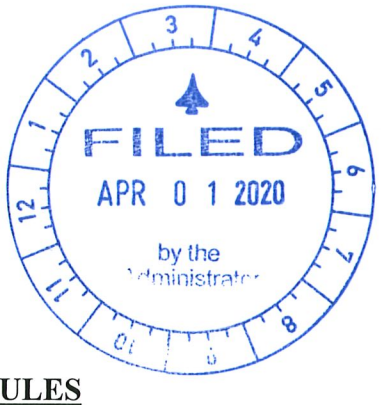

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
City Place, Suite 400
204 North Robinson
Oklahoma City, Oklahoma 73102

ORDER ADOPTING NEW AND AMENDED PERMANENT RULES

Pursuant to the requirements of Section 303 of the Oklahoma Administrative Procedures Act, a notice of rulemaking intent ("Notice") of the Administrator ("Administrator") of the Oklahoma Department of Securities ("Department") was published in The Oklahoma Register on February 18, 2020. The Notice concerned changes to the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities.

The following rules were specified in the Notice:

660:11-1-3. Definitions [AMENDED]
660:11-5-2. Definitions [AMENDED]
660:11-5-14. Agent termination [AMENDED]
660:11-5-21. Supplemental disclosures [AMENDED]
660:11-5-26. Merger and acquisition broker exemption [NEW]
660:11-5-42. Standards of ethical practices for broker-dealers and their agents [AMENDED]
660:11-7-2. Definitions [AMENDED]
660:11-7-11. Initial registration [AMENDED]
660:11-7-14. Investment adviser representative termination [NEW]
660:11-7-20. Supplemental disclosures [AMENDED]
660:11-7-21. Errors and omissions coverage [NEW]
660: 11-7-31. Post-registration reporting requirements [AMENDED]
660:11-7-41. Record keeping requirements [AMENDED]
660:11-7-42. Standards of ethical practices [AMENDED]
660:11-7-46. Information security and privacy [NEW]
660:11-9-31. Prospectus delivery requirement [AMENDED]
660:11-9-33. Special requirements for promotional or ~~developmental~~ development stage companies [AMENDED]
660:11-9-36. Promoters' and organizers' equity contributions [AMENDED]
660:11-11-1. Definitions [AMENDED]
660:11-11-40. Manual exemption [AMENDED]
660:11-11-52. Oklahoma Accredited Investor Exemption [AMENDED]
660:11-11-53. Exemption for offers but not sales [AMENDED]
660:11-15-2. Protection from financial exploitation [NEW]

As provided for in the Notice, all interested persons were afforded a thirty (30) day comment period to make written comments regarding the proposed new rules 660:11-5-26, 660:11-7-14, 660:11-7-21, 660:11-7-46, 660:11-15-2, and the proposed rule amendments ("Proposed New

Rules and Rule Amendments"). Because of the impact of the COVID-19 pandemic, the Department extended the comment period to March 26, 2020.

A rule impact statement was prepared for the Proposed New Rules and Rule Amendments. The rule impact statement and the text of the Proposed New Rules and Rule Amendments including the proposed changes were posted on the Department's website as specified in the Notice. The Department electronically notified the person who had made a timely request for advance notice of the Department's rulemaking proceedings.

Also, as provided for by the Notice, a public hearing regarding the Proposed New Rules and Rule Amendments was scheduled and conducted on March 27, 2020, at 10:00 a.m., by teleconference (due to the COVID-19 pandemic isolation restrictions) before the Administrator.

The Department received comments from three entities endorsing the promulgation of 660:11-5-26 concerning the exemption from registration for broker-dealers acting solely as mergers and acquisition brokers.

The Department received comments from seven entities requesting the reconsideration or clarification of the proposed language in Rule 660:11-7-42 regarding the provision clarifying the already established fiduciary duty of investment advisers and investment adviser representatives to their clients. Several of the entities also expressed reservations over the provision prohibiting a firm from requiring arbitration in its investment advisory contracts.

The Department received a comment from one entity requesting that the proposed language in Rule 660:11-15-2 be amended to make it more uniform with recent legislation and rules in other states.

The Department staff recommended the correction of scrivener errors and citations that were not in the precise form mandated by the OAC rules on rulemaking, the addition and retraction of language and consequent renumbering, clarification of references to model rules and federal law. The Department staff made additional comments in response to the public comments.

The Administrator reviewed the comments made by all persons.

The Administrator chose to not proceed at this time with the language in Rule 660:11-7-42 describing the fiduciary duty owed by investment advisers and investment adviser representatives to their clients. The Administrator notes that such fiduciary duty is already imposed by caselaw and reserves the right to revisit this issue in the future.

The Administrator also chose not to proceed at this time with the language in Rule 660:11-7-42 limiting an investment adviser from requiring an arbitration forum in its investment advisory contracts for resolution of any conflicts. This issue may also be revisited in the future.

The Administrator revised the proposed language in Rule 660:11-15-2 to make it more uniform with rules or legislation recently passed by other states in that a securities firm must only report suspected financial abuse to the Department upon determination of such abuse.

The Administrator adopted the staff comments concerning matters raised by the public comments and to correct scrivener errors and renumbering as needed.

AUTHORITY

Section 1-605.A of the Oklahoma Uniform Securities Act of 2004, 71 O.S. §§1-101 through 1-701 (2011 and Supp. 2019) ("Securities Act"), provides that the Administrator of the Department may:

1. Issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this act and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;

2. By rule, define terms, whether or not used in this act, but those definitions may not be inconsistent with this act; and

3. By rule, classify securities, persons, and transactions and adopt different requirements for different classes.

Section 1-605.B of the Securities Act limits this authority to situations in which the Administrator finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by the Securities Act.

Section 1-608 of the Securities Act directs the Administrator to so act in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

CONCLUSION OF LAW

The Administrator finds that the Proposed New Rules and Rule Amendments are necessary or appropriate in the public interest or for the protection of investors and are consistent with the purposes intended by the Securities Act.

ORDER

BASED UPON AND SUBJECT TO THE FOREGOING, IT IS HEREBY ORDERED that the Proposed New Rules and Proposed Rule Amendments are adopted as set forth in the attached Exhibit A that includes the new rules and proposed amendments to rules in OAC 660:11.

WITNESS my Hand and the Official Seal of the Oklahoma Department of Securities at Oklahoma City, Oklahoma, and dated this 1st day of April, 2020.

(SEAL)

MELANIE HALL, ADMINISTRATOR OF THE OKLAHOMA DEPARTMENT OF SECURITIES