale of
7 securities, or loan based upon securities of any such
8 corporation shall take place between such corporations, or
9 between such person, group of persons, firm or corporation and
10 such corporations, without first securing the approval of the
11 insurance commissioner. If, in the opinion of the insurance
12 commissioner, such sale, transfer, exchange, or loan would be
13 improper and would work to the detriment of any such insurance
14 company, the commissioner shall have the power to prohibit the
15 transaction. Any A person, firm, or corporate officer or
16 director ~~aiding~~ shall not aid such transaction carried-out
17 without approval of the insurance commissioner ~~shall be~~
18 deemed. A person, firm, or other corporate officer or
19 director who willfully violates this provision is guilty of a
20 class "D" felony and-upon-conviction-punished-as-provided-in
21 section-502-605. A person, firm, or corporate officer or
22 director who willfully violates this provision, and when such
23 violation results in a loss of more than ten thousand dollars,
24 is guilty of a class "C" felony.

25 Sec. 67. Section 536A.22, unnumbered paragraph 2, Code
26 2003, is amended to read as follows:

27 The total amount of such thrift certificates, installment
28 thrift certificates, certificates of indebtedness, promissory
29 notes, or similar evidences of indebtedness outstanding and in
30 the hands of the general public shall not at any time exceed
31 ten times the total amount of capital, surplus, undivided
32 profits, and subordinated debt that gives priority to such
33 securities of the issuing industrial loan company. The sale
34 of such securities is subject to the provisions of chapter 502
35 and rules adopted by the superintendent of banking pursuant to

1 chapter 17A, ~~and shall not be construed to be exempt by reason~~
2 ~~of the provisions of section 502.202, subsection 10,~~ except
3 that the sale of thrift certificates or installment thrift
4 certificates which are redeemable by the holder either upon
5 demand or within a period not in excess of five years are
6 exempt from sections 502.201 and ~~502.602~~ 502.504.

7 DIVISION IV

8 EFFECTIVE DATE

9 Sec. 68. This Act takes effect January 1, 2005.

10 EXPLANATION

11 This bill provides for the regulation of securities.
12 Generally, these regulations are designed to protect investors
13 from fraudulent sales of securities. Securities law is
14 governed under both federal and state law, including the
15 Securities Act of 1933 and the Securities Exchange Act of
16 1934, and are regulated by the United States securities and
17 exchange commission. Iowa has adopted the Iowa uniform
18 securities Act, model legislation popularly known as the "Blue
19 Sky Law", which was developed by the national conference of
20 commissioners on uniform state laws. The Iowa blue sky law is
21 codified in Code chapter 502 and regulated by the securities
22 bureau of the insurance division of the department of
23 commerce.

24 The bill substantially revises every provision of Code
25 chapter 502. It is based on a new version of model
26 legislation as recommended by the commissioners and referred
27 to as the uniform securities Act (2002). The new uniform act
28 provides state securities regulators authority to investigate,
29 prosecute, and sanction individuals and firms that engage in
30 securities transactions, in a manner that is consistent with
31 current federal law, including with the federal National
32 Securities Markets Improvement Act (NSMIA), enacted in 1996,
33 which has preempted some state regulatory authority.

34 The bill regulates public offerings of securities by
35 issuers and control persons must be registered. Second,

1 broker-dealers and their agents, and investment advisers and
2 their representatives, must be registered. Third, fraud in
3 securities transactions is prohibited and enforcement powers
4 are given to an appropriate regulatory agency. These powers
5 include the ability to make rules and regulations, issue stop
6 orders, bring criminal prosecutions, and pursue civil actions
7 in court. The 2002 uniform securities Act brings all of these
8 regulatory provisions up-to-date with expansion of enforcement
9 authority at the state level. Division I of the bill includes
10 all of the following:

11 ARTICLE 1. This article includes general provisions,
12 including definitions, a reference to federal statutes and
13 federal agencies, and provisions governing electronic records
14 and signatures.

15 ARTICLE 2. This article provides exemptions from
16 registration of securities, including by providing for both
17 exempt securities and exempt transactions and waivers. It
18 also provides for the denial, suspension, revocation,
19 conditioning, or limitations on exemptions for securities
20 regulation.

21 ARTICLE 3. This article provides for the registration of
22 securities and notice filing of federal covered securities.
23 It provides for security registration requirements, notice
24 filing, securities registration by coordination or
25 qualification, security registration filings, and the denial,
26 suspension, or revocation of registrations. It also provides
27 for waivers and modifications.

28 ARTICLE 3A. This is a special Iowa article which includes
29 takeover provisions, including by providing for registration
30 requirements, the filing of solicitation materials,
31 prohibiting fraudulent, deceptive, or manipulative practices,
32 proving limitations of offers and offerors, administration,
33 its application to public utilities and financial
34 institutions, and the application of securities law.

35 ARTICLE 4. This article regulates broker-dealers, agents,

1 investment advisers, investment adviser representatives, and
2 federal covered investment advisers. The article provides for
3 registration requirements and exemptions for broker-dealers,
4 agents, and investment adviser representatives. It also
5 provides for federal covered investment adviser notice filing
6 requirements. The article provides for succession and changes
7 in the registration of broker-dealers or investment advisers,
8 for the termination of employment or association of agents and
9 investment adviser representatives, and for related transfers
10 of employment or association. It provides for the withdrawal
11 of registration of broker-dealers, agents, investment
12 advisers, and investment adviser representatives. It provides
13 for filing fees, as well as postregistration requirements.
14 Finally, the article provides for the denial, revocation,
15 suspension, withdrawal, restriction, condition, or limitation
16 of registration.

17 ARTICLE 5. This article relates to fraud and liabilities.
18 It provides for general fraud and prohibited conduct in
19 providing investment advice. It sets forth an evidentiary
20 burden, provides for the filing of sales and advertising
21 literature, and prohibits misleading filings and
22 misrepresentations concerning registration or exemptions. The
23 article also provides for qualified immunity, criminal
24 penalties, civil liability, and rescission offers.

25 ARTICLE 6. This article provides for administration and
26 judicial review. It provides generally for administration of
27 the bill's provisions, investigations and subpoenas, and civil
28 and administrative enforcement. It also includes special
29 provisions governing rules, forms, orders, interpretative
30 opinions, and hearings. It provides for public records and
31 their confidentiality. The article provides for uniformity
32 and cooperation with other agencies. It includes provisions
33 governing judicial review. The article also provides
34 provisions governing jurisdiction, service of process, and
35 includes a severability clause.

1 Division II of the bill provides for the transition of
2 administration. These include applicability of the bill's new
3 provisions to existing proceedings and existing rights and
4 duties.

5 Division III of the bill contains provisions in other
6 chapters that conform to changes made by the bill.

7 The bill takes effect January 1, 2005.

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**Fiscal Services Division
Legislative Services Agency
Fiscal Note**

HF 2409 – Uniform Securities Act (LSB 5212 HV)
Analyst: Ron Robinson (Phone: (515) 281-6256) (ron.robinson@legis.state.ia.us)
Fiscal Note Version - New

Description

House File 2409 provides for the regulation of securities and providing penalties.

Section 47 of the Bill adds Section 502.508 and makes a willful violation of the Uniform Securities Act punishable as a Class "D" Felony or a Class "C" Felony if the loss involves more than \$10,000.

Assumptions

1. The addition of Section 502.508, Code of Iowa, clarifies current law.
2. The Iowa Justice Data Warehouse indicates that there were no convictions in FY 2003 and two convictions in FY 2002 for current violations of the Uniform Securities Act.
3. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
4. Prisoner length of stay, revocation rates, and other corrections' practices and policies will not change over the projection period.
5. The law will become effective January 1, 2005. A lag of six months is assumed, from the effective date of the change in the law to the date of first entry of affected offenders into the correctional system.
6. The analysis is based on information obtained from the Justice Data Warehouse, which includes statewide court and Community-Based Corrections (CBC) information. Conviction and penalty information is based on FY 2003 data.
7. The addition of Section 502.508, Code of Iowa, will lead to no additional convictions under HF 2409.
8. There is no readily available data with which to predict the number of violations involving the Uniform Securities Act that will be issued under HF 2409.

Correctional Impact

House File 2409 will have no significant correctional impact.

Fiscal Impact

The fiscal impact of HF 2409 cannot be determined due to insufficient information; however, the impact is not expected to be significant.

To the extent that additional violations are prosecuted due to a violation of the Uniform Securities Act, the following are average State costs associated with imposing criminal penalties for one conviction:

- Class D Felony: Minimum is \$1,700 (court costs and probation). Maximum for person crimes is \$12,000 and \$8,100 for crimes not against a person (court costs with a jury, indigent defense, prison, and parole).
- Class C Felony: Minimum is \$3,000 (court costs, probation, and indigent defense). Maximum for person crimes is \$23,000 and \$11,000 for crimes not against a person (court costs with a jury, prison, parole, and indigent defense).

Sources

Department of Commerce, Insurance Division

Office of the Attorney General

Department of Human Rights, Criminal and Juvenile Justice Planning Division

Dennis C Prouty

March 3, 2004

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

HOFFMAN, CH
WILDERDYKE
OLSON

Succeeded By
SF 2409
and 2557

HSB 648

COMMERCE, REGULATION & LABOR
SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
COMMERCE/INSURANCE
DIVISION BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for the regulation of securities, providing for
2 fees and penalties, and providing an effective date.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I
UNIFORM SECURITIES ACT
ARTICLE 1
GENERAL PROVISIONS

Section 1. Section 502.102, Code Supplement 2003, is amended by striking the section and inserting in lieu thereof the following:

502.102 DEFINITIONS.

In this chapter, unless the context otherwise requires:

1. "Administrator" means the commissioner of insurance or the deputy appointed pursuant to section 502.601.

2. "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions, is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this chapter.

2A. "Agricultural cooperative association" means an entity which is structured and operated on a cooperative basis pursuant to 26 U.S.C. § 1381(a) and which meets the definitional requirement of an association as provided in 12 U.S.C. § 1141j(c) or 7 U.S.C. § 291, if the association is organized as any one of the following:

a. A farmers cooperative association as defined in section 10.1.

b. An association of persons organized pursuant to chapter 497 for purposes of conducting an agricultural or dairy business on a cooperative plan, as described in section 497.1.

c. A cooperative association organized pursuant to chapter 498 for purposes of conducting an agricultural, livestock, horticultural, or dairy business on a cooperative plan and

1 acting as a cooperative selling agency, as described in
2 section 498.2.

3 d. An agricultural association as defined in section 499.2
4 and organized pursuant to chapter 499.

5 e. A cooperative organized under chapter 501 which may
6 acquire or otherwise obtain or lease agricultural land in this
7 state as provided in section 501.103.

8 f. Any other entity which is organized on a cooperative
9 basis under the laws of this state for the purpose of engaging
10 in the activities of an agricultural association as defined in
11 section 499.2.

12 3. "Bank" means any of the following:

13 a. A banking institution organized under the laws of the
14 United States.

15 b. A member bank of the United States federal reserve
16 system.

17 c. Any other banking institution, whether incorporated or
18 not, doing business under the laws of a state or of the United
19 States, a substantial portion of the business of which
20 consists of receiving deposits or exercising fiduciary powers
21 similar to those permitted to be exercised by national banks
22 under the authority of the office of the comptroller of the
23 currency of the United States pursuant to Pub. L. No. 87-722,
24 § 1, 12 U.S.C. § 92a, and which is supervised and examined by
25 a state or federal agency having supervision over banks, and
26 which is not operated for the purpose of evading this chapter.

27 d. A receiver, conservator, or other liquidating agent of
28 any institution or firm included in paragraph "a", "b", or
29 "c".

30 4. "Broker-dealer" means a person engaged in the business
31 of effecting transactions in securities for the account of
32 others or for the person's own account. The term does not
33 include any of the following:

34 a. An agent.

35 b. An issuer.

1 c. A bank or savings institution if its activities as a
2 broker-dealer are limited to those specified in section
3 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if
4 limited to unsolicited transactions, and in subsections
5 3(a)(5)(B), and 3(a)(5)(C) of the Securities Exchange Act of
6 1934, 15 U.S.C. § 78c(a)(4) and (5); or a bank that satisfies
7 the conditions described in section 3(a)(4)(E) of the
8 Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(4).

9 d. An international banking institution.

10 e. A person excluded by rule adopted or order issued under
11 this chapter.

12 5. "Depository institution" means any of the following:

13 a. A bank.

14 b. A savings institution, trust company, credit union, or
15 similar institution that is organized or chartered under the
16 laws of a state or of the United States, authorized to receive
17 deposits, and supervised and examined by an official or agency
18 of a state or the United States if its deposits or share
19 accounts are insured to the maximum amount authorized by
20 statute by the federal deposit insurance corporation, the
21 national credit union share insurance fund, or a successor
22 authorized by federal law. The term does not include any of
23 the following:

24 (1) An insurance company or other organization primarily
25 engaged in the business of insurance.

26 (2) A Morris plan bank.

27 (3) An industrial loan company.

28 6. "Federal covered investment adviser" means a person
29 registered under the Investment Advisers Act of 1940.

30 7. "Federal covered security" means a security that is, or
31 upon completion of a transaction will be, a covered security
32 under section 18(b) of the Securities Act of 1933, 15 U.S.C. §
33 77r(b), or rules or regulations adopted pursuant to that
34 provision.

35 8. "Filing" means the receipt under this chapter of a

1 record by the administrator or a designee of the
2 administrator.

3 9. "Fraud", "deceit", and "defraud" are not limited to
4 common law deceit.

5 10. "Guaranteed" means guaranteed as to payment of all
6 principal and all interest.

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

10 a. A depository institution or international banking
11 institution.

12 b. An insurance company.

13 c. A separate account of an insurance company.

14 d. An investment company as defined in the Investment
15 Company Act of 1940.

16 e. A broker-dealer registered under the Securities
17 Exchange Act of 1934.

18 f. An employee pension, profit-sharing, or benefit plan if
19 the plan has total assets in excess of five million dollars or
20 its investment decisions are made by a named fiduciary, as
21 defined in the Employee Retirement Income Security Act of
22 1974, that is a broker-dealer registered under the Securities
23 Exchange Act of 1934, an investment adviser registered or
24 exempt from registration under the Investment Advisers Act of
25 1940, an investment adviser registered under this chapter, a
26 depository institution, or an insurance company.

27 g. A plan established and maintained by a state, a
28 political subdivision of a state, or an agency or
29 instrumentality of a state or a political subdivision of a
30 state for the benefit of its employees, if the plan has total
31 assets in excess of five million dollars or its investment
32 decisions are made by a duly designated public official or by
33 a named fiduciary, as defined in the Employee Retirement
34 Income Security Act of 1974, that is a broker-dealer
35 registered under the Securities Exchange Act of 1934, an

1 investment adviser registered or exempt from registration
2 under the Investment Advisers Act of 1940, an investment
3 adviser registered under this chapter, a depository
4 institution, or an insurance company.

5 h. A trust, if it has total assets in excess of five
6 million dollars, its trustee is a depository institution, and
7 its participants are exclusively plans of the types identified
8 in paragraph "f" or "g", regardless of the size of their
9 assets, except a trust that includes as participants self-
10 directed individual retirement accounts or similar self-
11 directed plans.

12 i. An organization described in section 501(c)(3) of the
13 Internal Revenue Code, 26 U.S.C. § 501(c)(3), corporation,
14 Massachusetts trust or similar business trust, limited
15 liability company, or partnership, not formed for the specific
16 purpose of acquiring the securities offered, with total assets
17 in excess of five million dollars.

18 j. A small business investment company licensed by the
19 small business administration under section 301(c) of the
20 Small Business Investment Act of 1958, 15 U.S.C. § 681(c),
21 with total assets in excess of five million dollars.

22 k. A private business development company as defined in
23 section 202(a)(22) of the Investment Advisers Act of 1940, 15
24 U.S.C. § 80b-2(a)(22), with total assets in excess of five
25 million dollars.

26 l. A federal covered investment adviser acting for its own
27 account.

28 m. A "qualified institutional buyer" as defined in Rule
29 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted by the
30 securities and exchange commission under the Securities Act of
31 1933, 17 C.F.R. § 230.144A.

32 n. A "major U.S. institutional investor" as defined in
33 Rule 15a-6(b)(4)(i) adopted by the securities and exchange
34 commission under the Securities Exchange Act of 1934, 17
35 C.F.R. § 240.15a-6.

1 o. Any other person, other than an individual, of
2 institutional character with total assets in excess of five
3 million dollars not organized for the specific purpose of
4 evading this chapter.

5 p. Any other person specified by rule adopted or order
6 issued under this chapter.

7 12. "Insurance company" means a company organized as an
8 insurance company whose primary business is writing insurance
9 or reinsuring risks underwritten by insurance companies and
10 which is subject to supervision by the insurance commissioner
11 or a similar official or agency of a state.

12 13. "Insured" means insured as to payment of all principal
13 and all interest.

14 13A. "Interest at the legal rate" means the interest rate
15 for judgments specified in section 535.3.

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

20 15. "Investment adviser" means a person that, for
21 compensation, engages in the business of advising others,
22 either directly or through publications or writings, as to the
23 value of securities or the advisability of investing in,
24 purchasing, or selling securities or that, for compensation
25 and as a part of a regular business, issues or promulgates
26 analyses or reports concerning securities. The term includes
27 a financial planner or other person that, as an integral
28 component of other financially related services, provides
29 investment advice to others for compensation as part of a
30 business or that holds itself out as providing investment
31 advice to others for compensation. The term does not include
32 any of the following:

33 a. An investment adviser representative.

34 b. A lawyer, accountant, engineer, or teacher whose
35 performance of investment advice is solely incidental to the

1 practice of the person's profession.

2 c. A broker-dealer or its agents whose performance of
3 investment advice is solely incidental to the conduct of
4 business as a broker-dealer and who does not receive special
5 compensation for the investment advice.

6 d. A publisher of a bona fide newspaper, news magazine, or
7 business or financial publication of general and regular
8 circulation.

9 e. A federal covered investment adviser.

10 f. A bank or savings institution.

11 g. Any other person that is excluded by the Investment
12 Advisers Act of 1940 from the definition of investment
13 adviser.

14 h. Any other person excluded by rule adopted or order
15 issued under this chapter.

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

28 a. Performs only clerical or ministerial acts.

29 b. Is an agent whose performance of investment advice is
30 solely incidental to the individual acting as an agent and who
31 does not receive special compensation for investment advisory
32 services.

33 c. Is employed by or associated with a federal covered
34 investment adviser, unless the individual has a "place of
35 business" in this state as that term is defined by rule

1 adopted by the securities and exchange commission under
2 section 203A of the Investment Advisers Act of 1940, 15 U.S.C.
3 § 80b-3a, and is any of the following:

4 (1) An "investment adviser representative" as that term is
5 defined by rule adopted under section 203A of the Investment
6 Advisers Act of 1940, 15 U.S.C. § 80b-3a.

7 (2) Not a "supervised person" as that term is defined in
8 Section 202(a)(25) of the Investment Advisers Act of 1940, 15
9 U.S.C. § 80b-2(a)(25).

10 d. Is excluded by rule adopted or order issued under this
11 chapter.

12 17. "Issuer" means a person that issues or proposes to
13 issue a security, subject to all of the following:

14 a. The issuer of a voting trust certificate, collateral
15 trust certificate, certificate of deposit for a security, or
16 share in an investment company without a board of directors or
17 individuals performing similar functions is the person
18 performing the acts and assuming the duties of depositor or
19 manager pursuant to the trust or other agreement or instrument
20 under which the security is issued.

21 b. The issuer of an equipment trust certificate or similar
22 security serving the same purpose is the person by which the
23 property is or will be used or to which the property or
24 equipment is or will be leased or conditionally sold or that
25 is otherwise contractually responsible for assuring payment of
26 the certificate.

27 c. The issuer of a fractional undivided interest in an
28 oil, gas, or other mineral lease or in payments out of
29 production under a lease, right, or royalty is the owner of an
30 interest in the lease or in payments out of production under a
31 lease, right, or royalty, whether whole or fractional, that
32 creates fractional interests for the purpose of sale.

33 d. With respect to a viatical settlement contract,
34 "issuer" means a person involved in creating, transferring, or
35 selling to an investor any interest in such a contract,

1 including but not limited to fractional or pooled interests,
2 but does not include an agent or a broker-dealer.

3 18. "Nonissuer transaction" or "nonissuer distribution"
4 means a transaction or distribution not directly or indirectly
5 for the benefit of the issuer.

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

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

16 21. "Place of business" of a broker-dealer, an investment
17 adviser, or a federal covered investment adviser means any of
18 the following:

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

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

28 22. "Predecessor chapter" means this chapter as it existed
29 on December 31, 2004.

30 23. "Price amendment" means the amendment to a
31 registration statement filed under the Securities Act of 1933
32 or, if an amendment is not filed, the prospectus or prospectus
33 supplement filed under the Securities Act of 1933 that
34 includes a statement of the offering price, underwriting and
35 selling discounts or commissions, amount of proceeds,

1 conversion rates, call prices, and other matters dependent
2 upon the offering price.

3 24. "Principal place of business" of a broker-dealer or an
4 investment adviser means the executive office of the broker-
5 dealer or investment adviser from which the officers,
6 partners, or managers of the broker-dealer or investment
7 adviser direct, control, and coordinate the activities of the
8 broker-dealer or investment adviser.

9 25. "Record", except in the phrases "of record", "official
10 record", and "public record", means information that is
11 inscribed on a tangible medium or that is stored in an
12 electronic or other medium and is retrievable in perceivable
13 form.

14 26. "Sale" includes every contract of sale, contract to
15 sell, or disposition of, a security or interest in a security
16 for value, and "offer to sell" includes every attempt or offer
17 to dispose of, or solicitation of an offer to purchase, a
18 security or interest in a security for value. Both terms
19 include all of the following:

20 a. A security given or delivered with, or as a bonus on
21 account of, a purchase of securities or any other thing
22 constituting part of the subject of the purchase and having
23 been offered and sold for value.

24 b. A gift of assessable stock involving an offer and sale.

25 c. A sale or offer of a warrant or right to purchase or
26 subscribe to another security of the same or another issuer
27 and a sale or offer of a security that gives the holder a
28 present or future right or privilege to convert the security
29 into another security of the same or another issuer, including
30 an offer of the other security.

31 27. "Securities and exchange commission" means the United
32 States securities and exchange commission.

33 27A. "Securities bureau" means the securities bureau of
34 the insurance division of the department of commerce.

35 28. "Security" means a note; stock; treasury stock;

1 security future; bond; debenture; evidence of indebtedness;
2 certificate of interest or participation in a profit-sharing
3 agreement; collateral trust certificate; preorganization
4 certificate or subscription; transferable share; investment
5 contract; voting trust certificate; certificate of deposit for
6 a security; fractional undivided interest in oil, gas, or
7 other mineral rights; put, call, straddle, option, or
8 privilege on a security, certificate of deposit, or group or
9 index of securities, including an interest therein or based on
10 the value thereof; put, call, straddle, option, or privilege
11 entered into on a national securities exchange relating to
12 foreign currency; or, in general, an interest or instrument
13 commonly known as a "security"; or a certificate of interest
14 or participation in, temporary or interim certificate for,
15 receipt for, guarantee of, or warrant or right to subscribe to
16 or purchase, any of the foregoing. All of the following shall
17 apply to the term:

18 a. It includes both a certificated and an uncertificated
19 security.

20 b. It does not include an insurance or endowment policy or
21 annuity contract under which an insurance company promises to
22 pay a fixed or variable sum of money either in a lump sum or
23 periodically for life or other specified period.

24 c. It does not include any of the following:

25 (1) An interest in a contributory or noncontributory
26 pension or welfare plan subject to the Employee Retirement
27 Income Security Act of 1974.

28 (2) A certificate or tax credit issued or transferred
29 pursuant to chapter 15E, division VII.

30 d. It includes an investment in a common enterprise with
31 the expectation of profits to be derived primarily from the
32 efforts of a person other than the investor and a "common
33 enterprise" means an enterprise in which the fortunes of the
34 investor are interwoven with those of either the person
35 offering the investment, a third party, or other investors.

1 e. It includes as a security an interest in a limited
 2 liability company or in a limited liability partnership or any
 3 class or series of such interest, including any fractional or
 4 other interest in such interest, provided "security" does not
 5 include an interest in a limited liability company or a
 6 limited liability partnership if the person claiming that such
 7 an interest is not a security proves that all of the members
 8 of the limited liability company or limited liability
 9 partnership are actively engaged in the management of the
 10 limited liability company or limited liability partnership;
 11 provided that the evidence that members vote or have the right
 12 to vote, or the right to information concerning the business
 13 and affairs of the limited liability company or limited
 14 liability partnership, or the right to participate in
 15 management, shall not establish, without more, that all
 16 members are actively engaged in the management of the limited
 17 liability company or limited liability partnership.

18 f. It includes a viatical settlement investment contract.

19 29. "Self-regulatory organization" means a national
 20 securities exchange registered under the Securities Exchange
 21 Act of 1934, a national securities association of broker-
 22 dealers registered under the Securities Exchange Act of 1934,
 23 a clearing agency registered under the Securities Exchange Act
 24 of 1934, or the municipal securities rulemaking board
 25 established under the Securities Exchange Act of 1934.

26 30. "Sign" means, with present intent to authenticate or
 27 adopt a record, to do any of the following:

- 28 a. To execute or adopt a tangible symbol.
- 29 b. To attach or logically associate with the record an
- 30 electronic symbol, sound, or process.

31 31. "State" means a state of the United States, the
 32 District of Columbia, Puerto Rico, the United States Virgin
 33 Islands, or any territory or insular possession subject to the
 34 jurisdiction of the United States.

35 31A. "Viatical settlement investment contract" means a

1 contract entered into by a viatical settlement purchaser, to
2 which the viator is not a party, to purchase a life insurance
3 policy or an interest in the death benefits of a life
4 insurance policy, which contract is entered into for the
5 purpose of deriving economic benefit.

6 Sec. 2. NEW SECTION. 502.103 REFERENCES TO FEDERAL
7 STATUTES.

8 "Securities Act of 1933", 15 U.S.C. § 77a et seq. ;
9 "Securities Exchange Act of 1934", 15 U.S.C. § 78a et seq. ;
10 "Public Utility Holding Company Act of 1935", 15 U.S.C. § 79
11 et seq. ; "Investment Company Act of 1940", 15 U.S.C. § 80a-1
12 et seq. ; "Investment Advisers Act of 1940", 15 U.S.C. § 80b-1
13 et seq. ; "Employee Retirement Income Security Act of 1974", 29
14 U.S.C. § 1001 et seq. ; "National Housing Act", 12 U.S.C. §
15 1701; "Commodity Exchange Act", 7 U.S.C. § 1 et seq. ;
16 "Internal Revenue Code", 26 U.S.C. § 1 et seq. ; "Securities
17 Investor Protection Act of 1970", 15 U.S.C. § 78aaa et seq. ;
18 "Securities Litigation Uniform Standards Act of 1998", 112
19 Stat. 3227; "Small Business Investment Act of 1958", 15 U.S.C.
20 § 661 et seq. ; and "Electronic Signatures in Global and
21 National Commerce Act", 15 U.S.C. § 7001 et seq. mean those
22 federal statutes and the rules and regulations adopted under
23 those federal statutes, as in effect on the effective date of
24 this Act.

25 Sec. 3. NEW SECTION. 502.104 REFERENCES TO FEDERAL
26 AGENCIES.

27 A reference in this chapter to an agency or department of
28 the United States is also a reference to a successor agency or
29 department.

30 Sec. 4. NEW SECTION. 502.105 ELECTRONIC RECORDS AND
31 SIGNATURES.

32 This chapter modifies, limits, and supersedes the federal
33 Electronic Signatures in Global and National Commerce Act, but
34 does not modify, limit, or supersede § 101(c) of that Act, 15
35 U.S.C. § 7001(c), or authorize electronic delivery of any of

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1 the notices described in section 103(b) of that Act, 15 U.S.C.
2 § 7003(b). This chapter authorizes the filing of records and
3 signatures, when specified by provisions of this chapter or by
4 a rule adopted or order issued under this chapter, in a manner
5 consistent with section 104(a) of that Act, 15 U.S.C. §
6 7004(a).

7 ARTICLE 2

8 EXEMPTIONS FROM REGISTRATION OF SECURITIES

9 Sec. 5. Section 502.201, Code 2003, is amended by striking
10 the section and inserting in lieu thereof the following:

11 502.201 EXEMPT SECURITIES.

12 All of the following securities are exempt from the
13 requirements of sections 502.301 through 502.306 and 502.504:

14 1. UNITED STATES GOVERNMENT AND MUNICIPAL SECURITIES. A
15 security, including a revenue obligation or a separate
16 security as defined in rule 131, 17 C.F.R. § 230.131, adopted
17 by the securities and exchange commission under the Securities
18 Act of 1933, issued, insured, or guaranteed by the United
19 States; by a state; by a political subdivision of a state; by
20 a public authority, agency, or instrumentality of one or more
21 states; by a political subdivision of one or more states; or
22 by a person controlled or supervised by and acting as an
23 instrumentality of the United States under authority granted
24 by the Congress; or a certificate of deposit for any of the
25 foregoing.

26 2. FOREIGN GOVERNMENT SECURITIES. A security issued,
27 insured, or guaranteed by a foreign government with which the
28 United States maintains diplomatic relations, or any of its
29 political subdivisions, if the security is recognized as a
30 valid obligation by the issuer, insurer, or guarantor.

31 3. DEPOSITORY INSTITUTION AND INTERNATIONAL BANKING
32 INSTITUTION SECURITIES. A security issued by and representing
33 or that will represent an interest in or a direct obligation
34 of, or be guaranteed by any of the following:

35 a. An international banking institution.

1 b. A banking institution organized under the laws of the
2 United States; a member bank of the United States federal
3 reserve system; or a depository institution, a substantial
4 portion of the business of which consists or will consist of
5 receiving deposits or share accounts that are insured to the
6 maximum amount authorized by statute by the federal deposit
7 insurance corporation, the national credit union share
8 insurance fund, or a successor authorized by federal law or
9 exercising fiduciary powers that are similar to those
10 permitted for national banks under the authority of the
11 comptroller of the currency pursuant to Pub. L. No. 87-722, §
12 1, 12 U.S.C. § 92a.

13 c. Any other depository institution, unless by rule or
14 order the administrator proceeds under section 502.204.

15 4. INSURANCE COMPANY SECURITIES. A security issued by and
16 representing an interest in, or a debt of, or insured or
17 guaranteed by, an insurance company authorized to do business
18 in this state.

19 5. COMMON CARRIER AND PUBLIC UTILITY SECURITIES. A
20 security issued or guaranteed by a railroad, other common
21 carrier, public utility, or public utility holding company
22 that is any of the following:

23 a. Regulated in respect to its rates and charges by the
24 United States or a state.

25 b. Regulated in respect to the issuance or guarantee of
26 the security by the United States, a state, Canada, or a
27 Canadian province or territory.

28 c. A public utility holding company registered under the
29 Public Utility Holding Company Act of 1935 or a subsidiary of
30 such a registered holding company within the meaning of that
31 Act.

32 6. CERTAIN OPTIONS AND RIGHTS. A federal covered security
33 specified in section 18(b)(1) of the Securities Act of 1933,
34 15 U.S.C. § 77r(b)(1), or by rule adopted under that provision
35 or a security listed or approved for listing on another

1 securities market specified by rule under this chapter; a put
 2 or a call option contract; a warrant; a subscription right on
 3 or with respect to such securities; or an option or similar
 4 derivative security on a security or an index of securities or
 5 foreign currencies issued by a clearing agency registered
 6 under the Securities Exchange Act of 1934 and listed or
 7 designated for trading on a national securities exchange, a
 8 facility of a national securities exchange, or a facility of a
 9 national securities association registered under the
 10 Securities Exchange Act of 1934 or an offer or sale, of the
 11 underlying security in connection with the offer, sale, or
 12 exercise of an option or other security that was exempt when
 13 the option or other security was written or issued; or an
 14 option or a derivative security designated by the securities
 15 and exchange commission under section 9(b) of the Securities
 16 Exchange Act of 1934, 15 U.S.C. § 78i(b).

17 7. NONPROFIT SECURITIES. A security issued by a person
 18 organized and operated exclusively for religious, educational,
 19 benevolent, fraternal, charitable, social, athletic, or
 20 reformatory purposes, or as a chamber of commerce, and not for
 21 pecuniary profit, no part of the net earnings of which inures
 22 to the benefit of a private stockholder or other person, or a
 23 security of a company that is excluded from the definition of
 24 an investment company under section 3(c)(10)(B) of the
 25 Investment Company Act of 1940, 15 U.S.C. § 80a-3(c)(10)(B);
 26 except that with respect to the offer or sale of a note, bond,
 27 debenture, or other evidence of indebtedness issued by such a
 28 person, a rule may be adopted under this chapter limiting the
 29 availability of this exemption by classifying securities,
 30 persons, and transactions, imposing different requirements for
 31 different classes, specifying with respect to paragraph "b"
 32 the scope of the exemption and the grounds for denial or
 33 suspension, and requiring an issuer to do any of the
 34 following:

35 a. File a notice specifying the material terms of the

1 proposed offer or sale and copies of any proposed sales and
2 advertising literature to be used and provide that the
3 exemption becomes effective if the administrator does not
4 disallow the exemption within the period established by the
5 rule.

6 b. File a request for exemption authorization for which a
7 rule under this chapter may specify the scope of the
8 exemption, the requirement of an offering statement, the
9 filing of sales and advertising literature, the filing of
10 consent to service of process complying with section 502.611,
11 and grounds for denial or suspension of the exemption.

12 c. Register under section 502.304.

13 8A. COOPERATIVE ASSOCIATIONS. A stock or similar
14 security, including a patronage refund certificate, issued by
15 any of the following:

16 a. A cooperative housing corporation described in
17 paragraph 1 of subsection "b" of section 216 of the Internal
18 Revenue Code, if its activities are limited to the ownership,
19 leasing, management, or construction of residential properties
20 for its members, and activities incidental thereto.

21 b. A mutual or cooperative organization, including a
22 cooperative association organized in good faith under and for
23 any of the purposes enumerated in chapter 497, 498, 499, or
24 501, that deals in commodities or supplies goods or services
25 in transactions primarily with and for the benefit of its
26 members, if all of the following apply:

27 (1) Such stock or similar security is part of a class
28 issuable only to persons who deal in commodities with, or
29 obtain goods or services from, the issuer.

30 (2) Such stock or similar security is transferable only to
31 the issuer or a successor in interest of the transferor who
32 qualifies for membership in such mutual or cooperative
33 organization.

34 (3) No dividends other than patronage refunds are payable
35 to holders of such stock or similar security except on a

1 complete or partial liquidation.

2 8B. AGRICULTURAL COOPERATIVE ASSOCIATIONS. A security
3 issued by an agricultural cooperative association, provided
4 all of the following conditions are satisfied:

5 a. A commission or remuneration must not be paid or
6 provided either directly or indirectly for the sale, except as
7 permitted by the administrator by rule or by order issued upon
8 written application showing good cause for allowance of a
9 commission or other remuneration.

10 b. If the securities to be issued are notes or other
11 evidences of indebtedness and are issued after July 1, 1991,
12 the issuer must file with the administrator a written notice
13 specifying the name of the issuer, the date of the issuer's
14 organization, the name of a contact person, a copy of the
15 issuer's current audited financial statement, the types of
16 security or securities to be offered, and the class of persons
17 to whom the offer will be made in accordance with such rules
18 as prescribed by the administrator.

19 9. EQUIPMENT TRUST CERTIFICATE. An equipment trust
20 certificate with respect to equipment leased or conditionally
21 sold to a person, if any security issued by the person would
22 be exempt under this section or would be a federal covered
23 security under section 18(b)(1) of the Securities Act of 1933,
24 15 U.S.C. § 77r(b)(1).

25 9A. ECONOMIC DEVELOPMENT CORPORATIONS. Any security
26 issued by a corporation formed under chapter 496B.

27 9B. AGRICULTURAL DEVELOPMENT AUTHORITY. Any security
28 issued by the agricultural development authority under chapter
29 175.

30 9C. MEMBERSHIP CAMPGROUNDS. Any security representing a
31 membership camping contract which is registered pursuant to
32 section 557B.2 or exempt under section 557B.4.

33 9D. TIME-SHARES. Any security representing a time-share
34 interval as defined in section 557A.2.

35 9E. VIATICAL SETTLEMENT CONTRACTS. A viatical settlement

1 contract, or fractional or pooled interest in such contract,
2 provided any of the following conditions are satisfied:

3 a. The assignment, transfer, sale, devise, or bequest of a
4 death benefit of a life insurance policy or contract is made
5 by the viator to an insurance company as provided under Title
6 XIII, subtitle 1.

7 b. The assignment, transfer, sale, devise, or bequest of a
8 life insurance policy or contract, for any value less than the
9 expected death benefit, is made by the viator to a family
10 member or other person who enters into no more than one such
11 agreement in a calendar year.

12 c. A life insurance policy or contract is assigned to a
13 bank, savings bank, savings and loan association, credit
14 union, or other licensed lending institution as collateral for
15 a loan.

16 d. Accelerated benefits are exercised as provided in the
17 life insurance policy or contract and consistent with
18 applicable law.

19 e. The assignment, transfer, sale, devise, or bequest of
20 the death benefit or ownership of a life insurance policy or
21 contract made by the policyholder or contract owner to a
22 viatical settlement provider, if the viatical settlement
23 transaction complies with chapter 508E, including rules
24 adopted pursuant to that chapter.

25 Sec. 6. Section 502.202, Code Supplement 2003, is amended
26 by striking the section and inserting in lieu thereof the
27 following:

28 NEW SECTION. 502.202 EXEMPT TRANSACTIONS.

29 The following transactions are exempt from the requirements
30 of sections 502.301 through 502.306 and 502.504:

31 1. ISOLATED NONISSUER TRANSACTIONS. An isolated nonissuer
32 transaction, whether effected by or through a broker-dealer or
33 not.

34 2. NONISSUER TRANSACTIONS IN SPECIFIED OUTSTANDING
35 SECURITIES. A nonissuer transaction by or through a broker-

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1 dealer registered, or exempt from registration, under this
2 chapter, and a resale transaction by a sponsor of a unit
3 investment trust registered under the Investment Company Act
4 of 1940, provided that for either transaction, the security is
5 of a class that has been outstanding in the hands of the
6 public for at least ninety days, if, at the date of the
7 transaction, all of the following apply:

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

15 b. The security is sold at a price reasonably related to
16 its current market price.

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

21 d. A nationally recognized securities manual or its
22 electronic equivalent designated by rule adopted or order
23 issued under this chapter or a record filed with the
24 securities and exchange commission that is publicly available
25 contains all of the following:

26 (1) A description of the business and operations of the
27 issuer.

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

30 (3) An audited balance sheet of the issuer as of a date
31 within eighteen months before the date of the transaction or,
32 in the case of a reorganization or merger when the parties to
33 the reorganization or merger each had an audited balance
34 sheet, and a pro forma balance sheet for the combined
35 organization.

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

7 e. Any one of the following requirements is met:

8 (1) The issuer of the security has a class of equity
9 securities listed on a national securities exchange registered
10 under section 6 of the Securities Exchange Act of 1934 or
11 designated for trading on the national association of
12 securities dealers automated quotation system.

13 (2) The issuer of the security is a unit investment trust
14 registered under the Investment Company Act of 1940.

15 (3) The issuer of the security, including its
16 predecessors, has been engaged in continuous business for at
17 least three years.

18 (4) The issuer of the security has total assets of at
19 least two million dollars based on an audited balance sheet as
20 of a date within eighteen months before the date of the
21 transaction or, in the case of a reorganization or merger when
22 the parties to the reorganization or merger each had such an
23 audited balance sheet, and a pro forma balance sheet for the
24 combined organization.

25 3. NONISSUER TRANSACTIONS IN SPECIFIED FOREIGN
26 TRANSACTIONS. A nonissuer transaction by or through a broker-
27 dealer registered or exempt from registration under this
28 chapter in a security of a foreign issuer that is a margin
29 security defined in regulations or rules adopted by the board
30 of governors of the United States federal reserve system.

31 4. NONISSUER TRANSACTIONS IN SECURITIES SUBJECT TO
32 SECURITIES EXCHANGE ACT REPORTING. A nonissuer transaction by
33 or through a broker-dealer registered or exempt from
34 registration under this chapter in an outstanding security if
35 the guarantor of the security files reports with the

1 securities and exchange commission under the reporting
2 requirements of section 13 or 15(d) of the Securities Exchange
3 Act of 1934, 15 U.S.C. § 78m or 78o(d).

4 5. NONISSUER TRANSACTIONS IN SPECIFIED FIXED INCOME
5 SECURITIES. A nonissuer transaction by or through a broker-
6 dealer registered or exempt from registration under this
7 chapter in a security if any of the following apply:

8 a. It is rated at the time of the transaction by a
9 nationally recognized statistical rating organization in one
10 of its four highest rating categories.

11 b. It has a fixed maturity or a fixed interest or
12 dividend, if all of the following apply:

13 (1) A default has not occurred during the current fiscal
14 year or within the three previous fiscal years or during the
15 existence of the issuer and any predecessor if less than three
16 fiscal years, in the payment of principal, interest, or
17 dividends on the security.

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

25 6. UNSOLICITED BROKERAGE TRANSACTIONS. A nonissuer
26 transaction by or through a broker-dealer registered or exempt
27 from registration under this chapter effecting an unsolicited
28 order or offer to purchase.

29 7. NONISSUER TRANSACTION BY PLEDGEEES. A nonissuer
30 transaction executed by a bona fide pledgee without the
31 purpose of evading this chapter.

32 8. NONISSUER TRANSACTIONS WITH FEDERAL COVERED INVESTMENT
33 ADVISERS. A nonissuer transaction by a federal covered
34 investment adviser with investments under management in excess
35 of one hundred million dollars acting in the exercise of

1 discretionary authority in a signed record for the account of
2 others.

3 9. SPECIFIED EXCHANGE TRANSACTIONS. A transaction in a
4 security, whether or not the security or transaction is
5 otherwise exempt, in exchange for one or more bona fide
6 outstanding securities, claims, or property interests, or
7 partly in such exchange and partly for cash, if the terms and
8 conditions of the issuance and exchange or the delivery and
9 exchange and the fairness of the terms and conditions have
10 been approved by the administrator after a hearing.

11 10. UNDERWRITER TRANSACTIONS. A transaction between the
12 issuer or other person on whose behalf the offering is made
13 and an underwriter, or among underwriters.

14 11. UNIT SECURED TRANSACTIONS. A transaction in a note,
15 bond, debenture, or other evidence of indebtedness secured by
16 a mortgage or other security agreement if all of the following
17 apply:

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

21 b. A general solicitation or general advertisement of the
22 transaction is not made.

23 c. A commission or other remuneration is not paid or
24 given, directly or indirectly, to a person not registered
25 under this chapter as a broker-dealer or as an agent.

26 12. BANKRUPTCY, GUARDIAN, OR CONSERVATOR TRANSACTIONS. A
27 transaction by an executor, administrator of an estate,
28 sheriff, marshal, receiver, trustee in bankruptcy, guardian,
29 or conservator.

30 13. TRANSACTIONS WITH SPECIFIED INVESTORS. A sale or
31 offer to sell to any of the following:

32 a. An institutional investor.

33 b. A federal covered investment adviser.

34 c. Any other person exempted by rule adopted or order
35 issued under this chapter.

1 d. A person or class of persons who are granted this
2 exemption by the administrator. The administrator, by rule or
3 order, may grant this exemption to a person or class of
4 persons based upon the factors of financial sophistication,
5 net worth, and the amount of assets under investment.

6 14. LIMITED OFFERING TRANSACTIONS. A sale or an offer to
7 sell securities by or on behalf of an issuer, if the
8 transaction is part of a single issue in which all of the
9 following apply:

10 a. Not more than thirty-five purchasers are present in
11 this state during any twelve consecutive months, other than
12 those designated in subsection 13.

13 b. A general solicitation or general advertising is not
14 made in connection with the offer to sell or sale of the
15 securities.

16 c. A commission or other remuneration is not paid or
17 given, directly or indirectly, to a person other than a
18 broker-dealer registered under this chapter or an agent
19 registered under this chapter for soliciting a prospective
20 purchaser in this state.

21 d. The issuer reasonably believes that all the purchasers
22 in this state, other than those designated in subsection 13,
23 are purchasing for investment.

24 15. TRANSACTIONS WITH EXISTING SECURITY HOLDERS. A
25 transaction under an offer to existing security holders of the
26 issuer, including persons that at the date of the transaction
27 are holders of convertible securities, options, or warrants,
28 if a commission or other remuneration, other than a standby
29 commission, is not paid or given, directly or indirectly, for
30 soliciting a security holder in this state.

31 16. OFFERINGS REGISTERED UNDER THE CHAPTER AND THE
32 SECURITIES ACT OF 1933. An offer to sell, but not a sale, of
33 a security not exempt from registration under the Securities
34 Act of 1933 if all of the following apply:

35 a. A registration or offering statement or similar record

1 as required under the Securities Act of 1933 has been filed,
2 but is not effective, or the offer is made in compliance with
3 rule 165 adopted under the Securities Act of 1933, 17 C.F.R.
4 § 230.165.

5 b. A stop order of which the offeror is aware has not been
6 issued against the offeror by the administrator or the
7 securities and exchange commission, and an audit, inspection,
8 or proceeding that is public and that may culminate in a stop
9 order is not known by the offeror to be pending.

10 17. OFFERINGS WHEN REGISTRATION HAS BEEN FILED, BUT IS NOT
11 EFFECTIVE UNDER THIS CHAPTER AND EXEMPT FROM THE SECURITIES
12 ACT OF 1933. An offer to sell, but not a sale, of a security
13 exempt from registration under the Securities Act of 1933 if
14 all of the following apply:

15 a. A registration statement has been filed under this
16 chapter, but is not effective.

17 b. A solicitation of interest is provided in a record to
18 offerees in compliance with a rule adopted by the
19 administrator under this chapter.

20 c. A stop order of which the offeror is aware has not been
21 issued by the administrator under this chapter and an audit,
22 inspection, or proceeding that may culminate in a stop order
23 is not known by the offeror to be pending.

24 18. CONTROL TRANSACTIONS. A transaction involving the
25 distribution of the securities of an issuer to the security
26 holders of another person in connection with a merger,
27 consolidation, exchange of securities, sale of assets, or
28 other reorganization to which the issuer, or its parent or
29 subsidiary and the other person, or its parent or subsidiary,
30 are parties.

31 19. RECISION OFFERS. A recision offer, sale, or purchase
32 under section 502.510.

33 20. OUT-OF-STATE OFFERS OR SALES. An offer or sale of a
34 security to a person not a resident of this state and not
35 present in this state if the offer or sale does not constitute

1 a violation of the laws of the state or foreign jurisdiction
2 in which the offeree or purchaser is present and is not part
3 of an unlawful plan or scheme to evade this chapter.

4 21. EMPLOYEE BENEFIT PLANS. Employees' stock purchase,
5 savings, option, profit-sharing, pension, or similar
6 employees' benefit plan, including any securities, plan
7 interests, and guarantees issued under a compensatory benefit
8 plan or compensation contract, contained in a record,
9 established by the issuer, its parents, its majority-owned
10 subsidiaries, or the majority-owned subsidiaries of the
11 issuer's parent for the participation of their employees
12 including offers or sales of such securities to any of the
13 following:

14 a. Directors; general partners; trustees, if the issuer is
15 a business trust; officers; consultants; and advisers.

16 b. Family members who acquire such securities from those
17 persons through gifts or domestic relations orders.

18 c. Former employees, directors, general partners,
19 trustees, officers, consultants, and advisers if those
20 individuals were employed by or providing services to the
21 issuer when the securities were offered.

22 d. Insurance agents who are exclusive insurance agents of
23 the issuer, or the issuer's subsidiaries or parents, or who
24 derive more than fifty percent of their annual income from
25 those organizations.

26 22. SPECIFIED DIVIDENDS AND TENDER OFFERS AND JUDICIALLY
27 RECOGNIZED REORGANIZATIONS. A transaction involving any of
28 the following:

29 a. A stock dividend or equivalent equity distribution,
30 whether the corporation or other business organization
31 distributing the dividend or equivalent equity distribution is
32 the issuer or not, if nothing of value is given by
33 stockholders or other equity holders for the dividend or
34 equivalent equity distribution other than the surrender of a
35 right to a cash or property dividend if each stockholder or

1 other equity holder may elect to take the dividend or
2 equivalent equity distribution in cash, property, or stock.

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

7 c. The solicitation of tenders of securities by an offeror
8 in a tender offer in compliance with rule 162 adopted under
9 the Securities Act of 1933, 17 C.F.R. § 230.162.

10 23. NONISSUER TRANSACTIONS INVOLVING SPECIFIED FOREIGN
11 ISSUER SECURITIES TRADED ON DESIGNATED SECURITY EXCHANGES. A
12 nonissuer transaction in an outstanding security by or through
13 a broker-dealer registered or exempt from registration under
14 this chapter, if the issuer is a reporting issuer in a foreign
15 jurisdiction designated by this subsection or by rule adopted
16 or order issued under this chapter; has been subject to
17 continuous reporting requirements in the foreign jurisdiction
18 for not less than one hundred eighty days before the
19 transaction; and the security is listed on the foreign
20 jurisdiction's securities exchange that has been designated by
21 this subsection or by rule adopted or order issued under this
22 chapter, or is a security of the same issuer that is of senior
23 or substantially equal rank to the listed security or is a
24 warrant or right to purchase or subscribe to any of the
25 foregoing. For purposes of this subsection, Canada, together
26 with its provinces and territories, is a designated foreign
27 jurisdiction and the Toronto stock exchange, inc., is a
28 designated securities exchange. After an administrative
29 hearing in compliance with chapter 17A, the administrator, by
30 rule adopted or order issued under this chapter, may revoke
31 the designation of a securities exchange under this
32 subsection, if the administrator finds that revocation is
33 necessary or appropriate in the public interest and for the
34 protection of investors.

35 Sec. 7. Section 502.203, Code 2003, is amended by striking

1 the section and inserting in lieu thereof the following:

2 502.203 ADDITIONAL EXEMPTIONS AND WAIVERS.

3 A rule adopted or order issued under this chapter may
4 exempt a security, transaction, or offer; a rule under this
5 chapter may exempt a class of securities, transactions, or
6 offers from any or all of the requirements of sections 502.301
7 through 502.306 and 502.504; and an order under this chapter
8 may waive, in whole or in part, any or all of the conditions
9 for an exemption or offer under sections 502.201 and 502.202.

10 Sec. 8. Section 502.204, Code 2003, is amended by striking
11 the section and inserting in lieu thereof the following:

12 502.204 DENIAL, SUSPENSION, REVOCATION, CONDITION, OR
13 LIMITATION OF EXEMPTIONS.

14 1. ENFORCEMENT-RELATED POWERS. Except with respect to a
15 federal covered security or a transaction involving a federal
16 covered security, an order under this chapter may deny,
17 suspend application of, condition, limit, or revoke an
18 exemption created under section 502.201, subsection 3,
19 paragraph "c", or subsection 7 or 8, or section 502.202, or an
20 exemption or waiver created under section 502.203 with respect
21 to a specific security, transaction, or offer. An order under
22 this section may be issued only pursuant to the procedures in
23 section 502.306, subsection 4, or section 502.604, and only
24 prospectively.

25 2. KNOWLEDGE OF ORDER REQUIRED. A person does not violate
26 section 502.301, 502.303 through 502.306, 502.504, or 502.510
27 by an offer to sell, offer to purchase, sale, or purchase
28 effected after the entry of an order issued under this section
29 if the person did not know, and in the exercise of reasonable
30 care could not have known, of the order.

31 ARTICLE 3

32 REGISTRATION OF SECURITIES AND NOTICE FILING OF
33 FEDERAL COVERED SECURITIES

34 Sec. 9. Section 502.301, Code 2003, is amended by striking
35 the section and inserting in lieu thereof the following:

1 502.301 SECURITIES REGISTRATION REQUIREMENT.

2 It is unlawful for a person to offer or sell a security in
3 this state unless one of the following applies:

- 4 1. The security is a federal covered security.
- 5 2. The security, transaction, or offer is exempted from
6 registration under sections 502.201 through 502.203.
- 7 3. The security is registered under this chapter.

8 Sec. 10. Section 502.302, Code 2003, is amended by
9 striking the section and inserting in lieu thereof the
10 following:

11 502.302 NOTICE FILING.

12 1. REQUIRED FILING OF RECORDS. With respect to a federal
13 covered security, as defined in section 18(b)(2) of the
14 Securities Act of 1933, 15 U.S.C. § 77r(b)(2), that is not
15 otherwise exempt under sections 502.201 through 502.203, a
16 rule adopted or order issued under this chapter may require
17 the filing of any or all of the following records:

18 a. Before the initial offer of a federal covered security
19 in this state, all records that are part of a federal
20 registration statement filed with the securities and exchange
21 commission under the Securities Act of 1933 and a consent to
22 service of process complying with section 502.611 signed by
23 the issuer.

24 A person who is the issuer of a federal covered security
25 under section 18(b)(2) of the Securities Act of 1933 shall
26 initially make a notice filing and annually renew a notice
27 filing in this state for an indefinite amount or a fixed
28 amount. The fixed amount must be for two hundred fifty
29 thousand dollars. A notice filer shall pay a filing fee when
30 the notice is filed. If the amount covered by the notice is
31 indefinite, the notice filer shall pay a filing fee of one
32 thousand dollars. If the amount covered by the notice is
33 fixed, the notice filer shall pay a filing fee of two hundred
34 fifty dollars, and all of the following shall apply:

35 (1) The notice filer shall file a sales report with the

1 administrator or pay an additional filing fee of one thousand
 2 two hundred fifty dollars within ninety days after the notice
 3 filing's annual renewal date. If the notice filer files a
 4 sales report with the administrator, the notice filer shall
 5 pay an additional filing fee of one-tenth of one percent of
 6 the amount of securities sold in excess of two hundred fifty
 7 thousand dollars. The additional filing fee must be paid
 8 within ninety days after the notice filing's annual renewal
 9 date.

10 (2) The notice filing covering the additional securities
 11 shall be effective retroactively as of the effective date of
 12 the notice filing that is being amended.

13 b. After the initial offer of the federal covered security
 14 in this state, all records that are part of an amendment to a
 15 federal registration statement filed with the securities and
 16 exchange commission under the Securities Act of 1933.

17 2. NOTICE FILING EFFECTIVENESS AND RENEWAL. A notice
 18 filing under subsection 1 is effective for one year commencing
 19 on the later of the notice filing or the effectiveness of the
 20 offering filed with the securities and exchange commission.
 21 On or before expiration, the issuer may renew a notice filing
 22 by filing a copy of those records filed by the issuer with the
 23 securities and exchange commission that are required by rule
 24 or order under this chapter to be filed and by paying the
 25 renewal fee required by subsection 1, paragraph "a". A
 26 previously filed consent to service of process complying with
 27 section 502.611 may be incorporated by reference in a renewal.
 28 A renewed notice filing becomes effective upon the expiration
 29 of the filing being renewed.

30 3. NOTICE FILINGS FOR FEDERAL COVERED SECURITIES UNDER
 31 SECTION 18(b)(4)(D). With respect to a security that is a
 32 federal covered security under section 18(b)(4)(D) of the
 33 Securities Act of 1933, 15 U.S.C. § 77r(b)(4)(D), a rule under
 34 this chapter may require a notice filing by or on behalf of an
 35 issuer to include a copy of form D, including the appendix, as

1 promulgated by the securities and exchange commission, and a
2 consent to service of process complying with section 502.611
3 signed by the issuer not later than fifteen days after the
4 first sale of the federal covered security in this state and
5 the payment of a fee of one hundred dollars; and the payment
6 of a fee of two hundred fifty dollars for any late filing.

7 4. STOP ORDERS. Except with respect to a federal security
8 under section 18(b)(1) of the Securities Act of 1933, 15
9 U.S.C. § 77r(b)(1), if the administrator finds that there is a
10 failure to comply with a notice or fee requirement of this
11 section, the administrator may issue a stop order suspending
12 the offer and sale of a federal covered security in this
13 state. If the deficiency is corrected, the stop order is void
14 as of the time of its issuance and no penalty may be imposed
15 by the administrator.

16 Sec. 11. Section 502.303, Code 2003, is amended by
17 striking the section and inserting in lieu thereof the
18 following:

19 502.303 SECURITIES REGISTRATION BY COORDINATION.

20 1. REGISTRATION PERMITTED.

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

25 b. A proposed sale pursuant to the exemption contained in
26 "Regulation A" as adopted under section 3(b) of the Securities
27 Act of 1933 where such registration statement has not become
28 effective or notification of proposed sale has not been
29 qualified may be registered by coordination under this
30 section.

31 2. REQUIRED RECORDS. A registration statement and
32 accompanying records under this section must contain or be
33 accompanied by all of the following records in addition to the
34 information specified in section 502.305 and a consent to
35 service of process complying with section 502.611:

1 a. A copy of the latest form of prospectus filed under the
2 Securities Act of 1933.

3 b. A copy of the articles of incorporation and bylaws or
4 their substantial equivalents currently in effect; a copy of
5 any agreement with or among underwriters; a copy of any
6 indenture or other instrument governing the issuance of the
7 security to be registered; and a specimen, copy, or
8 description of the security that is required by rule adopted
9 or order issued under this chapter.

10 c. Copies of any other information or any other records
11 filed by the issuer under the Securities Act of 1933 requested
12 by the administrator.

13 d. An undertaking to forward each amendment to the federal
14 prospectus, other than an amendment that delays the effective
15 date of the registration statement, promptly after it is filed
16 with the securities and exchange commission.

17 3. CONDITIONS FOR EFFECTIVENESS OF REGISTRATION STATEMENT.

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

21 a. A stop order under subsection 4 or section 502.306 or
22 issued by the securities and exchange commission is not in
23 effect and a proceeding is not pending against the issuer
24 under section 502.306.

25 b. The registration statement has been on file for at
26 least twenty days or a shorter period provided by rule adopted
27 or order issued under this chapter.

28 4. NOTICE OF FEDERAL REGISTRATION STATEMENT EFFECTIVENESS.

29 The registrant shall promptly notify the administrator in a
30 record of the date when the federal registration statement
31 becomes effective and the content of any price amendment and
32 shall promptly file a record containing the price amendment.
33 If the notice is not timely received, the administrator may
34 issue a stop order, without prior notice or hearing,
35 retroactively denying effectiveness to the registration

1 statement or suspending its effectiveness until in compliance
2 with this section. The administrator shall promptly notify
3 the registrant of an order by telegram, telephone, or
4 electronic means and promptly confirm this notice by a record.
5 If the registrant subsequently complies with the notice
6 requirements of this section, the stop order is void as of the
7 date of its issuance.

8 5. EFFECTIVENESS OF REGISTRATION STATEMENT. If the
9 federal registration statement becomes effective before each
10 of the conditions in this section is satisfied or is waived by
11 the administrator, the registration statement is automatically
12 effective under this chapter when all the conditions are
13 satisfied or waived. If the registrant notifies the
14 administrator of the date when the federal registration
15 statement is expected to become effective, the administrator
16 shall promptly notify the registrant by telegram, telephone,
17 or electronic means and promptly confirm this notice by a
18 record, indicating whether all the conditions are satisfied or
19 waived and whether the administrator intends the institution
20 of a proceeding under section 502.306. The notice by the
21 administrator does not preclude the institution of such a
22 proceeding.

23 Sec. 12. Section 502.304, Code 2003, is amended by
24 striking the section and inserting in lieu thereof the
25 following:

26 502.304 SECURITIES REGISTRATION BY QUALIFICATION.

27 1. REGISTRATION PERMITTED. A security may be registered
28 by qualification under this section.

29 2. REQUIRED RECORDS. A registration statement under this
30 section must contain the information or records specified in
31 section 502.305, a consent to service of process complying
32 with section 502.611, and, if required by rule adopted under
33 this chapter, all of the following information or records:

34 a. With respect to the issuer and any significant
35 subsidiary, its name, address, and form of organization; the

1 state or foreign jurisdiction and date of its organization;
2 the general character and location of its business; a
3 description of its physical properties and equipment; and a
4 statement of the general competitive conditions in the
5 industry or business in which it is or will be engaged.

6 b. With respect to each director and officer of the
7 issuer, and other person having a similar status or performing
8 similar functions, the person's name, address, and principal
9 occupation for the previous five years; the amount of
10 securities of the issuer held by the person as of the
11 thirtieth day before the filing of the registration statement;
12 the amount of the securities covered by the registration
13 statement to which the person has indicated an intention to
14 subscribe; and a description of any material interest of the
15 person in any material transaction with the issuer or a
16 significant subsidiary effected within the previous three
17 years or proposed to be effected.

18 c. With respect to persons covered by paragraph "b", the
19 aggregate sum of the remuneration paid to those persons during
20 the previous twelve months and estimated to be paid during the
21 next twelve months, directly or indirectly, by the issuer, and
22 all predecessors, parents, subsidiaries, and affiliates of the
23 issuer.

24 d. With respect to a person owning of record or owning
25 beneficially, if known, ten percent or more of the outstanding
26 shares of any class of equity security of the issuer, the
27 information specified in paragraph "b" other than the person's
28 occupation.

29 e. With respect to a promoter, if the issuer was organized
30 within the previous three years, the information or records
31 specified in paragraph "b", any amount paid to the promoter
32 within that period or intended to be paid to the promoter, and
33 the consideration for the payment.

34 f. With respect to a person on whose behalf any part of
35 the offering is to be made in a nonissuer distribution, the

1 person's name and address; the amount of securities of the
2 issuer held by the person as of the date of the filing of the
3 registration statement; a description of any material interest
4 of the person in any material transaction with the issuer or
5 any significant subsidiary effected within the previous three
6 years or proposed to be effected; and a statement of the
7 reasons for making the offering.

8 g. The capitalization and long-term debt, on both a
9 current and pro forma basis, of the issuer and any significant
10 subsidiary, including a description of each security
11 outstanding or being registered or otherwise offered, and a
12 statement of the amount and kind of consideration, whether in
13 the form of cash, physical assets, services, patents,
14 goodwill, or anything else of value, for which the issuer or
15 any subsidiary has issued its securities within the previous
16 two years or is obligated to issue its securities.

17 h. The kind and amount of securities to be offered; the
18 proposed offering price or the method by which it is to be
19 computed; any variation at which a proportion of the offering
20 is to be made to a person or class of persons other than the
21 underwriters, with a specification of the person or class; the
22 basis on which the offering is to be made if otherwise than
23 for cash; the estimated aggregate underwriting and selling
24 discounts or commissions and finders' fees, including
25 separately cash, securities, contracts, or anything else of
26 value to accrue to the underwriters or finders in connection
27 with the offering or, if the selling discounts or commissions
28 are variable, the basis of determining them and their maximum
29 and minimum amounts; the estimated amounts of other selling
30 expenses, including legal, engineering, and accounting
31 charges; the name and address of each underwriter and each
32 recipient of a finder's fee; a copy of any underwriting or
33 selling group agreement under which the distribution is to be
34 made or the proposed form of any such agreement whose terms
35 have not yet been determined; and a description of the plan of

1 distribution of any securities that are to be offered
2 otherwise than through an underwriter.

3 i. The estimated monetary proceeds to be received by the
4 issuer from the offering; the purposes for which the proceeds
5 are to be used by the issuer; the estimated amount to be used
6 for each purpose; the order or priority in which the proceeds
7 will be used for the purposes stated; the amounts of any funds
8 to be raised from other sources to achieve the purposes
9 stated; the sources of the funds; and, if a part of the
10 proceeds is to be used to acquire property, including
11 goodwill, otherwise than in the ordinary course of business,
12 the names and addresses of the vendors, the purchase price,
13 the names of any persons that have received commissions in
14 connection with the acquisition, and the amounts of the
15 commissions and other expenses in connection with the
16 acquisition, including the cost of borrowing money to finance
17 the acquisition.

18 j. A description of any stock options or other security
19 options outstanding, or to be created in connection with the
20 offering, and the amount of those options held or to be held
21 by each person required to be named in paragraph "b", "d",
22 "e", "f", or "h" and by any person that holds or will hold ten
23 percent or more in the aggregate of those options.

24 k. The dates of, parties to, and general effect concisely
25 stated of each managerial or other material contract made or
26 to be made otherwise than in the ordinary course of business
27 to be performed in whole or in part at or after the filing of
28 the registration statement or that was made within the
29 previous two years, and a copy of the contract.

30 l. A description of any pending litigation, action, or
31 proceeding to which the issuer is a party and that materially
32 affects its business or assets, and any litigation, action, or
33 proceeding known to be contemplated by governmental
34 authorities.

35 m. A copy of any prospectus, pamphlet, circular, form

1 letter, advertisement, or other sales literature intended as
2 of the effective date to be used in connection with the
3 offering and any solicitation of interest used in compliance
4 with section 502.202, subsection 17, paragraph "b".

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

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

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

23 q. A balance sheet of the issuer as of a date within four
24 months before the filing of the registration statement; a
25 statement of income and a statement of cash flows for each of
26 the three fiscal years preceding the date of the balance sheet
27 and for any period between the close of the immediately
28 previous fiscal year and the date of the balance sheet, or for
29 the period of the issuer's and any predecessor's existence if
30 less than three years; and, if any part of the proceeds of the
31 offering is to be applied to the purchase of a business, the
32 financial statements that would be required if that business
33 were the registrant.

34 r. Any additional information or records required by rule
35 adopted or order issued under this chapter.

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1 2A. REPORTS AND EXAMINATIONS. The administrator may by
2 rule or order require as a condition of registration by
3 qualification, and at the expense of the applicant or
4 registrant, that a report by an accountant, engineer,
5 appraiser, or other professional person be filed. The
6 administrator may also designate one or more employees of the
7 securities bureau to make an examination of the business and
8 records of an issuer of securities for which a registration
9 statement has been filed by qualification, at the expense of
10 the applicant or registrant.

11 3. CONDITIONS FOR EFFECTIVENESS OF REGISTRATION STATEMENT.

12 A registration statement under this section becomes effective
13 thirty days, or any shorter period provided by rule adopted or
14 order issued under this chapter, after the date the
15 registration statement or the last amendment other than a
16 price amendment is filed, if any of the following applies:

- 17 a. A stop order is not in effect and a proceeding is not
18 pending under section 502.306.
- 19 b. The administrator has not issued an order under section
20 502.306 delaying effectiveness.
- 21 c. The applicant or registrant has not requested that
22 effectiveness be delayed.

23 4. DELAY OF EFFECTIVENESS OF REGISTRATION STATEMENT. The

24 administrator may delay effectiveness once for not more than
25 ninety days if the administrator determines the registration
26 statement is not complete in all material respects and
27 promptly notifies the applicant or registrant of that
28 determination. The administrator may also delay effectiveness
29 for a further period of not more than thirty days if the
30 administrator determines that the delay is necessary or
31 appropriate.

32 5. PROSPECTUS DISTRIBUTION MAY BE REQUIRED. A rule

33 adopted or order issued under this chapter may require as a
34 condition of registration under this section that a prospectus
35 containing a specified part of the information or record

1 specified in subsection 2 be sent or given to each person to
2 whom an offer is made, before or concurrently, with the
3 earliest of any of the following:

4 a. The first offer made in a record to the person
5 otherwise than by means of a public advertisement, by or for
6 the account of the issuer or another person on whose behalf
7 the offering is being made or by an underwriter or broker-
8 dealer that is offering part of an unsold allotment or
9 subscription taken by the person as a participant in the
10 distribution.

11 b. The confirmation of a sale made by or for the account
12 of the person.

13 c. Payment pursuant to such a sale.

14 d. Delivery of the security pursuant to such a sale.

15 Sec. 13. NEW SECTION. 502.304A EXPEDITED REGISTRATION BY
16 FILING FOR SMALL ISSUERS.

17 1. REGISTRATION PERMITTED. A security meeting the
18 conditions set forth in this section may be registered by
19 filing as provided in this section.

20 2. CONDITIONS OF THE ISSUER. In order to register under
21 this section, the issuer must meet all of the following
22 conditions:

23 a. The issuer must be a corporation, limited liability
24 company, or partnership organized under the laws of one of the
25 states or possessions of the United States which engages in or
26 proposes to engage in a business other than petroleum
27 exploration or production mining or other extractive
28 industries.

29 b. The securities must be offered and sold only on behalf
30 of the issuer, and must not be used by any selling security
31 holder to register securities for resale.

32 3. CONDITIONS FOR EFFECTIVENESS OF REGISTRATION --
33 REQUIRED RECORDS AND FEE. In order to register under this
34 section, all of the following conditions must be satisfied:

35 a. The offering price for common stock, the exercise price

1 if the securities are options, warrants, or rights for common
 2 stock, or the conversion price if the securities are
 3 convertible into common stock must be equal to or greater than
 4 one dollar per share. The issuer must not split its common
 5 stock, or declare a stock dividend, for two years after
 6 effectiveness of the registration, except that in connection
 7 with a subsequent registered public offering, the issuer may
 8 upon application and consent of the administrator take such
 9 action.

10 b. A commission, fee, or other remuneration shall not be
 11 paid or given, directly or indirectly, for the sale of the
 12 securities, except for a payment to a broker-dealer or agent
 13 registered under this chapter, or except for a payment as
 14 permitted by the administrator by rule or by order issued upon
 15 written application showing good cause for allowance of a
 16 commission, fee, or other remuneration.

17 c. The issuer or a broker-dealer offering or selling the
 18 securities is not or would not be disqualified under rule 505,
 19 17 C.F.R. § 230.505(2)(iii), adopted under the Securities Act
 20 of 1933.

21 d. The aggregate offering price of the offering of
 22 securities by the issuer within or outside this state must not
 23 exceed one million dollars, less the aggregate offering price
 24 for all securities sold within twelve months before the start
 25 of, and during the offering of, the securities under rule 504,
 26 17 C.F.R. § 230.504, in reliance on any exemption under
 27 section 3(b) of the Securities Act of 1933 or in violation of
 28 section 5(a) of that Act; provided, that if rule 504, 17
 29 C.F.R. § 230.504, adopted under the Securities Act of 1933, is
 30 amended, that the administrator may by rule increase the limit
 31 under this paragraph to conform to amendments to federal law,
 32 including but not limited to modification in the amount of the
 33 aggregate offering price.

34 e. An offering document meeting the disclosure
 35 requirements of rule 502(b)(2), 17 C.F.R. § 230.502(b)(2),

1 adopted under the Securities Act of 1933, must be delivered to
2 each purchaser in the state prior to the sale of the
3 securities, unless the administrator by rule or order provides
4 for disclosure different from that rule.

5 f. The issuer must file with the administrator an
6 application for registration and the offering document to be
7 used in connection with the offer and sale of securities.

8 g. The issuer must pay to the administrator a fee of one
9 hundred dollars and is not required to pay the filing fee set
10 forth in section 502.305, subsection 2.

11 4. EFFECTIVENESS OF REGISTRATION. Unless the
12 administrator issues a stop order denying the effectiveness of
13 the registration, as provided in section 502.306, the
14 registration becomes effective on the fifth business day after
15 the registration has been filed with the administrator, or
16 earlier if the administrator permits a shorter time period
17 between registration and effectiveness.

18 5. AGENT REGISTRATION. In connection with an offering
19 registered under this section, a person may be registered as
20 an agent of the issuer under section 502.402 by the filing of
21 an application by the issuer with the administrator for the
22 registration of the person as an agent of the issuer and the
23 paying of a fee of ten dollars. Notwithstanding any other
24 provision of this chapter, the registration of the agent shall
25 be effective until withdrawn by the issuer or until the
26 securities registered pursuant to the registration statement
27 have all been sold, whichever occurs first. The registration
28 of an agent shall become effective when ordered by the
29 administrator or on the fifth business day after the agent's
30 application has been filed with the administrator, whichever
31 occurs first, and the administrator shall not impose further
32 conditions upon the registration of the agent. However, the
33 administrator may deny, revoke, suspend, or withdraw the
34 registration of the agent at any time as provided in section
35 502.412. An agent registered solely pursuant to this section

1 is entitled to sell only securities registered under this
2 section.

3 6. INAPPLICABLE ISSUERS. This section is not applicable
4 to any of the following issuers:

5 a. An investment company, including a mutual fund.

6 b. An issuer subject to the reporting requirements of
7 section 13 or 15(d) of the Securities Exchange Act of 1934.

8 c. A direct participation program, unless otherwise
9 permitted by the administrator by rule or order for good
10 cause.

11 d. A blind pool or other offering for which the specific
12 business or properties cannot now be described, unless the
13 administrator determines that the blind pool is a community
14 development, seed, or venture capital fund for which the
15 administrator permits a waiver.

16 7. LIMITS ON STOP ORDERS. Notwithstanding any other
17 provision of this chapter, the administrator shall not deny
18 effectiveness to or suspend or revoke the effectiveness of a
19 registration under this section on the basis of section
20 502.306, subsection 1, paragraph "h".

21 Sec. 14. Section 502.305, Code 2003, is amended by
22 striking the section and inserting in lieu thereof the
23 following:

24 502.305 SECURITIES REGISTRATION FILINGS.

25 1. WHO MAY FILE. A registration statement may be filed by
26 the issuer, a person on whose behalf the offering is to be
27 made, or a broker-dealer registered under this chapter.

28 2. FILING. Except as provided in subsection 10 and
29 section 502.304A, subsection 3, paragraph "g", a person who
30 files a registration statement or a notice filing shall pay a
31 filing fee of one-tenth of one percent of the proposed
32 aggregate sales price of the securities to be offered to
33 persons in this state pursuant to the registration statement
34 or notice filing. However, except as provided in subsection
35 10, section 502.302, subsection 1, paragraph "a", and section

1 502.304A, subsection 3, paragraph "g", the annual filing fee
2 shall not be less than fifty dollars or more than one thousand
3 dollars. The administrator shall retain the filing fee even
4 if the notice filing is withdrawn or the registration is
5 withdrawn, denied, suspended, revoked, or abandoned.

6 3. STATUS OF OFFERING. A registration statement filed
7 under section 502.303 or 502.304 must specify all of the
8 following:

9 a. The amount of securities to be offered in this state.

10 b. The states in which a registration statement or similar
11 record in connection with the offering has been or is to be
12 filed.

13 c. Any adverse order, judgment, or decree issued in
14 connection with the offering by a state securities regulator,
15 the securities and exchange commission, or a court.

16 4. INCORPORATION BY REFERENCE. A record filed under this
17 chapter or its predecessor chapter within five years preceding
18 the filing of a registration statement may be incorporated by
19 reference in the registration statement to the extent that the
20 record is currently accurate.

21 5. NONISSUER DISTRIBUTION. In the case of a nonissuer
22 distribution, information or a record shall not be required
23 under subsection 9 or section 502.304, unless it is known to
24 the person filing the registration statement or to the person
25 on whose behalf the distribution is to be made or unless it
26 can be furnished by those persons without unreasonable effort
27 or expense.

28 6. ESCROW AND IMPOUNDMENT. A rule adopted or order issued
29 under this chapter may require as a condition of registration
30 that a security issued within the previous five years or to be
31 issued to a promoter for a consideration substantially less
32 than the public offering price or to a person for a
33 consideration other than cash be deposited in escrow; and that
34 the proceeds from the sale of the registered security in this
35 state be impounded until the issuer receives a specified

1 amount from the sale of the security either in this state or
 2 elsewhere. The conditions of any escrow or impoundment
 3 required under this subsection may be established by rule
 4 adopted or order issued under this chapter, but the
 5 administrator shall not reject a depository institution solely
 6 because of its location in another state.

7 7. FORM OF SUBSCRIPTION. A rule adopted or order issued
 8 under this chapter may require as a condition of registration
 9 that a security registered under this chapter be sold only on
 10 a specified form of subscription or sale contract and that a
 11 signed or conformed copy of each contract be filed under this
 12 chapter or preserved for a period specified by the rule or
 13 order, which shall not be longer than five years.

14 8. EFFECTIVE PERIOD. Except while a stop order is in
 15 effect under section 502.306, a registration statement is
 16 effective for one year after its effective date, or for any
 17 longer period designated in an order issued under this chapter
 18 during which the security is being offered or distributed in a
 19 nonexempted transaction by or for the account of the issuer or
 20 other person on whose behalf the offering is being made or by
 21 an underwriter or broker-dealer that is still offering part of
 22 an unsold allotment or subscription taken as a participant in
 23 the distribution. For the purposes of a nonissuer
 24 transaction, all outstanding securities of the same class
 25 identified in the registration statement as a security
 26 registered under this chapter are considered to be registered
 27 while the registration statement is effective. If any
 28 securities of the same class are outstanding, a registration
 29 statement shall not be withdrawn until one year after its
 30 effective date. A registration statement may be withdrawn
 31 only with the approval of the administrator.

32 9. PERIODIC REPORTS. While a registration statement is
 33 effective, a rule adopted or order issued under this chapter
 34 may require the person that filed the registration statement
 35 to file reports, not more often than quarterly, to keep the

1 information or other record in the registration statement
2 reasonably current and to disclose the progress of the
3 offering.

4 10. POSTEFFECTIVE AMENDMENTS. A registrant who sold
5 securities to persons in this state in excess of the amount of
6 securities registered in this state at the time of the sale
7 may file an amendment to its registration statement to
8 register the additional securities. All of the following
9 requirements shall apply:

10 a. If a registrant proposes to sell securities to persons
11 in this state pursuant to a registration statement that is
12 currently effective in this state in an amount that exceeds
13 the amount registered in this state, the registrant must do
14 all of the following:

15 (1) File an amendment to register the additional
16 securities.

17 (2) Pay an additional filing fee in the same amount as
18 specified by subsection 2 as though the amendment constitutes
19 a separate issue.

20 b. If a registrant sold securities to persons in this
21 state in excess of the amount registered in this state at that
22 time, the registrant must do all of the following:

23 (1) File an amendment to register the additional
24 securities.

25 (2) Pay an additional filing fee that is three times the
26 amount specified in subsection 2 as though the amendment
27 constitutes a separate issue.

28 The administrator may order the amendment effective
29 retroactively as of the effective date of the registration
30 statement that is being amended.

31 Sec. 15. NEW SECTION. 502.306 DENIAL, SUSPENSION, AND
32 REVOCATION OF SECURITIES REGISTRATION.

33 1. STOP ORDERS. The administrator may issue a stop order
34 denying effectiveness to, or suspending or revoking the
35 effectiveness of, a registration statement if the

1 administrator finds that the order is in the public interest
2 and that any of the following apply:

3 a. The registration statement as of its effective date or
4 before the effective date in the case of an order denying
5 effectiveness, an amendment under section 502.305, subsection
6 10, as of its effective date, or a report under section
7 502.305, subsection 9, is incomplete in a material respect or
8 contains a statement that, in the light of the circumstances
9 under which it was made, was false or misleading with respect
10 to a material fact.

11 b. This chapter or a rule adopted or order issued under
12 this chapter or a condition imposed under this chapter has
13 been willfully violated, in connection with the offering, by
14 the person filing the registration statement; by the issuer, a
15 partner, officer, or director of the issuer or a person having
16 a similar status or performing a similar function; a promoter
17 of the issuer; or a person directly or indirectly controlling
18 or controlled by the issuer; but only if the person filing the
19 registration statement is directly or indirectly controlled by
20 or acting for the issuer; or by an underwriter.

21 c. The security registered or sought to be registered is
22 the subject of a permanent or temporary injunction of a court
23 of competent jurisdiction or an administrative stop order or
24 similar order issued under any federal, foreign, or state law
25 other than this chapter applicable to the offering, but the
26 administrator shall not institute a proceeding against an
27 effective registration statement under this paragraph more
28 than one year after the date of the order or injunction on
29 which it is based, and the administrator shall not issue an
30 order under this paragraph on the basis of an order or
31 injunction issued under the securities act of another state
32 unless the order or injunction was based on conduct that would
33 constitute, as of the date of the order, a ground for a stop
34 order under this section.

35 d. The issuer's enterprise or method of business includes

1 or would include activities that are unlawful where performed.

2 e. With respect to a security sought to be registered
3 under section 502.303, there has been a failure to comply with
4 the undertaking required by section 502.303, subsection 2,
5 paragraph "d".

6 f. The applicant or registrant has not paid the filing
7 fee, but the administrator shall void the order if the
8 deficiency is corrected.

9 g. The offering is subject to any of the following:

10 (1) Will work or tend to work a fraud upon purchasers or
11 would so operate.

12 (2) Has been or would be made with unreasonable amounts of
13 underwriters' and sellers' discounts, commissions, or other
14 compensation, or promoters' profits or participations, or
15 unreasonable amounts or kinds of options.

16 h. The financial condition of the issuer affects or would
17 affect the soundness of the securities, except that
18 applications for registration of securities by companies which
19 are in the development stage shall not be denied based solely
20 upon the financial condition of the company. For purposes of
21 this rule, a "development stage company" is defined as a
22 company which has been in existence for five years or less.

23 i. A person who is an issuer, correspondent, or applicant,
24 as listed on the uniform application to register securities
25 form known as "Form U-1", has abandoned the registration
26 statement. The administrator may enter an order pursuant to
27 this paragraph if a notice of abandonment is sent to the last
28 known address of each person, and the person fails to take
29 corrective action within the time specified by the
30 administrator. The notice of abandonment shall state the
31 reasons for the administrator's action, specify the corrective
32 action required, and specify the time period for submitting a
33 response. However, the time specified shall not be less than
34 fifteen days.

35 2. ENFORCEMENT OF SUBSECTION 1, PARAGRAPH "G". To the

1 extent practicable, the administrator by rule adopted or order
2 issued under this chapter shall publish standards that provide
3 notice of conduct that violates subsection 1, paragraph "g".

4 3. INSTITUTION OF STOP ORDER. The administrator shall not
5 institute a stop order proceeding against an effective
6 registration statement on the basis of conduct or a
7 transaction known to the administrator when the registration
8 statement became effective unless the proceeding is instituted
9 within thirty days after the registration statement became
10 effective.

11 4. SUMMARY PROCESS. The administrator may summarily
12 revoke, deny, postpone, or suspend the effectiveness of a
13 registration statement pending final determination of an
14 administrative proceeding. Upon the issuance of the order,
15 the administrator shall promptly notify each person specified
16 in subsection 5 that the order has been issued, the reasons
17 for the revocation, denial, postponement, or suspension, and
18 that within fifteen days after the receipt of a request in a
19 record from the person the matter will be scheduled for a
20 hearing. If a hearing is not requested and none is ordered by
21 the administrator, within thirty days after the date of
22 service of the order, the order becomes final. If a hearing
23 is requested or ordered, the administrator, after notice of
24 and opportunity for hearing for each person subject to the
25 order, may modify or vacate the order or extend the order
26 until final determination.

27 5. PROCEDURAL REQUIREMENTS FOR STOP ORDER. A stop order
28 shall not be issued under this section without all of the
29 following:

30 a. An appropriate notice to the applicant or registrant,
31 the issuer, and the person on whose behalf the securities are
32 to be or have been offered.

33 b. An opportunity for hearing.

34 c. Findings of fact and conclusions of law in a record in
35 accordance with chapter 17A.

1 6. MODIFICATION OR VACATION OF STOP ORDER. The
2 administrator may modify or vacate a stop order issued under
3 this section if the administrator finds that the conditions
4 that caused its issuance have changed or that it is necessary
5 or appropriate in the public interest or for the protection of
6 investors.

7 Sec. 16. NEW SECTION. 502.307 WAIVER AND MODIFICATION.

8 The administrator may waive or modify, in whole or in part,
9 any or all of the requirements of sections 502.302, 502.303,
10 and 502.304, subsection 2, or the requirement of any
11 information or record in a registration statement or in a
12 periodic report filed pursuant to section 502.305, subsection
13 9.

14 ARTICLE 3A

15 TAKEOVER PROVISIONS

16 Sec. 17. NEW SECTION. 502.321A SPECIAL DEFINITIONS.

17 For the purposes of this article, unless the context
18 otherwise requires:

19 1. "Associate" means a person acting jointly or in concert
20 with another for the purpose of acquiring, holding or
21 disposing of, or exercising any voting rights attached to the
22 equity securities of a target company.

23 2. "Beneficial owner" includes, but is not limited to, any
24 person who directly or indirectly, through any contract,
25 arrangement, understanding, or relationship, has or shares the
26 power to vote or direct the voting of a security or has or
27 shares the power to dispose of or otherwise direct the
28 disposition of the security. A person is the beneficial owner
29 of securities beneficially owned by any relative or spouse or
30 relative of the spouse residing in the home of the person, any
31 trust or estate in which the person owns ten percent or more
32 of the total beneficial interest or serves as trustee or
33 executor, any corporation or entity in which the person owns
34 ten percent or more of the equity, and any affiliate or
35 associate of the person.

1 3. "Beneficial ownership" includes, but is not limited to,
 2 the right, exercisable within sixty days, to acquire
 3 securities through the exercise of options, warrants, or
 4 rights or the conversion of convertible securities. The
 5 securities subject to these options, warrants, rights, or
 6 conversion privileges held by a person are outstanding for the
 7 purpose of computing the percentage of outstanding securities
 8 of the class owned by the person, but are not outstanding for
 9 the purpose of computing the percentage of the class owned by
 10 any other person.

11 4. "Equity security" means any stock or similar security
 12 and includes any of the following:

- 13 a. Any security convertible, with or without
 14 consideration, into a stock or similar security.
- 15 b. Any warrant or right to subscribe to or purchase a
 16 stock or similar security.
- 17 c. Any security carrying a warrant or right to subscribe
 18 to or purchase a stock or similar security.
- 19 d. Any other security which the administrator deems to be
 20 of a similar nature and considers necessary or appropriate,
 21 according to rules prescribed by the administrator for the
 22 public interest and protection of investors, to be treated as
 23 an equity security.

24 5. "Offeree" means the beneficial owner, who is a resident
 25 of this state, of equity securities which an offeror offers to
 26 acquire in connection with a takeover offer.

27 6. "Offeror" means a person who makes or in any manner
 28 participates in making a takeover offer. It does not include
 29 a supervised financial institution or broker-dealer loaning
 30 funds to an offeror in the ordinary course of its business, or
 31 any supervised financial institution, broker-dealer, attorney,
 32 accountant, consultant, employee, or other person furnishing
 33 information or advice to or performing ministerial duties for
 34 an offeror, and who does not otherwise participate in the
 35 takeover offer.

1 7. "Principal place of business" means the executive
2 office of a target company from which the officers, partners,
3 or managers of the target company direct, control, and
4 coordinate the activities of the target company.

5 8. a. "Takeover offer" means the offer to acquire any
6 equity securities of a target company from a resident of this
7 state pursuant to a tender offer or request or invitation for
8 tenders, if after the acquisition of all securities acquired
9 pursuant to the offer any of the following are true:

10 (1) The offeror would be directly or indirectly a
11 beneficial owner of more than ten percent of any class of the
12 outstanding equity securities of the target company.

13 (2) The beneficial ownership by the offeror of any class
14 of the outstanding equity securities of the target company
15 would be increased by more than five percent. However, this
16 subparagraph subdivision does not apply if after the
17 acquisition of all securities acquired pursuant to the offer,
18 the offeror would not be directly or indirectly a beneficial
19 owner of more than ten percent of any class of the outstanding
20 equity securities of the target company.

21 b. "Takeover offer" does not include any of the following:

22 (1) An offer in connection with the acquisition of a
23 security which, together with all other acquisitions by the
24 offeror of securities of the same class of equity securities
25 of the target company, would not result in the offeror having
26 acquired more than two percent of this class of securities
27 during the preceding twelve-month period.

28 (2) An offer by the target company to acquire its own
29 equity securities if such offer is subject to section 13(e) of
30 the Securities Exchange Act of 1934.

31 (3) An offer in which the target company is an insurance
32 company or insurance holding company subject to regulation by
33 the commissioner of insurance, a financial institution subject
34 to regulation by the superintendent of banking or the
35 superintendent of savings and loan associations, or a public

1 utility subject to regulation by the utilities division of the
2 department of commerce.

3 9. "Target company" means an issuer of publicly traded
4 equity securities that has at least twenty percent of its
5 equity securities beneficially held by residents of this state
6 and has substantial assets in this state. For the purposes of
7 this chapter, an equity security is publicly traded if a
8 trading market exists for the security. A trading market
9 exists if the security is traded on a national securities
10 exchange, whether or not registered pursuant to the Securities
11 Exchange Act of 1934, or on the over-the-counter market.

12 Sec. 18. NEW SECTION. 502.321B REGISTRATION REQUIREMENTS
13 -- HEARING.

14 1. TAKEOVER FILING REQUIRED. It is unlawful for a person
15 to make a takeover offer or to acquire any equity securities
16 pursuant to the offer unless the offer is valid under this
17 article. A takeover offer is effective when the offeror files
18 with the administrator a registration statement containing the
19 information prescribed in subsection 6. Not later than the
20 date of filing of the registration statement, the offeror
21 shall deliver a copy of the registration statement by
22 certified mail to the target company at its principal place of
23 business and publicly disclose the material terms of the
24 proposed offer. Public disclosure shall require, at a
25 minimum, that a copy of the registration statement be supplied
26 to all broker-dealers maintaining an office in this state
27 currently quoting the security.

28 2. REGISTRATION STATEMENT FILING. The registration
29 statement shall be filed on forms prescribed by the
30 administrator, and shall be accompanied by a consent by the
31 offeror to service of process and filing fee specified in
32 section 502.321G, and contain all of the following
33 information:

- 34 a. All information specified in subsection 6.
35 b. Two copies of all solicitation materials intended to be

1 used in the takeover offer, and in the form proposed to be
2 published, sent, or delivered to offerees.

3 c. Additional information as prescribed by the
4 administrator by rule, pursuant to chapter 17A, prior to the
5 making of the offer.

6 3. REGISTRATION NOT APPROVAL. Registration shall not be
7 considered approval by the administrator, and any
8 representation to the contrary is unlawful.

9 4. SUSPENSION AUTHORIZED. Within three calendar days of
10 the date of filing of the registration statement, the
11 administrator may, by order, summarily suspend the
12 effectiveness of the takeover offer if the administrator
13 determines that the registration does not contain all of the
14 information specified in subsection 6 or that the takeover
15 offer materials provided to offerees do not provide full
16 disclosure to offerees of all material information concerning
17 the takeover offer. The suspension shall remain in effect
18 only until the determination following a hearing held pursuant
19 to subsection 5.

20 5. HEARING PROCEDURES. A hearing shall be scheduled by
21 the administrator for each suspension provided under this
22 section. The hearing shall be held within ten calendar days
23 of the date of the suspension. The administrator's
24 determination following the hearing shall be made within three
25 calendar days after the hearing has been completed, but not
26 more than sixteen days after the date of the suspension.
27 However, the administrator may prescribe different time
28 periods than those specified in this subsection by rule or
29 order.

30 If, based upon the record of the hearing, the administrator
31 finds that the registration statement fails to provide for
32 full and fair disclosure of all material information
33 concerning the offer, or that the takeover is in violation of
34 any of the provisions of this article, the administrator shall
35 permanently suspend the effectiveness of the takeover offer.

1 The administrator may provide an opportunity for the offeror
2 to correct disclosure and other deficiencies identified by the
3 administrator and to reinstate the takeover offer by filing a
4 new or amended registration statement pursuant to this
5 section.

6 6. REQUIRED INFORMATION. The form required to be filed by
7 subsection 2, paragraph "a", shall contain all of the
8 following information:

9 a. The identity and background of all persons on whose
10 behalf the acquisition of any equity security of the target
11 company has been or is to be effected.

12 b. The source and amount of funds or other consideration
13 used or to be used in acquiring any equity security including,
14 if applicable, a statement describing any securities which are
15 being offered in exchange for the equity securities of the
16 target company. If any part of the acquisition price is or
17 will be represented by borrowed funds or other consideration,
18 the information shall also include a description of the
19 material terms of any financing arrangements and the names of
20 the parties from whom the funds were or are to be borrowed.

21 c. If the offeror is other than a natural person,
22 information concerning its organization and operations,
23 including all of the following:

24 (1) The year, form, and jurisdiction of its organization.

25 (2) A description of each class of equity security and
26 long-term debt.

27 (3) A description of the business conducted by the offeror
28 and its subsidiaries and any material changes in the offeror
29 or subsidiaries during the past three years.

30 (4) A description of the location and character of the
31 principal properties of the offeror and its subsidiaries.

32 (5) A description of any pending and material legal or
33 administrative proceedings in which the offeror or any of its
34 affiliates is a party.

35 (6) The names of all directors and executive officers of

1 the offeror and their material business activities and
2 affiliations during the past five years.

3 (7) The financial statements of the offeror in a form and
4 for periods of time as the administrator may prescribe by rule
5 pursuant to section 17A.4, subsection 1.

6 d. If the offeror is a natural person, information
7 concerning the offeror's identity and background, including
8 business activities and affiliations during the past five
9 years and a description of any pending and material legal or
10 administrative proceedings in which the offeror is a party.

11 e. If the purpose of the acquisition is to gain control of
12 the target company, the material terms of any plans or
13 proposals which the offeror has, upon gaining control, to do
14 any of the following:

15 (1) Liquidate the target company.

16 (2) Sell its assets.

17 (3) Effect its merger or consolidation.

18 (4) Change the location of its principal place of business
19 or of a material portion of its business activities.

20 (5) Change its management or policies of employment.

21 (6) Materially alter its relationship with suppliers or
22 customers or the community in which it operates.

23 (7) Make any other major changes in its business,
24 corporate structure, management, or personnel.

25 (8) Other information which would materially affect the
26 shareholders' evaluation of the acquisition.

27 f. The number of shares or units of any equity security of
28 the target company owned beneficially by the offeror and any
29 affiliate or associate of the offeror, together with the name
30 and address of each affiliate or associate.

31 g. The material terms of any contract, arrangement, or
32 understanding with any other person with respect to the equity
33 securities of the target company by which the offeror has or
34 will acquire any interest in additional equity securities of
35 the target company, or is or will be obligated to transfer any

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1 interest in the equity securities to another.

2 h. Information required to be included in a tender offer
3 statement pursuant to section 14(d) of the Securities Exchange
4 Act of 1934 and the rules and regulations of the securities
5 and exchange commission issued pursuant to the Act.

6 Sec. 19. NEW SECTION. 502.321C FILING OF SOLICITATION
7 MATERIALS.

8 Copies of all advertisements, circulars, letters, or other
9 materials disseminated by the offeror or the target company,
10 soliciting or requesting the acceptance or rejection of a
11 takeover offer, shall be filed with the administrator and sent
12 to the target company or offeror not later than the time the
13 solicitation or request materials are first published, sent,
14 or given to the offerees. The administrator may prohibit the
15 use of any materials deemed false or misleading.

16 Sec. 20. NEW SECTION. 502.321D FRAUDULENT, DECEPTIVE, OR
17 MANIPULATIVE ACTS AND PRACTICES PROHIBITED.

18 An offeror, target company, affiliate or associate of an
19 offeror or target company, or broker-dealer acting on behalf
20 of an offeror or target company shall not engage in a
21 fraudulent, deceptive, or manipulative act or practice in
22 connection with a takeover offer. For purposes of this
23 section, a fraudulent, deceptive, or manipulative act or
24 practice includes, but is not limited to, any of the
25 following:

26 1. The publication or use in connection with a takeover
27 offer of a false statement of a material fact, or the omission
28 of a material fact which renders the statements made
29 misleading.

30 2. The purchase of any of the equity securities of an
31 officer, director, or beneficial owner of five percent or more
32 of the equity securities of the target company by the offeror
33 or the target company for a consideration greater than that to
34 be paid to other shareholders, unless the terms of the
35 purchase are disclosed in a registration statement filed

1 pursuant to section 502.321B.

2 3. The refusal by a target company to permit an offeror
3 who is a shareholder of record to examine or copy its list of
4 shareholders, pursuant to the applicable corporation statutes,
5 for the purpose of making a takeover offer.

6 4. The refusal by a target company to mail any
7 solicitation materials published by the offeror to its
8 security holders with reasonable promptness after receipt from
9 the offeror of the materials, together with the reasonable
10 expenses of postage and handling.

11 5. The solicitation of any offeree for acceptance or
12 rejection of a takeover offer, or acquisition of any equity
13 security pursuant to a takeover offer, when the offer is
14 suspended under section 502.321B, provided, however, that the
15 target company may communicate during a suspension with its
16 equity security holders to the extent required to respond to
17 the takeover offer made pursuant to the Securities Exchange
18 Act of 1934.

19 Sec. 21. NEW SECTION. 502.321E LIMITATIONS ON OFFERS AND
20 OFFERORS.

21 1. SAME TERMS REQUIRED. A takeover offer shall contain
22 substantially the same terms for shareholders residing within
23 and outside this state.

24 2. OFFEREE WITHDRAWAL OF SECURITIES. An offeror shall
25 provide that any equity securities of a target company
26 deposited or tendered pursuant to a takeover offer may be
27 withdrawn by or on behalf of an offeree within seven days
28 after the date the offer has become effective and after sixty
29 days from the date the offer has become effective, or as
30 otherwise determined by the administrator pursuant to a rule
31 or order issued for the protection of the shareholders.

32 3. PRO RATA ACCEPTANCE. If an offeror makes a takeover
33 offer for less than all the outstanding equity securities of
34 any class and, within ten days after the offer has become
35 effective and copies of the offer, or notice of any increase

1 in the consideration offered, are first published or sent or
 2 given to equity security holders, the number of securities
 3 deposited or tendered pursuant to the offer is greater than
 4 the number of securities that the offeror has offered to
 5 accept and pay for, the securities shall be accepted pro rata,
 6 disregarding fractions, according to the number of securities
 7 deposited or tendered for each offeree.

8 4. INCREASED CONSIDERATION. If an offeror varies the
 9 terms of a takeover offer before the offer's expiration date
 10 by increasing the consideration offered to equity security
 11 holders, the offeror shall pay the increased consideration for
 12 all equity securities accepted, whether the securities have
 13 been accepted by the offeror before or after the variation in
 14 the terms of the offer.

15 5. PROCEEDINGS -- STOP OFFERS OR ACQUISITIONS. An offeror
 16 shall not make a takeover offer or acquire any equity
 17 securities in this state pursuant to a takeover offer during
 18 the period of time that an administrator's proceeding alleging
 19 a violation of this chapter is pending against the offeror.

20 6. PROCEEDINGS -- HALT MOVING OF TARGET COMPANY ASSETS.
 21 An offeror shall not acquire, remove, or exercise control,
 22 directly or indirectly, over any target company assets located
 23 in this state pursuant to a takeover offer during the period
 24 of time that an administrator's proceeding alleging a
 25 violation of this chapter is pending against the offeror.

26 7. ACQUISITIONS SUBSEQUENT TO TAKEOVER PURCHASES. An
 27 offeror shall not acquire from a resident of this state an
 28 equity security of any class of a target company at any time
 29 within two years following the last purchase of securities
 30 pursuant to a takeover offer with respect to that class,
 31 including, but not limited to, acquisitions made by purchase,
 32 exchange, merger, consolidation, partial or complete
 33 liquidation, redemption, reverse stock split,
 34 recapitalization, reorganization, or any other similar
 35 transaction, unless the holders of the equity securities are

1 afforded, at the time of the acquisition, a reasonable
2 opportunity to dispose of the securities to the offeror upon
3 substantially equivalent terms as those provided in the
4 earlier takeover offer.

5 Sec. 22. NEW SECTION. 502.321F ADMINISTRATION -- RULES
6 AND ORDERS.

7 1. EXEMPTION AUTHORITY. The administrator may by rule or
8 order exempt from any provision of this article the following:

9 a. A proposed takeover offer or a category or type of
10 takeover offer which the administrator determines does not
11 have the purpose or effect of changing or influencing the
12 control of a target company.

13 b. A proposed takeover offer for which the administrator
14 determines that compliance with the sections is not necessary
15 for the protection of the offerees.

16 c. A person from the requirement of filing statements.

17 2. In the event of a conflict between the provisions of
18 chapter 17A and the provisions of this article, the provisions
19 of this article shall prevail.

20 Sec. 23. NEW SECTION. 502.321G FEES.

21 The administrator shall charge a nonrefundable filing fee
22 of two hundred fifty dollars for a registration statement
23 filed by an offeror.

24 Sec. 24. NEW SECTION. 502.321H NONAPPLICATION OF
25 CORPORATE TAKEOVER LAW.

26 If the target company is a public utility, public utility
27 holding company, national banking association, bank holding
28 company, or savings and loan association which is subject to
29 regulation by a federal agency and the takeover of such
30 company is subject to approval by the federal agency, this
31 article does not apply.

32 Sec. 25. NEW SECTION. 502.321I APPLICATION OF SECURITIES
33 LAW.

34 All of the provisions of this chapter which are not in
35 conflict with this article apply to any takeover offer

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1 involving a target company.

2 ARTICLE 4

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

6 Sec. 26. Section 502.401, Code 2003, is amended by
7 striking the section and inserting in lieu thereof the
8 following:

9 502.401 BROKER-DEALER REGISTRATION REQUIREMENT AND
10 EXEMPTIONS.

11 1. REGISTRATION REQUIREMENT. It is unlawful for a person
12 to transact business in this state as a broker-dealer unless
13 the person is registered under this chapter as a broker-dealer
14 or is exempt from registration as a broker-dealer under
15 subsection 2 or 4.

16 2. EXEMPTIONS FROM REGISTRATION. The following persons
17 are exempt from the registration requirement of subsection 1:

18 a. A broker-dealer without a place of business in this
19 state if its only transactions effected in this state are with
20 any of the following:

21 (1) The issuer of the securities involved in the
22 transactions.

23 (2) A broker-dealer registered as a broker-dealer under
24 this chapter or not required to be registered as a broker-
25 dealer under this chapter.

26 (3) An institutional investor.

27 (4) A nonaffiliated federal covered investment adviser
28 with investments under management in excess of one hundred
29 million dollars acting for the account of others pursuant to
30 discretionary authority in a signed record.

31 (5) A bona fide preexisting customer whose principal place
32 of residence is not in this state and the broker-dealer is
33 registered as a broker-dealer under the Securities Exchange
34 Act of 1934 or not required to be registered under the
35 Securities Exchange Act of 1934 and is registered under the

1 securities act of the state in which the customer maintains a
2 principal place of residence.

3 (6) A bona fide preexisting customer whose principal place
4 of residence is in this state but was not present in this
5 state when the customer relationship was established, if all
6 of the following apply:

7 (a) The broker-dealer is registered under the Securities
8 Exchange Act of 1934 or not required to be registered under
9 the Securities Exchange Act of 1934 and is registered under
10 the securities laws of the state in which the customer
11 relationship was established and where the customer had
12 maintained a principal place of residence.

13 (b) Within forty-five days after the customer's first
14 transaction in this state, the broker-dealer files an
15 application for registration as a broker-dealer in this state
16 and a further transaction is not effected more than seventy-
17 five days after the date on which the application is filed,
18 or, if earlier, the date on which the administrator notifies
19 the broker-dealer that the administrator has denied the
20 application for registration or has stayed the pendency of the
21 application for good cause.

22 (7) Not more than three customers in this state during the
23 previous twelve months, in addition to those customers
24 specified in this paragraph "a", if the broker-dealer is
25 registered under the Securities Exchange Act of 1934 or not
26 required to be registered under the Securities Exchange Act of
27 1934 and is registered under the securities act of the state
28 in which the broker-dealer has its principal place of
29 business.

30 (8) Any other person exempted by rule adopted or order
31 issued under this chapter.

32 b. A person that deals solely in United States government
33 securities and is supervised as a dealer in government
34 securities by the board of governors of the federal reserve
35 system, the comptroller of the currency, the federal deposit

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1 insurance corporation, or the office of thrift supervision.
2 3. LIMITS ON EMPLOYMENT OR ASSOCIATION. It is unlawful
3 for a broker-dealer, or for an issuer engaged in offering,
4 offering to purchase, purchasing, or selling securities in
5 this state, directly or indirectly, to employ or associate
6 with an individual to engage in an activity related to
7 securities transactions in this state if the registration of
8 the individual is suspended or revoked or the individual is
9 barred from employment or association with a broker-dealer, an
10 issuer, an investment adviser, or a federal covered investment
11 adviser by an order of the administrator under this chapter,
12 the securities and exchange commission, or a self-regulatory
13 organization. A broker-dealer or issuer does not violate this
14 subsection if the broker-dealer or issuer did not know, and in
15 the exercise of reasonable care could not have known, of the
16 suspension, revocation, or bar. Upon request from a broker-
17 dealer or issuer and for good cause, an order under this
18 chapter may modify or waive, in whole or in part, the
19 application of the prohibitions of this subsection to the
20 broker-dealer or issuer.

21 4. FOREIGN TRANSACTIONS. A rule adopted or order issued
22 under this chapter may permit any of the following:

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

28 (1) An individual from Canada or other foreign
29 jurisdiction who is temporarily present in this state and with
30 whom the broker-dealer had a bona fide customer relationship
31 before the individual entered the United States.

32 (2) An individual from Canada or other foreign
33 jurisdiction who is present in this state and whose
34 transactions are in a self-directed tax advantaged retirement
35 plan of which the individual is the holder or contributor in

1 that foreign jurisdiction.

2 (3) An individual who is present in this state, with whom
3 the broker-dealer customer relationship arose while the
4 individual was temporarily or permanently residing in Canada
5 or the other foreign jurisdiction.

6 b. An agent who represents a broker-dealer that is exempt
7 under this subsection to effect transactions in securities or
8 attempt to effect the purchase or sale of securities in this
9 state as permitted for a broker-dealer described in paragraph
10 "a".

11 Sec. 27. Section 502.402, Code 2003, is amended by
12 striking the section and inserting in lieu thereof the
13 following:

14 502.402 AGENT REGISTRATION REQUIREMENT AND EXEMPTIONS.

15 1. REGISTRATION REQUIREMENT. It is unlawful for an
16 individual to transact business in this state as an agent
17 unless the individual is registered under this chapter as an
18 agent or is exempt from registration as an agent under
19 subsection 2.

20 2. EXEMPTIONS FROM REGISTRATION. The following
21 individuals are exempt from the registration requirement of
22 subsection 1:

23 a. An individual who represents a broker-dealer in
24 effecting transactions in this state limited to those
25 described in section 15(h)(2) of the Securities Exchange Act
26 of 1934, 15 U.S.C. § 78(o)(2).

27 b. An individual who represents a broker-dealer that is
28 exempt under section 502.401, subsection 2 or 4.

29 c. An individual who represents an issuer with respect to
30 an offer or sale of the issuer's own securities or those of
31 the issuer's parent or any of the issuer's subsidiaries, and
32 who is not compensated in connection with the individual's
33 participation by the payment of commissions or other
34 remuneration based, directly or indirectly, on transactions in
35 those securities.

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1 d. An individual who represents an issuer and who effects
2 transactions in the issuer's securities exempted by section
3 502.202, other than section 502.202, subsection 11 or 14.

4 e. An individual who represents an issuer that effects
5 transactions solely in federal covered securities of the
6 issuer, but an individual who effects transactions in a
7 federal covered security under section 18(b)(3) or 18(b)(4)(D)
8 of the Securities Act of 1933, 15 U.S.C. § 77r(b)(3) or
9 77r(b)(4)(D), is not exempt if the individual is compensated
10 in connection with the agent's participation by the payment of
11 commissions or other remuneration based, directly or
12 indirectly, on transactions in those securities.

13 f. An individual who represents a broker-dealer registered
14 in this state under section 502.401, subsection 1, or exempt
15 from registration under section 502.401, subsection 2, in the
16 offer and sale of securities for an account of a nonaffiliated
17 federal covered investment adviser with investments under
18 management in excess of one hundred million dollars acting for
19 the account of others pursuant to discretionary authority in a
20 signed record.

21 g. An individual who represents an issuer in connection
22 with the purchase of the issuer's own securities.

23 h. An individual who represents an issuer and who
24 restricts participation to performing clerical or ministerial
25 acts.

26 i. Any other individual exempted by rule adopted or order
27 issued under this chapter.

28 3. REGISTRATION EFFECTIVE ONLY WHILE EMPLOYED OR
29 ASSOCIATED. The registration of an agent is effective only
30 while the agent is employed by or associated with a broker-
31 dealer registered under this chapter or an issuer that is
32 offering, selling, or purchasing its securities in this state.

33 4. LIMIT ON EMPLOYMENT OR ASSOCIATION. It is unlawful for
34 a broker-dealer, or an issuer engaged in offering, selling, or
35 purchasing securities in this state, to employ or associate

1 with an agent who transacts business in this state on behalf
2 of broker-dealers or issuers unless the agent is registered
3 under subsection 1 or exempt from registration under
4 subsection 2.

5 5. LIMIT ON AFFILIATIONS. An individual shall not act as
6 an agent for more than one broker-dealer or one issuer at a
7 time, unless the broker-dealer or the issuer for which the
8 agent acts is affiliated by direct or indirect common control
9 or is authorized by rule or order under this chapter.

10 Sec. 28. Section 502.403, Code 2003, is amended by
11 striking the sections and inserting in lieu thereof the
12 following:

13 502.403 INVESTMENT ADVISER REGISTRATION REQUIREMENT AND
14 EXEMPTIONS.

15 1. REGISTRATION REQUIREMENT. It is unlawful for a person
16 to transact business in this state as an investment adviser
17 unless the person is registered under this chapter as an
18 investment adviser or is exempt from registration as an
19 investment adviser under subsection 2.

20 2. EXEMPTIONS FROM REGISTRATION. All of the following
21 persons are exempt from the registration requirement of
22 subsection 1:

23 a. A person without a place of business in this state that
24 is registered under the securities act of the state in which
25 the person has its principal place of business if its only
26 clients in this state are any of the following:

27 (1) Federal covered investment advisers, investment
28 advisers registered under this chapter, or broker-dealers
29 registered under this chapter.

30 (2) Institutional investors.

31 (3) Bona fide preexisting clients whose principal places
32 of residence are not in this state if the investment adviser
33 is registered under the securities act of the state in which
34 the clients maintain principal places of residence.

35 (4) Any other client exempted by rule adopted or order

1 issued under this chapter.

2 b. A person without a place of business in this state if
3 the person has had, during the preceding twelve months, not
4 more than five clients that are resident in this state in
5 addition to those specified under paragraph "a".

6 c. Any other person exempted by rule adopted or order
7 issued under this chapter.

8 3. LIMITS ON EMPLOYMENT OR ASSOCIATION. It is unlawful
9 for an investment adviser, directly or indirectly, to employ
10 or associate with an individual to engage in an activity
11 related to investment advice in this state if the registration
12 of the individual is suspended or revoked or the individual is
13 barred from employment or association with an investment
14 adviser, federal covered investment adviser, or broker-dealer
15 by an order under this chapter, the securities and exchange
16 commission, or a self-regulatory organization, unless the
17 investment adviser did not know, and in the exercise of
18 reasonable care could not have known, of the suspension,
19 revocation, or bar. Upon request from the investment adviser
20 and for good cause, the administrator, by order, may waive, in
21 whole or in part, the application of the prohibitions of this
22 subsection to the investment adviser.

23 4. INVESTMENT ADVISER REPRESENTATIVE REGISTRATION
24 REQUIRED. It is unlawful for an investment adviser to employ
25 or associate with an individual required to be registered
26 under this chapter as an investment adviser representative who
27 transacts business in this state on behalf of the investment
28 adviser unless the individual is registered under section
29 502.404, subsection 1, or is exempt from registration under
30 section 502.404, subsection 2.

31 Sec. 29. Section 502.404, Code 2003, is amended by
32 striking the section and inserting in lieu thereof the
33 following:

34 502.404 INVESTMENT ADVISER REPRESENTATIVE REGISTRATION
35 REQUIREMENT AND EXEMPTIONS.

1 1. REGISTRATION REQUIREMENT. It is unlawful for an
2 individual to transact business in this state as an investment
3 adviser representative unless the individual is registered
4 under this chapter as an investment adviser representative or
5 is exempt from registration as an investment adviser
6 representative under subsection 2.

7 2. EXEMPTIONS FROM REGISTRATION. All of the following
8 individuals are exempt from the registration requirement of
9 subsection 1:

10 a. An individual who is employed by or associated with an
11 investment adviser that is exempt from registration under
12 section 502.403, subsection 2, or a federal covered investment
13 adviser that is excluded from the notice filing requirements
14 of section 502.405.

15 b. Any other individual exempted by rule adopted or order
16 issued under this chapter.

17 3. REGISTRATION EFFECTIVE ONLY WHILE EMPLOYED OR
18 ASSOCIATED. The registration of an investment adviser
19 representative is not effective while the investment adviser
20 representative is not employed by or associated with an
21 investment adviser registered under this chapter or a federal
22 covered investment adviser that has made or is required to
23 make a notice filing under section 502.405.

24 4. LIMIT ON AFFILIATIONS. An individual may transact
25 business as an investment adviser representative for more than
26 one investment adviser or federal covered investment adviser
27 unless a rule adopted or order issued under this chapter
28 prohibits or limits an individual from acting as an investment
29 adviser representative for more than one investment adviser or
30 federal covered investment adviser.

31 5. LIMITS ON EMPLOYMENT OR ASSOCIATION. It is unlawful
32 for an individual acting as an investment adviser
33 representative, directly or indirectly, to conduct business in
34 this state on behalf of an investment adviser or a federal
35 covered investment adviser if the registration of the

1 individual as an investment adviser representative is
2 suspended or revoked or the individual is barred from
3 employment or association with an investment adviser or a
4 federal covered investment adviser by an order under this
5 chapter, the securities and exchange commission, or a self-
6 regulatory organization. Upon request from a federal covered
7 investment adviser and for good cause, the administrator, by
8 order issued, may waive, in whole or in part, the application
9 of the requirements of this subsection to the federal covered
10 investment adviser.

11 6. REFERRAL FEES. An investment adviser registered under
12 this chapter, a federal covered investment adviser that has
13 filed a notice under section 502.405, or a broker-dealer
14 registered under this chapter is not required to employ or
15 associate with an individual as an investment adviser
16 representative if the only compensation paid to the individual
17 for a referral of investment advisory clients is paid to an
18 investment adviser registered under this chapter, a federal
19 covered investment adviser who has filed a notice under
20 section 502.405, or a broker-dealer registered under this
21 chapter with whom the individual is employed or associated as
22 an investment adviser representative.

23 Sec. 30. Section 502.405, Code 2003, is amended by
24 striking the section and inserting in lieu thereof the
25 following:

26 502.405 FEDERAL COVERED INVESTMENT ADVISER NOTICE FILING
27 REQUIREMENT.

28 1. NOTICE FILING REQUIREMENT. Except with respect to a
29 federal covered investment adviser described in subsection 2,
30 it is unlawful for a federal covered investment adviser to
31 transact business in this state as a federal covered
32 investment adviser unless the federal covered investment
33 adviser complies with subsection 3.

34 2. NOTICE FILING REQUIREMENT NOT REQUIRED. The following
35 federal covered investment advisers are not required to comply

1 with subsection 3:

2 a. A federal covered investment adviser without a place of
3 business in this state if its only clients in this state are
4 any of the following:

5 (1) Federal covered investment advisers, investment
6 advisers registered under this chapter, and broker-dealers
7 registered under this chapter.

8 (2) Institutional investors.

9 (3) Bona fide preexisting clients whose principal places
10 of residence are not in this state.

11 (4) Other clients specified by rule adopted or order
12 issued under this chapter.

13 b. A federal covered investment adviser without a place of
14 business in this state if the person has had, during the
15 preceding twelve months, not more than five clients that are
16 resident in this state in addition to those specified under
17 paragraph "a".

18 c. Any other person excluded by rule adopted or order
19 issued under this chapter.

20 3. NOTICE FILING PROCEDURE. A person acting as a federal
21 covered investment adviser, not excluded under subsection 2,
22 shall file a notice, a consent to service of process complying
23 with section 502.611, and such records as have been filed with
24 the securities and exchange commission under the Investment
25 Advisers Act of 1940 required by rule adopted or order issued
26 under this chapter and pay the fees specified in section
27 502.410, subsection 5.

28 4. EFFECTIVENESS OF FILING. The notice under subsection 3
29 becomes effective upon its filing.

30 Sec. 31. Section 502.406, Code 2003, is amended by
31 striking the section and inserting in lieu thereof the
32 following:

33 502.406 REGISTRATION BY BROKER-DEALER, AGENT, INVESTMENT
34 ADVISER, AND INVESTMENT ADVISER REPRESENTATIVE.

35 1. APPLICATION FOR INITIAL REGISTRATION. A person shall

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1 register as a broker-dealer, agent, investment adviser, or
2 investment adviser representative by filing an application and
3 a consent to service of process complying with section
4 502.611, and paying the fee specified in section 502.410 and
5 any reasonable fees charged by the designee of the
6 administrator for processing the filing. The application must
7 contain all of the following:

8 a. The information or record required for the filing of a
9 uniform application.

10 b. Upon request by the administrator, any other financial
11 or other information or record that the administrator
12 determines is appropriate.

13 2. AMENDMENT. If the information or record contained in
14 an application filed under subsection 1 is or becomes
15 inaccurate or incomplete in a material respect, the registrant
16 shall promptly file a correcting amendment.

17 3. EFFECTIVENESS OF REGISTRATION. If an order is not in
18 effect and a proceeding is not pending under section 502.412,
19 registration becomes effective at noon on the forty-fifth day
20 after a completed application is filed, unless the
21 registration is denied. A rule adopted or order issued under
22 this chapter may set an earlier effective date or may defer
23 the effective date until noon on the forty-fifth day after the
24 filing of any amendment completing the application.

25 4. REGISTRATION RENEWAL. A registration is effective
26 until midnight on December 31 of the year for which the
27 application for registration is filed. Unless an order is in
28 effect under section 502.412, a registration may be
29 automatically renewed each year by filing such records as are
30 required by rule adopted or order issued under this chapter,
31 by paying the fee specified in section 502.410, and by paying
32 costs charged by the designee of the administrator for
33 processing the filings.

34 5. ADDITIONAL CONDITIONS OR WAIVERS. A rule adopted or
35 order issued under this chapter may impose such other

1 conditions, not inconsistent with the National Securities
2 Markets Improvement Act of 1996. An order issued under this
3 chapter may waive, in whole or in part, specific requirements
4 in connection with registration as are in the public interest
5 and for the protection of investors.

6 Sec. 32. Section 502.407, Code 2003, is amended by
7 striking the section and inserting in lieu thereof the
8 following:

9 502.407 SUCCESSION AND CHANGE IN REGISTRATION OF BROKER-
10 DEALER OR INVESTMENT ADVISER.

11 1. SUCCESSION. A broker-dealer or investment adviser may
12 succeed to the current registration of another broker-dealer
13 or investment adviser or a notice filing of a federal covered
14 investment adviser, and a federal covered investment adviser
15 may succeed to the current registration of an investment
16 adviser or notice filing of another federal covered investment
17 adviser, by filing as a successor an application for
18 registration pursuant to section 502.401 or 502.403 or a
19 notice pursuant to section 502.405 for the unexpired portion
20 of the current registration or notice filing.

21 2. ORGANIZATIONAL CHANGE. A broker-dealer or investment
22 adviser that changes its form of organization or state of
23 incorporation or organization may continue its registration by
24 filing an amendment to its registration if the change does not
25 involve a material change in its financial condition or
26 management. The amendment becomes effective when filed or on
27 a date designated by the registrant in its filing. The new
28 organization is a successor to the original registrant for the
29 purposes of this chapter. If there is a material change in
30 financial condition or management, the broker-dealer or
31 investment adviser shall file a new application for
32 registration. A predecessor registered under this chapter
33 shall stop conducting its securities business other than
34 winding down transactions and shall file for withdrawal of
35 broker-dealer or investment adviser registration within forty-

1 five days after filing its amendment to effect succession.

2 3. NAME CHANGE. A broker-dealer or investment adviser
3 that changes its name may continue its registration by filing
4 an amendment to its registration. The amendment becomes
5 effective when filed or on a date designated by the
6 registrant.

7 4. CHANGE OF CONTROL. A change of control of a broker-
8 dealer or investment adviser may be made in accordance with a
9 rule adopted or order issued under this chapter.

10 Sec. 33. Section 502.408, Code 2003, is amended by
11 striking the section and inserting in lieu thereof the
12 following:

13 502.408 TERMINATION OF EMPLOYMENT OR ASSOCIATION OF AGENT
14 AND INVESTMENT ADVISER REPRESENTATIVE AND TRANSFER OF
15 EMPLOYMENT OR ASSOCIATION.

16 1. NOTICE OF TERMINATION. If an agent registered under
17 this chapter terminates employment by or association with a
18 broker-dealer or issuer, or if an investment adviser
19 representative registered under this chapter terminates
20 employment by or association with an investment adviser or
21 federal covered investment adviser, or if either registrant
22 terminates activities that require registration as an agent or
23 investment adviser representative, the broker-dealer, issuer,
24 investment adviser, or federal covered investment adviser
25 shall promptly file a notice of termination. If the
26 registrant learns that the broker-dealer, issuer, investment
27 adviser, or federal covered investment adviser has not filed
28 the notice, the registrant may do so.

29 2. TRANSFER OF EMPLOYMENT OR ASSOCIATION. If an agent
30 registered under this chapter terminates employment by or
31 association with a broker-dealer registered under this chapter
32 and begins employment by or association with another broker-
33 dealer registered under this chapter, or if an investment
34 adviser representative registered under this chapter
35 terminates employment by or association with an investment

1 adviser registered under this chapter or a federal covered
2 investment adviser that has filed a notice under section
3 502.405 and begins employment by or association with another
4 investment adviser registered under this chapter or a federal
5 covered investment adviser that has filed a notice under
6 section 502.405, then upon the filing by or on behalf of the
7 registrant, within thirty days after the termination, of an
8 application for registration that complies with the
9 requirement of section 502.406, subsection 1, and payment of
10 the filing fee required under section 502.410, the
11 registration of the agent or investment adviser representative
12 is one of the following:

13 a. Immediately effective as of the date of the completed
14 filing, if the agent's central registration depository record
15 or successor record or the investment adviser representative's
16 investment adviser registration depository record or successor
17 record does not contain a new or amended disciplinary
18 disclosure within the previous twelve months.

19 b. Temporarily effective as of the date of the completed
20 filing, if the agent's central registration depository record
21 or successor record or the investment adviser representative's
22 investment adviser registration depository record or successor
23 record contains a new or amended disciplinary disclosure
24 within the preceding twelve months.

25 3. WITHDRAWAL OF TEMPORARY REGISTRATION. The
26 administrator may withdraw a temporary registration if there
27 are or were grounds for discipline as specified in section
28 502.412 and the administrator does so within thirty days after
29 the filing of the application. If the administrator does not
30 withdraw the temporary registration within the thirty-day
31 period, registration becomes automatically effective on the
32 thirty-first day after filing.

33 4. POWER TO PREVENT REGISTRATION. The administrator may
34 prevent the effectiveness of a transfer of an agent or
35 investment adviser representative under subsection 2,

1 paragraph "a" or "b", based on the public interest and the
2 protection of investors.

3 5. TERMINATION OF REGISTRATION OR APPLICATION FOR
4 REGISTRATION. If the administrator determines that a
5 registrant or applicant for registration is no longer in
6 existence or has ceased to act as a broker-dealer, agent,
7 investment adviser, or investment adviser representative, or
8 is the subject of an adjudication of incapacity or is subject
9 to the control of a committee, conservator, or guardian, or
10 cannot reasonably be located, a rule adopted or order issued
11 under this chapter may require that the registration be
12 canceled or terminated or the application denied. The
13 administrator may reinstate a canceled or terminated
14 registration, with or without hearing, and may make the
15 registration retroactive.

16 Sec. 34. NEW SECTION. 502.409 WITHDRAWAL OF REGISTRATION
17 OF BROKER-DEALER, AGENT, INVESTMENT ADVISER, AND INVESTMENT
18 ADVISER REPRESENTATIVE.

19 1. WITHDRAWAL OF REGISTRATION. Withdrawal of registration
20 by a broker-dealer, agent, investment adviser, or investment
21 adviser representative becomes effective sixty days after the
22 filing of the application to withdraw or within any shorter
23 period as provided by rule adopted or order issued under this
24 chapter unless a revocation or suspension proceeding is
25 pending when the application is filed. If a proceeding is
26 pending, withdrawal becomes effective when and upon such
27 conditions as required by rule adopted or order issued under
28 this chapter. The administrator may institute a revocation or
29 suspension proceeding under section 502.412 within one year
30 after the withdrawal became effective automatically and issue
31 a revocation or suspension order as of the last date on which
32 registration was effective if a proceeding is not pending.

33 1A. CEASING TO DO BUSINESS AND ABANDONED FILINGS. If the
34 administrator finds that any registrant or applicant for
35 registration is no longer in existence or has ceased to do

1 business as a broker-dealer, agent, investment adviser, or
2 investment adviser representative, or is subject to an
3 adjudication of mental incompetence or to the control of a
4 committee, conservator, or guardian, or cannot be located
5 after search, the administrator may by order revoke the
6 registration or application. If the administrator finds that
7 the applicant for registration or registrant has abandoned the
8 application or registration, the administrator may enter an
9 order of abandonment, and limit or eliminate further
10 consideration of the application or registration, as provided
11 by the administrator. The administrator may enter an order
12 under this subsection if notice is sent to the applicant or
13 registrant, and either the administrator does not receive a
14 response by the applicant or registrant within forty-five days
15 from the date that the notice was delivered, or action is not
16 taken by the applicant or registrant within the time specified
17 by the administrator in the notice, whichever is later.

18 Sec. 35. NEW SECTION. 502.410 FILING FEES.

19 1. BROKER-DEALERS. A person shall pay a fee of two
20 hundred dollars when initially filing an application for
21 registration as a broker-dealer and a fee of two hundred
22 dollars when filing a renewal of registration as a broker-
23 dealer. If the filing results in a denial or withdrawal, the
24 administrator shall retain the fee.

25 2. AGENTS. The fee for an individual is thirty dollars
26 when filing an application for registration as an agent, a fee
27 of thirty dollars when filing a renewal of registration as an
28 agent, and a fee of thirty dollars when filing for a change of
29 registration as an agent. If the filing results in a denial
30 or withdrawal, the administrator shall retain the fee.

31 3. INVESTMENT ADVISERS. A person shall pay a fee of one
32 hundred dollars when filing an application for registration as
33 an investment adviser and a fee of one hundred dollars when
34 filing a renewal of registration as an investment adviser. If
35 the filing results in a denial or withdrawal, the

1 administrator shall retain the fee.

2 4. INVESTMENT ADVISER REPRESENTATIVES. The fee for an
3 individual is thirty dollars when filing an application for
4 registration as an investment adviser representative, a fee of
5 thirty dollars when filing a renewal of registration as an
6 investment adviser representative, and a fee of thirty dollars
7 when filing a change of registration as an investment adviser
8 representative. If the filing results in a denial or
9 withdrawal, the administrator shall retain the fee.

10 However, an investment adviser representative is not
11 required to pay a filing fee if the investment adviser is a
12 sole proprietorship or the substantial equivalent and the
13 investment adviser representative is the same individual as
14 the investment adviser.

15 5. FEDERAL COVERED INVESTMENT ADVISERS. A federal covered
16 investment adviser required to file a notice under section
17 502.405 shall pay an initial fee of one hundred dollars and an
18 annual notice fee of one hundred dollars.

19 6. PAYMENT. A person required to pay a filing or notice
20 fee under this section may transmit the fee through or to a
21 designee as a rule or order provides under this chapter.

22 Sec. 36. NEW SECTION. 502.411 POST-REGISTRATION
23 REQUIREMENTS.

24 1. FINANCIAL REQUIREMENTS. Subject to section 15(h) of
25 the Securities Exchange Act of 1934, 15 U.S.C. § 78o(h), or
26 section 222 of the Investment Advisers Act of 1940, 15 U.S.C.
27 § 80b-22, a rule adopted or order issued under this chapter
28 may establish minimum financial requirements for broker-
29 dealers registered or required to be registered under this
30 chapter and investment advisers registered or required to be
31 registered under this chapter.

32 2. FINANCIAL REPORTS. Subject to section 15(h) of the
33 Securities Exchange Act of 1934, 15 U.S.C. § 78o(h), or
34 section 222(b) of the Investment Advisers Act of 1940, 15
35 U.S.C. § 80b-22, a broker-dealer registered or required to be

1 registered under this chapter and an investment adviser
2 registered or required to be registered under this chapter
3 shall file such financial reports as are required by a rule
4 adopted or order issued under this chapter. If the
5 information contained in a record filed under this subsection
6 is or becomes inaccurate or incomplete in a material respect,
7 the registrant shall promptly file a correcting amendment.
8 The administrator may, by rule, assess a reasonable charge for
9 the late filing of a financial report under this subsection.

10 3. RECORDKEEPING. Subject to section 15(h) of the
11 Securities Exchange Act of 1934, 15 U.S.C. § 78o(h), or
12 section 222 of the Investment Advisers Act of 1940, 15 U.S.C.
13 § 80b-22, all of the following apply:

14 a. A broker-dealer registered or required to be registered
15 under this chapter and an investment adviser registered or
16 required to be registered under this chapter shall make and
17 maintain the accounts, correspondence, memoranda, papers,
18 books, and other records required by rule adopted or order
19 issued under this chapter.

20 b. Broker-dealer records required to be maintained under
21 paragraph "a" may be maintained in any form of data storage
22 acceptable under section 17(a) of the Securities Exchange Act
23 of 1934, 15 U.S.C. § 78q(a), if they are readily accessible to
24 the administrator.

25 c. Investment adviser records required to be maintained
26 under paragraph "a" may be maintained in any form of data
27 storage required by rule adopted or order issued under this
28 chapter.

29 4. AUDITS OR INSPECTIONS. The records of a broker-dealer
30 registered or required to be registered under this chapter and
31 of an investment adviser registered or required to be
32 registered under this chapter are subject to such reasonable
33 periodic, special, or other audits or inspections by a
34 representative of the administrator, within or without this
35 state, as the administrator considers necessary or appropriate

1 in the public interest and for the protection of investors.
2 An audit or inspection may be made at any time and without
3 prior notice. The administrator may copy, and remove for
4 audit or inspection copies of, all records the administrator
5 reasonably considers necessary or appropriate to conduct the
6 audit or inspection. The administrator may assess a
7 reasonable charge for conducting an audit or inspection under
8 this subsection.

9 5. CUSTODY AND DISCRETIONARY AUTHORITY BOND OR INSURANCE.
10 Subject to section 15(h) of the Securities Exchange Act of
11 1934, 15 U.S.C. § 78o(h), or section 222 of the Investment
12 Advisers Act of 1940, 15 U.S.C. § 80b-22, a rule adopted or
13 order issued under this chapter may require a broker-dealer or
14 investment adviser that has custody of or discretionary
15 authority over funds or securities of a customer or client to
16 obtain insurance or post a bond or other satisfactory form of
17 security in an amount the administrator shall prescribe. The
18 administrator may determine the requirements of the insurance,
19 bond, or other satisfactory form of security. Insurance or a
20 bond or other satisfactory form of security shall not be
21 required of a broker-dealer registered under this chapter
22 whose net capital exceeds, or of an investment adviser
23 registered under this chapter whose minimum financial
24 requirements exceed, the amounts required by rule or order
25 under this chapter. The insurance, bond, or other
26 satisfactory form of security must permit an action by a
27 person to enforce any liability on the insurance, bond, or
28 other satisfactory form of security if instituted within the
29 time limitations in section 502.509, subsection 10, paragraph
30 "b".

31 6. REQUIREMENTS FOR CUSTODY. Subject to section 15(h) of
32 the Securities Exchange Act of 1934, 15 U.S.C. § 78o(h), or
33 section 222 of the Investment Advisers Act of 1940, 15 U.S.C.
34 § 80b-22, an agent shall not have custody of funds or
35 securities of a customer except under the supervision of a

1 broker-dealer and an investment adviser representative shall
2 not have custody of funds or securities of a client except
3 under the supervision of an investment adviser or a federal
4 covered investment adviser. A rule adopted or order issued
5 under this chapter may prohibit, limit, or impose conditions
6 on a broker-dealer regarding custody of funds or securities of
7 a customer and on an investment adviser regarding custody of
8 securities or funds of a client.

9 7. INVESTMENT ADVISER BROCHURE RULE. With respect to an
10 investment adviser registered or required to be registered
11 under this chapter, a rule adopted or order issued under this
12 chapter may require that information or other records be
13 furnished or disseminated to clients or prospective clients in
14 this state as necessary or appropriate in the public interest
15 and for the protection of investors and advisory clients.

16 8. CONTINUING EDUCATION. A rule adopted or order issued
17 under this chapter may require an individual registered under
18 section 502.402 or 502.404 to participate in a continuing
19 education program approved by the securities and exchange
20 commission and administered by a self-regulatory organization
21 or, in the absence of such a program, a rule adopted or order
22 issued under this chapter may require continuing education for
23 an individual registered under section 502.404.

24 Sec. 37. NEW SECTION. 502.412 DENIAL, REVOCATION,
25 SUSPENSION, WITHDRAWAL, RESTRICTION, CONDITION, OR LIMITATION
26 OF REGISTRATION.

27 1. DISCIPLINARY CONDITIONS -- APPLICANTS. If the
28 administrator finds that the order is in the public interest
29 and subsection 4 authorizes the action, an order issued under
30 this chapter may deny an application, or may condition or
31 limit registration of an applicant to be a broker-dealer,
32 agent, investment adviser, or investment adviser
33 representative, and, if the applicant is a broker-dealer or
34 investment adviser, of a partner, officer, director, or person
35 having a similar status or performing similar functions, or a

1 person directly or indirectly in control, of the broker-dealer
2 or investment adviser.

3 2. DISCIPLINARY CONDITIONS -- REGISTRANTS. If the
4 administrator finds that the order is in the public interest
5 and subsection 4 authorizes the action, an order issued under
6 this chapter may revoke, suspend, condition, or limit the
7 registration of a registrant and, if the registrant is a
8 broker-dealer or investment adviser, of a partner, officer,
9 director, or person having a similar status or performing
10 similar functions, or a person directly or indirectly in
11 control, of the broker-dealer or investment adviser. However,
12 the administrator shall not do any of the following:

13 a. Institute a revocation or suspension proceeding under
14 this subsection based on an order issued under a law of
15 another state that is reported to the administrator or a
16 designee of the administrator more than one year after the
17 date of the order on which it is based.

18 b. Under subsection 4, paragraph "e", subparagraph (1) or
19 (2), issue an order on the basis of an order issued under the
20 securities act of another state unless the other order was
21 based on conduct for which subsection 4 would authorize the
22 action had the conduct occurred in this state.

23 3. DISCIPLINARY PENALTIES -- REGISTRANTS. If the
24 administrator finds that the order is in the public interest
25 and subsection 4, paragraphs "a" through "f", "h", "i", "j",
26 or "l", and "m", authorizes the action, an order under this
27 chapter may censure, impose a bar, or impose a civil penalty
28 in an amount not to exceed a maximum of five thousand dollars
29 for a single violation or five hundred thousand dollars for
30 more than one violation, on a registrant, and, if the
31 registrant is a broker-dealer or investment adviser, a
32 partner, officer, director, or person having a similar status
33 or performing similar functions, or a person directly or
34 indirectly in control, of the broker-dealer or investment
35 adviser.

1 4. GROUNDS FOR DISCIPLINE. A person may be disciplined
2 under subsections 1 through 3 if any of the following applies:

3 a. The person has filed an application for registration in
4 this state under this chapter or the predecessor chapter
5 within the previous ten years, which, as of the effective date
6 of registration or as of any date after filing in the case of
7 an order denying effectiveness, was incomplete in any material
8 respect or contained a statement that, in light of the
9 circumstances under which it was made, was false or misleading
10 with respect to a material fact.

11 b. The person willfully violated or willfully failed to
12 comply with this chapter or the predecessor chapter or a rule
13 adopted or order issued under this chapter or the predecessor
14 chapter within the previous ten years.

15 c. The person has been convicted of a felony or within the
16 previous ten years has been convicted of a misdemeanor
17 involving a security, a commodity future or option contract,
18 or an aspect of a business involving securities, commodities,
19 investments, franchises, insurance, banking, or finance.

20 d. The person is enjoined or restrained by a court of
21 competent jurisdiction in an action instituted by the
22 administrator under this chapter or the predecessor chapter, a
23 state, the securities and exchange commission, or the United
24 States from engaging in or continuing an act, practice, or
25 course of business involving an aspect of a business involving
26 securities, commodities, investments, franchises, insurance,
27 banking, or finance.

28 e. The person is the subject of an order, issued after
29 notice and opportunity for hearing, by any of the following:

30 (1) The securities or other financial services regulator
31 of a state or the securities and exchange commission or other
32 federal agency denying, revoking, barring, or suspending
33 registration as a broker-dealer, agent, investment adviser,
34 federal covered investment adviser, or investment adviser
35 representative.

1 (2) The securities regulator of a state or the securities
2 and exchange commission against a broker-dealer, agent,
3 investment adviser, investment adviser representative, or
4 federal covered investment adviser.

5 (3) The securities and exchange commission or a self-
6 regulatory organization suspending or expelling the registrant
7 from membership in the self-regulatory organization.

8 (4) A court adjudicating a United States postal service
9 fraud order.

10 (5) The insurance regulator of a state denying,
11 suspending, or revoking registration as an insurance agent or
12 insurance producer.

13 (6) A depository institution regulator or financial
14 services regulator suspending or barring the person from the
15 depository institution or other financial services business.

16 f. The person is the subject of an adjudication or
17 determination, after notice and opportunity for hearing, by
18 the securities and exchange commission, the commodity futures
19 trading commission, the federal trade commission, a federal
20 depository institution regulator, or a depository institution,
21 insurance, or other financial services regulator of a state
22 that the person willfully violated the Securities Act of 1933,
23 the Securities Exchange Act of 1934, the Investment Advisers
24 Act of 1940, the Investment Company Act of 1940, or the
25 Commodity Exchange Act, the securities or commodities law of a
26 state, or a federal or state law under which a business
27 involving investments, franchises, insurance, banking, or
28 finance is regulated.

29 g. The person is insolvent, either because the person's
30 liabilities exceed the person's assets or because the person
31 cannot meet the person's obligations as they mature, but the
32 administrator shall not enter an order against an applicant or
33 registrant under this paragraph without a finding of
34 insolvency as to the applicant or registrant.

35 h. The person refuses to allow or otherwise impedes the

1 administrator from conducting an audit or inspection under
2 section 502.411, subsection 4, or refuses access to a
3 registrant's office to conduct an audit or inspection under
4 section 502.411, subsection 4.

5 i. The person has failed to reasonably supervise an agent,
6 investment adviser representative, or other individual, if the
7 agent, investment adviser representative, or other individual
8 was subject to the person's supervision and committed a
9 violation of this chapter or the predecessor chapter or a rule
10 adopted or order issued under this chapter or the predecessor
11 chapter within the previous ten years.

12 j. The person has not paid the proper filing fee within
13 thirty days after having been notified by the administrator of
14 a deficiency, but the administrator shall vacate an order
15 under this paragraph when the deficiency is corrected.

16 k. The person after notice and opportunity for a hearing
17 has been found within the previous ten years to have done any
18 of the following:

19 (1) By a court of competent jurisdiction to have willfully
20 violated the laws of a foreign jurisdiction under which the
21 business of securities, commodities, investment, franchises,
22 insurance, banking, or finance is regulated.

23 (2) To have been the subject of an order of a securities
24 regulator of a foreign jurisdiction denying, revoking, or
25 suspending the right to engage in the business of securities
26 as a broker-dealer, agent, investment adviser, investment
27 adviser representative, or similar person.

28 (3) To have been suspended or expelled from membership by
29 or participation in a securities exchange or securities
30 association operating under the securities laws of a foreign
31 jurisdiction.

32 l. The person is the subject of a cease and desist order
33 issued by the securities and exchange commission or issued
34 under the securities, commodities, investment, franchise,
35 banking, finance, or insurance laws of a state.

1 m. The person has engaged in dishonest or unethical
2 practices in the securities, commodities, investment,
3 franchise, banking, finance, or insurance business within the
4 previous ten years.

5 n. The person is not qualified on the basis of factors
6 such as training, experience, and knowledge of the securities
7 business. However, in the case of an application by an agent
8 for a broker-dealer that is a member of a self-regulatory
9 organization or by an individual for registration as an
10 investment adviser representative, a denial order shall not be
11 based on this paragraph if the individual has successfully
12 completed all examinations required by subsection 5. The
13 administrator may require an applicant for registration under
14 section 502.402 or 502.404 who has not been registered in a
15 state within the two years preceding the filing of an
16 application in this state to successfully complete an
17 examination.

18 5. EXAMINATIONS. A rule adopted or order issued under
19 this chapter may require that an examination, including an
20 examination developed or approved by an organization of
21 securities regulators, be successfully completed by a class of
22 individuals or all individuals. An order issued under this
23 chapter may waive, in whole or in part, an examination as to
24 an individual and a rule adopted under this chapter may waive,
25 in whole or in part, an examination as to a class of
26 individuals if the administrator determines that the
27 examination is not necessary or appropriate in the public
28 interest and for the protection of investors.

29 6. SUMMARY PROCESS. The administrator may suspend or deny
30 an application summarily; restrict, condition, limit, or
31 suspend a registration; or censure, bar, or impose a civil
32 penalty on a registrant before final determination of an
33 administrative proceeding. Upon the issuance of an order, the
34 administrator shall promptly notify each person subject to the
35 order that the order has been issued, the reasons for the

1 action, and that within fifteen days after the receipt of a
2 request in a record from the person the matter will be
3 scheduled for a hearing. If a hearing is not requested and
4 none is ordered by the administrator within thirty days after
5 the date of service of the order, the order becomes final by
6 operation of law. If a hearing is requested or ordered, the
7 administrator, after notice of and opportunity for hearing to
8 each person subject to the order, may modify or vacate the
9 order or extend the order until final determination. Section
10 17A.18A is inapplicable to a summary order issued under this
11 subsection.

12 7. PROCEDURAL REQUIREMENTS. An order issued shall not be
13 issued under this section, except under subsection 6, without
14 all of the following:

- 15 a. Appropriate notice to the applicant or registrant.
- 16 b. Opportunity for hearing.
- 17 c. Findings of fact and conclusions of law in a record in
18 accordance with chapter 17A.

19 8. CONTROL PERSON LIABILITY. A person that controls,
20 directly or indirectly, a person not in compliance with this
21 section may be disciplined by order of the administrator under
22 subsections 1 through 3 to the same extent as the noncomplying
23 person, unless the controlling person did not know, and in the
24 exercise of reasonable care could not have known, of the
25 existence of conduct that is a ground for discipline under
26 this section.

27 9. LIMIT ON INVESTIGATION OR PROCEEDING. The
28 administrator shall not institute a proceeding under
29 subsection 1, 2, or 3 based solely on material facts actually
30 known by the administrator unless an investigation or the
31 proceeding is instituted within one year after the
32 administrator actually acquires knowledge of the material
33 facts.

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35

ARTICLE 5
FRAUD AND LIABILITIES

1 Sec. 38. Section 502.501, Code 2003, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 502.501 GENERAL FRAUD.

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

7 1. To employ a device, scheme, or artifice to defraud;

8 2. To make an untrue statement of a material fact or to
9 omit to state a material fact necessary in order to make the
10 statements made, in light of the circumstances under which
11 they were made, not misleading; or

12 3. To engage in an act, practice, or course of business
13 that operates or would operate as a fraud or deceit upon
14 another person.

15 Sec. 39. NEW SECTION. 502.501A PROHIBITED TRANSACTIONS
16 OF BROKER-DEALERS AND AGENTS.

17 A broker-dealer or agent shall not effect a transaction in,
18 or induce or attempt to induce the purchase or sale of, any
19 security in this state by means of any manipulative,
20 deceptive, or other fraudulent scheme, device, or contrivance,
21 fictitious quotation, or in violation of this chapter or any
22 rule adopted or order issued under this chapter. A broker-
23 dealer or agent shall not recommend to a customer the
24 purchase, sale, or exchange of a security without reasonable
25 grounds to believe that the transaction or recommendation is
26 suitable for the customer based upon reasonable inquiry
27 concerning the customer's investment objectives, financial
28 situation and needs, and other relevant information known by
29 the broker-dealer.

30 Sec. 40. Section 502.502, Code 2003, is amended by
31 striking the section and inserting in lieu thereof the
32 following:

33 502.502 PROHIBITED CONDUCT IN PROVIDING INVESTMENT ADVICE.

34 1. FRAUD IN PROVIDING INVESTMENT ADVICE. It is unlawful
35 for a person that advises others for compensation, either

1 directly or indirectly or through publications or writings, as
2 to the value of securities or the advisability of investing
3 in, purchasing, or selling securities or that, for
4 compensation and as part of a regular business, issues or
5 promulgates analyses or reports relating to securities to do
6 any of the following:

7 a. Employ a device, scheme, or artifice to defraud another
8 person.

9 b. Engage in an act, practice, or course of business that
10 operates or would operate as a fraud or deceit upon another
11 person.

12 2. RULES DEFINING FRAUD. A rule adopted under this
13 chapter may define an act, practice, or course of business of
14 an investment adviser or an investment adviser representative,
15 other than a supervised person of a federal covered investment
16 adviser, as fraudulent, deceptive, or manipulative, and
17 prescribe means reasonably designed to prevent investment
18 advisers and investment adviser representatives, other than
19 supervised persons of a federal covered investment adviser,
20 from engaging in acts, practices, and courses of business
21 defined as fraudulent, deceptive, or manipulative.

22 3. RULES SPECIFYING CONTENTS OF ADVISORY CONTRACT. A rule
23 adopted under this chapter may specify the contents of an
24 investment advisory contract entered into, extended, or
25 renewed by an investment adviser.

26 Sec. 41. Section 502.503, Code 2003, is amended by
27 striking the section and inserting in lieu thereof the
28 following:

29 502.503 EVIDENTIARY BURDEN.

30 1. CIVIL. In a civil action or administrative proceeding
31 under this chapter, a person claiming an exemption, exception,
32 preemption, or exclusion has the burden to prove the
33 applicability of the claim.

34 2. CRIMINAL. In a criminal proceeding under this chapter,
35 a person claiming an exemption, exception, preemption, or

1 exclusion has the burden of going forward with evidence of the
2 claim.

3 Sec. 42. Section 502.504, Code 2003, is amended by
4 striking the section and inserting in lieu thereof the
5 following:

6 502.504 FILING OF SALES AND ADVERTISING LITERATURE.

7 1. FILING REQUIREMENT. Except as otherwise provided in
8 subsection 2, a rule adopted or order issued under this
9 chapter may require the filing of a prospectus, pamphlet,
10 circular, form letter, advertisement, sales literature, or
11 other advertising record relating to a security or investment
12 advice, addressed or intended for distribution to prospective
13 investors, including clients or prospective clients of a
14 person registered or required to be registered as an
15 investment adviser under this chapter.

16 2. EXCLUDED COMMUNICATIONS. This section does not apply
17 to sales and advertising literature specified in subsection 1
18 which relates to a federal covered security, a federal covered
19 investment adviser, or a security or transaction exempted by
20 section 502.201, 502.202, or 502.203 except as required
21 pursuant to section 502.201, subsection 7.

22 2A. AUTHORITY TO PROHIBIT FALSE ADVERTISING. The
23 administrator may by rule or order prohibit the publication,
24 circulation, or use of any advertising deemed false or
25 misleading.

26 Sec. 43. Section 502.505, Code 2003, is amended by
27 striking the section and inserting in lieu thereof the
28 following:

29 502.505 MISLEADING FILINGS.

30 It is unlawful for a person to make or cause to be made, in
31 a record that is used in an action or proceeding or filed
32 under this chapter, a statement that, at the time and in the
33 light of the circumstances under which it is made, is false or
34 misleading in a material respect, or, in connection with the
35 statement, to omit to state a material fact necessary to make

1 the statement made, in the light of the circumstances under
2 which it was made, not false or misleading.

3 Sec. 44. Section 502.506, Code 2003, is amended by
4 striking the section and inserting in lieu thereof the
5 following:

6 502.506 MISREPRESENTATIONS CONCERNING REGISTRATION OR
7 EXEMPTION.

8 1. CERTAIN REPRESENTATIONS NOT ALLOWED. The filing of an
9 application for registration, a registration statement, a
10 notice filing under this chapter, the registration of a
11 person, the notice filing by a person, or the registration of
12 a security under this chapter does not constitute a finding by
13 the administrator that a record filed under this chapter is
14 true, complete, and not misleading. The filing or
15 registration or the availability of an exemption, exception,
16 preemption, or exclusion for a security or a transaction does
17 not mean that the administrator has passed upon the merits or
18 qualifications of, or recommended or given approval to, a
19 person, security, or transaction. It is unlawful to make, or
20 cause to be made, to a purchaser, customer, client, or
21 prospective customer or client a representation inconsistent
22 with this section.

23 1A. OFFICIAL ENDORSEMENT PROHIBITED. A state official or
24 employee of the state shall not use such person's name in an
25 official capacity in connection with the endorsement or
26 recommendation of the organization or the promotion of any
27 issuer or in the sale to the public of its securities, and no
28 one shall use the stationery of the state or of any official
29 thereof in connection with any such transaction.

30 Sec. 45. NEW SECTION. 502.506A MISSTATEMENTS IN
31 PUBLICITY PROHIBITED.

32 It is unlawful for any person to make or cause to be made,
33 in any public report or press release, or in other information
34 which is either made generally available to the public or used
35 in opposition to a tender offer, any statement of a material

1 fact relating to a target company or made in connection with a
2 takeover offer which is, at the time and in the light of the
3 circumstances under which it is made, false or misleading, if
4 it is reasonably foreseeable that such statement will induce
5 other persons to buy, sell, or hold securities of the target
6 company.

7 Sec. 46. Section 502.507, Code 2003, is amended by
8 striking the section and inserting in lieu thereof the
9 following:

10 502.507 QUALIFIED IMMUNITY.

11 A broker-dealer, agent, investment adviser, federal covered
12 investment adviser, or investment adviser representative is
13 not liable to another broker-dealer, agent, investment
14 adviser, federal covered investment adviser, or investment
15 adviser representative for defamation relating to a statement
16 that is contained in a record required by the administrator,
17 or designee of the administrator, the securities and exchange
18 commission, or a self-regulatory organization, unless the
19 person knew, or should have known at the time that the
20 statement was made, that it was false in a material respect or
21 the person acted in reckless disregard of the statement's
22 truth or falsity.

23 Sec. 47. NEW SECTION. 502.508 CRIMINAL PENALTIES.

24 1. CRIMINAL PENALTIES.

25 a. Except as provided in paragraph "b", a person who
26 willfully violates any provision of this chapter, or any rule
27 adopted or order issued under this chapter, is guilty of a
28 class "D" felony.

29 b. A person who willfully violates section 502.501 or
30 section 502.502, subsection 1, resulting in a loss of more
31 than ten thousand dollars is guilty of a class "C" felony.

32 2. CRIMINAL REFERENCE NOT REQUIRED. The attorney general
33 or the proper county, with or without a reference from the
34 administrator, may institute criminal proceedings under this
35 chapter.

1 3. NO LIMITATION ON OTHER CRIMINAL ENFORCEMENT. This
2 chapter does not limit the power of this state to punish a
3 person for conduct that constitutes a crime under other laws
4 of this state.

5 Sec. 48. NEW SECTION. 502.509 CIVIL LIABILITY.

6 1. SECURITIES LITIGATION UNIFORM STANDARDS ACT.

7 Enforcement of civil liability under this section is subject
8 to the Securities Litigation Uniform Standards Act of 1998.

9 2. LIABILITY OF SELLER TO PURCHASER. A person is liable
10 to the purchaser if the person sells a security in violation
11 of section 502.301 or, by means of an untrue statement of a
12 material fact or an omission to state a material fact
13 necessary in order to make the statement made, in light of the
14 circumstances under which it is made, not misleading, the
15 purchaser not knowing the untruth or omission and the seller
16 not sustaining the burden of proof that the seller did not
17 know and, in the exercise of reasonable care, could not have
18 known of the untruth or omission. An action under this
19 subsection is governed by the following:

20 a. The purchaser may maintain an action to recover the
21 consideration paid for the security, less the amount of any
22 income received on the security, and interest at the legal
23 rate from the date of the purchase, costs, and reasonable
24 attorney fees determined by the court, upon the tender of the
25 security, or for actual damages as provided in paragraph "c".

26 b. The tender referred to in paragraph "a" may be made any
27 time before entry of judgment. Tender requires only notice in
28 a record of ownership of the security and willingness to
29 exchange the security for the amount specified. A purchaser
30 that no longer owns the security may recover actual damages as
31 provided in paragraph "c".

32 c. Actual damages in an action arising under this
33 subsection are the amount that would be recoverable upon a
34 tender less the value of the security when the purchaser
35 disposed of it, and interest at the legal rate from the date

1 of the purchase, costs, and reasonable attorney fees
2 determined by the court.

3 3. LIABILITY OF PURCHASER TO SELLER. A person is liable
4 to the seller if the person buys a security by means of an
5 untrue statement of a material fact or omission to state a
6 material fact necessary in order to make the statement made,
7 in light of the circumstances under which it is made, not
8 misleading, the seller not knowing of the untruth or omission,
9 and the purchaser not sustaining the burden of proof that the
10 purchaser did not know, and in the exercise of reasonable
11 care, could not have known of the untruth or omission. An
12 action under this subsection is governed by all of the
13 following:

14 a. The seller may maintain an action to recover the
15 security, and any income received on the security, costs, and
16 reasonable attorney fees determined by the court, upon the
17 tender of the purchase price, or for actual damages as
18 provided in paragraph "c".

19 b. The tender referred to in paragraph "a" may be made any
20 time before entry of judgment. Tender requires only notice in
21 a record of the present ability to pay the amount tendered and
22 willingness to take delivery of the security for the amount
23 specified. If the purchaser no longer owns the security, the
24 seller may recover actual damages as provided in paragraph
25 "c".

26 c. Actual damages in an action arising under this
27 subsection are the difference between the price at which the
28 security was sold and the value the security would have had at
29 the time of the sale in the absence of the purchaser's conduct
30 causing liability, and interest at the legal rate from the
31 date of the sale of the security, costs, and reasonable
32 attorney fees determined by the court.

33 4. LIABILITY OF UNREGISTERED BROKER-DEALER AND AGENT. A
34 person acting as a broker-dealer or agent that sells or buys a
35 security in violation of section 502.401, subsection 1,

1 section 502.402, subsection 1, or section 502.506 is liable to
2 the customer. The customer, if a purchaser, may maintain an
3 action for recovery of actual damages as specified in
4 subsection 2, paragraphs "a" through "c", or, if a seller, for
5 a remedy as specified in subsection 3, paragraphs "a" through
6 "c".

7 5. LIABILITY OF UNREGISTERED INVESTMENT ADVISER AND
8 INVESTMENT ADVISER REPRESENTATIVE. A person acting as an
9 investment adviser or investment adviser representative that
10 provides investment advice for compensation in violation of
11 section 502.403, subsection 1, section 502.404, subsection 1,
12 or section 502.506 is liable to the client. The client may
13 maintain an action to recover the consideration paid for the
14 advice, interest at the legal rate from the date of payment,
15 costs, and reasonable attorney fees determined by the court
16 and taxed as court costs.

17 6. LIABILITY FOR INVESTMENT ADVICE. A person that
18 receives directly or indirectly any consideration for
19 providing investment advice to another person and that employs
20 a device, scheme, or artifice to defraud the other person or
21 engages in an act, practice, or course of business that
22 operates or would operate as a fraud or deceit on the other
23 person is liable to the other person. An action under this
24 subsection is governed by all of the following:

25 a. The person defrauded may maintain an action to recover
26 the consideration paid for the advice and the amount of any
27 actual damages caused by the fraudulent conduct, interest at
28 the legal rate from the date of the fraudulent conduct, costs,
29 and reasonable attorney fees determined by the court, less the
30 amount of any income received as a result of the fraudulent
31 conduct.

32 b. This subsection does not apply to a broker-dealer or
33 its agents if the investment advice provided is solely
34 incidental to transacting business as a broker-dealer and no
35 special compensation is received for the investment advice.

1 7. JOINT AND SEVERAL LIABILITY. The following persons are
2 liable jointly and severally with and to the same extent as
3 persons liable under subsections 2 through 6:

4 a. A person that directly or indirectly controls a person
5 liable under subsections 2 through 6, unless the controlling
6 person sustains the burden of proof that the person did not
7 know, and in the exercise of reasonable care could not have
8 known, of the existence of conduct by reason of which the
9 liability is alleged to exist.

10 b. An individual who is a managing partner, executive
11 officer, or director of a person liable under subsections 2
12 through 6, including an individual having a similar status or
13 performing similar functions, unless the individual sustains
14 the burden of proof that the individual did not know and, in
15 the exercise of reasonable care could not have known, of the
16 existence of conduct by reason of which the liability is
17 alleged to exist.

18 c. An individual who is an employee of or associated with
19 a person liable under subsections 2 through 6 or a person,
20 whether an employee of such person or otherwise, who
21 materially aids in the act or transaction constituting the
22 violation, and who materially aids the conduct giving rise to
23 the liability, unless the individual sustains the burden of
24 proof that the individual did not know and, in the exercise of
25 reasonable care could not have known, of the existence of
26 conduct by reason of which the liability is alleged to exist.

27 d. A person that is a broker-dealer, agent, investment
28 adviser, or investment adviser representative that materially
29 aids the conduct giving rise to the liability under
30 subsections 2 through 6, unless the person sustains the burden
31 of proof that the person did not know and, in the exercise of
32 reasonable care could not have known, of the existence of
33 conduct by reason of which liability is alleged to exist.

34 8. RIGHT OF CONTRIBUTION. A person liable under this
35 section has a right of contribution as in cases of contract

1 against any other person liable under this section for the
2 same conduct.

3 9. SURVIVAL OF CAUSE OF ACTION. A cause of action under
4 this section survives the death of an individual who might
5 have been a plaintiff or defendant.

6 10. STATUTE OF LIMITATIONS. A person shall not obtain
7 relief under any of the following:

8 a. Under subsection 2 for violation of section 502.301, or
9 under subsection 4 or 5, unless the action is instituted
10 within one year after the violation occurred.

11 b. Under subsection 2, other than for violation of section
12 502.301, or under subsection 3 or 6, unless the action is
13 instituted within the earlier of two years after discovery of
14 the facts constituting the violation or five years after the
15 violation.

16 11. NO ENFORCEMENT OF VIOLATIVE CONTRACT. A person that
17 has made, or has engaged in the performance of, a contract in
18 violation of this chapter or a rule adopted or order issued
19 under this chapter, or that has acquired a purported right
20 under the contract with knowledge of conduct by reason of
21 which its making or performance was in violation of this
22 chapter, shall not base an action on the contract.

23 12. NO CONTRACTUAL WAIVER. A condition, stipulation, or
24 provision binding a person purchasing or selling a security or
25 receiving investment advice to waive compliance with this
26 chapter or a rule adopted or order issued under this chapter
27 is void.

28 13. SURVIVAL OF OTHER RIGHTS OR REMEDIES. The rights and
29 remedies provided by this chapter are in addition to any other
30 rights or remedies that may exist, but this chapter does not
31 create a cause of action not specified in this section or
32 section 502.411, subsection 5.

33 13A. INFORMATIONAL FILING WITH THE ADMINISTRATOR. A copy
34 of any suit or arbitration action filed under this section
35 shall be served upon the administrator within twenty days of

1 the filing in the form and manner prescribed by the
2 administrator by rule or order, provided that all of the
3 following apply:

4 a. The failure to comply with this provision shall not
5 invalidate the action which is the subject of the suit.

6 b. The suit or arbitration action has not been filed in a
7 record with the central registration depository or the
8 investment adviser registration depository.

9 13B. LIABILITY FOR TAKEOVER VIOLATIONS. Any person who
10 violates section 502.321B shall be liable to the person
11 selling the security to such violator, which seller may sue
12 either at law or in equity to recover the security, costs, and
13 reasonable attorney fees, plus any income or distributions, in
14 cash or in kind, received by the purchaser thereon, upon
15 tender of the consideration received, or for damages if the
16 purchaser no longer owns the security. Damages shall be the
17 excess of the value of the security when the purchaser
18 disposed of it, plus interest at the legal rate from the date
19 of disposition, over the consideration paid for the security.
20 Tender requires only notice of willingness to pay the amount
21 specified in exchange for the security. Any notice may be
22 given by service as in civil actions or by certified mail to
23 the last known address of the person liable.

24 In addition to other remedies provided in this chapter, in
25 a proceeding alleging a violation of article 3A, the court may
26 provide that all shares acquired from a resident of this state
27 in violation of any provision of this chapter or rule or order
28 issued pursuant to this chapter be denied voting rights for
29 one year after acquisition, that the shares be nontransferable
30 on the books of the target company, or that during this one-
31 year period the target company have the option to call the
32 shares for redemption either at the price at which the shares
33 were acquired or at book value per share as of the last day of
34 the fiscal quarter ended prior to the date of the call for
35 redemption, which redemption shall occur on the date set in

1 the call notice but not later than sixty days after the call
2 notice is given.

3 Sec. 49. NEW SECTION. 502.510 RECISION OFFERS.

4 A purchaser, seller, or recipient of investment advice may
5 not maintain an action under section 502.509 if all of the
6 following apply:

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

10 a. An offer stating the respect in which liability under
11 section 502.509 may have arisen and fairly advising the
12 purchaser, seller, or recipient of investment advice of that
13 person's rights in connection with the offer, and any
14 financial or other information necessary to correct all
15 material misrepresentations or omissions in the information
16 that was required by this chapter to be furnished to that
17 person at the time of the purchase, sale, or investment
18 advice.

19 b. If the basis for relief under this section may have
20 been a violation of section 502.509, subsection 2, an offer to
21 repurchase the security for cash, payable on delivery of the
22 security, equal to the consideration paid, and interest at the
23 legal rate from the date of the purchase, less the amount of
24 any income received on the security; or, if the purchaser no
25 longer owns the security, an offer to pay the purchaser upon
26 acceptance of the offer damages in an amount that would be
27 recoverable upon a tender, less the value of the security when
28 the purchaser disposed of it, and interest at the legal rate
29 from the date of the purchase in cash equal to the damages
30 computed in the manner provided in this subsection.

31 c. If the basis for relief under this section may have
32 been a violation of section 502.509, subsection 3, an offer to
33 tender the security, on payment by the seller of an amount
34 equal to the purchase price paid, less income received on the
35 security by the purchaser and interest at the legal rate from

1 the date of the sale; or if the purchaser no longer owns the
 2 security, an offer to pay the seller upon acceptance of the
 3 offer, in cash, damages in the amount of the difference
 4 between the price at which the security was purchased and the
 5 value the security would have had at the time of the purchase
 6 in the absence of the purchaser's conduct that may have caused
 7 liability and interest at the legal rate of interest from the
 8 date of the sale.

9 d. If the basis for relief under this section may have
 10 been a violation of section 502.509, subsection 4; and if the
 11 customer is a purchaser, an offer to pay as specified in
 12 paragraph "b"; or, if the customer is a seller, an offer to
 13 tender or to pay as specified in paragraph "c".

14 e. If the basis for relief under this section may have
 15 been a violation of section 502.509, subsection 3, an offer to
 16 reimburse in cash the consideration paid for the advice and
 17 interest at the legal rate from the date of payment.

18 f. If the basis for relief under this section may have
 19 been a violation of section 502.509, subsection 6, an offer to
 20 reimburse in cash the consideration paid for the advice, the
 21 amount of any actual damages that may have been caused by the
 22 conduct, and interest at the legal rate from the date of the
 23 violation causing the loss.

24 2. The offer under subsection 1 states that it must be
 25 accepted by the purchaser, seller, or recipient of investment
 26 advice within thirty days after the date of its receipt by the
 27 purchaser, seller, or recipient of investment advice or any
 28 shorter period, of not less than three days, that the
 29 administrator, by order, specifies.

30 3. The offeror has the present ability to pay the amount
 31 offered or to tender the security under subsection 1.

32 4. The offer under subsection 1 is delivered to the
 33 purchaser, seller, or recipient of investment advice, or sent
 34 in a manner that ensures receipt by the purchaser, seller, or
 35 recipient of investment advice.

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

5 If the basis for relief under this section alleges a
6 violation of section 502.509 which employed a device, scheme,
7 or artifice to defraud, made an untrue statement of a material
8 fact necessary in order to make the statement made, in light
9 of the circumstances under which it was made, not misleading,
10 or engaged in an act, practice, or course of business that
11 operated or would operate as a fraud or deceit on another
12 person, the offer is filed with the administrator ten business
13 days before the offering and conforms in form and content with
14 a rule prescribed by the administrator.

15 ARTICLE 6

16 ADMINISTRATION AND JUDICIAL REVIEW

17 Sec. 50. Section 502.601, Code Supplement 2003, is amended
18 by striking the section and inserting in lieu thereof the
19 following:

20 502.601 ADMINISTRATION.

21 1. ADMINISTRATION. This chapter shall be administered by
22 the commissioner of insurance of this state. The
23 administrator shall appoint a deputy administrator who shall
24 be exempt from the merit system provisions of chapter 8A,
25 subchapter IV. The deputy administrator is the principal
26 operations officer of the securities bureau of the insurance
27 division of the department of commerce. The deputy
28 administrator is responsible to the administrator for the
29 routine administration of this chapter and the management of
30 the securities bureau. In the absence of the administrator,
31 whether because of vacancy in the office, by reason of
32 absence, physical disability, or other cause, the deputy
33 administrator shall be the acting administrator and shall, for
34 that period, have and exercise the authority conferred upon
35 the administrator. The administrator may by order delegate to

1 the deputy administrator any or all of the functions assigned
2 to the administrator under this chapter. The administrator
3 shall employ officers, attorneys, accountants, and other
4 employees as needed for the administration of the chapter.

5 2. UNLAWFUL USE OF RECORDS OR INFORMATION. It is unlawful
6 for the administrator or an officer, employee, or designee of
7 the administrator to use for personal benefit or the benefit
8 of others records or other information obtained by or filed
9 with the administrator that are not public under section
10 502.607, subsection 2. This chapter does not authorize the
11 administrator or an officer, employee, or designee of the
12 administrator to disclose the record or information, except in
13 accordance with section 502.602, section 502.607, subsection
14 3, or section 502.608.

15 3. NO PRIVILEGE OR EXEMPTION CREATED OR DIMINISHED. This
16 chapter does not create or diminish a privilege or exemption
17 that exists at common law, by statute or rule, or otherwise.

18 4. INVESTOR EDUCATION. The administrator may develop and
19 implement investor education initiatives to inform the public
20 about investing in securities, with particular emphasis on the
21 prevention and detection of securities fraud. In developing
22 and implementing these initiatives, the administrator may
23 collaborate with public and nonprofit organizations with an
24 interest in investor education. The administrator may accept
25 a grant or donation from a person that is not affiliated with
26 the securities industry or from a nonprofit organization,
27 regardless of whether the organization is affiliated with the
28 securities industry, to develop and implement investor
29 education initiatives. This subsection does not authorize the
30 administrator to require participation or monetary
31 contributions of a registrant in an investor education
32 program.

33 5. THE SECURITIES INVESTOR EDUCATION AND TRAINING FUND. A
34 securities investor education and training fund is created in
35 the state treasury under the control of the administrator to

1 provide moneys for the purposes specified in subsection 4.
2 All moneys received by the state by reason of civil penalties
3 pursuant to this chapter shall be deposited in the securities
4 investor education and training fund. Notwithstanding section
5 12C.7, interest or earnings on moneys deposited into the fund
6 shall be credited to the fund. Notwithstanding section 8.33,
7 unencumbered or unobligated moneys remaining in the fund shall
8 not revert but shall be available for expenditure for the
9 following fiscal year. However, if, on June 30, unencumbered
10 or unobligated moneys remaining in the fund exceed two hundred
11 thousand dollars, moneys in excess of that amount shall revert
12 to the general fund of the state in the same manner as
13 provided in section 8.33.

14 Sec. 51. Section 502.602, Code 2003, is amended by
15 striking the section and inserting in lieu thereof the
16 following:

17 502.602 INVESTIGATIONS AND SUBPOENAS.

18 1. AUTHORITY TO INVESTIGATE. The administrator may do any
19 of the following:

20 a. Conduct public or private investigations within or
21 outside of this state which the administrator considers
22 necessary or appropriate to determine whether a person has
23 violated, is violating, or is about to violate this chapter or
24 a rule adopted or order issued under this chapter, or to aid
25 in the enforcement of this chapter or in the adoption of rules
26 and forms under this chapter.

27 b. Require or permit a person to testify, file a
28 statement, or produce a record, under oath or otherwise as the
29 administrator determines, as to all the facts and
30 circumstances concerning a matter to be investigated or about
31 which an action or proceeding is to be instituted.

32 c. Notwithstanding section 502.607, subsection 2, publish
33 a record concerning an action, proceeding, or an investigation
34 under, or a violation of, this chapter or a rule adopted or
35 order issued under this chapter if the administrator

1 determines it is necessary or appropriate in the public
2 interest and for the protection of investors.

3 2. ADMINISTRATOR POWERS TO INVESTIGATE. For the purpose
4 of an investigation under this chapter, the administrator or
5 the administrator's designated officer may administer oaths
6 and affirmations, subpoena witnesses, seek compulsion of
7 attendance, take evidence, require the filing of statements,
8 and require the production of any records that the
9 administrator considers relevant or material to the
10 investigation, all of which may be enforced pursuant to
11 chapter 17A.

12 3. PROCEDURE AND REMEDIES FOR NONCOMPLIANCE. If a person
13 does not appear or refuses to testify, file a statement,
14 produce records, or otherwise does not obey a subpoena as
15 required by the administrator under this chapter, the
16 administrator may apply to district court or a court of
17 another state to enforce compliance. The court may do any of
18 the following:

- 19 a. Hold the person in contempt.
- 20 b. Order the person to appear before the administrator.
- 21 c. Order the person to testify about the matter under
22 investigation or in question.
- 23 d. Order the production of records.
- 24 e. Grant injunctive relief, including restricting or
25 prohibiting the offer or sale of securities or the providing
26 of investment advice.
- 27 f. Impose a civil penalty of an amount not to exceed a
28 maximum of five thousand dollars for a single violation or
29 five hundred thousand dollars for more than one violation.
- 30 g. Grant any other necessary or appropriate relief.

31 4. APPLICATION FOR RELIEF. This section does not preclude
32 a person from applying to district court or a court of another
33 state for relief from a request to appear, testify, file a
34 statement, produce records, or obey a subpoena.

35 5. USE IMMUNITY PROCEDURE. An individual is not excused

1 from attending, testifying, filing a statement, producing a
2 record or other evidence, or obeying a subpoena of the
3 administrator under this chapter or in an action or proceeding
4 instituted by the administrator under this chapter on the
5 ground that the required testimony, statement, record, or
6 other evidence, directly or indirectly, may tend to
7 incriminate the individual or subject the individual to a
8 criminal fine, penalty, or forfeiture. If the individual
9 refuses to testify, file a statement, or produce a record or
10 other evidence on the basis of the individual's privilege
11 against self-incrimination, the administrator may apply to the
12 district court to compel the testimony, the filing of the
13 statement, the production of the record, or the giving of
14 other evidence. The testimony, record, or other evidence
15 compelled under such an order shall not be used, directly or
16 indirectly, against the individual in a criminal case, except
17 in a prosecution for perjury or contempt or otherwise failing
18 to comply with the order.

19 6. ASSISTANCE TO SECURITIES REGULATOR OF ANOTHER
20 JURISDICTION. At the request of the securities regulator of
21 another state or a foreign jurisdiction, the administrator may
22 provide assistance if the requesting regulator states that it
23 is conducting an investigation to determine whether a person
24 has violated, is violating, or is about to violate a law or
25 rule of the other state or foreign jurisdiction relating to
26 securities matters that the requesting regulator administers
27 or enforces. The administrator may provide the assistance by
28 using the authority to investigate and the powers conferred by
29 this section as the administrator determines is necessary or
30 appropriate. The assistance may be provided without regard to
31 whether the conduct described in the request would also
32 constitute a violation of this chapter or other law of this
33 state if occurring in this state. In deciding whether to
34 provide the assistance, the administrator may consider whether
35 the requesting regulator is permitted and has agreed to

1 provide assistance reciprocally within its state or foreign
2 jurisdiction to the administrator on securities matters when
3 requested, whether compliance with the request would violate
4 or prejudice the public policy of this state, and the
5 availability of resources and employees of the administrator
6 to carry out the request for assistance.

7 Sec. 52. Section 502.603, Code 2003, is amended by
8 striking the section and inserting in lieu thereof the
9 following:

10 502.603 CIVIL ENFORCEMENT.

11 1. CIVIL ACTION INSTITUTED BY ADMINISTRATOR. If the
12 administrator believes that a person has engaged, is engaging,
13 or is about to engage in an act, practice, or course of
14 business constituting a violation of this chapter or a rule
15 adopted or order issued under this chapter or that a person
16 has, is, or is about to engage in an act, practice, or course
17 of business that materially aids a violation of this chapter
18 or a rule adopted or order issued under this chapter, the
19 administrator may maintain an action in the district court to
20 enjoin the act, practice, or course of business and to enforce
21 compliance with this chapter or a rule adopted or order issued
22 under this chapter.

23 2. RELIEF AVAILABLE. In an action under this section and
24 on a proper showing, the court may do any of the following:

- 25 a. Issue a permanent or temporary injunction, restraining
- 26 order, or declaratory judgment.
- 27 b. Order other appropriate or ancillary relief, which may
- 28 include any of the following:

29 (1) Ordering an asset freeze, accounting, writ of
30 attachment, writ of general or specific execution, and
31 appointment of a receiver or conservator, that may be the
32 administrator, for the defendant or the defendant's assets.

33 (2) Ordering the administrator to take charge and control
34 of a defendant's property, including investment accounts and
35 accounts in a depository institution, rents, and profits; to

1 collect debts; and to acquire and dispose of property.

2 (3) Imposing a civil penalty not to exceed a maximum of
3 five thousand dollars for a single violation or five hundred
4 thousand dollars for more than one violation; an order of
5 recision, restitution, or disgorgement directed to a person
6 that has engaged in an act, practice, or course of business
7 constituting a violation of this chapter or the predecessor
8 chapter or a rule adopted or order issued under this chapter
9 or the predecessor chapter.

10 (4) Ordering the payment of prejudgment and postjudgment
11 interest.

12 c. Order such other relief as the court considers
13 appropriate.

14 3. NO BOND REQUIRED. The administrator shall not be
15 required to post a bond in an action or proceeding under this
16 chapter.

17 Sec. 53. Section 502.604, Code 2003, is amended by
18 striking the section and inserting in lieu thereof the
19 following:

20 502.604 ADMINISTRATIVE ENFORCEMENT.

21 1. ISSUANCE OF AN ORDER OR NOTICE. If the administrator
22 determines that a person has engaged, is engaging, or is about
23 to engage in an act, practice, or course of business
24 constituting a violation of this chapter or a rule adopted or
25 order issued under this chapter or that a person has
26 materially aided, is materially aiding, or is about to
27 materially aid an act, practice, or course of business
28 constituting a violation of this chapter or a rule adopted or
29 order issued under this chapter, the administrator may do any
30 of the following:

31 a. Issue an order directing the person to cease and desist
32 from engaging in the act, practice, or course of business or
33 to take other action necessary or appropriate to comply with
34 this chapter.

35 b. Issue an order denying, suspending, revoking, or

1 conditioning the exemptions for a broker-dealer under section
2 502.401, subsection 2, paragraph "a", subparagraph (4) or (6),
3 or an investment adviser under section 502.403, subsection 2,
4 paragraph "a", subparagraph (3).

5 c. Issue an order under section 502.204.

6 2. SUMMARY PROCESS. An order under subsection 1 is
7 effective on the date of issuance. Upon issuance of the
8 order, the administrator shall promptly serve each person
9 subject to the order with a copy of the order and a notice
10 that the order has been entered. The order must include a
11 statement of any civil penalty or costs of investigation the
12 administrator will seek, a statement of the reasons for the
13 order, and notice that, within fifteen days after receipt of a
14 request in a record from the person, the matter will be
15 scheduled for a hearing. If a person subject to the order
16 does not request a hearing and none is ordered by the
17 administrator within thirty days after the date of service of
18 the order, the order, including the imposition of a civil
19 penalty or requirement for payment of costs of investigation
20 sought in the order, becomes final as to that person by
21 operation of law. If a hearing is requested or ordered, the
22 administrator, after notice of and opportunity for hearing to
23 each person subject to the order, may modify or vacate the
24 order or extend it until final determination.

25 3. PROCEDURE FOR FINAL ORDER. If a hearing is requested
26 or ordered pursuant to subsection 2, a hearing must be held
27 pursuant to chapter 17A. A final order shall not be issued
28 unless the administrator makes findings of fact and
29 conclusions of law in a record in accordance with chapter 17A.
30 The final order may make final, vacate, or modify the order
31 issued under subsection 1.

32 4. CIVIL PENALTY. In a final order under subsection 3,
33 the administrator may impose a civil penalty up to an amount
34 not to exceed a maximum of five thousand dollars for a single
35 violation or five hundred thousand dollars for more than one

1 violation.

2 5. COSTS. In a final order, the administrator may charge
3 the actual cost of an investigation or proceeding for a
4 violation of this chapter or a rule adopted or order issued
5 under this chapter.

6 6. FILING OF CERTIFIED FINAL ORDER WITH COURT -- EFFECT OF
7 FILING. If a petition for judicial review of a final order is
8 not filed in accordance with section 502.609, the
9 administrator may file a certified copy of the final order
10 with the clerk of a court of competent jurisdiction. The
11 order so filed has the same effect as a judgment of the court
12 and may be recorded, enforced, or satisfied in the same manner
13 as a judgment of the court.

14 7. ENFORCEMENT BY COURT -- FURTHER CIVIL PENALTY. If a
15 person does not comply with an order under this section, the
16 administrator may petition a court of competent jurisdiction
17 to enforce the order. The court shall not require the
18 administrator to post a bond in an action or proceeding under
19 this section. If the court finds, after service and
20 opportunity for hearing, that the person was not in compliance
21 with the order, the court may adjudge the person in civil
22 contempt of the order. The court may impose a further civil
23 penalty against the person for contempt in an amount not less
24 than three thousand dollars but not greater than ten thousand
25 dollars for each violation and may grant any other relief the
26 court determines is just and proper in the circumstances.

27 Sec. 54. Section 502.604A, Code 2003, is amended by
28 striking the section and inserting in lieu thereof the
29 following:

30 502.604A LIMITED LAW ENFORCEMENT AUTHORITY.

31 The administrator or the administrator's designee, when
32 carrying out the provisions of section 502.603 or 502.604, may
33 develop, share, and receive information related to any law
34 enforcement purpose, including any criminal investigation.
35 The administrator or designee shall not have the authority to

1 issue criminal subpoenas or make arrests. The administrator
2 or designee shall not be considered a peace officer, including
3 as provided in chapter 801.

4 Sec. 55. Section 502.605, Code 2003, is amended by
5 striking the section and inserting in lieu thereof the
6 following:

7 502.605 RULES, FORMS, ORDERS, INTERPRETATIVE OPINIONS, AND
8 HEARINGS.

9 1. ISSUANCE AND ADOPTION OF FORMS, ORDERS, AND RULES.

10 Pursuant to chapter 17A, the administrator may do any of the
11 following:

12 a. Issue forms and orders and, after notice and comment,
13 may adopt and amend rules necessary or appropriate to carry
14 out this chapter and may repeal rules, including rules and
15 forms governing registration statements, applications, notice
16 filings, reports, and other records.

17 b. Define terms, whether or not used in this chapter, but
18 those definitions shall not be inconsistent with this chapter.

19 c. Classify securities, persons, and transactions and
20 adopt different requirements for different classes.

21 2. FINDINGS AND COOPERATION. Under this chapter, a rule
22 or form shall not be adopted or amended, or an order issued or
23 amended, unless the administrator finds that the rule, form,
24 order, or amendment is necessary or appropriate in the public
25 interest or for the protection of investors and is consistent
26 with the purposes intended by this chapter. In adopting,
27 amending, and repealing rules and forms, section 502.608
28 applies in order to achieve uniformity among the states and
29 coordination with federal laws in the form and content of
30 registration statements, applications, reports, and other
31 records, including the adoption of uniform rules, forms, and
32 procedures.

33 3. FINANCIAL STATEMENTS. Subject to section 15(h) of the
34 Securities Exchange Act and section 222 of the Investment
35 Advisers Act of 1940, the administrator may require that a

1 financial statement filed under this chapter be prepared in
2 accordance with generally accepted accounting principles in
3 the United States and comply with other requirements specified
4 by rule adopted or order issued under this chapter. A rule
5 adopted or order issued under this chapter may establish any
6 of the following:

7 a. Subject to section 15(h) of the Securities Exchange Act
8 and section 222 of the Investment Advisers Act of 1940, the
9 form and content of financial statements required under this
10 chapter.

11 b. Whether unconsolidated financial statements must be
12 filed.

13 c. Whether required financial statements must be audited
14 by an independent certified public accountant.

15 4. INTERPRETATIVE OPINIONS. The administrator may provide
16 interpretative opinions or issue determinations that the
17 administrator will not institute a proceeding or an action
18 under this chapter against a specified person for engaging in
19 a specified act, practice, or course of business if the
20 determination is consistent with this chapter. A rule adopted
21 or order issued under this chapter may establish a reasonable
22 charge for interpretative opinions or determinations that the
23 administrator will not institute an action or a proceeding
24 under this chapter.

25 5. EFFECT OF COMPLIANCE. A penalty under this chapter
26 shall not be imposed for, and liability does not arise from,
27 conduct that is engaged in or omitted in good faith believing
28 it conforms to a rule, form, or order of the administrator
29 under this chapter.

30 6. PRESUMPTION FOR PUBLIC HEARINGS. A hearing in an
31 administrative proceeding under this chapter must be conducted
32 in public unless the administrator for good cause consistent
33 with this chapter determines that the hearing will not be so
34 conducted.

35 Sec. 56. Section 502.606, Code 2003, is amended by

1 striking the section and inserting in lieu thereof the
2 following:

3 502.606 ADMINISTRATIVE FILES AND OPINIONS.

4 1. PUBLIC REGISTER OF FILINGS. The administrator shall
5 maintain, or designate a person to maintain, a register of
6 applications for registration of securities; registration
7 statements; notice filings; applications for registration of
8 broker-dealers, agents, investment advisers, and investment
9 adviser representatives; notice filings by federal covered
10 investment advisers that are or have been effective under this
11 chapter or the predecessor chapter; notices of claims of
12 exemption from registration or notice filing requirements
13 contained in a record; orders issued under this chapter or the
14 predecessor chapter; and interpretative opinions or no action
15 determinations issued under this chapter.

16 2. PUBLIC AVAILABILITY. The administrator shall make all
17 rules, forms, interpretative opinions, and orders available to
18 the public.

19 3. COPIES OF PUBLIC RECORDS. The administrator shall
20 furnish a copy of a record that is a public record or a
21 certification that the public record does not exist to a
22 person that so requests. A rule adopted under this chapter
23 may establish a reasonable charge for furnishing the record or
24 certification. A copy of the record certified or a
25 certificate by the administrator of a record's nonexistence is
26 prima facie evidence of a record or its nonexistence.

27 Sec. 57. Section 502.607, Code 2003, is amended by
28 striking the section and inserting in lieu thereof the
29 following:

30 502.607 PUBLIC RECORDS -- CONFIDENTIALITY.

31 1. PRESUMPTION OF PUBLIC RECORDS. Except as otherwise
32 provided in subsection 2, records obtained by the
33 administrator or filed under this chapter, including a record
34 contained in or filed with a registration statement,
35 application, notice filing, or report, are public records and

1 are available for public examination.

2 2. NONPUBLIC RECORDS. Notwithstanding chapter 22, the
3 following records are not public records and are not available
4 for public examination under subsection 1:

5 a. A record obtained by the administrator in connection
6 with an audit or inspection under section 502.411, subsection
7 4, or an investigation under section 502.602.

8 b. A part of a record filed in connection with a
9 registration statement under sections 502.301 and 502.303
10 through 502.305 or a record under section 502.411, subsection
11 4, that contains trade secrets or confidential information if
12 the person filing the registration statement or report has
13 asserted a claim of confidentiality or privilege that is
14 authorized by law.

15 c. A record that is not required to be provided to the
16 administrator or filed under this chapter and is provided to
17 the administrator only on the condition that the record will
18 not be subject to public examination or disclosure.

19 d. A nonpublic record received from a person specified in
20 section 502.608, subsection 1.

21 e. Any social security number, residential address unless
22 used as a business address, and residential telephone number
23 unless used as a business telephone number, contained in a
24 record that is filed.

25 f. A record obtained by the administrator through a
26 designee that the administrator determines by rule or order
27 has been appropriately expunged from its own records by that
28 designee, if the administrator finds that such expungement is
29 in the public interest and does not impair investor
30 protection.

31 3. ADMINISTRATOR DISCRETION TO DISCLOSE. If disclosure is
32 for the purpose of a civil, administrative, or criminal
33 investigation, action, or proceeding or to a person specified
34 in section 502.608, subsection 1, the administrator may
35 disclose a record obtained in connection with an audit or

1 inspection under section 502.411, subsection 4, or a record
2 obtained in connection with an investigation under section
3 502.602.

4 Sec. 58. Section 502.608, Code 2003, is amended by
5 striking the section and inserting in lieu thereof following:

6 502.608 UNIFORMITY AND COOPERATION WITH OTHER AGENCIES.

7 1. OBJECTIVE OF UNIFORMITY. The administrator shall, in
8 its discretion, cooperate, coordinate, consult, and, subject
9 to section 502.607, share records and information with the
10 securities regulator of another state, Canada, a Canadian
11 province or territory, a foreign jurisdiction, the securities
12 and exchange commission, the United States department of
13 justice, the commodity futures trading commission, the federal
14 trade commission, the securities investor protection
15 corporation, a self-regulatory organization, a national or
16 international organization of securities regulators, a federal
17 or state banking and insurance regulator, and a governmental
18 law enforcement agency to effectuate greater uniformity in
19 securities matters among the federal government, self-
20 regulatory organizations, states, and foreign governments.

21 2. POLICIES TO CONSIDER. In cooperating, coordinating,
22 consulting, and sharing records and information under this
23 section and in acting by rule, order, or waiver under this
24 chapter, the administrator shall, in its discretion, take into
25 consideration in carrying out the public interest, all of the
26 following general policies:

27 a. Maximizing effectiveness of regulation for the
28 protection of investors.

29 b. Maximizing uniformity in federal and state regulatory
30 standards.

31 c. Minimizing burdens on the business of capital
32 formation, without adversely affecting essentials of investor
33 protection.

34 3. SUBJECTS FOR COOPERATION. The cooperation,
35 coordination, consultation, and sharing of records and

1 information authorized by this section includes all of the
2 following:

- 3 a. Establishing or employing one or more designees as a
4 central depository for registration and notice filings under
5 this chapter and for records required or allowed to be
6 maintained under this chapter.
- 7 b. Developing and maintaining uniform forms.
- 8 c. Conducting a joint examination or investigation.
- 9 d. Holding a joint administrative hearing.
- 10 e. Instituting and prosecuting a joint civil or
11 administrative proceeding.
- 12 f. Sharing and exchanging personnel.
- 13 g. Coordinating registrations under sections 502.301 and
14 502.401 through 502.404 and exemptions under section 502.203.
- 15 h. Sharing and exchanging records, subject to section
16 502.607.
- 17 i. Formulating rules, statements of policy, guidelines,
18 forms, and interpretative opinions and releases.
- 19 j. Formulating common systems and procedures.
- 20 k. Notifying the public of proposed rules, forms,
21 statements of policy, and guidelines.
- 22 l. Attending conferences and other meetings among
23 securities regulators, which may include representatives of
24 governmental and private sector organizations involved in
25 capital formation, deemed necessary or appropriate to promote
26 or achieve uniformity.
- 27 m. Developing and maintaining a uniform exemption from
28 registration for small issuers, and taking other steps to
29 reduce the burden of raising investment capital by small
30 businesses.

31 Sec. 59. Section 502.609, Code 2003, is amended by
32 striking the section and inserting in lieu thereof the
33 following:

34 502.609 JUDICIAL REVIEW OF ORDERS.

35 A final order issued by the administrator under this

1 chapter is subject to judicial review in accordance with
2 chapter 17A.

3 Sec. 60. Section 502.610, Code 2003, is amended by
4 striking the section the inserting in lieu thereof the
5 following:

6 502.610 JURISDICTION.

7 1. SALES AND OFFERS TO SELL. Sections 502.301, 502.302,
8 502.401, subsection 1, 502.402, subsection 1, 502.403,
9 subsection 1, 502.404, subsection 1, 502.501, 502.506,
10 502.509, and 502.510 do not apply to a person that sells or
11 offers to sell a security unless the offer to sell or the sale
12 is made in this state or the offer to purchase or the purchase
13 is made and accepted in this state.

14 2. PURCHASES AND OFFERS TO PURCHASE. Sections 502.401,
15 subsection 1, 502.402, subsection 1, 502.403, subsection 1,
16 502.404, subsection 1, 502.501, 502.506, 502.509, and 502.510
17 do not apply to a person that purchases or offers to purchase
18 a security unless the offer to purchase or the purchase is
19 made in this state or the offer to sell or the sale is made
20 and accepted in this state.

21 3. OFFERS IN THIS STATE. For the purpose of this section,
22 an offer to sell or to purchase a security is made in this
23 state, whether or not either party is then present in this
24 state, if any of the following apply to the offer:

- 25 a. The offer originates from within this state.
- 26 b. The offer is directed by the offeror to a place in this
27 state and received at the place to which it is directed.

28 4. ACCEPTANCES IN THIS STATE. For the purpose of this
29 section, an offer to purchase or to sell is accepted in this
30 state, whether or not either party is then present in this
31 state, if all of the following apply to the acceptance:

- 32 a. The acceptance is communicated to the offeror in this
33 state and the offeree reasonably believes the offeror to be
34 present in this state and the acceptance is received at the
35 place in this state to which it is directed.

1 b. The acceptance has not previously been communicated to
2 the offeror, orally or in a record, outside this state.

3 5. PUBLICATIONS, RADIO, TELEVISION, OR ELECTRONIC
4 COMMUNICATIONS. An offer to sell or to purchase is not made
5 in this state when a publisher circulates or there is
6 circulated on the publisher's behalf in this state a bona fide
7 newspaper or other publication of general, regular, and paid
8 circulation that is not published in this state, or that is
9 published in this state but has had more than two-thirds of
10 its circulation outside this state during the previous twelve
11 months or when a radio or television program or other
12 electronic communication originating outside this state is
13 received in this state. A radio or television program, or
14 other electronic communication, is considered as having
15 originated in this state if either the broadcast studio or the
16 originating source of transmission is located in this state,
17 unless any of the following apply:

18 a. The program or communication is syndicated and
19 distributed from outside this state for redistribution to the
20 general public in this state.

21 b. The program or communication is supplied by a radio,
22 television, or other electronic network with the electronic
23 signal originating from outside this state for redistribution
24 to the general public in this state.

25 c. The program or communication is an electronic
26 communication that originates outside this state and is
27 captured for redistribution to the general public in this
28 state by a community antenna or cable, radio, cable
29 television, or other electronic system.

30 d. The program or communication consists of an electronic
31 communication that originates in this state, but which is not
32 intended for distribution to the general public in this state.

33 6. INVESTMENT ADVICE AND MISREPRESENTATIONS. Sections
34 502.403, subsection 1, 502.404, subsection 1, 502.405,
35 subsection 1, 502.502, 502.505, and 502.506 apply to a person

1 if the person engages in an act, practice, or course of
2 business instrumental in effecting prohibited or actionable
3 conduct in this state, whether or not either party is then
4 present in this state.

5 Sec. 61. Section 502.611, Code 2003, is amended by
6 striking the section and inserting in lieu thereof the
7 following:

8 502.611 SERVICE OF PROCESS.

9 1. SIGNED CONSENT TO SERVICE OF PROCESS. A consent to
10 service of process required by this chapter must be signed and
11 filed in the form required by a rule or order under this
12 chapter. A consent appointing the administrator the person's
13 agent for service of process in a noncriminal action or
14 proceeding against the person, or the person's successor or
15 personal representative under this chapter or a rule adopted
16 or order issued under this chapter after the consent is filed,
17 has the same force and validity as if the service were made
18 personally on the person filing the consent. A person that
19 has filed a consent complying with this subsection in
20 connection with a previous application for registration or
21 notice filing need not file an additional consent.

22 2. CONDUCT CONSTITUTING APPOINTMENT OF AGENT FOR SERVICE.
23 If a person, including a nonresident of this state, engages in
24 an act, practice, or course of business prohibited or made
25 actionable by this chapter or a rule adopted or order issued
26 under this chapter and the person has not filed a consent to
27 service of process under subsection 1, the act, practice, or
28 course of business constitutes the appointment of the
29 administrator as the person's agent for service of process in
30 a noncriminal action or proceeding against the person or the
31 person's successor or personal representative.

32 3. PROCEDURE FOR SERVICE OF PROCESS. Service under
33 subsection 1 or 2 may be made by providing a copy of the
34 process to the office of the administrator, but it is not
35 effective unless all of the following apply:

1 a. The plaintiff, which may be the administrator, promptly
2 sends notice of the service and a copy of the process, return
3 receipt requested, to the defendant or respondent at the
4 address set forth in the consent to service of process or, if
5 a consent to service of process has not been filed, at the
6 last known address, or takes other reasonable steps to give
7 notice.

8 b. The plaintiff files an affidavit of compliance with
9 this subsection in the action or proceeding on or before the
10 return day of the process, if any, or within the time that the
11 court, or the administrator in a proceeding before the
12 administrator, allows.

13 4. SERVICE IN ADMINISTRATIVE PROCEEDINGS OR CIVIL ACTIONS
14 BY ADMINISTRATOR. Service pursuant to subsection 3 may be
15 used in a proceeding before the administrator or by the
16 administrator in a civil action in which the administrator is
17 the moving party.

18 5. OPPORTUNITY TO DEFEND. If process is served under
19 subsection 3, the court, or the administrator in a proceeding
20 before the administrator, shall order continuances as are
21 necessary or appropriate to afford the defendant or respondent
22 reasonable opportunity to defend.

23 Sec. 62. NEW SECTION. 502.612 SEVERABILITY CLAUSE.

24 If any provision of this chapter or its application to any
25 person or circumstances is held invalid, the invalidity does
26 not affect other provisions or applications of this chapter
27 that can be given effect without the invalid provision or
28 application, and to this end the provisions of this chapter
29 are severable.

30 Sec. 63. Sections 502.205 through 502.218, 502.502A,
31 502.603A, and 502.604B, Code 2003, are repealed.

32 DIVISION II

33 TRANSITION PROVISIONS

34 Sec. 64. APPLICATION OF ACT TO EXISTING PROCEEDING AND
35 EXISTING RIGHTS AND DUTIES.

1 1. APPLICABILITY OF PREDECESSOR CHAPTER TO PENDING
 2 PROCEEDINGS AND EXISTING RIGHTS. The predecessor chapter 502
 3 exclusively governs all actions or proceedings that are
 4 pending on the effective date of this Act or may be instituted
 5 on the basis of conduct occurring before the effective date of
 6 this Act, but a civil action shall not be maintained to
 7 enforce any liability under the predecessor chapter unless
 8 instituted within any period of limitation that applied when
 9 the cause of action accrued or within five years after the
 10 effective date of this Act, whichever is earlier.

11 2. CONTINUED EFFECTIVENESS UNDER PREDECESSOR CHAPTER. All
 12 effective registrations under the predecessor chapter 502, all
 13 administrative orders relating to the registrations, rules,
 14 statements of policy, interpretative opinions, declaratory
 15 rulings, no action determinations, and conditions imposed on
 16 the registrations under the predecessor chapter 502 remain in
 17 effect while they would have remained in effect if this Act
 18 had not been enacted. They are considered to have been filed,
 19 issued, or imposed under chapter 502 as amended by this Act,
 20 but are exclusively governed by the predecessor chapter 502.

21 3. APPLICABILITY OF PREDECESSOR CHAPTER TO OFFERS OR
 22 SALES. The predecessor chapter 502 exclusively applies to an
 23 offer or sale made within one year after the effective date of
 24 this Act pursuant to an offering made in good faith before the
 25 effective date of this Act on the basis of an exemption
 26 available under the predecessor chapter 502.

27 DIVISION III

28 CONFORMING CHANGES

29 Sec. 65. Section 22.7, subsection 42, Code Supplement
 30 2003, is amended to read as follows:

31 42. Information obtained by the commissioner of insurance
 32 in the course of an investigation as provided in section
 33 ~~502:603~~, 523B.8, or 523C.23.

34 42A. Information obtained by the commissioner of insurance
 35 pursuant to section 502.607.

1 Sec. 66. Section 507B.14, unnumbered paragraph 1, Code
2 2003, is amended to read as follows:

3 When a controlling interest in two or more corporations, at
4 least one of which is an insurance company domiciled in this
5 state, is held by any person, group of persons, firm, or
6 corporation, no exchange of stock, transfer or sale of
7 securities, or loan based upon securities of any such
8 corporation shall take place between such corporations, or
9 between such person, group of persons, firm or corporation and
10 such corporations, without first securing the approval of the
11 insurance commissioner. If, in the opinion of the insurance
12 commissioner, such sale, transfer, exchange, or loan would be
13 improper and would work to the detriment of any such insurance
14 company, the commissioner shall have the power to prohibit the
15 transaction. Any A person, firm, or corporate officer or
16 director aiding shall not aid such transaction carried-out
17 without approval of the insurance commissioner shall-be
18 deemed. A person, firm, or other corporate officer or
19 director who willfully violates this provision is guilty of a
20 class "D" felony and-upon-conviction-punished-as-provided-in
21 section-502-605. A person, firm, or corporate officer or
22 director who willfully violates this provision, and when such
23 violation results in a loss of more than ten thousand dollars,
24 is guilty of a class "C" felony.

25 Sec. 67. Section 536A.22, unnumbered paragraph 2, Code
26 2003, is amended to read as follows:

27 The total amount of such thrift certificates, installment
28 thrift certificates, certificates of indebtedness, promissory
29 notes, or similar evidences of indebtedness outstanding and in
30 the hands of the general public shall not at any time exceed
31 ten times the total amount of capital, surplus, undivided
32 profits, and subordinated debt that gives priority to such
33 securities of the issuing industrial loan company. The sale
34 of such securities is subject to the provisions of chapter 502
35 and rules adopted by the superintendent of banking pursuant to

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1 chapter 17A, ~~and shall not be construed to be exempt by reason~~
2 ~~of the provisions of section 502.202, subsection 10,~~ except
3 that the sale of thrift certificates or installment thrift
4 certificates which are redeemable by the holder either upon
5 demand or within a period not in excess of five years are
6 exempt from sections 502.201 and ~~502.602~~ 502.504.

7 DIVISION IV
8 EFFECTIVE DATE

9 Sec. 68. This Act takes effect January 1, 2005.

10 EXPLANATION

11 This bill provides for the regulation of securities.
12 Generally, these regulations are designed to protect investors
13 from fraudulent sales of securities. Securities law is
14 governed under both federal and state law, including the
15 Securities Act of 1933 and the Securities Exchange Act of
16 1934, and are regulated by the United States securities and
17 exchange commission. Iowa has adopted the Iowa uniform
18 securities Act, model legislation popularly known as the "Blue
19 Sky Law", which was developed by the national conference of
20 commissioners on uniform state laws. The Iowa blue sky law is
21 codified in Code chapter 502 and regulated by the securities
22 bureau of the insurance division of the department of
23 commerce.

24 The bill substantially revises every provision of Code
25 chapter 502. It is based on a new version of model
26 legislation as recommended by the commissioners and referred
27 to as the uniform securities Act (2002). The new uniform act
28 provides state securities regulators authority to investigate,
29 prosecute, and sanction individuals and firms that engage in
30 securities transactions, in a manner that is consistent with
31 current federal law, including with the federal National
32 Securities Markets Improvement Act (NSMIA), enacted in 1996,
33 which has preempted some state regulatory authority.

34 The bill regulates public offerings of securities by
35 issuers and control persons must be registered. Second,

1 broker-dealers and their agents, and investment advisers and
2 their representatives, must be registered. Third, fraud in
3 securities transactions is prohibited and enforcement powers
4 are given to an appropriate regulatory agency. These powers
5 include the ability to make rules and regulations, issue stop
6 orders, bring criminal prosecutions, and pursue civil actions
7 in court. The 2002 uniform securities Act brings all of these
8 regulatory provisions up-to-date with expansion of enforcement
9 authority at the state level. Division I of the bill includes
10 all of the following:

11 ARTICLE 1. This article includes general provisions,
12 including definitions, a reference to federal statutes and
13 federal agencies, and provisions governing electronic records
14 and signatures.

15 ARTICLE 2. This article provides exemptions from
16 registration of securities, including by providing for both
17 exempt securities and exempt transactions and waivers. It
18 also provides for the denial, suspension, revocation,
19 conditioning, or limitations on exemptions for securities
20 regulation.

21 ARTICLE 3. This article provides for the registration of
22 securities and notice filing of federal covered securities.
23 It provides for security registration requirements, notice
24 filing, securities registration by coordination or
25 qualification, security registration filings, and the denial,
26 suspension, or revocation of registrations. It also provides
27 for waivers and modifications.

28 ARTICLE 3A. This is a special Iowa article which includes
29 takeover provisions, including by providing for registration
30 requirements, the filing of solicitation materials,
31 prohibiting fraudulent, deceptive, or manipulative practices,
32 proving limitations of offers and offerors, administration,
33 its application to public utilities and financial
34 institutions, and the application of securities law.

35 ARTICLE 4. This article regulates broker-dealers, agents,

1 investment advisers, investment adviser representatives, and
 2 federal covered investment advisers. The article provides for
 3 registration requirements and exemptions for broker-dealers,
 4 agents, and investment adviser representatives. It also
 5 provides for federal covered investment adviser notice filing
 6 requirements. The article provides for succession and changes
 7 in the registration of broker-dealers or investment advisers,
 8 for the termination of employment or association of agents and
 9 investment adviser representatives, and for related transfers
 10 of employment or association. It provides for the withdrawal
 11 of registration of broker-dealers, agents, investment
 12 advisers, and investment adviser representatives. It provides
 13 for filing fees, as well as postregistration requirements.
 14 Finally, the article provides for the denial, revocation,
 15 suspension, withdrawal, restriction, condition, or limitation
 16 of registration.

17 ARTICLE 5. This article relates to fraud and liabilities.
 18 It provides for general fraud and prohibited conduct in
 19 providing investment advice. It sets forth an evidentiary
 20 burden, provides for the filing of sales and advertising
 21 literature, and prohibits misleading filings and
 22 misrepresentations concerning registration or exemptions. The
 23 article also provides for qualified immunity, criminal
 24 penalties, civil liability, and rescission offers.

25 ARTICLE 6. This article provides for administration and
 26 judicial review. It provides generally for administration of
 27 the bill's provisions, investigations and subpoenas, and civil
 28 and administrative enforcement. It also includes special
 29 provisions governing rules, forms, orders, interpretative
 30 opinions, and hearings. It provides for public records and
 31 their confidentiality. The article provides for uniformity
 32 and cooperation with other agencies. It includes provisions
 33 governing judicial review. The article also provides
 34 provisions governing jurisdiction, service of process, and
 35 includes a severability clause.

1 Division II of the bill provides for the transition of
2 administration. These include applicability of the bill's new
3 provisions to existing proceedings and existing rights and
4 duties.

5 Division III of the bill contains provisions in other
6 chapters that conform to changes made by the bill.

7 The bill takes effect January 1, 2005.

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