Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities
Effective September 15, 2023

TITLE 660. DEPARTMENT OF SECURITIES

CHAPTER 1. ORGANIZATION AND PROCEDURES OF SECURITIES COMMISSION

SUBCHAPTER 1. GENERAL PROVISIONS

Section

660:1-1-1. Purpose

The provisions of this Chapter set forth the organization and procedural rules governing the Oklahoma Securities Commission.

660:1-1-2. Statutory citations

Citations to statutes in this Chapter refer to the most recent codification of Title 71 of the Oklahoma Statutes.

660:1-1-3. Definitions

Unless the context clearly indicates otherwise, or unless defined in this Section, terms used in this Chapter, if defined in the Oklahoma Uniform Securities Act of 2004, the Oklahoma Subdivided Land Sales Code, the Oklahoma Business Opportunity Sales Act or the Oklahoma Take-over Disclosure Act of 1985 shall have the meanings set forth in such acts. The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Administrator" means the Administrator of the Department of Securities.

"Business Opportunity Act" means the most recent codification of the Oklahoma Business Opportunity Sales Act in Title 71 of the Oklahoma Statutes.

"Commission" means the Oklahoma Securities Commission.

"Department" means the Oklahoma Department of Securities.

"Land Sales Act" means the most recent codification of the Oklahoma Subdivided Land Sales Code in Title 71 of the Oklahoma Statutes.

"NASD" means the National Association of Securities Dealers, Inc.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the most recent codification of the Oklahoma Uniform Securities Act of 2004 in Title 71 of the Oklahoma Statutes.

"Take-over Act" means the most recent codification of the Oklahoma Take-over Disclosure Act of 1985 in Title 71 of the Oklahoma Statutes.

SUBCHAPTER 3. ORGANIZATION

Section

660:1-3-1. Purpose and organization

The Oklahoma Securities Commission shall be the policy making and governing authority of the Department. The organization of the Commission shall be in accordance with the provisions of Section 1-601 of the Securities Act.

660:1-3-2. Commission actions

(a) All official acts of the Commission shall be evidenced by a written record, and all final orders, decisions, opinions, rules and other written statements of policy or interpretations formulated, adopted or used in the discharge of the function of the Commission shall be available for public inspection.

(b) Official action of the Commission shall not be bound or be prejudiced by any informal statement made or opinion given by the Commission or employees of the Department.

SUBCHAPTER 5. APPEALS

Section

660:1-5-1. Procedures for appeals to the Commission

(a) **Scope.** The provisions of this Section govern the procedures for appeals by a person aggrieved by a final order of the Administrator filed before the Commission. These procedures shall not be construed to extend or limit the jurisdiction of the Commission or the Administrator as established by law.

(b) **Appeal-how and when taken.** In matters in which an appeal is permitted by law, the person appealing the order shall file with the Administrator a petition within fifteen (15) days after entry of the order. The Administrator shall submit the petition to the Commission at the next scheduled Commission meeting. The Petition shall specify the party or parties requesting the

appeal; shall designate the order or part thereof appealed from; shall request a record on appeal be compiled; shall set forth appellant's agreement to pay for the preparation of the record on appeal; and shall be signed by the party or parties or counsel for the party or parties. For purposes of this subsection, the term "entry of the order" means the day the final order is mailed or personally delivered to the persons entitled to receive the order.

(c) **Record on appeal.** Upon receipt of the petition of appeal, the Administrator shall direct the Department to compile the record on appeal. The record on appeal shall consist of the record upon which the final order was issued as described in 660:2-9-7. Upon completion of the record on appeal, the Administrator shall notify the appellant that the record has been completed. Upon payment of the costs of preparation of the record on appeal, copies of the record will be served upon the Commission and all parties to the appeal with a notice of the date that the record was served and the briefing schedule.

(d) **Briefing schedule and briefs.** The appellant shall file six copies of his opening brief on appeal with the Administrator and serve one copy on all other parties to the appeal within fifteen (15) days of service of the record on appeal. The appellee shall file six copies of his opening brief on appeal with the Administrator and serve one copy on all other parties to the appeal within fifteen (15) days of receipt of the brief of appellant. The Chairperson of the Commission, or his designee, may, upon good cause shown, enlarge these periods as he deems appropriate.

(1) **Brief of appellant.** The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(A) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(B) A statement setting forth any objection to the jurisdiction of the Department and the grounds for such objection or a statement that no objection to jurisdiction is being made.

(C) A statement of the issues presented for review.

(D) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of the proceedings, and its disposition with the Administrator. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record. No factual statements may be made in the brief unless asserted at the hearing before the Administrator and a citation to the record is included.

(E) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented and the reasons therefor, with citations to the authorities, statutes and parts of the record upon which the party is relying.

(F) A short conclusion stating the precise relief sought.

(2) **Brief of appellee.** The brief of the appellee shall conform to the requirements of (1)(A)-(F) of this paragraph, except that a statement of jurisdiction, of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(3) **Oral argument.** All parties submitting briefs shall include, either on the cover of the brief or by separate document filed with the brief, a statement as to whether oral argument before the Commission is desired.

(4) **Length of briefs.** Except by permission of the Chairperson of the Commission, or his designee, the briefs of the parties shall not exceed thirty (30) pages, exclusive of the table of contents, table of citations and appendix.

(5) **Appendix to brief.** A party to an appeal may submit, contemporaneously with the filing and service of his brief, an appendix containing copies of material cited in the brief, such as cases, statutes, treatises, and other authorities or copies of portions of the record on appeal. Copies of authorities must reflect the official citation to the authority. Portions of the record must be accompanied by a citation to the exact location of the material in the official record on appeal. The appendix shall not contain any argument or material which should have been more appropriately included in the brief.

(6) **Appeal based on newly discovered evidence.** Any appeal of a final order of the Administrator based in whole or in part on the grounds that newly discovered evidence has been obtained shall include in the brief a detailed description of the newly discovered evidence, a statement setting forth specifically how the new evidence is relevant, and a detailed explanation of why the evidence could not have been discovered in a timely fashion prior to the issuance of the final order by the Administrator. If the Commission determines the newly discovered evidence should be considered, it shall remand the matter to the Administrator with instruction to rehear the matter and consider the newly discovered evidence.

(e) **Stay pending review.** The filing of an appeal with the Commission does not stay the order of the Administrator pending the appeal.

(1) A party aggrieved by a final order of the Administrator may, upon filing a petition for appeal with the Commission, apply to the Administrator for a stay pending the appeal. The Administrator may stay the effect of his order pending the appeal upon such grounds or upon condition of such undertakings as he deems, in his discretion, to be appropriate.

(2) If the Administrator denies the application for a stay, the party may file with the Administrator six copies of an application for stay to the Commission. The application for stay shall not be longer than five (5) pages and shall set forth any grounds upon which the stay is sought. The Administrator may file a statement in opposition to the application for stay. The Administrator shall forward copies of the application for stay and any statement in opposition to the Commission within five (5) days of receipt.

(3) The filing of an application for a stay with the Administrator or the Commission shall not have the effect of staying the order of the Administrator. The order of the Administrator shall only be stayed upon order of the Administrator, the Commission or a court of appropriate jurisdiction.

(f) **Motions.** All applications or motions made to the Commission in connection with an appeal properly filed before the Commission shall be filed with the Administrator and promptly submitted to the Chairperson of the Commission, or his designee, and be promptly ruled upon by the Chairperson of the Commission, or his designee.

(g) **Executive session.** Deliberations by the Commission may be held in executive session.

(h) **Order on appeal.** The Order of the Commission on any appeal shall contain a concise statement of the facts as found by the Commission and a concise statement of the conclusions therefrom and the effective date of the Order.

CHAPTER 2. ORGANIZATION AND PROCEDURES OF DEPARTMENT OF SECURITIES

SUBCHAPTER 1. GENERAL PROVISIONS

Section

660:2-1-1. Purpose

(a) The provisions of this Chapter set forth the organization and procedural rules governing the Department of Securities and have been adopted for the purpose of complying with 75 O.S., Section 302.

(b) The provisions of this Chapter relating to investigations and hearings apply to all investigations and hearings conducted by the Department in the enforcement of the Business Opportunity Act, the Land Sales Act, and the Securities Act.

660:2-1-2. Statutory citations

Citations to statutes in this Chapter refer to the most recent codification of Title 71 of the Oklahoma Statutes.

660:2-1-3. Definitions

Unless the context clearly indicates otherwise, terms used in this Chapter, if defined in the Oklahoma Uniform Securities Act of 2004, the Oklahoma Land Sales Code, or the Oklahoma Business Opportunity Sales Act shall have the meanings set forth in such acts. The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Administrator" means the Administrator of the Department.

"Business Opportunity Act" means the most recent codification of the Oklahoma Business Opportunity Sales Act in Title 71 of the Oklahoma Statutes.

"Commission" means the Oklahoma Securities Commission.

"Department" means the Oklahoma Department of Securities.

"Deputy Administrator" means the Deputy Administrator of the Department.

"Director of Corporate Finance" means the Department employee who leads the division responsible for the registration of securities, business opportunities, and subdivided lands as well as any exemption from such registration requirements.

"Director of Enforcement" means the Department employee who leads the division responsible for the investigation and enforcement of persons who violate the Securities Act, the Business Opportunity Act, and the Land Sales Act.

"Director of Professional Registrations and Compliance" means the Department employee who leads the division responsible for the registration and examination of broker-dealers, agents, investment advisers, and investment adviser representatives.

"Hearing Officer" means a person who has been duly designated by the Administrator to hold hearings and, as required, render proposed orders.

"Land Sales Act" means the most recent codification of the Oklahoma Subdivided Land Sales Code in Title 71 of the Oklahoma Statutes.

"Securities Act" means the most recent codification of the Oklahoma Uniform Securities Act of 2004 in Title 71 of the Oklahoma Statutes.

SUBCHAPTER 3. ORGANIZATION

Section

660:2-3-1. Organization

(a) The Department shall be organized in accordance with Section 1-601 of the Securities Act. It shall be the purpose of the Department to implement the policies of the Commission and to enforce the Securities Act, the Business Opportunity Act, and the Land Sales Act in an efficient and effective manner.

(b) The Department shall be organized in the following divisions:

(1) registration of broker-dealers, agents, investment advisers, and investment adviser representatives;

(2) registration of securities, business opportunities, and subdivided lands;

(3) investigation and enforcement; and

(4) investor education.

(c) The Department shall have as its chief officer an Administrator who shall be charged with the duty of administering and enforcing the acts under the supervision of the Commission and in accordance with its policies.

SUBCHAPTER 5. AUTHORITY AND ACTIONS OF ADMINISTRATOR

Section

660:2-5-1. Official actions

(a) All official acts of the Administrator shall be evidenced by a written record, and all final orders, decisions, opinions, rules and other written statements of policy or interpretations formulated, adopted or used in the discharge of the function of the Administrator shall be available for public inspection.

(b) Official action of the Administrator shall not be bound or be prejudiced by any informal statement made or opinion given by the Administrator, Commission or employees of the Department.

660:2-5-2. Register of actions [REVOKED]

660:2-5-3. Settlements

In order to avoid the expense and time involved in formal legal proceedings, it is the policy of the Administrator to afford persons who have engaged in unlawful acts and practices an opportunity to enter into settlement agreements, when it appears to the Administrator that such procedure fully safeguards the public interest. The Administrator reserves the right in all cases to withhold the privilege of disposition by settlement agreement.

660:2-5-4. Summary orders [REVOKED]

SUBCHAPTER 7. INVESTIGATIONS

Section

660:2-7-9. Termination of investigation

660:2-7-1. Initiation

Investigations may be initiated upon inquiry, request or complaint by members of the public or by the Administrator or the Commission upon their own motion. The request or complaint by a member of the public should be in writing on the form identified in Chapter 6 of this Title, be signed by the complainant and contain a statement setting forth the acts, activities or matters and the name and address of the party or parties against whom they are complaining. No formal procedures are required in making such requests or complaints. The complainant is not regarded as a party, since the Administrator acts only in the public interest. The Administrator shall not take action when the acts, activities or matters complained of are merely matters of private controversy and do not tend to adversely affect the public.

660:2-7-2. Authority [REVOKED]

660:2-7-3. Investigative processes

(a) **Authority.** Investigations under the statutes administered by the Administrator shall be conducted by representatives designated and duly authorized for this purpose. Such representatives are authorized to exercise and perform the duties of their office in accordance with the statutes of the state of Oklahoma and the regulations of the Administrator, including administration of oaths and affirmations, in any matter under investigation by the Administrator. Nothing in this section shall prohibit the Administrator or the Administrator's designee from expanding or restricting the scope of any investigation at any time during an investigation.

(b) **Investigative hearings.** Investigative hearings, as distinguished from hearings in individual proceedings, may be conducted in the course of any investigation undertaken by the Administrator, including inquiries initiated for the purpose of determining whether or not a respondent is complying with an order of the Administrator. Investigative hearings may be held before the Administrator or the Administrator's designee for the purpose of hearing the testimony of witnesses and receiving documents and other data relating to any subject under investigation. Such hearings shall be non-public.

(c) **Subpoena to testify or produce records.** While the Administrator encourages voluntary cooperation in investigations, the Administrator or the Administrator's designee at any stage of any investigation, may issue a subpoena ordering the person named therein to appear before a designated representative at a designated time and place, including the offices of the Department, to testify, to file a sworn statement or affidavit, and/or to produce documentary evidence relating to any matter under investigation.

(i) Testimony shall only be reduced to writing or recorded at the direction of the Department.

(ii) Documents required by a subpoena shall be produced in the manner, form, and time frame instructed therein.

(d) **Subpoena to grant access.** The Administrator may issue a subpoena to grant access to, to examine, and to copy documents, books or other records of any person being investigated.

(e) **Service.** Subpoenas shall be served in the manner provided by law.

(f) **Written examination.** The Administrator or the Administrator's designee may issue an order requiring persons to file a report or statement, or answers in writing and under oath to specific questions, relating to any matter under investigation.

(g) **Rights of witness.** Any person under investigation, compelled to furnish information or documentary evidence, shall be advised of the purpose and scope of the investigation, subject to the confidentiality requirements provided by law. Any person required to testify shall be entitled to review a copy of the transcript of the person's own testimony, if transcribed, at the offices of the Department. Any person required to submit documentary evidence shall be entitled to retain or, on payment of lawfully prescribed cost, to procure a copy of any document produced by such person. Any party compelled to testify or to produce documentary evidence may be accompanied and advised by counsel, provided that such counsel is duly licensed to practice law by the Supreme Court of Oklahoma. Such counsel may question such person briefly at the conclusion of the examination to clarify any of the answers such person has given.

(h) **Confidentiality.** Information or documents obtained by the Administrator and subpoenas issued in connection with an investigation shall be kept confidential and shall not be made available to the public, unless expressly ordered by the Administrator, or disclosed pursuant to the provisions of Subchapter 9 of this Chapter or as otherwise provided by law.

(i) **Duty to Supplement.** Any person who has responded to a subpoena must supplement its response in a timely manner if the person learns that in some material respect the disclosure or response is incomplete.

660:2-7-4. Subpoenas [REVOKED]

660:2-7-5. Testimony [REVOKED]

660:2-7-6. Reports [REVOKED]

660:2-7-7. Enforcement of process [REVOKED]

660:2-7-8. Right to counsel [REVOKED]

660:2-7-9. Termination of investigation

Upon completion of investigation, where the facts indicate that no corrective action by the Administrator is warranted, the investigative files shall be closed, without prejudice to

reopening. Where remedial action is appropriate, the files may be referred for the initiation of administrative or civil proceedings, or other disposition as may be permitted under law. At any time during or after completion of an investigation, a matter may be referred to a law enforcement agency or another governmental or regulatory entity.

SUBCHAPTER 9. INDIVIDUAL PROCEEDING PRACTICES AND PROCEDURES

Section

660:2-9-1. Hearings in general

(a) **Authority.** Prior to the issuance of a final order in an individual proceeding, all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall be in writing and advise the parties of their right to a hearing and their obligation to file an answer, the time period within which a hearing must be requested, and the effect of a failure to file an answer and to request a hearing.

(b) **Public hearing.** All hearings shall be open to the public but may not be recorded by the public or any respondent by any electronic means.

(c) **Hearings on summary orders.** The provisions of this Subchapter shall not apply to proceedings for summary orders.

660:2-9-2. Initiation of individual proceedings

(a) **Request for hearing and answer.** The person to whom the notice of opportunity for hearing is addressed shall file with the Administrator a written answer within the time specified in the notice. The answer shall indicate whether the party requests a hearing and shall specifically admit or deny each allegation of the Department or state that the party does not have, and is unable to obtain, sufficient information to admit or deny each allegation. When a person intends in good faith to deny only a part of an allegation, the party shall specify so much of it as is true and shall deny only the remainder. A statement of a lack of information shall have the effect of a denial. Any allegation not denied shall be deemed admitted. Failure of a party to file an answer in compliance with this subsection shall result in the issuance of a final order against that party.

(b) **Setting or denial of hearing.** Upon receipt of a written request for a hearing, the Administrator shall either promptly schedule a hearing or shall issue a written order denying a hearing.

(c) **Time of notice.** Notice of all hearings shall be served by regular first class mail or by personal delivery within a time reasonable in light of the circumstances, in advance of the hearing, but not less than forty-five (45) days in advance thereof, to all parties. For good cause shown, any hearing may be rescheduled, provided all persons entitled to notice of such hearing are promptly advised thereof.

(d) **Content of notice.** The notice of hearing shall contain the following information:

(1) the date, time, place and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a short plain statement of the matters asserted; and

(4) a reference to the particular sections of the statutes and rules involved.

(e) **Appointment of hearing officer.** The Administrator may delegate authority to a Hearing Officer to conduct an individual proceeding and prepare a proposed order for submission to the Administrator whenever deemed appropriate under the circumstances. The Administrator shall enter into a written contract with each Hearing Officer appointed, which shall govern the terms of appointment.

(f) **Authority of presiding officer.** The Administrator, or the Hearing Officer, shall have the authority to do all things necessary and appropriate to conduct the individual proceeding. The duties of the Administrator, or the Hearing Officer, include, but are not limited to, the following:

(1) Administering oaths and affirmations;

(2) Issuing subpoenas authorized by law and quashing or modifying any such subpoena;

(3) Receiving relevant evidence and ruling upon the admission of evidence and offers of proof;

(4) Regulating the course of a proceeding and the conduct of the parties and their counsel;

(5) Holding prehearing and other conferences and requiring the attendance at any such conference of any party;

(6) Recusing himself upon a motion of a party based on reasonable grounds, or upon his own motion;

(7) Considering and ruling upon all procedural and other motions, subject to any limitations otherwise specified;

(8) Requiring the filing of briefs, if so desired; and

(9) Requiring the filing of proposed findings of fact and conclusions of law.

(g) **Submission of case on documentary record.** The Administrator, or the Hearing Officer, may elect not to hold a hearing if all parties agree to submit the case on the documentary record and waive their right to appear.

660:2-9-3. Prehearing proceedings and processes

(a) **Scheduling.** As soon as is practicable after a hearing has been scheduled, the Administrator, or the Hearing Officer, shall enter a scheduling order that is intended to expedite the disposition of the action and ensure the fair, orderly and efficient conduct of the proceedings. The parties shall confer in person or by telephone and attempt to prepare a single agreed scheduling order to submit to the Administrator or the Hearing Officer. The agreed, proposed scheduling order shall be submitted to the Administrator or the Hearing Officer no later than fifteen (15) days after the hearing has been scheduled. If the parties are unable to agree to a single scheduling order, the parties shall each submit, no later than twenty (20) days after the hearing has been scheduled, a proposed scheduling order to the Administrator or the Hearing Officer who shall issue an appropriate scheduling order or, prior to issuing such order, hold a scheduling conference in person or by telephone. The scheduling order shall establish at least the following:

(1) a schedule of discovery;

(2) any limitations to be placed on discovery;

(3) a preliminary list identifying all witnesses, documents and exhibits intended to be utilized at the hearing;

(4) identification of any expert witness intended to be called;

(5) the date for exchanging the documents and exhibits intended to be utilized at the hearing and the final list identifying all witnesses intended to be called at the hearing; and

(6) such other matters as may aid in the disposition of the matter.

(b) **Discovery.**

(1) Discovery may be obtained by one or more of the following methods:

(A) A party may serve a written request on any other party requiring the party to produce, within fifteen (15) days, for inspection and copying, any documents or tangible items that are in the possession, custody or control of the party and relevant to the subject matter of the individual proceeding and are not privileged. The number of requests to produce or permit inspection shall not exceed thirty (30) in number except by agreement of the party being required to produce or by order of the Administrator,

or Hearing Officer. All documents will be produced at the offices of the Department or at such other place as the parties may agree in writing.

(B) A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters relating to facts, the application of law to fact, or opinions about either; and the genuineness of any documents described in the request. Copies of documents shall be served with the request to admit unless they have been or are otherwise furnished or made available for inspection and copying. The number of requests to admit for each party shall not exceed thirty (30) in number except by agreement of the party being required to respond or by order of the Administrator or the Hearing Officer. Each matter upon which an admission is requested shall be separately stated. The matter is admitted unless, within fifteen (15) days after service of the request, or within such shorter or longer time as the Administrator or the Hearing Officer, may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter and signed by the party. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. The grounds for an objection must be stated. A party may not object solely on the ground that the request presents a genuine issue for trial.

(C) A party may take the testimony of a witness by deposition at the expense of that party. A party desiring a transcript must make appropriate arrangements with the reporter or transcriber to order and pay for it. A party desiring to take the deposition of another party, or an employee thereof, shall serve written notice to the witness, or his counsel. The notice shall state the time and place for taking the deposition and shall be served at least three (3) days before the person is required to appear. A party desiring to take the deposition of a non-party witness shall serve the witness with a subpoena in accordance with 660:2-9-4. A copy of the notice or subpoena shall be served on all other parties to the proceeding by means specified in paragraph (h) below. Unless otherwise agreed by the parties or ordered by the Administrator or Hearing Officer, a deposition under this provision shall not last more than six (6) hours, exclusive of breaks, and shall be taken only between the hours of 8:00 a.m. and 5:00 p.m. on a day other than a Saturday or Sunday and on a day other than a legal holiday.

(2) A party who has responded to a request for production or request to admit must supplement or correct its response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information

has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the Administrator, or the Hearing Officer.

(3) In addition to limitations on discovery set forth in a scheduling order or any law, regulation, or rule, discovery does not include:

(a) Non-public information or documents from the personnel file of any Department employee;

(b) Non-public information or documents relating to any investigation conducted by the Department against unrelated parties;

(c) Non-public information or documents relating to any action brought by the Department against unrelated parties;

(d) Information or documents relating to any examination conducted by the Department of unrelated parties;

(e) Information or documents relating to any license applications or determinations made by the Department of unrelated parties; or

(f) Depositions of Department personnel.

(c) **Motions in general.**

(1) Unless otherwise permitted by these rules or by the Administrator or the Hearing Officer motions and responses thereto shall be served on all parties and shall:

(A) be made in writing and shall not exceed twenty (20) pages;

(B) state concisely the question(s) to be determined;

(C) state with particularity the grounds therefore and the relief or order sought; and

(D) be accompanied by a concise brief or a list of authorities upon which movant relies.

(2) A response to a written motion shall be filed within fifteen (15) days after receipt of the motion but no later than one day prior to the date and time of the hearing. A response to a written motion shall not exceed twenty (20) pages. A reply to a response to a written motion may be filed within five (5) days after receipt of the response but no later than the date and time of the hearing. A reply to a response to a written motion shall not exceed five (5) pages.

(3) The Administrator or the Hearing Officer may allow oral argument if it appears necessary to the Administrator or the Hearing Officer for a fuller understanding of the issues presented.

(4) The filing or pendency of a motion does not alter or extend any time period prescribed by this Subchapter or by an order of the Administrator or the Hearing Officer.

(d) **Motions for summary decision.** A party may move for summary decision as to any substantive issue in the case. The Administrator, or the Hearing Officer, may issue a summary decision if he finds that there is no genuine issue as to any material fact and that the moving party is entitled to prevail as a matter of law.

(e) **Prehearing conference.**

(1) Upon the request of a party or when the Administrator, or the Hearing Officer, believes it necessary or appropriate, a prehearing conference shall be held, as close to the time of hearing as is reasonable under the circumstances, to address the following matters:

(A) simplification of issues;

(B) the final list of witnesses and exhibits to be utilized at the hearing;

(C) admissions and stipulations of fact;

(D) stipulations regarding admission and authenticity of documents;

(E) requests for official notice;

(F) discovery disputes;

(G) pending motions; and

(H) other matters that will promote the orderly and prompt conduct of the hearing.

(2) At the conclusion of the prehearing conference, a ruling or order shall be entered reciting the action taken. The order shall control the subsequent course of the proceeding unless modified by a subsequent order. The order shall be modified only to prevent manifest injustice.

(f) **Failure to participate, appear, comply or cooperate.** A party's failure to participate in good faith in the preparation of a scheduling order or prehearing conference order; failure to comply with a scheduling order or prehearing conference order; failure to comply with or cooperate in discovery; or failure to appear at, substantially prepare for, or participate in good faith in, any hearing or conference, may result in any of the following sanctions:

(1) striking of any pleading in whole or in part;

(2) an order prohibiting a party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(3) an order directing that designated facts be taken as established for purposes of the proceeding;

(4) staying the proceeding;

(5) default judgment; or

(6) such other order as the Administrator, or the Hearing Officer, may deem just and appropriate.

(g) **Post prehearing conference.** If additional exhibits are discovered after the prehearing conference order is issued or after the date final documents and exhibits are exchanged, the party intending to use them shall immediately notify all other parties and furnish copies of the additional exhibits to such parties. If additional witnesses are discovered, all other parties shall be notified immediately and furnished the nature of the testimony along with the names and addresses of the witnesses. These additional exhibits or the testimony of the additional witnesses shall not be admitted at the hearing without the agreement of all parties or without a showing to the Administrator, or the Hearing Officer, that manifest injustice would be created if the exhibit or witness testimony were not permitted.

(h) **Service and filing of papers.** Service of papers upon a party shall be made by personal delivery, regular first class mail, facsimile transmission or electronic mail. All papers required to be served by a party shall be filed with the Administrator in accordance with the scheduling order. When a Hearing Officer is appointed, a person making a filing with the Administrator shall promptly provide to the Hearing Officer a copy of such filing. Papers filed with the Administrator shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service and the mailing address, facsimile telephone number or electronic mail address to which service was made, if not made in person.

(i) **Signature and certification.** Every filing of a party represented by counsel shall be signed by at least one counsel of record and shall state counsel's name, bar number, address, email address, and telephone number. A party who is not represented by counsel shall sign the filing and state the party's name, residential address, email address, and telephone number on every filing. The signature of counsel or a party shall constitute a certification that:

(1) the person signing the filing has read the filing;

(2) to the best of his knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication; and

(3) if a filing is not signed, the Administrator or the Hearing Officer shall strike the filing, unless it is signed promptly after the omission is called to the attention of the party making the filing.

(j) **Computation of time.** A paper is filed when it is received by the Administrator. Unless otherwise specifically provided by this Subchapter, computation of any time period prescribed by this Subchapter, or by an order of the Administrator or the Hearing Officer begins with the first day following the act or event that initiates the time period. The last day of the time period so computed is included unless it is a Saturday, Sunday, state holiday, or any other day when the Department's office is not open for public business, in which event the period runs until the end of the next business day. If a notice or other filing is served by mail and the party served is entitled or required to take some action within a prescribed time period after service, the date of mailing is the date of service, and three (3) days shall be added to the prescribed time period.

660:2-9-4. Authority to subpoena witnesses

(a) **Subpoenas.**

(1) Any party to an individual proceeding shall have the right to have subpoenas issued to require the attendance and testimony of witnesses at a designated time and place, or to require the production of documents and tangible items in the possession or under the control of the witness at a designated time and place. A party requesting the issuance of a subpoena shall submit the proposed subpoena in writing to the Administrator or the Hearing Officer. The proposed subpoena shall contain the name and address of the person to be subpoenaed; the name, bar number, address, email address, and telephone number of counsel of record, or if the party is not represented, the name, address, email address, and telephone number of the party requesting the subpoena; and if the production of documents or tangible items is sought, a particular description of such documents or tangible items. Where it appears to the Administrator or the Hearing Officer that the subpoena sought may be unreasonable, oppressive, excessive in scope, unduly burdensome, or not relevant, the Administrator or the Hearing Officer may, in the Administrator's or the Hearing Officer's discretion, as a condition precedent to the issuance of the subpoena, require the party seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. If after consideration of all the circumstances, the Administrator, or the Hearing Officer, determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, unduly burdensome or not relevant, the Administrator or the Hearing Officer may refuse to issue the subpoena, or issue the subpoena only upon such conditions as fairness requires.

(2) A party requesting the issuance of a subpoena to an out-of-state witness may be required to show the relevance of the information sought and the witness' contacts with this state as a condition precedent to the issuance of the subpoena. If after consideration of all circumstances, the Administrator or the Hearing Officer determines that the information sought is not relevant or the witness' contacts with the state are insufficient to establish jurisdiction over the witness, he may refuse to issue the subpoena.

(b) **Service.** Service of a subpoena in this state shall be by personal delivery or by certified mail with a return receipt requested and delivery restricted to the person named in the subpoena. Service shall be made at least three (3) days before the person is required to appear. Service of a subpoena outside of this state shall be served by any person in any manner prescribed for the service of a subpoena in a civil action in the state in which the subpoena is being served. The party requesting the subpoena shall be responsible for, and bear the cost of, service.

(c) **Proof of service of subpoena.** The party requesting the subpoena shall promptly file a notice with the Administrator advising that service has been made upon the person named in the subpoena. If service is effected by mail, the notice shall include a copy of the return receipt reflecting delivery and acceptance by certified mail, return receipt requested and delivery restricted to the person named in the subpoena. If service is effected by personal delivery to the person named in the subpoena, the notice shall include a written, notarized affidavit affirming such delivery by the person making delivery.

(d) **Objection to subpoena.** A person who has been served with a subpoena may object to the subpoena by filing a motion to quash with the Administrator within ten (10) days of service of the subpoena or by the date the person is ordered to appear, whichever is earlier.

(e) **Enforcement of subpoenas.**

(1) If a person under subpoena fails to appear as required, or fails to produce the documents or tangible items set forth in the subpoena, a party may apply to the Administrator for enforcement of the subpoena.

(2) An application to the Administrator for enforcement of a subpoena shall be made immediately upon the failure to comply with the subpoena or within such other time period as the Administrator may establish.

(3) Upon a timely request by a party for enforcement of a subpoena, the Administrator may apply to the district court of Oklahoma County or the district court in any other county where service can be obtained to enforce the subpoena.

(f) **Fees.** Non-party witnesses subpoenaed pursuant to this section shall be paid the same fees and mileage as are paid witnesses in the courts of the state of Oklahoma. Such fees shall be paid by the party requesting that the subpoena be issued within twenty (20) days after the witnesses' testimony is completed.

660:2-9-5. Representation

(a) **Right to counsel.** Any party shall have the right to appear in person and by counsel, provided, however, that such counsel representing the party must be duly licensed to practice law by the Supreme Court of Oklahoma. Such counsel may be present during the giving of evidence, have a reasonable opportunity to examine and inspect all documentary evidence, examine witnesses and present evidence on the client's behalf.

(b) **Notice of appearance.** An attorney representing a party shall promptly file a notice of appearance with the Administrator. The notice of appearance shall contain all of the following:

(1) the attorney's name, address, email address, telephone number, and bar number;

(2) the firm name, address, and telephone number if the attorney is a member of a firm; and

(3) the name, address, email address, and telephone number of the person represented.

(c) **Service on attorney.** After a notice of appearance has been filed, service of all papers shall be made upon the attorney of record and shall be effective as service upon the person represented.

(d) **Withdrawal.** Any attorney who withdraws from representing a party must file a written notice of withdrawal with the Department and the Administrator or Hearing Officer and must serve the notice of withdrawal on all attorneys then of record and on all unrepresented parties. The notice must contain the effective date of the withdrawal, the current name, address, email address, and telephone number of each party who will no longer be represented, and, if known, the name of the person who will represent the party from that time forward. Withdrawal of a party's attorney after the service of a notice of hearing is not grounds for the continuance of the hearing unless good cause is shown.

660:2-9-6. Conduct of individual proceeding

(a) **Order of proceeding.** The hearing shall proceed as follows:

(1) The Administrator or the Hearing Officer shall call the hearing to order;

(2) the Administrator or the Hearing Officer shall briefly explain the purpose and nature of the hearing;

(3) the Administrator or the Hearing Officer may allow the parties to present preliminary matters;

(4) the Administrator or the Hearing Officer may allow the parties to make opening statements;

(5) the Administrator or the Hearing Officer shall state the order of presentation of evidence;

(6) witnesses shall be sworn or put under affirmation to tell the truth; and

(7) the Administrator or the Hearing Officer may allow the parties to present summations and closing argument.

(b) **Rules of evidence.** The rules of evidence need not be strictly followed or observed by the Administrator or the Hearing Officer during the hearing in order to obtain a full and fair disclosure of facts relevant to the matters at issue. However, the admissibility of evidence shall be governed by the provisions of Section 310 of the Administrative Procedures Act.

(c) **Official notice.** The Administrator or the Hearing Officer may take official notice of judicially cognizable general, technical, or scientific facts. In addition, notice may be taken of generally recognized practices and procedures relating to the applicable industry. Parties shall be notified either before or during the hearing of the material noticed and they shall be afforded an opportunity to contest the material so noticed. The Administrator's or the Hearing Officer experience, technical competence, and specialized knowledge may be used in evaluating the evidence presented.

(d) **Examination of witnesses.**

(1) Witnesses shall testify under oath or affirmation. If the Administrator or the Hearing Officer determines that a witness is hostile or unresponsive, the Administrator or the Hearing Officer may authorize the party calling the witness to proceed as if the witness were under cross-examination.

(2) A party may conduct direct examination or cross-examination of a witness in order to obtain a full and fair disclosure of facts relevant to the matters at issue.

(3) Upon request by any party, the Administrator or the Hearing Officer may exclude witnesses other than parties from the hearing room when those witnesses are not testifying. A party that is not a natural person may designate an individual as its representative to remain in the hearing room, even though the individual may also be a witness. An expert witness who is to render an opinion based on the testimony given at the hearing may remain in the hearing room during all testimony. The Administrator or the Hearing Officer may order the witnesses, parties, their counsel, and any person under their direction not to disclose to any sequestered witness the substance of the testimony, exhibits, or other evidence introduced during the absence of the witness.

(4) No witness shall testify by telephone or other electronic means unless by agreement of the parties or by order of the Administrator or the Hearing Officer.

(5) The Administrator or the Hearing Officer may question any witness provided that all parties shall have the right of cross-examination of those witnesses.

660:2-9-7. Record of individual proceeding

(a) **Requirement to record.** Oral proceedings shall be electronically recorded. Copies of the recordings shall be provided by the Department at the request of any party to the proceeding. Costs of transcription of the recordings shall be borne by the party requesting transcription and shall be paid directly to the person performing the transcription. Parties to any proceeding may have the proceedings recorded and transcribed by a court reporter at their own expense.

(b) **Content of record.** The record in any hearing shall include the following:

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

(2) all evidence received or considered, including a statement of matters officially noted;

(3) questions and offers of proof, objections and rulings thereon;

(4) proposed findings of fact, conclusions of law, and exceptions;

(5) the proposed order of the Hearing Officer;

(6) all other evidence or data submitted to the Administrator, or the Hearing Officer, in connection with their consideration of the case provided all parties have had access to such evidence; and

(7) the final order of the Administrator.

660:2-9-8. Final orders

A final order in any individual proceeding shall be in writing. A final order shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, upon request, a party submits proposed findings of fact, the order shall include a ruling upon each proposed finding. Parties shall be notified either personally or by certified mail, return receipt requested, of any final order.

660:2-9-9. Rehearings

(a) **Written request.** Any party aggrieved by a final order may request rehearing, reopening or reconsideration if a written request is made therefor within ten days (10) after entry of the final order.

(b) **Grounds.** In the request for rehearing, reopening or reconsideration, the party shall set forth one or more of the following grounds:

(1) newly discovered or newly available evidence relevant to the issues;

(2) need for additional evidence to adequately develop the facts essential to proper decision;

(3) probable error committed by the Administrator, or the Hearing Officer, in the proceeding or in his decision such as would be ground for reversal on judicial review of the order;

(4) need for further consideration of the issues and the evidence in the public interest; or

(5) a showing that issues not previously considered ought to be examined in order to properly dispose of the matter.

(c) **Additional grounds for rehearing.** Nothing in these rules shall prevent the Administrator from ordering any matter reheard, reopened or reconsidered in accordance with other applicable statutory provisions or rules or, at any time, on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence.

(d) **Order granting rehearing.** The order granting reconsideration, reopening or rehearing shall set forth the grounds that justify such action.

(e) **Scope.** The reconsideration, reopening or rehearing shall be confined to those grounds upon which the reconsideration, reopening or rehearing was granted.

660:2-9-10. Appeals [REVOKED]

SUBCHAPTER 11. PROCEDURES FOR INSPECTING AND/OR COPYING PUBLIC RECORDS

Section

660:2-11-1. Purpose

The provisions of this Subchapter set forth the procedures of the Department for public inspection and/or copying of the public records of the Department. Such procedures are established for purposes of complying with the provisions of the Open Records Act as defined in 660:2-11-2 and Section 302 of the Oklahoma Administrative Procedures Act (75 O.S., Â§ 302). Nothing herein is intended to derogate from or be in conflict with the provisions of the Open Records Act. To the extent any provision of this Subchapter is found to be in conflict with any provision of the Open Records Act, the provisions of the Open Records Act shall govern.

660:2-11-2. Definitions

The following words and terms, when used in this Subchapter have the following meanings, unless the context clearly indicates otherwise:

"Open Records Act" means the Oklahoma Open Records Act, 51 O.S., Sections 24A1 et seq.

660:2-11-3. Record custodians

(a) **Authority of record custodians.** The persons designated below serve as Record Custodians for purposes of the Open Records Act and are hereby charged with responsibility for compliance with that Act pursuant to the procedures set forth in this Section and elsewhere in this Subchapter.

(b) **Appointment of record custodians.** The following officials of the Department are hereby appointed as Record Custodians for the designated records and as such have all the powers and duties set forth in this Subchapter and in the Open Records Act:

(1) Administrator - all records of the Department

(2) Deputy Administrator - all records of the Department

(3) Director of Enforcement - all enforcement records of the Department

(4) Director of Corporate Finance - all product registration and exemption records of the Department

(5) Director of Professional Registrations and Compliance – all registration of securities professionals and examination records of the Department.

(c) **Substitute record custodians.** Each of the Record Custodians appointed in subsection (b) of this Section is hereby authorized to designate any other employee of the Department to serve as Record Custodian in the place of the designated Record Custodian. Such substitute Record Custodian will have the same duties and powers as the Record Custodian set forth above and wherever the term "Record Custodian" is used herein, it includes any such substitute Record Custodian. Whenever a Record Custodian appoints another person as a substitute Record Custodian he or she is to give notice to the Administrator of such designation and the Administrator will maintain a register of all such designations.

(d) **Duties.** All Record Custodians will protect the public records of the Department from damage and disorganization; prevent excessive disruption of the essential functions of the Department; provide assistance and information upon request; ensure efficient and timely action and response to all applications for inspection and/or copying of public records; and carry out the procedures adopted by this Department for inspecting and/or copying public records.

(e) **Direction of requests to custodians.** All members of the public, in seeking access to, or copies of, a public record in accordance with the provisions of the Open Records Act are to address their requests to the Record Custodian charged with responsibility for the maintenance of the record sought to be inspected or copied.

660:2-11-4. Hours of inspection

All public records of the Department will be available for inspection during the regular business hours of the Department. Such hours will be 8:30 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

660:2-11-5. Procedures for inspection of records

(a) **Requests for inspection.** To inspect a public record in the possession of the Department, the person requesting the record shall execute a Form OAD 25 - REQUEST FOR RECORD INSPECTION and deliver it to the Record Custodian responsible for the requested record designated in 660:2-11-3. All record inspection forms must be completed by the person requesting the record and signed by the individual making the request. The Record Custodian may demand reasonable identification of any person requesting a record.

(b) **Place of inspection.** All inspections of public records shall be performed in the offices of the Department under the supervision of the Record Custodian or a designee.

(c) **Identification of records.** A written request for inspection of a record shall reasonably describe the record sought. In instances where the person requesting the record cannot provide sufficient information to identify a record, the Record Custodian shall assist in making such identification.

(d) **Delay or denial of requests for inspection.** If the record requested is not available for inspection at the time requested, the Record Custodian shall, no later than seven (7) business days prior to the record inspection date, notify the person requesting the record:

(1) that the record will be available for inspection at a later time by returning Form OAD 26 - RECORD INSPECTION DELAY NOTICE; or

(2) that the record will not be available for inspection, by returning to the person requesting the record a copy of Form OAD 27 - RECORD INSPECTION DENIAL.

660:2-11-6. Procedures for copying records

(a) **Requests for copies.** To obtain a copy of a public record in the possession of the Department, the person requesting the copy shall execute a Form OAD 28 - REQUEST FOR RECORD COPY and deliver it to the Record Custodian responsible for the requested record designated in 660:2-11-3; except that no form shall be required for requests made for records which have been reproduced for free public distribution. Such request shall be accompanied by the fees set forth in Section 1-612 of the Securities Act. All record copy forms must be completed by the person requesting the record and signed by the individual making the request. The Record Custodian or a designee may demand reasonable identification of any person requesting a record.

(b) **Responsibility for making copies.** All copies of public records shall be performed by the Record Custodian or a designee in the offices of the Department except where the Record Custodian or a designee determines that the size or the volume of records to be copied warrants sending the record outside the Department for copying, in which event the copies shall be made at a place selected by the Record Custodian or a designee and under the supervision of the Record Custodian, or a designee.

(c) **Identification of records.** A written request for copies of a record shall reasonably describe the record sought. In instances where the person requesting the copies cannot provide sufficient information to identify a record, the Record Custodian, or a designee, shall assist in making such identification.

(d) **Delay or denial of requests for copies.** If the record requested is not available for copying at the time requested, the Record Custodian or a designee shall, no later than seven (7) business days prior to the requested copy date, notify the person requesting the copies:

(1) that the record will be available for copying at a later time by returning Form OAD 29 - RECORD COPY DELAY NOTICE; or

(2) that the record will not be available for copying, by returning to the person requesting the record a copy of Form OAD 30 - RECORD COPY DENIAL.

660:2-11-7. Fees

(a) **Amounts payable.** The following are the fees that shall be charged by the Department for copying and/or mechanical reproduction of public records and for the search for public records requested by the public pursuant to the Open Records Act and Section 1-612 of the Securities Act; provided, however, no record search and/or copying charge shall be assessed against officers or employees of the Department who make requests which are reasonably necessary to the performance of their official duties:

(1) **Inspection fees.** No fee shall be charged for inspection of a public record in the offices of the Department.

(2) **Copying fees.** Any person requesting copies of public records shall pay the fees specified in Section 1-612 of the Securities Act prior to receipt of the records.

(3) **Fee for mechanical reproduction.** For copying any public record which cannot be reproduced by photocopying, such as a computer printout or a blueprint, or where the size of the record to be copied warrants sending the record outside for copying, the person requesting the record shall be charged the actual cost to the Department of such copying, including the cost of labor, materials and equipment.

(4) **Search Fee**. If the person requesting a record is using the records solely for a commercial purpose, a search fee shall be charged as set forth in Section 1-612 of the Securities Act for the time spent by employees in retrieving the record.

(b) **Prepayment of fees.** The Record Custodian may require prepayment of estimated fees for requests for public records and shall require prepayment of a fee whenever the estimated amount exceeds $200.00. The prepayment amount shall be an estimate of the costs of copying, mechanical reproduction and/or searching for the record. Any overage or underage in the prepayment amount shall be settled prior to producing the requested record or delivering the copy or mechanical reproduction of the record to the person requesting the record.

SUBCHAPTER 13. DECLARATORY RULINGS AND INTERPRETIVE OPINIONS

Section

660:2-13-1. Opinions

The Administrator and/or Commission may honor requests from interested persons for interpretive opinions and as to the applicability of any rule or order, if it be shown that an actual case, controversy or issue is in contemplation and that unreasonable hardship, loss or delay would result if the matter were not determined in advance. The Administrator in his discretion may honor requests from interested persons for formal interpretive opinions relating to a specific factual circumstance and no-action positions, including consideration of waivers, where appropriate and in the public interest, on the basis of facts stated and submitted in writing, with respect to the provisions of the Securities Act or any rule or statement of policy adopted thereunder, provided such requests satisfy and conform to the following requirements:

(1) Such requests shall be in writing and shall include or be accompanied by all information and material required by any statute, rule or statement of policy under which an exception or exemption may be claimed, including but not limited to, copies of prospectuses or offering circulars if applicable or appropriate.

(2) The request letter shall include the name of the entity for whom the request is being made and the specific subsection of the particular statute or the particular rule or statement of policy to which the letter pertains shall be indicated in the upper right-hand corner of the letter.

(3) The letter should contain a brief narrative of the fact situation and should set out all of the facts necessary to reach a conclusion in the matter; however, such narratives should be concise and to the point.

(4) The names of the company or companies, organization or organizations and all other persons involved should be stated and should relate and be limited to a particular factual circumstance. Letters relating to unnamed companies, organizations or persons or to hypothetical situations will not warrant a formal response.

(5) Every such request shall include or be accompanied by a signed opinion of legal counsel which briefly and concisely states counsel's understanding, counsel's opinion in the matter, which may be expressed tentatively or conditioned upon concurrence by the Administrator, and the basis for such opinion.

(6) Each request for a no-action position and/or interpretive opinion letter shall be accompanied by payment of a fee in the amount specified in Section 1-612 of the Securities Act.

CHAPTER 4. PROCEDURES FOR THE OKLAHOMA SUBDIVIDED LAND SALES CODE

SUBCHAPTER 1. GENERAL PROVISIONS

Section

660:4-1-1. Purpose

The provisions of this Chapter have been adopted for the purpose of carrying out the provisions of the Oklahoma Subdivided Land Sales Code, 71 O.S., Sections 601 through 667, including the establishment of administrative procedures.

660:4-1-2. Statutory citations

Citations to statutes in this Chapter refer to the most recent codification of the Oklahoma Subdivided Land Sales Code, 71 O.S., Sections 601 through 667.

SUBCHAPTER 3. HEARINGS

Section

660:4-3-1. Reconsideration of Department action

(a) **Review of final order.** Any person aggrieved by a final order of the Administrator under the Land Sales Act may obtain a review by the Oklahoma Securities Commission by filing with the Administrator within fifteen (15) days after the entry of its order, a written petition praying that the order be modified or set aside in whole or in part and stating the grounds therefor.

(b) **Hearing de novo.** The application and petition shall within sixty (60) days be heard de novo by the Commission en banc.

(c) **Request for oral argument.** If petitioner desires to present oral argument on his petition, it shall be affirmatively requested in writing at the time the petition is submitted to the Administrator.

CHAPTER 6. FORMS

SUBCHAPTER 1. GENERAL PROVISIONS

Section

660:6-1-1. Purpose

The provisions of this Chapter have been adopted for the purpose of describing the various forms accepted by the Department for compliance with the various provisions of the acts subject to the jurisdiction of the Administrator.

SUBCHAPTER 3. FORMS FOR GENERAL PURPOSES

Section

660:6-3-1. Forms to inspect or copy records

(a) **Forms.** The following forms are required to obtain records of the Department under the Open Records Act:

(1) OAD-25 -- Request for Record Inspection

(2) OAD-26 -- Record Inspection Delay Notice

(3) OAD-27 -- Record Inspection Denial

(4) OAD-28 -- Request for Record Copy

(5) OAD-29 -- Record Copy Delay Notice

(6) OAD 30 -- Record Copy Denial

(b) **Obtaining forms.** The referenced forms are available on the Department's website at https://www.securities.ok.gov/.

660:6-3-2. Forms to file a complaint

(a) **Form.** The following form is used to file a complaint with the Department: Complaint Form.

(b) **Obtaining form.** The referenced form is available on the Department's website at https://www.securities.ok.gov/.

SUBCHAPTER 5. FORMS USED UNDER THE SECURITIES ACT

Section

660:6-5-1. Forms for registration or exemption of securities

(a) **Forms.** The following is a list of forms accepted by the Department in connection with the registration or exemption of securities under the Securities Act:

(1) U-1 -- Uniform Application to Register Securities

(2) U-2 -- Uniform Consent to Service of Process

(3) U-2A -- Uniform Form of Corporate Resolution

(4) U-7 -- Small Company Offering Registration Form

(5) NF -- Uniform Investment Company Notice Filing

(6) Form D -- Notice of Exempt Offering of Securities

(7) NASAA Model Accredited Investor Exemption Notice of Transaction Form

(8) Oklahoma Accredited Investor Exemption Supplemental Information Form

(9) Oklahoma Notice of Regulation A Tier 2 Offering Form (or equivalent uniform form)

(10) Part 1 of Federal Form 1-A

(b) **Obtaining forms.** The referenced forms are available on the Department's website at https://www.securities.ok.gov/.

660:6-5-2. Forms for securities industry registration

(a) **Forms.** The following is a list of forms used by the Department in connection with registering persons as broker-dealers, agents, non-FINRA principals, issuer agents, investment advisers or investment adviser representatives, under the Securities Act:

(1) BD -- Uniform Application for Broker-Dealer Registration

(2) BDW -- Uniform Request for Broker-Dealer Withdrawal

(3) ADV -- Uniform Application for Investment Adviser Registration and Report by Exempt Reporting Advisers

(4) ADV-W -- Uniform Application for Investment Adviser Withdrawal

(5) U-2 -- Uniform Consent to Service of Process

(6) U-2A -- Uniform Form of Corporate Resolution

(7) U4 -- Uniform Application for Securities Industry Registration or Transfer

(8) U5 -- Uniform Termination Notice for Securities Industry Registration

(9) U10 -- Uniform Examination Request for Non-FINRA Candidates

(10) OBD-001 -- Applicant/Management Certification for Non-FINRA Principals

(11) OBD-008 -- Application for Renewal of Non-FINRA Broker-Dealer Registration

(12) OBD-016 -- Application for Renewal of Non-FINRA Broker-Dealer Principal Registration

(13) OBD-018 -- Applicant/Management Certification for Issuer Agents

(14) OBD-019 -- Application for Renewal of Non-FINRA Broker-Dealer Agent Registration

(b) **Obtaining forms.** The referenced forms are available on the Department's website at https://www.securities.ok.gov/.

SUBCHAPTER 7. FORMS USED UNDER THE TAKE-OVER ACT

[RESERVED]

SUBCHAPTER 9. FORMS USED UNDER THE LAND SALES ACT

Section

660:6-9-1. Forms for registration of subdivided land

(a) **Forms.** The following is a list of forms required by the Department in connection with the registration of subdivided land under the Land Sales Act:

(1) LRF-625 -- Application for Registration of Subdivided Lands

(2) LRF-626A -- Public Offering Statement-Instruction Guide

(3) LRF-626B -- Summary Disclosure Statement Guide

(b) **Obtaining forms.** The referenced forms are available on the Department's website at https://www.securities.ok.gov/.

660:6-9-2. Forms for licensing of agents

(a) **Forms.** The following is a list of forms required by the Department in connection with the licensing of agents under the Land Sales Act: LRF-632 -- Application for License for Subdivided Land Sales Agent

(b) **Obtaining form.** The form listed in Subsection (a) may be obtained from the Department.

SUBCHAPTER 11. FORMS USED UNDER THE BUSINESS OPPORTUNITY ACT

[RESERVED]

CHAPTER 11. OKLAHOMA UNIFORM SECURITIES ACT OF 2004

SUBCHAPTER 1. GENERAL PROVISIONS

Section

660:11-1-1. Purpose

The provisions of this chapter have been adopted for the purpose of carrying out the provisions of the Oklahoma Uniform Securities Act of 2004 including, but not limited to, provisions governing the offer, sale and issuance of securities.

660:11-1-2. Statutory citations

Citations to statutes in this chapter refer to the most recent codification of the Oklahoma Uniform Securities Act of 2004 in Title 71 of the Oklahoma Statutes.

660:11-1-3. Definitions

Unless the context otherwise requires, or unless defined in this section or in 660:11-5-2, terms used in this chapter, if defined in the Securities Act, shall have the meaning as defined in the Securities Act. The following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Advisers Act**" means the Investment Advisers Act of 1940.

"**Authorized to do business in Oklahoma**" means authorized to do business in Oklahoma pursuant to the Oklahoma Uniform Securities Act of 2004.

"**Audited financial statements**" means "Certified financial statements."

"**Certified financial statements**" means financial statements prepared in accordance with generally accepted accounting principles and examined by Independent accountants in accordance with generally accepted auditing standards, accompanied by an opinion as described in 660:11-15-1.

"**CFR**" means the Code of Federal Regulations.

"**CRD**" means the NASAA/FINRA Central Registration Depository system or WEBCRD.

"**Date of filing**" means the date on which a proper registration statement is filed for purposes of determining the dates of the statements of financial condition to be filed with

a registration statement. If amendments to a registration statement are necessary to comply fully with the registration requirements, "date of filing" means the date on which the last amendment is filed.

"**FDIC**" means the Federal Deposit Insurance Corporation.

"**FINRA**" means the Financial Industry Regulatory Authority, Inc., the successor to the NASD.

"**Financial statements**" means, but is not limited to, the statement of financial condition, statement of income, and statement of changes in stockholders' or owners' equity, as well as all related footnotes and supporting schedules applicable thereto, prepared in accordance with generally accepted accounting principles.

"Form ADV" means the current Uniform Application for Investment Adviser Registration and Report by Exempt Reporting Advisers as issued by the SEC.

"Form ADV-W" means the current Notice of Withdrawal from Registration as issued by the SEC.

"Form BD" means the current Uniform Application for Broker-Dealer Registration as issued by FINRA.

"Form BDW" means the current Uniform Request for Broker-Dealer Withdrawal as issued by FINRA.

"Form U4" means the current Uniform Application for Securities Industry Registration or Transfer as issued by FINRA.

"Form U5" means the Uniform Termination Notice for Securities Industry Registration as issued by FINRA.

"**IARD**" means the FINRA-operated Investment Adviser Registration Depository.

"**Independent accountants**" means independent certified public accountants. The concept of independence shall be that promulgated by the American Institute of Certified Public Accountants.

"**Institutional account**" means the account of:

(A) a bank, savings and loan association, insurance company or registered investment company;

(B) an investment adviser registered under the Securities Act, with another state securities commission (or any agency or office performing like functions), or with the SEC under Section 203 of the Advisers Act; or

(C) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

"**NASAA**" means the North American Securities Administrators Association.

"**NASD**" means the National Association of Securities Dealers, Inc.

"**1933 Act**" means the Securities Act of 1933.

"**1934 Act**" means the Securities Exchange Act of 1934.

"**1940 Act**" means the Investment Company Act of 1940.

"**Predecessor of an issuer**" means:

(A) a person the major portion of whose assets have been acquired directly or indirectly by the issuer, or

(B) a person from which the issuer acquired directly or indirectly the major portion of its assets.

"**Promotional or developmental stage company**" means an issuer:

(A) that is not listed, or authorized for listing, on the New York Stock Exchange, the American Stock Exchange, the NASDAQ Global Market, or a securities exchange that the SEC determines under Section 18(b)(1) of the 19933 Act has substantially similar listing standards;

(B) that has had annual net earnings for each of the last two (2) consecutive fiscal years before the public offering that have been less than five percent (5%) of the aggregate public offering; or

(C) that has had average, annual net earnings for the last five (5) fiscal years before the public offering that have been less than five percent (5%) of the aggregate public offering. (A) the company and any predecessors were formed within the twelve-month period ending on the date of the filing of the application for registration;

"**Promptly**" means not later than thirty (30) days.

"**Prospectus**" means a prospectus in a form and containing such information as may be required by the Administrator, including a prospectus filed under the 1933 Act or an offering circular used in connection with an exempt security or transaction regardless of the designation of the document (i.e., prospectus, offering circular, memorandum, etc.).

"**Registration statement**" means an application for registration of securities under Sections 1-303 or 1-304 of the Securities Act and all documents and exhibits related thereto, including a Prospectus.

"**SEC**" means the United States Securities and Exchange Commission.

"**Securities Act**" means the most recent codification of the Oklahoma Uniform Securities Act of 2004 in Title 71 of the Oklahoma Statutes.

"**SIPC**" means the Securities Investor Protection Corporation.

660:11-1-4. [RESERVED]

660:11-1-5. [RESERVED]

660:11-1-6. Amendments

The Administrator may by order amend the provisions of this chapter to conform references to the Securities Act or to rules promulgated thereunder to numerical redesignations occasioned by legislative or rulemaking activities.

SUBCHAPTER 3. INVESTMENT CERTIFICATE ISSUERS

PART 1. GENERAL PROVISIONS

Section

PART 3. REPORTING AND ACCOUNTING REQUIREMENTS

PART 5. MISCELLANEOUS PROVISIONS

PART 1. GENERAL PROVISIONS

660:11-3-1. Definitions

The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Allowance**" means an allowance for loan losses or a reserve against bad debts.

"**Net loans outstanding**" means total gross loans outstanding less unearned discount.

"**Nonperforming loan**" means a loan over 90 days past due with respect to principal and/or interest.

"**Uncollectible**" means the potential for collection is virtually nonexistent.

"**Worthless**" means lacking value.

PART 3. REPORTING AND ACCOUNTING REQUIREMENTS

660:11-3-21. Loans

(a) **Classifications.** Each investment certificate issuer shall observe the following prescribed classification standards of loans:

(1) Loss - all, or a portion, of the loan considered uncollectible or worthless.

(2) Doubtful - all, or a portion, of the loan the ultimate collection of which is doubtful and in which a substantial loss is probable, but not as yet definitely ascertainable in amount.

(3) Substandard - all, or a portion, of the loan not classified as doubtful or loss and which involves more than normal risk due to the financial condition or unfavorable record of the borrower, insufficiency of security, or other factors.

(4) Special mention - loans not warranting classification as substandard, doubtful, or loss but which are of an unusual nature carrying more than the usual risk, and should have the careful attention of management.

(b) **Appraisals.** Each investment certificate issuer shall perform an in-house appraisal or obtain an appraisal by a licensed independent appraiser of collateral at the time of the origination of each loan. Said appraisal shall be updated by a licensed independent appraiser upon the Administrator's written request upon a change in the economic or market conditions or if the loan becomes nonperforming.

(c) **Aging schedules.**

(1) The provisions of this subsection shall apply to determining the age of loans. Loans shall be aged on the basis of contract terms in effect at the close of business each month. Account balances not in current status shall be classified in the following categories (assuming monthly payments):

(A) One installment or a portion in excess of 5% of an installment due and unpaid 0 to 30 days past due.

(B) Two installments or one and a portion in excess of 5% of an installment due and unpaid 31 to 60 days past due.

(C) Three installments or two and a portion in excess of 5% of an installment due and unpaid 61 to 90 days past due.

(D) Four installments or three and a portion in excess of 5% of an installment due and unpaid over 90 days past due.

(2) Amortizing real estate loans are to be reported as past due when the borrower is in arrears two or more monthly payments. Such obligations with payments scheduled other than monthly are to be reported as past due when one scheduled payment is due and unpaid for 30 days or more.

(3) Single payment and demand notes providing for the payment of interest at stated intervals are to be reported as past due after one interest payment is due and unpaid for 30 days or more.

(4) Single payment notes providing for the payment of interest at maturity are to be reported as past due after maturity if interest or principal remains unpaid for 30 days or more.

(d) **Interest.** Loans are to be reported as being in nonaccrual status if:

(1) said loans are maintained on a cash basis because of deterioration in the financial position of the borrower;

(2) payment in full of interest or principal is not expected; or

(3) principal or interest has been in default for a period of 90 days or more unless the obligation is both well secured and in the process of collection. A debt is "well secured" if it is secured (1) by collateral in the form of liens on or pledges of real or personal property, including securities, that have a realizable value sufficient to discharge the debt in full, or (2) by the guaranty of a financially responsible party. A debt is "in the process of collection" if collection of the debt is proceeding in due course either through legal action, including judgment enforcement procedures, or, in appropriate circumstances, through collection

efforts not involving legal action which are reasonably expected to result in repayment of the debt or in its restoration to a current status.

(e) **Charge-offs.** Each investment certificate issuer shall charge-off the whole or any part of a loan at such times that said loan is classified by the Administrator as "loss" as defined in (a) above.

660:11-3-22. Valuation of other assets

(a) **Real property.** Real property shall be recorded on the balance sheet in accordance with generally accepted accounting principles. Each investment certificate issuer shall maintain an appraisal of all real property recorded on the balance sheet. Said appraisal shall be updated by a licensed, independent appraiser upon the Administrator's request if a change in the economic or market conditions occur. If said appraisal indicates that the value of the asset is materially overstated on the balance sheet such that the financial statements are materially misstated, said asset shall be written down to market value upon the written request of the Administrator.

(b) **Other assets.** All other assets of the investment certificate issuer shall be recorded on the balance sheet in accordance with generally accepted accounting principles.

(c) **Charge-offs.** Each investment certificate issuer shall charge-off the whole of any other asset, including real property, at such time that said asset is deemed to be lacking in value by the Administrator.

660:11-3-23. Reserve against bad debts

(a) **Requirement to maintain reserve.** Each investment certificate issuer shall at all times maintain a reserve against bad debts, that is, an Allowance for Loan Losses, in an amount equal to two percent (2%) of the total loans outstanding.

(b) **Determination of amount of reserve.** As of the end of each quarter, the management of each investment certificate issuer shall evaluate the collectibility of the loan portfolio to bring the Allowance, by means of a charge or credit, to a level adequate to absorb anticipated loan losses. Any recoveries during the reporting period should be credited to the Allowance, and any charge-offs should be charged to the Allowance. With respect to those loans classified as "doubtful" in accordance with 660:11-3-21, the Allowance shall be increased by an amount equal to fifty percent (50%) of the amounts classified as "doubtful." With respect to those loans classified as "substandard" in accordance with 660:11-3-21, the Allowance shall be increased by ten percent (10%) of the amounts of the outstanding loans classified as "substandard."

660:11-3-24. Books and records

(a) **Maintenance of books and records.** Each investment certificate issuer shall maintain its books and records in such a manner that said books and records will facilitate preparation of financial statements in accordance with generally accepted accounting principles. Said books and records shall be maintained in sufficient detail to afford an analysis of all transactions.

(b) **Financial statements.** Each investment certificate issuer shall prepare a balance sheet and statement of income at the close of business on the last day of each month. Said financial statements shall be prepared not later than fifteen (15) business days after the end of the accounting period.

660:11-3-25. Reports

(a) **Reports required.** Each investment certificate issuer shall prepare and file with the Administrator quarterly reports for the quarters other than the quarter ending the fiscal year. Each report shall include the following:

(1) balance sheet and statement of income at the close of business on the last day of the quarter covered by said report;

(2) a schedule of the loans classified as loss, doubtful, substandard or special mention pursuant to 660:11-3-21, to include the loan balance amount of accrued interest and value of collateral for each loan appearing thereon; and

(3) aging schedules as prepared in accordance with 660:11-3-21.

(b) **When to file.** Each report shall be submitted to the Administrator within thirty (30) days of the end of the quarter for which the report applies.

PART 5. MISCELLANEOUS PROVISIONS

660:11-3-31. Qualifications of conservator or liquidator

A conservator or liquidator, who may be the Administrator of the Department, a member of his staff, or an independent party, appointed under Section 1-308.I.2. of the Securities Act shall be of legal age, of good moral character, a resident of the state of Oklahoma and competent to perform the duties of conservator or liquidator.

660:11-3-32. Acknowledgment

The purpose of Section 1-308.C of the Securities Act is to aid investment certificate issuers in applying for insurance by the FDIC. The prior issuance and continued effectiveness of a registration order shall constitute the written acknowledgment addressed by Section 1-308.C of the Securities Act. A formal acknowledgment for purposes of seeking insurance by the FDIC will be issued by the Administrator upon receipt of a written request therefor. Said request shall be accompanied by a copy of the application filed or to be filed with the FDIC. Upon obtaining membership in the FDIC, an investment certificate issuer shall not be subject to the prospectus preparation and delivery requirements set forth in Section 1-304.E of the Securities Act.

660:11-3-33. Examination standards

Examinations made by the Administrator or designated members of his staff may be performed in reliance upon the American Institute of Certified Public Accountants industry audit guides for financial institutions and federal regulatory guidelines for financial institutions.

SUBCHAPTER 5. BROKER-DEALERS AND AGENTS

PART 1. GENERAL PROVISIONS

Section

PART 3. LICENSING PROCEDURES

PART 5. REPORTING REQUIREMENTS

PART 7. RECORD KEEPING AND ETHICAL STANDARDS

PART 1. GENERAL PROVISIONS

660:11-5-1. Purpose

The rules in this subchapter have been adopted to provide procedures for complying with the provisions of the Securities Act relating to the registration of broker-dealers and agents and to establish post-registration requirements and standards of ethical practices for broker-dealers and agents.

660:11-5-2. Definitions

In addition to the terms defined in 660:11-1-3, the following words and terms when used in this subchapter shall have the following meaning, unless the context clearly indicates otherwise or the words or terms are defined in another Section:

"**Branch office**" means any location where one or more associated persons of a member regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or is held out as such, excluding:

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

(B) Any location that is the associated person's primary residence; provided that:

(i) Only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location;

(ii) The location is not held out to the public as an office and the associated person does not meet with customers at the location;

(iii) Neither customer funds nor securities are handled at that location;

(iv) The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person;

(v) The associated person's correspondence and communications with the public are subject to the firm's supervision;

(vi) Electronic communications (e.g., e-mail) are made through the member's electronic system;

(vii) All orders are entered through the designated branch office or an electronic system established by the member that is reviewable at the branch office;

(viii) Written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and

(ix) A list of the residence locations is maintained by the member;

(C) Any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the member complies with the provisions of subparagraphs (B)(a) through (h) above;

(D) Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;

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

(F) The floor of a registered national securities exchange where a member conducts a direct access business with public customers; or

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

"Complaint" means and includes any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of those persons under the control of the broker-dealer in connection with the solicitation or execution of any transaction or the disposition of securities or funds of that customer.

"Completion of the transaction" means:

(A) In the case of a customer who purchases a security through or from a broker-dealer, except as provided in (B), the time when such customer pays the broker-dealer any part of the purchase price, or, if payment is effected by bookkeeping entry, the time when such bookkeeping entry is made by the broker-dealer for any part of the purchase price;

(B) In the case of a customer who purchases a security through or from a broker-dealer and who makes payments therefor prior to the time when payment is requested

or notification is given that payment is due, the time when such broker-dealer delivers the security to or into the account of such customer;

(C) In the case of a customer who sells a security through or to a broker-dealer, except as provided in (D), if any security is not in the custody of the broker-dealer at the time of sale, the time when the security is delivered to the broker-dealer, and if the security is in the custody of the broker-dealer at the time of sale, the time when the broker-dealer transfers the security from the account of such customer;

(D) In the case of a customer who sells a security through or to a broker-dealer and who delivers such security to such broker-dealer prior to the time when delivery is requested or notification is given that delivery is due, the time when such broker-dealer makes payment to or into the account of such customer.

"Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person is presumed to control a company that:

(A) is a director, general partner or officer exercising executive responsibility or having similar status or functions;

(B) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or

(C) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital.

"Customer" means any person who, in the regular course of a broker-dealer's business, has cash or securities in the possession of such broker-dealer. "Customer" shall not include a broker-dealer.

"Direct participation programs" mean programs which provide for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof; excluded from this definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code and individual retirement plans Section 408 of that code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Internal Revenue Code and any company including separate accounts registered pursuant to the 1940 Act.

"Independent investment adviser" means an investment adviser that is not controlled by, does not control, and is not under common control with a broker-dealer.

"Investment company and variable contracts products" means:

(A) redeemable securities of companies registered pursuant to the 1940 Act;

(B) securities of closed-end companies registered pursuant to the 1940 Act during the period of original distribution only; and

(C) variable contracts and insurance premium funding programs and other contracts issued by an insurance company except contracts which are exempt securities pursuant to Section 3(a)(8) of the 1933 Act.

"Issuer agent" means an agent whose activities in the securities business are limited solely to effecting transactions for the benefit of an issuer or issuers as that term is defined in Section 1-102.19 of the Securities Act.

"Municipal securities" mean securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a state or any political subdivision thereof, or any agency or instrumentality of a state or any political subdivision thereof, or any municipal corporate instrumentality of one of more states, or any security which is an industrial development bond as defined in Section3(a)(29) of the 1934 Act.

"Nonbranch sales office" means any business location of the broker-dealer identified to the public or customers by any means as a location at which a securities business is conducted on behalf of the broker-dealer which location is identified solely in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the office of the broker-dealer responsible for supervising the activities of the identified location.

"Office" means any location where a broker-dealer and/or one or more of its agents regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale, of any security.

"Option" means any put, call, straddle or other option or privilege, which is a "security" as defined in Section 2(1) of the 1933 Act, as amended, but shall not include any tender offer, registered warrant, right, convertible security or any other option in respect to which the writer is the issuer of the security which may be purchased or sold upon the exercise of the option.

"OSJ" or **"Office of supervisory jurisdiction"** means any office designated as directly responsible for the review of the activities of registered agents or associated persons in such office and/or in other offices of the broker-dealer. An office of supervisory jurisdiction would be any business location of a broker-dealer at which one or more of the following functions take place:

(A) order execution and/or market making;

(B) structuring of public offerings or private placements;

(C) maintaining custody of customers' funds and/or securities;

(D) final acceptance (approval) of new accounts on behalf of the broker-dealer;

(E) review and endorsement of customer orders pursuant to 660:11-5-42;

(F) final approval of advertising or sales literature for use by agents of the broker-dealer;

(G) responsibility for supervising the activities of persons associated with the broker-dealer at one or more other offices of the broker-dealer.

"Principal" means:

(A) any individual registered with a registered national securities association as a principal or branch manager of a member, broker or dealer, or any other person who has been delegated supervisory responsibility for the firm or its associated persons; or

(B) any person associated with a non-FINRA applicant for registration as a broker-dealer who is or will be actively engaged in the management of the applicant's securities business, including supervision, solicitation, conduct of business or training of persons associated with an applicant for any of these functions, and is designated as a principal by the broker-dealer applicant.

"Public offering price" shall mean the price at which the security involved was offered to the public as set forth in the prospectus of the issuing company.

"Selling group" means any group formed in connection with a public offering, to distribute all or part of an issue of securities by sales made directly to the public by or through members of such selling group, under an agreement which imposes no financial commitment on the members of such group to purchase any such securities except as they may individually or collectively elect to do so.

"Selling syndicate" means any syndicate formed in connection with a public offering, to distribute all or part of an issue of securities by others or sales made directly to the public by or through participants in such syndicate under an agreement which imposes a financial commitment upon the participants in such syndicate to purchase any of such securities.

"Undertaking for Participation in the NASAA/CRD Temporary Agent Transfer Program" means the document entitled "Broker-Dealer Undertaking for Participation in

the NASAA/CRD Temporary Agent Transfer Program" which the employing broker-dealer has executed and filed with the CRD.

PART 3. LICENSING PROCEDURES

660:11-5-11. Initial registration

(a) **Broker-dealer.** Each broker-dealer applying for initial registration pursuant to Section 1-406 of the Securities Act:

(1) who is contemporaneously applying for FINRA membership or who is a FINRA member:

(A) shall file with the CRD:

(i) a completed Form BD, including Schedules A-E; and

(ii) the filing fee specified in Section 1-612 of the Securities Act.

(B) shall provide proof of registration with FINRA and with the jurisdiction where the broker-dealer's principal office is located; and

(C) shall file with the Department, within 60 days of becoming registered, a list of the addresses, telephone numbers and resident agents of all nonbranch sales offices located within the state of Oklahoma.

(2) who is not a current FINRA member shall file with the Department:

(A) a completed Form BD, including Schedules A-E;

(B) the filing fee specified in Section 1-612 of the Securities Act;

(C) financial statements as required by 660:11-5-45, or if the broker-dealer has not commenced operating, an engagement letter with an accounting firm to prepare the audited financial statements required by 660:11-5-31;

(D) documentation of compliance with the minimum capital requirement set forth in Section 1-406.E of the Securities Act and 660:11-5-17;

(E) designation, qualification and registration of a principal as defined in 660:11-5-2 pursuant to (c) of this Section;

(F) a list of the addresses, telephone numbers and resident agents of all nonbranch sales offices located within the state of Oklahoma;

(G) a copy of the written supervisory procedures of the broker-dealer; and

(H) any additional documentation, supplemental forms and information as the Administrator may deem necessary.

(b) **Broker-dealer agent.**

(1) **Required documents.** Each broker-dealer agent applying for initial registration pursuant to Section 1-406 of the Securities Act shall file:

(A) a completed Form U4;

(B) the filing fee specified in Section 1-612 of the Securities Act;

(C) proof of successful completion of the applicable examinations specified in 660:11-5-16; and

(D) proof of applicant's approved status of registration or licensure in a jurisdiction in which he has an office of employment when such registration is required; and

(E) any additional documentation, supplemental forms and information as the Administrator may deem necessary.

(2) **Where to file.** An agent applying for registration with a FINRA member shall file the documentation required by (1)(A) through (C) of this subsection with the CRD and shall file any additional documentation with the Department. Agents applying for registration with a non-FINRA broker-dealer shall file the required documentation with the Department.

(c) **Broker-dealer principal.**

(1) **Required documents.** Each person applying for initial registration under the Securities Act as a principal of a broker-dealer who is not a member of FINRA shall file with the Department:

(A) a completed Form U4;

(B) a $50.00 filing fee;

(C) proof of successful completion of the applicable examinations specified in 660:11-5-16; and

(D) any additional documentation, supplemental forms and information as the Administrator may deem necessary.

(2) **Effect of registration.** Registration under the Securities Act as a principal of a broker-dealer shall constitute registration as an agent.

(d) **Issuer agent.** Agents of issuers applying for initial registration in the state of Oklahoma pursuant to Section 1-406 of the Securities Act shall file the following with the Department:

(1) a completed Form U4;

(2) the fee specified in Section 1-612 of the Securities Act;

(3) proof of successful completion of the applicable examinations specified in 660:11-5-16;

(4) an executed Applicant/Management Certification Form; and

(5) any additional documentation, supplemental forms and information as the Administrator may deem necessary.

(e) **Requirement for continued registration.** 660:11-5-42, adopted pursuant to Sections 1-411.D.13 and 1-605.A.2. of the Securities Act, sets forth the standards of ethical practices for broker-dealers and their agents. Paragraph (22) of said rule requires that each broker-dealer establish, maintain and enforce written procedures that will enable it to supervise properly the activities of each registered agent to assure compliance with applicable securities laws, rules, regulations and statements of policy. Therefore, the initial and continued registration of a broker-dealer that is not a FINRA member is conditioned upon the designation, qualification and registration of a principal who shall be responsible for the supervision of all agents of the broker-dealer who are registered under the Securities Act. A broker-dealer applicant or registrant may apply for registration of more than one person as a principal of said broker-dealer.

660:11-5-12. Renewal

(a) **Broker-dealer.** A FINRA member shall renew its registration by submitting the renewal fee specified in Section 1-612 of the Securities Act to the CRD. A non-FINRA member shall renew its registration by submitting to the Department an Application for Renewal of Non-FINRA Broker-Dealer Registration and the renewal fee specified in Section 1-612 of the Securities Act.

(b) **Broker-dealer agent.** Agents of FINRA members shall renew their registrations by submitting the renewal fee specified in Section 1-612 of the Securities Act to the CRD. Agents of non-FINRA members shall renew their registrations by submitting an Application for Renewal of Non-FINRA Broker-Dealer Agent Registration and the renewal fee specified in Section 1-612 of the Securities Act to the Department.

(c) **Broker-dealer principal**. Principals of non-FINRA members shall renew their registrations by submitting an Application for Renewal of Non-FINRA Broker-Dealer Principal Registration and the renewal fee specified in Section 1-612 of the Securities Act to the Department.

(d) **Issuer agent.** Issuer agents shall renew their registrations by submitting an Application for Renewal of Issuer Agent Registration and the renewal fee specified in Section 1-612 of the Securities Act to the Department.

660:11-5-13. Agent transfer

An agent who wishes to terminate his employment with one registered broker-dealer and thereafter commence employment with another broker-dealer may do so without causing a suspension in the agent's registration if all of the following conditions are met:

(1) Both the terminating and employing broker-dealers are members of the Financial Industry Regulatory Authority, Inc.

(2) The transfer is effected in accordance with the terms and conditions of the NASAA/FINRA Central Registration Depository Temporary Agent Transfer Program.

(3) The employing broker-dealer has executed and filed an "Undertaking for Participation in the NASAA/FINRA Central Registration Depository TAT Program."

(4) The employing broker-dealer currently is not subject to an order of the Administrator which would otherwise make this section unavailable.

660:11-5-14. Broker-dealer and agent termination

(a) **Filing requirement.** Notice of termination of registration shall be promptly given:

(1) on behalf of a broker-dealer by filing a Form BDW. The Form BDW shall be filed with the CRD.

(2) on behalf of an agent by filing a Form U5. The Form U5 for an agent terminating registration with a FINRA member broker-dealer shall be filed with the CRD. The Form U5 for an agent terminating registration with a non-FINRA broker-dealer shall be filed with the Department.

(b) **Responsibility for filing on behalf of an agent.** A completed Form U5 signed by the broker-dealer or the issuer will be accepted as fulfilling the statutory requirements of both the broker-dealer or issuer and the agent. Upon verification that the Form U5 has not been filed by the broker-dealer or issuer, the agent shall notify the Department in writing of said termination.

(c) **Amendments.** If the information contained in a Form BDW or Form U5 becomes inaccurate or incomplete, the broker-dealer, issuer, or agent shall promptly file a correcting amendment after learning of the facts or circumstances giving rise to the amendment.

(d**) Effect of failure to file.** In the event of termination, the filing of a future application for registration shall not be considered complete until a termination notice is filed.

660:11-5-15. Categories of registration [RESERVED]

660:11-5-16. Examination requirements for agents and for principals of non-FINRA member broker-dealers

(a) **Examination requirement.** Proof of compliance with the examination requirements of this Section is prerequisite to a complete filing for registration under the Securities Act.

(b) **Examination.** Each applicant for registration as a broker-dealer agent, issuer agent, or principal of a non-FINRA member broker-dealer shall, unless covered by subsection (g), have passed within four (4) years of the date of application the Securities Industry Essentials examination (SIE) and within two (2) years of the date of application the other applicable examinations for the desired category of registration as set forth in subsection (d) or (e). The examinations shall consist of a qualification examination(s) applicable to the category of registration applied for and a uniform state law examination. The Administrator adopts the examinations administered by FINRA as applicable to each individual registrant by category of registration as the required examinations.

(c) **Limitations on licenses.** The activities of each person registered as an agent are limited to the corresponding category for which they are qualified by examination, unless waived, and for which they are registered under the Securities Act.

(d) **Examination categories.** Examination categories for agents are as follows

(1) General securities or government securities - FINRA Members: - SIE; Series 7; and Series 63 or 66

(2) General securities - Non-FINRA Members/Issuers - SIE; Series 7; and Series 63 or 66

(3) Investment company and variable contract products - SIE; Series 6; and Series 63 or 66

(4) Direct participation programs - SIE; Series 22; and Series 63 or 66

(5) Municipal securities - Series 7; Series 52; and Series 63 or 66

(6) Investment banking representative – SIE; Series 79; and Series 63 or 66

(7) Securities Trader – SIE; Series 57; and Series 63 or 66

(8) Limited Representative – Private Securities Offerings – SIE: Series 82; and Series 63 or 66

(9) Research Analyst – SIE; Series 86; Series 87; and Series 63 or 66

(10) Operations Professional – SIE; Series 99; and Series 63 or 66

(e) **Examination categories for principals of non-FINRA member broker-dealers.** Examination categories for principals of non-FINRA member broker-dealers are as follows - Series 7; Series 24; and Series 63 or 66

(f) **Change in series number.** Should FINRA examination series numbers change, the most current examination series applicable to the category of registration shall apply.

(g) **Validity of prior examination scores.**

(1) Any individual who has been registered as an agent in any state within two years from the date of filing an application for registration shall not be required to retake the required examinations to be eligible for registration.

(2) Any individual who has not been registered as an agent in any state for more than two years but less than five years, who has elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and whose appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the FINRA Maintaining Qualifications Program shall be deemed in compliance with the examination requirements for the FINRA qualifying examination; provided, however, that participation in the FINRA Maintaining Qualifications Program shall not extend the Series 63 or Series 66 for purposes of agent registration.

(3) Successful participation in the FINRA Maintaining Qualifications Program shall not extend the Series 63, Series 65, or Series 66 for purposes of investment adviser representative registration.

(g) **Waiver of examination requirement.** The Administrator may waive the examination requirements on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the justifications therefor.

660:11-5-17. Net capital for broker-dealers

(a) **General requirement.** All broker-dealers registered under the Securities Act shall at all times have and maintain net capital of no less than the highest minimum requirement applicable to each broker-dealer as established by the SEC in 17 CFR 240.15c3-1.

(b) **Calculation of "net capital."** As used in this subchapter, net capital shall mean the net worth of a broker-dealer calculated according to the formula established by the SEC.

660:11-5-18. [RESERVED]

660:11-5-19. Piecemeal filings

An application for initial registration or renewal of registration as a broker-dealer, broker-dealer agent, broker-dealer principal or issuer agent shall not be deemed to have been filed

until all of the documentation required by 660:11-5-11 or 660:11-5-12 is submitted, or is otherwise made available, to the Department and payment of the proper fees is made. Such documentation shall be in completed form.

660:11-5-20. Cross-border licensing exemption.

By authority delegated to the Administrator in Section 1-401.B.1.h of the Securities Act, a Canadian broker-dealer meeting all of the following conditions is determined to be exempt from the registration requirement in Section 1-401.A of the Securities Act:

(1) The broker-dealer is domiciled in Canada, does not have an office or other physical presence in the United States, and is not an office or branch of a broker-dealer domiciled in the United States.

(2) The broker-dealer is registered with or a member of a Canadian self-regulatory organization, stock exchange, or the Bureau des Services Financiers and maintains that registration or membership in good standing.

(3) The broker-dealer and its agents effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:

(A) an individual from Canada that temporarily resides or is temporarily present in this state and with whom the broker-dealer had a bona fide broker-dealer-customer relationship before the individual entered the United States; or

(B) an individual present in this state whose transactions relate to a self-directed, tax advantaged Canadian retirement plan of which the individual is the holder or contributor.

(4) The broker-dealer prominently discloses in writing to its clients in this state that the broker-dealer and its agents are not subject to the full regulatory requirement of the Securities Act.

(5) Neither the broker-dealer nor its agents disclaim the applicability of Canadian law or jurisdiction to any transaction conducted pursuant to this exemption.

(6) The broker-dealer and its agents comply with the antifraud provisions of the Securities Act and of federal securities laws.

(7) Prior to or contemporaneously with the first transaction in Oklahoma, the broker-dealer must file a consent to service of process on Form U-2 in a manner that effectively appoints the Administrator as agent for service of process.

(8) Any Canadian broker-dealer or agent relying on this exemption shall, upon written request, furnish the Department any information relative to a transaction covered by this Section that the Administrator deems relevant.

660:11-5-21. Supplemental disclosures

Every broker-dealer and agent registered under the Securities Act must keep their application current at all times by promptly filing amendments supplementing their application after learning of the facts and circumstances giving rise to the amendments as required by Section 1-406.B of the Securities Act.

660:11-5-22. Private offering issuer agent exemption

By authority delegated to the Administrator in Section 1-402.B.9 of the Securities Act, an individual meeting all of the following conditions is determined to be exempt from the registration requirement of Section 1-402 of the Securities Act:

(1) The subject offering is conducted in a manner to be exempt pursuant to Section 1Â-202.14 of the Securities Act.

(2) The individual represents the issuer in functioning as an agent in the subject offering.

(3) The individual is not compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

(4) Such individual has not within the past five (5) years been subject to the following in connection with a violation of a state or federal securities law or regulation: an order denying, suspending or revoking registration or a cease and desist order of the Administrator; any similar order, judgment, or decree by another state securities agency, the SEC, or any self-regulatory securities organization; or an order of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person.

(5) The exemption is only available with respect to transactions in the subject offering. However, the individual is not prohibited from qualifying for this exemption with respect to any other offering so long as all requirements are satisfied.

660:11-5-23. Coordinated limited offering issuer agent exemption

By authority delegated to the Administrator in Section 1-402.B.9 of the Securities Act, an individual meeting all of the following conditions is determined to be exempt from the registration requirement of Section 1-402 of the Securities Act:

(1) The subject offering is conducted in a manner to be exempt pursuant to 660:11-11-43.

(2) The individual represents the issuer in functioning as an agent in the subject offering.

(3) The individual is not compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

(4) Such individual has not within the past five (5) years been subject to the following in connection with a violation of a state or federal securities law or regulation: an order denying, suspending or revoking registration or a cease and desist order of the Administrator; any similar order, judgment, or decree by another state securities agency, the SEC, or any self-regulatory securities organization; or an order of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person.

(5) The exemption is only available with respect to transactions in the subject offering. However, the individual is not prohibited from qualifying for this exemption with respect to any other offering so long as all requirements are satisfied.

660:11-5-24. Oklahoma Accredited Investor issuer agent exemption

By authority delegated to the Administrator in Section 1-402.B.9 of the Securities Act, an individual meeting all of the following conditions is determined to be exempt from the registration requirements of Section 1-402 of the Securities Act:

(1) The subject offering is conducted in a manner to be exempt pursuant to 660:11-11-52.

(2) The individual represents the issuer in functioning as an agent in the subject offering.

(3) The individual is not compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

(4) Such individual has not within the past five (5) years been subject to the following in connection with a violation of a state or federal securities law or regulation: an order denying, suspending or revoking registration or a cease and desist order of the Administrator; any similar order, judgment, or decree by another state securities agency, the SEC, or any self-regulatory securities organization; or an order of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person.

(5) The exemption is only available with respect to transactions in the subject offering. However, the individual is not prohibited from qualifying for this exemption with respect to any other offering so long as all requirements are satisfied.

660:11-5-25. Registration relief for military service members and their spouses

(a) **Definitions**. For purposes of this Section:

(1) "**Military Service Member**" means any member of the Armed Forces or Reserves of the United States, National Guard of any state, the Military Reserves of any state, or the Naval Militias of any state.

(2) "**Military Spouse**" means an individual who is the current spouse of a Military Service Member who is on active duty in this state or claims residency in this state for the six months prior to assignment to active duty or during the period of active duty.

(b) **Initial registration of a military service member**.

(1) The Administrator shall consider the equivalent education, training, and experience completed by an applicant while the applicant was a member of the United States Armed Forces or Reserves, National Guard of any state, the Military Reserves of any state, or the Naval militias of any state, and apply it in the manner most favorable toward satisfying the qualification for registration.

(2) A Military Service Member, who meets the following requirements, may apply to the Administrator for expedited review for registration under the Securities Act. An applicant shall:

(A) Submit a complete application for registration on the forms prescribed by the Administrator;

(B) Notify the Administrator in writing that the Military Service Member is seeking expedited review of the application;

(C) Submit the filing fee specified in Section 1-612 of the Securities Act except as provided in (4) of this subsection;

(D) Submit evidence of passing scores on examinations equivalent to those required by 660:11-5-16; and

(E) Provide any other documentation as required by the Administrator.

(3) No applicant for registration under this Section shall be qualified for expedited review if the applicant is or has been the subject of disqualifying disciplinary action as set forth in Section 1-411.D of the Securities Act or has been discharged for cause from a broker-dealer or investment adviser.

(4) A Military Service Member who makes an initial application within one year of completion of military service may request a waiver of the initial filing fee specified in Section 1-612 of the Securities Act. An applicant shall, upon application, notify the Administrator in writing that the Military Service Member is seeking waiver of the initial filing fee.

(c) **Status of a military service member.**

(1) **Inactive status of currently registered agents.**

(A) If a registered agent of a broker-dealer or issuer volunteers for or is called into active duty as a Military Service Member, the agent shall be deemed to be on inactive status upon prompt notification to the Administrator, in writing, of the individual's activation into military duty. That individual will be deemed to be reactivated upon the agent's return to active association with the broker-dealer or issuer. Such agent shall remain eligible to receive transaction-related compensation, including continuing commissions. The associated broker-dealer or issuer also may allow such agent to enter into an arrangement with another registered agent of the broker-dealer or issuer to take over and service the agent's accounts and to share transaction-related compensation based upon the business generated by such accounts. However, because such agents are deemed to be inactive, they may not perform any of the functions and responsibilities performed by a registered agent.

(B) A registered agent who is deemed to be on inactive status under (A) of this paragraph shall not be required to pay the fee specified in Section 1-612 of the Securities Act during the time of that agent's inactive status and for one year thereafter.

(C) The relief provided under this paragraph shall be available only to a registered agent who is deemed to be on inactive status under (A) of this paragraph during the period that such agent remains registered with the broker-dealer or issuer with which the agent was registered at the beginning of active duty, regardless of whether the agent returns to active association with another broker-dealer or issuer upon completion of the agent's active duty.

(D) The relief provided under this paragraph shall be available only to an individual registered as an agent under the Securities Act and only with respect to the period specified in connection with that individual's service on active military duty. Further, the broker-dealer or issuer with whom such agent is registered shall promptly notify the Administrator, in writing, of such agent's return to active association with the broker-dealer or issuer.

(2) **Inactive status of sole proprietorships.**

(A) If a broker-dealer that is a sole proprietor temporarily closes his or her business by reason of volunteering for or being called into active military duty, the broker-dealer shall be deemed to be on inactive status upon prompt notification to the Administrator, in writing, of the individual's activation into active military duty.

(B) A sole proprietor Military Service Member deemed to be on inactive status as set forth in this paragraph shall not be required to pay the fee as specified in Section 1-612 of the Act during the pendency of such inactive status and for one year thereafter.

(C) The relief described in this paragraph shall be provided only to a sole proprietor Military Service Member and only with respect to the period specified in connection with that individual's service on active military duty. Further, the sole proprietor shall promptly notify the Administrator, in writing, of his or her return to active participation

in the investment banking or securities business. The sole proprietor must promptly file an updated Form U-4.

(3) **Status of formerly registered agents.**

(A) If an agent who was formerly registered with a broker-dealer or issuer volunteers for or is called into active military duty at any time after the date the individual ceased to be registered with a broker-dealer or issuer but during the period of validity of the individual's prior examination scores as set forth in OAC 660:11-5-16 ("examination scores validity periods"), the Administrator shall extend the period of validity of the individual's scores by the individual's period of active military service; provided, the validity of the scores will continue for no less than one (1) year following the individual's completion of active military service.

(B) If an individual deemed to be on inactive status as an agent while serving as a Military Service Member ceases to be registered with a broker-dealer or issuer, the Administrator shall extend the individual's examination scores validity periods by the remaining period of the individual's active military service.

(C) An individual applying to become registered with a broker-dealer or issuer within one (1) year following the completion of the individual's active military service shall not be required to pay the fee specified in Section 1-612 of the Securities Act; provided the fee relief in this subparagraph shall only apply to the individual's first application for registration during such period.

(d) **Initial registration of a military spouse.**

(1) A Military Spouse who meets the following requirements may apply to the Administrator for expedited review for registration under the Securities Act. An applicant shall:

(A) Submit a complete application for registration on the forms prescribed by the Administrator;

(B) Notify the Administrator in writing that the Military Spouse is seeking expedited review of the application;

(C) Submit evidence of passing scores on examinations equivalent to those required by 660:11-5-16;

(D) Submit the filing fee specified in Section 1-612 of the Securities Act; and

(E) Provide any other documentation as required by the Administrator.

(2) This subsection does not apply if the applicant is or has been the subject of disqualifying disciplinary action as set forth in Section 1-411.D of the Securities Act or has been discharged for cause from a broker-dealer or investment adviser.

(3) This subsection does not apply to a Military Spouse who does not claim residence in the state of Oklahoma.

660:11-5-26. Merger and acquisition broker exemption

(a) **Definitions**. For purposes of this Section:

(1) **"Control"** means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. There is a presumption of control for any person who:

(A) is a director, general partner, member, or manager of a limited liability company, or officer exercising executive responsibility (or has similar status or functions);

(B) has the right to vote 20 percent or more of a class of voting securities or the power to sell or direct the sale of 20 percent or more of a class of voting securities; or;

(C) in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 20 percent or more of the capital.

(2) **"Eligible privately held company"** means a company meeting both of the following conditions:

(A) The company does not have any class of securities registered, or required to be registered, with the SEC under Section 12 of the 1934 Act, 15 U.S.C. 78l, or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection 15(d) of the 1934 Act, 15 U.S.C. 78o(d).

(B) In the fiscal year ending immediately before the fiscal year in which the services of the Merger and Acquisition Broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions (determined in accordance with the historical financial accounting records of the company):

(i) The earnings of the company before interest, taxes, depreciation, and amortization are less than $25,000,000.

(ii) The gross revenues of the company are less than $250,000,000.

(3) **"Merger and Acquisition Broker"** means any broker-dealer and any person associated with a broker-dealer engaged in the business of effecting securities transactions

solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether that broker-dealer acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company –

(A) if the broker-dealer reasonably believes that upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert, will control and, directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and

(B) if any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant; a balance sheet dated not more than 120 days before the date of the exchange offer; and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and any material loss contingencies of the issuer.

(4) **"Public shell company"** means a company that at the time of a transaction with an eligible privately held company:

(A) has any class of securities registered, or required to be registered, with the SEC under Section 12 of the 1934 Act, 15 U.S.C. 78l, or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection 15(d) of the 1934 Act, 15 U.S.C. 78o(d); and

(B) has no or nominal operations; and

(C) has:

(i) no or nominal assets;

(ii) assets consisting solely of cash and cash equivalents; or

(iii) assets consisting of any amount of cash and cash equivalents and nominal other assets.

(b) **Inflation adjustment**. On the date that is five years after the date of the enactment of this Section, and every five years thereafter, each dollar amount in subparagraph (a)(2)(B) shall be adjusted by:

(1) dividing the annual value of the Employment Cost Index for Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2020; and

(2) multiplying such dollar amount by the quotient obtained under (i) of this subsection.

(3) Rounding – Each dollar amount determined under (i) of this subsection shall be rounded to the nearest multiple of $100,000.

(c) **Exemption**. Except as provided in paragraphs (d) and (e), a Merger and Acquisition Broker shall be exempt from registration as a broker-dealer under this Section.

(d) **Excluded activities**. A merger and acquisition broker is not exempt from registration under this paragraph if such broker-dealer does any of the following:

(1) Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction.

(2) Engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the SEC under Section 12 of the 1934 Act, 15 U.S.C. 78l or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under subsection 15(d) of the 1934 Act, 15 U.S.C. 78o(d).

(3) Engages on behalf of any party in a transaction involving a public shell company.

(e) **Disqualifications**. A merger and acquisition broker is not exempt from registration under this paragraph if such broker-dealer is subject to:

(1) Suspension or revocation of registration under paragraph 15(b)(4) of the 1934 Act, 15 U.S.C. 78o(b)(4);

(2) A statutory disqualification described in paragraph 3(a)(39) of the 1934 Act, 15 U.S.C. 78c(a)(39);

(3) A disqualification under the rules adopted by the SEC under Section 926 of the DoddFrank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d); or

(4) A final order described in subparagraph (4)(H) of Section 15(b) of the 1934 Act, 15 U.S.C. 78o(b)(4)(H).

PART 5. REPORTING REQUIREMENTS

660:11-5-31. Post-registration reporting requirements

(a) **Filing requirement.** Pursuant to Section 1-410.B of the Securities Act, all broker-dealers registered under Section 1-406 of the Securities Act who are not FINRA members must make post-registration filings with the Department. The Department will not accept incomplete or piecemeal filings. Failure to file a complete report when due may result in the suspension or revocation of registration.

(b) **Report content.** Such registered broker-dealers shall make one (1) post-registration filing each fiscal year. Said filing shall contain audited financial statements as of the broker-dealer's fiscal year end and the report filing fee specified in Section 1-612 of the Securities Act.

(c) **Report filing dates.** Post-registration filings become due on the last day of the fiscal period to which they apply; however, a grace period is provided before a filing becomes delinquent. The filing must be made by the last day of the fourth month following the close of the registrant's fiscal year.

PART 7. RECORD KEEPING AND ETHICAL STANDARDS

660:11-5-41. Books and records requirements for broker-dealers

17 CFR §240.17a-3 (2013) and 17 CFR §240.17a-4 (2014), books and records rules established by the SEC under the 1934 Act, are hereby incorporated by reference as if fully set forth into this Chapter.

660:11-5-42. Dishonest and unethical practices of broker-dealers and agents

(a) **Purpose.** This Section is intended to set forth the standards of ethical practices for broker-dealers and agents. Any noncompliance with the standards of ethical practices specified in this section will constitute unethical practices in the securities business as the same is set forth in Section 1-411.D.13 of the Securities Act; however, the following is not intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of broker-dealers, and their agents, in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory.

(b) **Standards.**

(1) A broker-dealer and its agents, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade. A broker-dealer and its agents shall not violate any federal securities statute or rule or any rule of a national securities exchange or national securities association of which it is a member with respect to any customer, transaction or business effected in this state.

(2) Recommendations

(A) A broker-dealer and its agents shall have reasonable grounds for believing that a recommended transaction or investment strategy involving a security or securities is suitable for such customer based upon the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information disclosed by the customer or known to the broker-dealer or agent.

(B) A broker-dealer and its agents fulfill the customer-specific suitability obligation for an institutional account, as defined in 660:11-1-3, if (i) the broker-dealer or agent has a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities and (ii) the institutional customer affirmatively indicates that it is exercising independent judgment in evaluating the broker-dealer or agent's recommendations. Where an institutional customer has delegated decision-making authority to an agent, such as an investment adviser or a bank trust department, these factors shall be applied to the agent.

(3) Charges, if any, for services performed, including miscellaneous services such as collection of monies due for principal, dividends, or interest, exchange or transfer of securities, appraisals, safekeeping or custody of securities, and other services, shall be reasonable and not unfairly discriminatory between customers.

(4) In "over-the-counter" transactions, whether in "listed" or "unlisted" securities, if any broker-dealer or agent of a broker-dealer buys for their own account from their customer, or sells for their own account to their customer, they shall buy or sell at a price which is fair, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that they are entitled to a profit; and if they act as agent for their customer in any such transaction, they shall not charge their customer more than a fair commission or service charge, taking into consideration all relevant circumstances including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service they may have rendered by reason of their experience in and knowledge of such security and the market therefor.

(5) No broker-dealer or agent of a broker-dealer shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security. If nominal quotations are used or given, they shall be clearly stated or indicated to be only nominal quotations.

(6) No broker-dealer or agent of a broker-dealer shall make an offer to buy from or sell to any person any security at a stated price unless such broker-dealer or agent is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

(7) A broker-dealer, when a member of a selling syndicate or a selling group, shall purchase securities taken in trade at a fair market price at the time of purchase, or shall act as agent in the sale of such securities.

(8) A broker-dealer who in the capacity of paying agent, transfer agent, trustee, or any other similar capacity, has received information as to the ownership of securities, shall under no circumstances make use of such information for the purpose of soliciting purchases, sales or exchanges except at the request and on behalf of the issuer.

(9) No broker-dealer or agent of a broker-dealer shall, directly or indirectly, give, permit to be given, or offer to give, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service, or similar publication, of any matter which has, or is intended to have, an effect upon the market price of any security, provided that this rule shall not be construed to apply to matter which is clearly distinguishable as paid advertising.

(10) A broker-dealer at or before the completion of each transaction with a customer shall give or send to each customer written notification disclosing:

(A) whether such broker-dealer is acting as a broker for such customer and some other person; and

(B) in any case in which such broker-dealer is acting as a broker for such customer or for both such customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for such customer and the date and the time when such transaction took place or the fact that such information will be furnished upon the request of such customer, and the source and amount of any commission or other remuneration received or to be received by such broker-dealer in connection with the transaction.

(11) A broker-dealer or agent of a broker-dealer controlled by, controlling, or under common control with, the issuer of any security, shall, before entering into any contract with or for a customer for the purchase or sale of such security, disclose to such customer the existence of such control, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

(12) A broker-dealer or agent of a broker-dealer who is acting as a broker for a customer or for both such customer and some other person, or a broker-dealer who is acting as a

dealer and who receives or has promise of receiving a fee from a customer for advising such customer with respect to securities, shall, at or before the completion of any transaction for or with such customer in any security in the primary or secondary distribution of which such broker-dealer is participating or is otherwise financially interested, give such customer written notification of the existence of such participation or interest.

(13) The following standards shall apply to discretionary accounts:

(A) No broker-dealer or agent of a broker-dealer shall effect with or for any customer's account in respect to which such broker-dealer or agent or employee is vested with any discretionary power any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources of such customer and character of such account.

(B) No broker-dealer or agent of a broker-dealer shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the broker-dealer, as evidenced in writing by the broker-dealer or the partner, officer, or manager duly designated by the broker-dealer, in accordance with (22) of this subsection.

(C) The broker-dealer or the person duly designated shall approve promptly, in writing, each discretionary order entered and shall review all discretionary accounts at frequent intervals in order to detect and prevent transactions which are excessive in size or frequency in view of the financial resources of the customer and the character of the account.

(D) This section shall not apply to:

(i) discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed, except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretions, absent a specific, written contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretions exercised in an institutional account, as defined in 660:11-1-3, pursuant to valid Good-Till-Cancelled instructions issued on a "not-held" basis. Any exercise of time and price discretion must be reflected on the order ticket;

(ii) bulk exchange at net asset value of money market mutual funds ("funds") utilizing negative response letters provided:

(I) The bulk exchange is limited to situations involving mergers and acquisitions of funds, changes of clearing members, and exchanges of funds used in sweep accounts;

(II) The negative response letter contains a tabular comparison of the nature and amount of the fees charged by each fund;

(III) The negative response letter contains a comparative description of the investment objectives of each fund and a prospectus of the fund to be purchased; and;

(IV) The negative response feature will not be activated until at least 30 days after the date on which the letter was mailed.

(14) A broker-dealer or agent of a broker-dealer who is participating or who is otherwise financially interested in the primary or secondary distribution of any security which is not admitted to trading on a national securities exchange, shall make no representation that such security is being offered to a customer "at the market" or at a price related to the market price unless such broker-dealer or agent knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by such broker-dealer or agent, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer or agent.

(15) No broker-dealer or agent of a broker-dealer shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device, practice, plan, program, design, or contrivance.

(16) The following standards shall apply to the use of customer funds:

(A) No broker-dealer or person associated with a broker-dealer shall make improper use of a customer's securities or funds.

(B) No broker-dealer or agent of a broker-dealer shall lend, either to themselves or to others, securities carried for the account of any customer, unless such broker-dealer or agent shall first have obtained from the customer a separate written authorization permitting the lending of securities thus carried by such broker-dealer or agent; and, regardless of any agreement between the broker-dealer or agent and a customer authorizing the former to lend or pledge such securities, no broker-dealer or agent shall lend or pledge more of such securities than is fair and reasonable in view of the indebtedness of the customer, except such lending as may be specifically authorized under (C) of this paragraph.

(C) No broker-dealer or agent of a broker-dealer shall lend securities carried for the account of any customer which have been fully paid for or which are in excess of the amount which may be loaned in view of the indebtedness of the customer, unless such broker-dealer or agent shall first have obtained from such customer a separate written authorization designating the particular securities to be loaned.

(D) No broker-dealer or agent of a broker-dealer shall hold securities carried for the account of any customer which have been fully paid for or which are in excess of the amount which may be pledged in view of the indebtedness of the customer, unless such securities are segregated and identified by a method which clearly indicates the interest of such customer in those securities.

(E) No broker-dealer or agent of a broker-dealer shall guarantee a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or agent with or for such customer.

(F) No broker-dealer or agent of a broker-dealer shall share directly or indirectly in the profits or losses in any account of a customer carried by the broker-dealer or agent or any other broker-dealer or agent, unless such broker-dealer or agent obtains written authorization from the broker-dealer carrying the account; and, a broker-dealer or agent shall share in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by the broker-dealer or agent. Exempt from the direct proportionate share limitation are accounts of the immediate family of such broker-dealer or agent. For purposes of this section, the term "immediate family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the broker-dealer or agent otherwise contributes directly or indirectly.

(17) The following standards shall apply to customer credit:

(A) No broker-dealer or agent of a broker-dealer shall take or carry any account or make a transaction for any customer under any arrangement which contemplates or provides for the purchase of any security for the account of the customer or for the sale of any security to the customer where payment for the security is to be made to the broker-dealer by the customer over a period of time in installments or by a series of partial payments, unless:

(i) in the event such broker-dealer acts as an agent or broker in such transaction, it shall immediately, in the regular course of its business, make an actual purchase of the security for the account of the customer, and shall immediately, in the regular course of its business, take possession or control of such security and shall maintain possession or control thereof so long as it remains under obligation to delivery of the security to the customer;

(ii) in the event such broker-dealer acts as a principal in any such transaction, it shall, at the time of such transaction own such security and shall maintain possession or control thereof so long as it remains under obligation to deliver the security to the customer; and

(iii) the provisions of Regulation T of the Federal Reserve Board, if applicable to such broker-dealer, are satisfied.

(B) No broker-dealer, whether acting as a principal or agent, shall, in connection with any transaction referred to in this Standard, make any agreement with its customer under which such broker-dealer shall be allowed to pledge or hypothecate any security involved in such transaction for any amount in excess of the indebtedness of the customer to such broker-dealer.

(18) The following standards shall apply to books and records:

(A) Each broker-dealer shall keep and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated by the Administrator and/or the Commission under the Securities Act.

(B) Each broker-dealer shall keep and preserve in each office of supervisory jurisdiction, as defined in 660:11-5-2, either a separate file of all written complaints of customers and action taken by the broker-dealer, if any, or a separate record of such complaints and clear reference to the files containing the correspondence connected with such complaints as maintained in such office.

(19) A broker-dealer shall make available to inspection by any bona fide regular customer, upon request, the information relative to such broker-dealer's financial condition as disclosed in its most recent balance sheet prepared either in accordance with such broker-dealer's usual practice or as required by the state or federal securities laws, or any rule or regulation promulgated thereunder.

(20) No broker-dealer or agent of a broker-dealer shall offer any security or confirm any purchase or sale of any security, from or to any person not actually engaged in the investment banking or securities business at any price which shows a concession, discount, or other allowance, but shall offer such security and confirm such purchase or sale at a net dollar or basis price.

(21) Selling concessions, discounts, or other allowances, as such, shall be allowed only as consideration for services rendered in distribution and in no event shall be allowed to anyone other than a broker-dealer registered under the Securities Act actually engaged in the investment banking or securities business; provided however, that nothing in this standard shall prevent any broker-dealer from selling any security owned by him to any person at any net price which may be fixed by him unless prevented therefrom by agreement.

(22) The following standards shall apply to supervisory procedures:

(A) Each broker-dealer shall establish, maintain and enforce written procedures which will enable it to supervise properly the activities of each registered agent and associated person to assure compliance with applicable securities laws, rules, regulations and statements of policy promulgated by the Administrator and/or the Commission under the Securities Act.

(B) Final responsibility for proper supervision shall rest with the broker-dealer, the principal(s) of the broker-dealer registered in accordance with 660:11-5-11, and the principal(s) of the broker-dealer in each OSJ, including the main office, and the registered representatives in each non-OSJ branch office designated by the broker-dealer to carry out the supervisory responsibilities assigned to that office by the broker-dealer pursuant to the rules and regulations of FINRA. A copy of the written supervisory procedures shall be kept in each office of supervisory jurisdiction and each non-OSJ branch office.

(C) Each broker-dealer shall be responsible for keeping and preserving appropriate records for carrying out such broker-dealer's supervisory procedures. Each broker-dealer shall review and endorse in writing, on an internal record, all transactions and all correspondence of its registered agents pertaining to the solicitation or execution of any securities transaction.

(D) Each broker-dealer shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses and conduct at least an annual inspection of each office of supervisory jurisdiction.

(E) Each broker-dealer shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications and experience of any person prior to making such a certification in the application of such person for registration under the Securities Act.

(23) The following standards shall apply to financial information:

(A) Each broker-dealer offering or selling securities not listed on a registered national securities exchange recognized by the Administrator shall have and furnish to customers, on request, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, prepared in accordance with generally accepted accounting principles, the names of the issuer's proprietors, partners or officers, the nature of the enterprise of the issuer and any other available information reasonably necessary for evaluating the desirability or the lack of desirability of investing in the securities of the issuer.

(B) Each broker-dealer who, in computation of net capital includes securities not listed on a registered national securities exchange recognized by the Administrator shall also have the information provided for in (A) of this paragraph available and shall, upon request, furnish same to the Department.

(C) All transactions in such securities described in (A) and (B) of this paragraph shall comply with the provisions of Section 1-301 of the Securities Act.

(D) The provisions of (A) of this paragraph shall not be required in unsolicited transactions, except when numerous unsolicited transactions in a particular security are occurring, it shall be the duty and responsibility of the broker-dealer to make reasonable effort to secure and provide to customers upon their written request the information required by the provisions of (A) of this paragraph. Nothing contained in this Section shall be construed to limit the powers of the Administrator under Section 1-204 of the Securities Act.

(24) The following standards shall apply when a broker-dealer shares an office with an independent investment adviser that has an investment adviser representative who regularly conducts business in the office and is not registered as an agent of the broker-dealer.

(A) The broker-dealer and the independent investment adviser shall reduce any agreement between them to writing.

(B) The broker-dealer shall take appropriate measures, including, but not limited to, adequate disclosures to eliminate the appearance of an agency relationship between the broker-dealer and the independent investment adviser when one does not otherwise exist.

(C) The broker-dealer shall comply with all applicable Oklahoma and federal laws requiring the safeguarding of customer data from disclosure to the independent investment adviser and investment adviser representative.

(25) No broker-dealer or agent shall engage in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers.

(26) No broker-dealer or agent shall execute a transaction on behalf of a customer without authorization to do so.

(27) No broker-dealer or agent shall enter any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

(28) No broker-dealer or agent shall enter into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

(29) No broker-dealer or agent shall fail to furnish to a customer purchasing securities in an offering, no later than the due date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus.

(30) No broker-dealer or agent shall use any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material, or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs, or otherwise designed to supplement, detract from, supersede, or defeat the purpose or effect of any prospectus or disclosure.

(31) No broker-dealer or agent shall fail to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member.

(32) No broker-dealer or agent shall fail or refuse to furnish a customer, upon reasonable request, information to the which the customer is entitled, or to respond to a formal written request or complaint.

(33) No broker-dealer or agent shall execute securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction.

(34) No broker-dealer or agent shall establish or maintain an account containing fictitious information in order to execute transactions which would otherwise be prohibited.

(35) No broker-dealer or agent shall divide or otherwise split the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control.

(36) No broker dealer or agent shall fail to pay and fully satisfy any final judgment or arbitration award, resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangement.

(37) No broker-dealer or agent shall attempt to avoid payment of any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangements.

(38) No broker-dealer or agent shall fail to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the broker-dealer or agent by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self-regulatory organization.

660:11-5-42.1. Standards of ethical practices--issuer agents

(a) **Purpose.** This rule is intended to set forth the standards of ethical practices for issuer agents. Any noncompliance with the standards of ethical practices specified in this section will constitute unethical practices in the securities business; however, the following is not intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of issuer agents, in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory.

(b) **Standards.**

(1) An issuer agent, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade. Issuer agents shall not violate any federal securities statute or rule or any rule of a national securities exchange or national securities association of which he is a member with respect to any customer, transaction or business effected in this state.

(2) In recommending to a customer the purchase, sale or exchange of any security, an issuer agent shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. Prior to making a recommendation to a customer an issuer agent shall also make reasonable efforts to obtain information concerning the customer's financial background, tax status, and investment objectives, and such other information used or considered to be reasonable and necessary by such registered agent in making such recommendation.

(3) No issuer agent shall guarantee a customer against loss in any securities transaction effected by the issuer agent with such customer.

660:11-5-43. Examination of broker-dealers

(a) **Periodic examinations.** The business and records of each broker-dealer registered under the Securities Act may be periodically examined by the Administrator and/or person(s) designated by him at such times and in such scope as the Administrator determines prudent and necessary for the protection of the public. A report of each such examination shall be prepared.

(b) **Department access.** Each broker-dealer scheduled for examination shall provide the personnel of the Department access to business books, documents, and other records. Each broker-dealer shall provide personnel with office space and facilities to conduct on-site examinations, and assistance in the physical inspection of assets and confirmation of liabilities. Failure of any applicant or registrant to provide such access shall constitute a violation of this section and shall be a basis for denial, suspension or revocation of the registration or application for registration.

660:11-5-44. [RESERVED]

660:11-5-45. Financial statements for non-FINRA broker-dealers

(a) **Required financial statements.** Applications for registration for non-FINRA member broker-dealers shall contain audited financial statements for the applicant as of the end of its last fiscal year. Applicants that have commenced operating, but have been in operation for less than twelve (12) months shall submit an unaudited statement of financial condition as of a date within ninety (90) days of the date of the filing of the application and an unaudited statement of income for the period beginning from the date of inception through the date as of which the statement of financial condition is prepared.

(b) **Net capital computation.** Financial statements submitted by or on behalf of a broker-dealer shall include a statement of net capital for the broker-dealer and a schedule presenting a computation of net capital as of each statement of financial condition date. The computation of net capital shall be calculated according to the formula established by the SEC in 17 CFR 240.15c3-1.

(c) **Waiver.** The Administrator in the Administrator's discretion may waive any of the requirements of this section on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the reasons therefor.

SUBCHAPTER 7. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

PART 1. GENERAL PROVISIONS

Section

PART 3. LICENSING PROCEDURES

PART 1. GENERAL PROVISIONS

660:11-7-1. Purpose

The rules in this subchapter are adopted to provide procedures for complying with the provisions of the Securities Act relating to the registration of investment advisers and investment adviser representatives and the submission of notice filings by SEC covered investment advisers, and to provide post-registration requirements for establishing, maintaining, and enforcing written policies and procedures tailored to the investment advisers business model, taking into account the size of the firm, type(s) of service provided, and the number of locations of the investment adviser.

660:11-7-2. Definitions

In addition to the terms defined in 660:11-1-3, the following words and terms when used in this subchapter shall have the following meaning, unless the context clearly indicates otherwise:

"**Access Person**" means:

(A) any of the investment adviser's supervised persons:

(i) who has access to the non-public information regarding any client's purchase or sale of securities, or non-public information regarding the portfolio holdings of any reportable fund, or

(ii) who is involved in making securities recommendations to clients or who has access to such recommendations that are non-public.

(B) if providing investment advice is the investment adviser's primary business, all of its directors, officers, and partners are presumed to be access persons.

"**Advisory affiliate**" means an advisory affiliate as defined by the Glossary of Terms for the Form ADV.

"**Beneficial ownership**" means ownership that meets the requirements of section 16 of the 1934 Act (15 U.S.C. 78p) and the rules and regulations thereunder including 17 CFR 240.16a-1. Any report required by 17 CFR 275.204A-1(b) may contain a statement that the report will not be construed as an admission that the person making the report has any direct or indirect beneficial ownership in the security to which the report relates.

"**Chief compliance officer**" means a supervised person with the authority and resources to develop and enforce an investment adviser's policies and procedures. The individual designated to serve as chief compliance officer must be registered in the chief compliance officer's home state as an investment adviser representative of the investment adviser and must have the background and skills appropriate for fulfilling the responsibilities of the position.

"**Fund**" means an investment company registered under the Investment Company Act of 1940.

"**IARD**" means the FINRA-operated Investment Adviser Registration Depository.

"**Impersonal advisory services**" means investment advisory services provided solely:

(A) by means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(B) through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(C) any combination of the foregoing services.

"**Initial public offering**" means an offering of securities under the 1933 Act (15 U.S.C. 77a), the issuer of which, immediately before the registration, was not subject to the reporting requirements of sections 13 or 15(d) of the 1934 Act (15 U.S.C. 78m or 78o(d).

"**Investment company contract**" means a contract with an investment company registered under the 1940 Act that meets the requirements of Section 15(c) of that Act.

"**Limited offering**" means an offering that is exempt from registration under section 4(2) or section 4(5) of the 1933 Act (15 U.S.C. 77d(2) or 77(d)(5) or sections 504, 505, or 506 of Regulation D of the Securities Act of 1933 (17 C.F.R. 230.504, 230.505, or 230.506).

"Non-related person" means not a "Related person" as defined by the Glossary of Terms for the Form ADV.

"**Office**" means any location where an investment adviser and/or one or more of its investment adviser representatives provides investment advisory services, solicits, meets with, or otherwise communicates with clients or holds the location out to the general public as a place at which an investment adviser and/or one or more of its investment adviser representatives provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

"**Reportable security**" means a security as defined in section 202(a)(18) of the 1933 Act (15 U.S.C. 80b-2(a)(18)), except that it does not include:

(A) direct obligations of the government of the United States;
(B) banker's acceptances, bank certificates of deposit, commercial paper and high-quality short-term debt instruments, including repurchase agreements;
(C) shares issued by money market funds;
(D) shares issued by open-end funds other than reportable funds; and
(E) shares issued by unit investment trusts that are invested exclusively in one or more open-end funds, none of which are reportable funds.

"**Solicitor**" means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

"**Supervised person**" means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and its subject to the supervision and control of the investment adviser. The definition includes investment adviser representatives, employees, independent contractors, or other associated persons and supervised personnel, or other persons acting on behalf of the investment adviser.

PART 3. LICENSING PROCEDURES

660:11-7-11. Initial registration

(a) **Investment adviser.** Investment advisers applying for initial registration pursuant to Section 1-406 of the Securities Act:

(1) shall file with the IARD:

(A) a fully completed Parts 1 and II of Form ADV;

(B) a Form BR for each office located within the state of Oklahoma, and if the investment adviser's principal office is located in Oklahoma, all offices located elsewhere; and

(C) the filing fee specified in Section 1-612 of the Securities Act;

(2) shall file with the Department:

(A) financial statements as required by 660:11-7-44 unless exempt therefrom;

(B) a copy of each form of investment advisory contract to be executed by Oklahoma clients and if the principal office of the investment adviser is located in Oklahoma, a copy of each form of investment advisory contract to be executed by any other clients;

(C) prior to the effective date of registration, proof that the applicant maintains an errors and omissions insurance policy in the amount of at least $1 million per claim from an insurer authorized to transact insurance in the state of Oklahoma or from any other insurer approved by the Administrator according to standards established by 660:11-7-21; and

(D) any additional documentation, supplemental forms, and information as the Administrator may deem necessary; and

(3) if a natural person, must have passed the applicable examinations specified in 660:11-7-13.

(b) **Investment adviser representative.** Investment adviser representatives applying for initial registration under the Securities Act:

(1) shall file with the CRD:

(A) a completed or updated Form U-4;

(B) the filing fee specified in Section 1-612 of the Securities Act;

(C) proof of applicant's approved status of registration or licensure in a jurisdiction in which he has an office of employment where such registration is required; and

(D) any additional documentation, supplemental forms, and information as the Administrator may deem necessary;

(2) must have passed the applicable examinations specified in 660:11-7-13.

660:11-7-12. Renewal

(a) **Investment adviser.** An investment adviser registered under the Act shall renew its registration by submitting to the IARD the renewal fee specified in Section 1-612 of the Securities Act.

(b) **Investment adviser representative.** Investment adviser representatives registered under the Act shall renew their registrations by submitting to the CRD the renewal fee specified in Section 1-612 of the Securities Act.

660:11-7-13. Examination requirements for investment adviser representatives

(a) **Examination requirement.** Proof of compliance with the written examination requirements of this Section is prerequisite to a complete filing for registration under the Securities Act.

(b) **Examinations.** Every natural person seeking registration as an investment adviser or investment adviser representative shall, unless covered by subsection (c) or (e) or otherwise waived by the Administrator, have passed:

(1) the Series 65/Uniform Investment Adviser Law Examination (Series 65) within two years of the date of application; or

(2) the Series 66/Uniform Combined State Law Examination (Series 66) and the FINRA Series 7/General Securities Representative Examination within two years of the date of application, and

(3) the Securities Industry Essential Examination within four years of the date of application.

(c) **Designations acceptable in lieu of examinations.** Compliance with the examination requirements is waived if the applicant has been awarded any of the following designations and at the time of filing an application is current and in good standing:

(1) Certified Financial Planner ("CFP") awarded by the Certified Financial Planners Board of Standards;

(2) Chartered Financial Consultant ("ChFC") or Masters of Science and Financial Services ("MSFS") awarded by the American College, Bryn Mawr, Pennsylvania;

(3) Chartered Financial Analyst ("CFA") awarded by the Institute of Chartered Financial Analysts;

(4) Personal Financial Specialist ("PFS") awarded by the American Institute of Certified Public Accountants;

(5) Chartered Investment Counselor ("CIC") awarded by the Investment Adviser Association; or

(6) Any further certificates or credentials that are placed on the NASAA 65 Equivalency List, as maintained and updated by NASAA and the NASAA Exams Advisory Committee.

(d) **Change in series number.** Should FINRA examination series numbers change, the most current examination series applicable to the category of registration shall apply.

(e) **Validity of prior examination scores.**

(1) Any individual who has been registered as an investment adviser representative in any state within two years from the date of filing an application for registration shall not be required to retake the examinations to be eligible for registration.

(2) Any individual who is not registered as an investment adviser representative in any state for more than two years but less than five years, who has elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and whose appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the FINRA Maintaining Qualifications Program shall not have to retake the appropriate FINRA qualifying examinations to comply with the examination requirements of subsection (b)(1); provided, however, that successful participation in the FINRA Maintaining Qualifications Program shall not extend the Series 65 or the Series 66 for purposes of investment adviser representative registration.

(f) **Waiver of examination requirement.** The Administrator may waive the examination requirement on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the justifications therefor.

660:11-7-14. Investment adviser and investment adviser representative termination

(a) **Filing requirement**. Notice of termination of registration shall be promptly given by filing within thirty (30) days of termination;

(1) on behalf of an investment adviser by filing a Form ADV-W. The Form ADV-W shall be filed with the IARD; and

(2) on behalf of an investment adviser representative by filing a completed Form U5. The Form U5 for an investment adviser representative shall be filed with IARD or CRD.

(b) **Responsibility for filing on behalf of the investment adviser representative.** A completed Form U5 signed by the investment adviser will be accepted as fulfilling the statutory requirements of both the investment adviser and the investment adviser representative. Upon verification that the Form U5 has not been filed by the investment adviser, the investment adviser representative shall notify the Department in writing of the termination.

(c) **Amendments.** If the information contained in a Form ADV-W or Form U5 becomes inaccurate or incomplete, the investment adviser shall promptly file a correcting amendment after learning of the facts and circumstance giving rise to the amendment.

(d) **Effect of failure to file**. In the event of termination, the filing of a future application for registration shall not be considered complete until a termination notice is filed.

660:11-7-15. Piecemeal filings

An application for initial registration or renewal of registration as an investment adviser or investment adviser representative shall not be deemed to have been filed until all of the documentation required by 660:11-7-11 or 660:11-7-12 is submitted, or is otherwise made available, to the Department and payment of the proper fees is made. Such documentation shall be in completed form.

660:11-7-16. Solicitor exemption

By authority delegated to the Administrator in Section 1-404.B.2 of the Securities Act, an individual whose only activity on behalf of an investment adviser is to solicit clients for same is exempt from the requirement to register as an investment adviser representative of such investment adviser if the individual is separately registered as an investment adviser representative of another investment adviser or is individually registered as an investment adviser.

660:11-7-17. Registration exemption for investment advisers to qualifying private funds.

(a) **Definitions.** For purposes of this regulation, the following definitions shall apply:

(1) "**Private fund**" means an issuer that would be an investment company, as defined in section 3 of the 1940 Act, but for section 3(c)(1) or 3(c)(7) of the 1940 Act, as provided in Section 202(a)(29) of the Advisers Act.

(2) "**Private fund adviser**" means an investment adviser who provides advice solely to one or more qualifying private funds and has assets under management in the United States of less than $150,000,000.

(3) "**Qualifying private fund**" means a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1, 17 C.F.R. 275.203(m)-1. The term may include an issuer that may be treated as a private fund for purposes of the exemption provided by SEC Rule 203(m)-1, 17 C.F.R. 275.203(m)-1.

(b) **Exemption for private fund advisers**. A private fund adviser shall be exempt from the registration requirements of Section 1-403 if the private fund adviser satisfies each of the following conditions:

(1) neither the private fund adviser nor any of its advisory affiliates are subject to a disqualification as described in Rule 262 of SEC Regulation A, 17 C.F.R. Â§ 230.262;

(2) the private fund adviser files with the state as a notice each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 C.F.R. Â§ 275.204-4; and

(3) the private fund adviser pays the fees specified in Section 1-612.A.5.

(c) **Federal covered investment advisers**. If a private fund adviser is registered with the Securities and Exchange Commission, the adviser shall not be eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers in Section 1-405.

(d) **Investment adviser representatives**. A person is exempt from the registration requirements of Section 1-404 if he or she is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to this rule and does not otherwise act as an investment adviser representative.

(e) **Electronic filing**. The report filings described in paragraph (b)(2) above shall be made electronically through the IARD. A report shall be deemed filed when the report and the fee required by Section 1-612.A.5 are filed and accepted by the IARD on the state's behalf.

660:11-7-18. Oil and gas professional exclusion

By authority delegated to the Administrator in Section 1-102.17.f of the Securities Act, the following persons shall be excluded from the definition of "investment adviser" only when giving advice, analyses, interpretations or reports that relate to interests in oil, gas, or other mineral leases: a professional geologist, professional engineer or professional geophysicist and professional petroleum landman who is engaged in the business of exploring for and/or producing oil and gas or other valuable minerals as an ongoing business.

660:11-7-19. Registration relief for military service members and their spouses

(a) Definitions. For purposes of this Section:

(1) "Military Service Member" means any member of the Armed Forces or Reserves of the United States, National Guard of any state, the Military Reserves of any state, or the Naval Militias of any state.

(2) "Military Spouse" means an individual who is the current spouse of a Military Service Member who is on active duty in this state or claims residency in this state for the six months prior to assignment to active duty or during the period of active duty.

(b) Initial registration of a military service member.

(1) The Administrator shall consider the equivalent education, training, and experience completed by an applicant while the applicant was a member of the United States Armed Forces or Reserves, National Guard of any state, the Military Reserves of any state, or the Naval militias of any state, and apply it in the manner most favorable toward satisfying the qualification for registration.

(2) A Military Service Member, who meets the following requirements, may apply to the Administrator for expedited review for registration under the Securities Act. An applicant shall:

(A) Submit a complete application for registration on the forms prescribed by the Administrator;

(B) Notify the Administrator in writing that the Military Service Member is seeking expedited review of the application;

(C) Submit the filing fee specified in Section 1-612 of the Securities Act except as provided in (4) of this subsection;

(D) Submit evidence of passing scores on examinations equivalent to those required by 660:11-7-13; and

(E) Provide any other documentation as required by the Administrator.

(3) No applicant for registration under this Section shall be qualified for expedited review if the applicant is or has been the subject of disqualifying disciplinary action as set forth in Section 1-411.D of the Securities Act or has been discharged for cause from a broker-dealer or investment adviser.

(4) A Military Service Member who makes an initial application within one year of completion of military service may request a waiver of the initial filing fee specified in Section 1-612 of the Securities Act. An applicant shall, upon application, notify the Administrator in writing that the Military Service Member is seeking waiver of the initial filing fee.

(c) Status of a military service member.

(1) Inactive status of currently registered investment adviser representatives.

(A) If a registered investment adviser representative of an investment adviser volunteers for or is called into active duty as a Military Service Member, the investment adviser representative shall be deemed to be on inactive status upon prompt notification to the Administrator, in writing, of the individual's activation into active military duty. That individual will be deemed reactivated upon the investment adviser representative's return to active association with the investment adviser. The associated investment adviser also may allow such investment adviser representative to enter into an arrangement with another registered investment adviser representative of the investment adviser to take over and service the investment adviser representative's accounts and to share compensation based upon the business generated by such accounts. However, because such investment adviser representatives are deemed inactive, they may not perform any of the functions and responsibilities performed by a registered investment adviser representative.

(B) A registered investment adviser representative who is deemed to be on inactive status under this paragraph shall not be required to pay the fee specified in Section 1Â612 of the Securities Act during the time of that investment adviser representative's inactive status and for one year thereafter.

(C) The relief provided under this paragraph shall be available only to a registered investment adviser representative who is deemed to be on inactive status under (A) of this paragraph during the period that such investment adviser representative remains registered with the investment adviser with which the investment adviser representative was registered at the beginning of active duty, regardless of whether the investment adviser representative returns to active association with another investment adviser upon completion of the investment adviser representative's active duty.

(D) The relief provided under this paragraph shall be available only to an individual registered as an investment adviser representative under the Securities Act and only with respect to the period specified in connection with that investment adviser representative's service on active military duty. Further, the investment adviser with whom such investment adviser representative is registered shall promptly notify the Administrator, in writing, of such investment adviser representative's return to active association with the investment adviser.

(2) Inactive status of sole proprietorships.

(A) If an investment adviser that is a sole proprietor temporarily closes his or her business by reason of volunteering for or being called into active military duty, the investment adviser shall be deemed to be on inactive status upon prompt notification to the Administrator, in writing, of the individual's activation into active military duty.

(B) A sole proprietor Military Service Member deemed to be on inactive status as set forth in this paragraph shall be relieved of any other filing requirements under this subchapter during the pendency of the individual's inactive status.

(C) A sole proprietor Military Service Member deemed to be on inactive status as set forth in this paragraph shall not be required to pay the fee as specified in Section 1-612 of the Securities Act during the pendency of such inactive status and for one year thereafter.

(D) The relief described in this paragraph shall be provided only to a sole proprietor Military Service Member and only with respect to the period specified in connection with his or her service on active military duty. Further, the sole proprietor shall promptly notify the Administrator, in writing, of his or her return to active participation in the investment banking or securities business. The sole proprietor must promptly file an updated Form ADV and Form U-4.

(3) Status of formerly registered investment adviser representatives.

(A) If an individual who was formerly registered as an investment adviser representative volunteers for or is called into active military duty at any time within two years after the date the individual ceased to be registered with an investment adviser, but during the period of validity of the individual's prior examination scores as set forth in OAC 660:11-7-13 ("examination scores validity periods"), the Administrator shall extend the period of validity of the individual's scores by the individual's period of active military service; provided, the validity of the scores will continue for no less than one (1) year following the individual's completion of active military service.

(B) If an individual deemed to be on inactive status as an investment adviser representative while serving as a Military Service Member ceases to be registered with an investment adviser, the Administrator shall extend the individual's examination scores validity periods by the remaining period of the individual's active military service.

(C) An individual applying to become associated with an investment adviser within one (1) year following the completion of the individual's active military service shall not be required to pay the fee specified in Section 1-612 of the Securities Act; provided the fee relief in this subparagraph shall only apply to the individual's first application for registration during such period.

(d) Initial registration of a military spouse.

(1) A Military Spouse who meets the following requirements may apply to the Administrator for expedited review for registration under the Securities Act. An applicant shall:

(A) Submit a complete application for registration on the forms prescribed by the Administrator;

(B) Notify the Administrator in writing that the Military Spouse is seeking expedited review of the application;

(C) Submit evidence of passing scores on examinations equivalent to those required by 660:11-7-13;

(D) Submit the filing fee specified in Section 1-612 of the Securities Act; and

(E) Provide any other documentation as required by the Administrator.

(2) This subsection does not apply if the applicant is or has been the subject of disqualifying disciplinary action as set forth in Section 1-411.D of the Securities Act or has been discharged for cause from a broker-dealer or investment adviser.

(3) This subsection does not apply to a Military Spouse who does not claim residence in the state of Oklahoma.

660:11-7-20. Supplemental disclosures

Every investment adviser and investment adviser representative registered under the Securities Act must keep their application current at all times by promptly filing amendments supplementing their application after learning of the facts or circumstances giving rise to the amendment as required by Section 1-406.B of the Securities Act.

660:11-7-21. Errors and Omissions Coverage

(a) Every investment adviser who is required to maintain an errors and omissions insurance policy under 660:11-7-11 must submit proof of an errors and omissions insurance policy to the Department as a condition of registration.

(b) Every investment adviser registered under Section 1-406 of the Securities Act must submit proof of an errors and omissions insurance policy annually as set forth in 660:11-7-31.

(c) For purposes of compliance with 660:11-7-11 and 660:11-7-31, proof of insurance may be demonstrated by submitting to the Department an attestation of compliance on a form available on the Department's website and a policy declaration page or a certificate of liability coverage specifying errors and omissions coverage.

(1) For purposes of compliance with this Section, 660:11-7-11, and 660:11-7-31, a policy may not contain exclusions for investment management services performed in this state or for persons performing investment management services in this state on behalf of the investment adviser or for persons performing investment management and advisory services in this state on behalf of the investment adviser unless the investment adviser and its representatives refrain from performing the excluded investment management and advisory services and disclose the limitations in the investment adviser's Form ADV Part 2A.

(2) The requirements for this insurance may be fulfilled by a policy provided through membership in a professional association so long as the requirements are otherwise met, or at the discretion of the Administrator.

(3) The requirements for this insurance may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(d) For purposes of this rule, policies written by admitted or authorized insurers, registered surplus lines insurers, and registered risk retention and purchasing groups will satisfy the errors and omissions requirements of 660:11-7-11 and 660:11-7-31.

(e) Every investment adviser registered under Section 1-406 of the Securities Act shall immediately notify the Department in writing if its errors and omissions insurance policy is cancelled, terminated, or substantially modified.

660:11-7-22. Municipal advisor exemption

(a) Definitions. For purposes of this Section:

(1) **"MSRB"** means the Municipal Securities Rulemaking Board, a self-regulatory organization created by Section 15B of the 1934 Act to regulate municipal securities brokers, municipal securities dealers, municipal advisors, and persons associated with a municipal advisor and their activities subject to SEC oversight.

(2) **"Municipal advisor"**

(A) means a person (who is not a municipal entity or an employee of a municipal entity) that

(i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities as 16 defined in 660:11-5-2, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or

(ii) undertakes a solicitation of a municipal entity;

(B) includes financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors.

(3) **"Municipal advisor representative"** means any natural person associated with a municipal advisor who engages in municipal advisory activities on a municipal advisor's behalf.

(4) **"Municipal financial product"** means municipal derivatives, guaranteed investment contracts, and investment strategies.

(b) **Municipal advisor exemption.** By authority delegated to the Administrator in Section 1-403.B.4 of the Securities Act, a municipal advisor who meets the following requirements shall be exempt from the investment adviser registration requirement in Section 1-403.A of the Securities
Act:

(1) the municipal advisor is registered with the SEC as required in (a)(1)(B) of 15 U.S. Code §78o-4 by completing and filing Form MA (17 CFR 249.1300) with the SEC in accordance with the instruction in the Form, along with any and all amendments as required by 17 CFR 240.15Bal-5; and

(2) the municipal advisor is registered with the MSRB as required by MSRB Rule A-12.

(c) **Municipal advisor representative exemption.** By authority delegated to the Administrator in Section 1-404.B.2 of the Securities Act, a municipal advisor representative who meets the following requirements shall be exempt from the investment adviser registration requirement in Section 1-404.A of the Securities Act:

(1) the municipal advisor representative has qualified in accordance with the rules of the MSRB; and

(2) the municipal advisor has completed and filed a current Form MA-I (17 CFR 249.1310) with the SEC in accordance with the instructions in the Form, along with any and all amendments as required by 17 CFR 240.15Bal-5, for each individual representative employed or associated with the firm and engaged in municipal advisory activities on the firm's behalf.

PART 5. REPORTING REQUIREMENTS

660:11-7-31. Post-registration reporting requirements

(a) **Form ADV Amendments**. Every investment adviser registered under Section 1-406 of the Securities Act must amend its Form ADV each year by filing an annual updating amendment within 90 days of the end of its fiscal year. In addition, every investment adviser registered under Section 1-406 of the Securities Act must amend its Form ADV by promptly filing additional amendments (other-than-annual amendments) if required by the written instructions to Form ADV.

(b) **Proof of Errors and Omissions Coverage**. Every investment adviser registered under Section 1-406 of the Securities Act must submit proof of an errors and omissions insurance policy meeting the requirements of 660:11-7-11(a)(2)(D) to the Department each year within 90 days of the end of its fiscal year. The proof must be submitted in compliance with 660:11-7-21.

(c) **Financial Reports**.

(1) **Filing requirement.** Pursuant to Section 1-410.B of the Securities Act, every investment adviser registered under Section 1-406 of the Securities Act who has custody, as that term is defined in 660:11-7-48, of clients' funds or securities or requires prepayment of advisory fees six (6) months or more in advance and in excess of $1,200.00 per client shall file a post-registration financial report with the Department each fiscal year.

(2) **Report content.** Financial reports shall contain the financial or operating report filing fee specified in Section 1-612 of the Securities Act and an audited statement of financial condition as of the investment adviser's fiscal year end.

(3) **Report filing dates.** Financial reports become due on the last day of the fiscal year to which they apply; however a grace period is provided before a filing becomes delinquent. The filing must be made within 90 days of the end of the registrant's fiscal year.

(4) **Amendment**. If the information contained in a financial report is or becomes inaccurate or incomplete in a material respect, the investment adviser shall promptly file a correcting amendment.

(d) **Form BR amendments**. Every investment adviser registered under Section 1-406 of the Securities Act must file a Form BR prior to the use or operation of any office in this state. In addition, every investment adviser registered under Section 1-406 of the Securities Act must promptly amend its Form BRs as required by the written instructions to Form BR.

(e) **Incomplete or Delinquent Filings**. The Department will not accept incomplete or piecemeal filings. Failure to make a required filing before it becomes delinquent may result in the suspension or revocation of registration.

PART 7. RECORD KEEPING AND ETHICAL STANDARDS

660:11-7-41. Record keeping requirements

(a) **General requirements.** Every investment adviser registered or required to be registered under the Securities Act shall make and keep true, accurate and current the following books and records:

(1) A journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts. In no event shall the general ledger be posted less than once a month.

(3) A record of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The record shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.

(5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such.

(6) All trial balances, financial statements prepared in accordance with generally accepted accounting principles with documentation to support the ownership of assets, and internal audit working papers relating to the business of such investment adviser. The trial balance shall be prepared no later than fifteen (15) business days after the end of the accounting period. The financial statements shall include a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement, and a net worth computation.

(7) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to the business of the investment adviser, including, but not limited to:

(A) any recommendation made or proposed to be made and any advice given or proposed to be given,

(B) any receipt, disbursement or delivery of funds or securities, or

(C) the placing or execution of any order to purchase or sell any security; provided, however:

(i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and

(ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to 2 or more persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the

investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and the source thereof.

(8) A list or other record identifying all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

(9) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

(10) A copy of all agreements entered into by the investment adviser with any client and all other agreements relating to the business of the investment adviser as such, including agreements which set forth the fees to be charged, the manner of computation and method of payment.

(11) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including any communication by electronic media, that the investment adviser circulates or distributes, directly or indirectly, to 2 or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including any communication by electronic media, recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

(12) When providing investment advice is the primary business of the investment adviser.

(A) A record of every transaction in a security in which the investment adviser or any advisory representative (as defined in (B) of this paragraph) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment adviser nor the advisory representative of the investment adviser has any direct or indirect influence or control, and (ii) transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded no later than ten (10) days after the end of the calendar quarter in which the transaction was effected.

(B) For purposes of this paragraph, the following definitions will apply:

(i) The term "advisory representative", shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

(I) any person in a control relationship to the investment adviser,

(II) any affiliated person of a controlling person, and

(III) any affiliated person of an affiliated person.

(ii) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company.

(13) When providing investment advice is not the primary business of the investment adviser:

(A) Notwithstanding the provisions of paragraph (12) of this subsection, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as defined in (C) of this paragraph) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(i) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(ii) transactions in securities which are direct obligations of the United States.

(B) Each record required by (A) of this paragraph shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(C) For purposes of this paragraph, the following definitions will apply:

(i) The term "advisory representative", when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendations shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of such recommendations or of the information concerning the recommendations:

(I) any person in a control relationship to the investment adviser,

(II) any affiliated person of a controlling person, and

(III) any affiliated person of an affiliated person.

(ii) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company.

(iii) An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived from such other business or businesses, on an unconsolidated basis, more than 50% of:

(I) its total sales and revenues, and

(II) its income (or loss) before income taxes and extraordinary items.

(14) A copy of each brochure and brochure supplement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Section 1-410.F of the Securities Act, and a record of the dates that each brochure and brochure supplement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(15) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:

(A) evidence of a written agreement to which the adviser is a party related to the payment of such fee;

(B) a signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and

(C) a copy of the solicitor's written disclosure statement. The written agreement, acknowledgment, and solicitor disclosure statement will be considered to be in compliance with this paragraph if such documents are in compliance with Rule 275.206(4)-3 of the Advisers Act of 1940.

(16) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to, electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

(17) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

(18) Recommendations.

(A) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(B) A record evidencing that the account record of each client consisting of the information described in (A) of this paragraph has been furnished by the investment adviser to the client within thirty days of the signing of an investment advisory contract, and thereafter at intervals no greater than thirty-six months. The account record shall include or be accompanied by prominent statements that the client should mark any corrections and return the account record to the adviser and that the client should notify the advisor of any changes to information contained in the account record as they occur in the future.

(19) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(20) Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(21) Where the adviser inadvertently held or obtained a client’s securities or funds and returned them to the client within three business days or has forwarded third party checks drawn by clients and made payable to third parties within three business days of receipt, the adviser shall keep a ledger or other listing of all securities or funds held or obtained including the following information:

(A) issuer;

(B) type of security and series;

(C) date of issue;

(D) for debt instruments, the denomination, interest rate and maturity date;

(E) certificate number, including alphabetical prefix or suffix;

(F) name in which registered;

(G) date received by the adviser;

(H) date sent to client or sender;

(I) form of delivery to client or sender, or copy of the form of delivery to client or sender; and

(J) mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(22) If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody in (c)(2) of 660:11-7-48, the adviser shall keep the following records:

(A) a record showing the issuer or current transfer agent's name, address, phone number and other applicable contact information pertaining to the party responsible for recording client interests in the securities; and

(B) a copy of any legend, shareholder agreement or other agreement showing that those securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(23) A copy of the investment adviser's written policies and procedures required by 660:11-7-46. In addition to the investment adviser's recordkeeping requirements under subsections (e) and (g) of this Section, the investment adviser shall maintain:

(A) A current copy of these policies and procedures either in hard copy in a separate location or stored on electronic storage media that is separate from and not dependent on access to the investment adviser's computers or a network;

(B) All records documenting the investment adviser's compliance with 660:11-7-46, including, but not limited to, evidence of the annual review of the policies and procedures; and

(C) A record of any violation of 660:11-7-46 and of any action taken as a result of the violation.

(24) Copies of the brochures required by 660:11-7-43 including a list of all clients or prospective clients to whom the brochures were provided and the date the brochures were provided.

(b) **Special requirements due to type of custody.**

(1) **Custody as defined in 660:11-7-48.** If an investment adviser has custody, as that term is defined in 660:11-7-48, the records required to be made and kept under (a) of this Section shall include:

(A) a copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.

(B) a journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

(C) a separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

(D) copies of confirmations of all transactions effected by or for the account of any client.

(E) a record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

(F) a copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of such statements along with the date such statements were sent to the clients.

(G) if applicable to the adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

(H) a record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

(I) if applicable, evidence of the client's designation of an independent representative.

(2) **Adviser to pooled investment vehicle.** If an investment adviser has custody because it advises a pooled investment vehicle, the adviser shall also keep the following records:

(A) true, accurate and current account statements;

(B) When the exception set forth in (c)(4) of 660:11-7-48 applies, the records required to be made and kept shall include:

(i) the date(s) of the audit;

(ii) a copy of the audited financial statements; and

(iii) evidence of the mailing of the audited financial to all limited partners, members or other beneficial owners within 120 days of the end of its fiscal year.

(C) When the description set forth in (b)(5) of 660:11-7-48 applies to an investment adviser, the investment adviser is required to make and keep records to include:

(i) a copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.

(ii) copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

(c) **Managed accounts.** Every investment adviser subject to (b) of this Section who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(1) Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.

(2) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each security held by the client, and the current amount or interest of the client.

(d) **Client identity.** Any books or records required by this Section may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(e) **Records retention.** Every investment adviser subject to (a) of this Section shall preserve the following records in the manner prescribed:

(1) All books and records required to be made under the provisions of (a) to (c)(1), inclusive, of this Section (except for books and records required to be made under the provisions of (a)(11) and (a)(16) of this Section), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser.

(2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

(3) Books and records required to be made under the provisions of (a)(11) and (a)(16) of this Section shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.

(4) Notwithstanding other record preservation requirements of this Section, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services: (A) records required to be preserved under (a)(3),(a)(7)-(10), (a)(14)-(15), (a)(17)-(19), (a)(23)-(24), (b) and (c) inclusive, of this Section, and (B) the records or copies required under the provision of (a)(11) and (a)(16) of this Section which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the applicable period described in this Subsection.

(f) **Ceasing business.** An investment adviser subject to (a) of this Section, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be

responsible for the preservation of the books and records required to be maintained and preserved under this Section for the remainder of the period specified in this Section, and shall notify the Administrator in writing of the exact address where the books and records will be maintained during the period.

(g) **Format and storage of records.**

(1) The records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved as the records are kept in their regular form for the required time, by an investment adviser on:

(A) paper or hard copy form; or

(B) micrographic media, including microfilm, microfiche, or any similar medium; or

(C) electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) The investment adviser must:

(A) arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(B) provide promptly any of the following that the Administrator or his representatives may request:

(i) a legible, true, and complete copy of the record in the medium and format in which it is stored;

(ii) a legible, true, and complete printout of the record; and

(iii) means to access, view, and print the records; and

(C) separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(3) In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

(A) to maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(B) to limit access to the records to properly authorized personnel and the Administrator and his representatives; and

(C) to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(h) **Investment supervisory services.** For purposes of this Section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(i) **Compliance with federal law.** Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 [17 C.F.R. 240.17a-3] and l7a-4 [17 C.F.R. 240.l7a-4] under the 1934 Act, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this Section, shall be deemed to be made, kept, maintained and preserved in compliance with this Section.

(j) **Compliance with other state requirements.** Every investment adviser registered or required to be registered under the Securities Act that has its principal place of business in a state other than Oklahoma shall be exempt from the requirements of this section, provided the investment adviser is licensed in the state in which it maintains its principal place of business and is in compliance with that state's books and records requirements.

660:11-7-42. Dishonest and unethical practices of investment advisers and investment adviser representatives

(a) **Purpose.** This Section is intended to set forth the standards of ethical practices for investment advisers and investment adviser representatives. The standards set forth in this Section apply to federal covered investment advisers and investment adviser representatives only to the extent that application is permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). Any noncompliance with the standards set forth in this Section will constitute unethical practices in the securities business as the same is set forth in Section 1-411.D.13 of the Securities Act; however, the following is not intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of investment advisers and investment adviser representatives in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory.

(b) **Standards.** Investment advisers and investment adviser representatives shall act in accordance with their fiduciary duty to their clients and shall not engage in dishonest or unethical practices including, although not limited to, the following:

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of

information furnished by the client after reasonable inquiry concerning the client's investment profile.

(A) A client's investment profile includes, but is not limited to, the client's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information disclosed by the client or known to the investment adviser or investment adviser representative.

(B) Institutional clients.

(i) An investment adviser or an investment adviser representative fulfills the customer-specific suitability obligation for an institutional account, as defined in 660:11-1-3, if

(I) the investment adviser or investment adviser representative has a reasonable basis to believe that the institutional client is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities and

(II) the institutional client affirmatively indicates that it is exercising independent judgment in evaluating the investment adviser or investment adviser representative's recommendations.

(ii) Where an institutional client has delegated decision-making authority to an agent, such as an investment adviser or a bank trust department, these factors shall be applied to the agent.

(2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser or investment adviser representative, or a financial institution engaged in the business of loaning funds.

(7) Loaning money or securities to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser or investment adviser representative.

(8) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative, federal covered investment adviser, or any employee, or person affiliated with the investment adviser, investment adviser representative, or federal covered investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(9) Providing a report or recommendation to any advisory client prepared by someone other than the investment adviser, investment adviser representative, federal covered investment adviser, or any employee, or person affiliated with the investment adviser, investment adviser representative, or federal covered investment adviser, without disclosing the source. This prohibition does not apply to a situation where the investment adviser, investment adviser representative or federal covered investment adviser uses published research reports or statistical analyses to render advice or where an investment adviser, investment adviser representative or federal covered investment adviser orders such a report in the normal course of providing service.

(10) Charging a client an unreasonable advisory fee.

(11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(A) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(B) Charging a client an advisory fee for rendering advice when compensation for effecting securities transactions pursuant to such advice will be received by the investment adviser, investment adviser representative, or federal covered investment adviser, or their employees or affiliated persons.

(12) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

(13) Publishing, circulating, or distributing any advertisement which directly or indirectly does any one of the following:

(A) Refers to any testimonial of any kind concerning the investment adviser, investment adviser representative or federal covered investment adviser, or concerning any advice, analysis, report, or other service rendered by such investment adviser or investment adviser representative.

(B) Refers to past specific recommendations of the investment adviser, investment adviser representative or federal covered investment adviser that were or would have been profitable to any person; except that an investment adviser or investment adviser representative may furnish or offer to furnish a list of all recommendations made by the investment adviser, investment adviser representative or federal covered investment adviser within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(i) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each such security.

(ii) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list.

(C) Represents that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use.

(D) Represents that any report, analysis, or other service will be furnished for free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation.

(E) Represents that the [Administrator] has approved any advertisement.

(F) Contains any untrue statement of a material fact, or that is otherwise false or misleading.

(G) For the purposes of this section, the term "advertisement" shall include any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

(i) Any analysis, report, or publication concerning securities.

(ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell.

(iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

(iv) Any other investment advisory service with regard to securities.

(14) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

(15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the investment adviser's action does not comply with the requirements of 660:11-7-48.

(16) Entering into, extending, or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment adviser or investment adviser representative and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

(17) Entering into, extending, or renewing any investment advisory contract, if such contract contains any provision that limits or purports to limit any of the following:

(A) the liability of the investment adviser for conduct or omission arising from the advisory relationship that does not conform to the Securities Act, applicable federal statutes, or common law fiduciary standard of care;

(B) remedies available to the client at law or equity or the jurisdiction or venue where any action shall be filed or heard; or

(C) applicability of the laws of Oklahoma with respect to the construction or interpretation of the provisions of the investment advisory contract.

(18) Failing to adopt, implement, and follow written supervisory procedures that are tailored specifically to their business and that:

(A) address the activities of all its investment adviser representatives and associated persons;

(B) identify who has supervisory responsibilities, including a record of each associated person who has supervisory responsibilities and the date assigned, and procedures for

each business line and applicable securities laws for which each supervisor is responsible; and

(C) specifically identify the individual to perform a supervisory function; what specifically the supervisor will review; when or how often the review will take place and how the supervisor's review will be documented.

(19) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Securities Act or any section thereunder.

(20) Accessing a client's account by using the client's own unique identifying information such as username and password.

(21) Failing to establish, maintain, and enforce required policies and procedures.

(22) Knowingly selling any security to or purchasing any security from a client while acting as principal for its own advisory account, or knowingly effecting any sale or purchase of any security for the account of the client while acting as broker-dealer for a person other than the client, without disclosing to the client in writing before the completion of the transaction the capacity in which it is acting and obtaining the consent of the client to the transaction.

(A) The prohibitions of this paragraph (22) shall not apply to any transactions with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction.

(B) The prohibition of this paragraph (22) shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer acts as an investment adviser solely:

(i) by means of publicly distributed written materials or publicly made oral statements;

(ii) by means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts;

(iii) through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or

(iv) any combination of the foregoing services.

(C) Publicly distributed written materials or publicly made oral statements shall disclose that, if the purchaser of the advisory communication uses the investment adviser's services in connection with the sale or purchase of a security which is a subject of the communication, the investment adviser may act as principal for its own account or as agent for another person. Compliance by the investment adviser with the

foregoing disclosure requirement shall not relieve it of any other disclosure obligations under the Securities Act.

(D) The prohibition of this paragraph (22) shall not apply to an investment adviser effecting an agency cross transaction for an advisory client provided the following conditions are met:

(i) The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;

(ii) Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

(iii) At or before the completion of each agency cross transaction, the investment adviser or any other person relying on this subparagraph sends the client a written confirmation. The written confirmation shall include:

(I) A statement of the nature of the transaction;

(II) The date the transaction took place;

(III) An offer to furnish, upon request, the time when the transaction took place; and

(IV) the source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a tender offer, the written confirmation shall state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written consent.

(iv) At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this subparagraph (D) send each client a written disclosure statement identifying:

(I) The total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and

(II) The total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during such period.

(v) Each written disclosure and confirmation required by this subparagraph (D) must include a conspicuous statement that the client may revoke the written consent required under (i) of this subparagraph (D) at any time by providing written notice to the investment adviser.

(vi) No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(vii) Nothing in the subparagraph (D) shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling his duty with respect to the best price and execution for the particular transaction for the client nor shall it relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the Securities Act.

(E) Definitions for purposes of this paragraph (22).

(i) "Agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. When acting in such capacity such person is required to be registered as a broker-dealer in this state unless excluded from the definition.

(ii) "Publicly distributed written materials" means written materials which are distributed to 35 or more persons who pay for those materials.

(iii) "Publicly made oral statements" means oral statements made simultaneously to 35 or more persons who pay for access to those statements.

(23) Sharing an office with a person who is not an advisory affiliate without:

(A) reducing any agreement with the unaffiliated person to writing;

(B) taking appropriate measures, including, but not limited to, adequate disclosures to eliminate the appearance of an agency relationship with the unaffiliated person when one does not otherwise exist; and

(C) complying with all applicable Oklahoma and federal laws requiring the safeguarding of customer data from the unaffiliated person.

(24) Failing to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, client or customer-initiated arbitration or court proceeding, unless

alternative payment arrangements are agreed to between the client and the investment adviser or investment adviser representative or between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangement.

(25) Attempting to avoid payment of any final judgment or arbitration award resulting from an investment-related, client or customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the client and the investment adviser or investment adviser representative or between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangements.

(26) Failing to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the investment adviser or investment adviser representative by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self-regulatory organization.

660:11-7-43. Disclosure requirements

(a) **Disclosure delivery requirement.** In furtherance of compliance with the standards of ethical practices specified in 660:11-7-42, every investment adviser, registered or required to be registered under the Securities Act shall, in accordance with the provisions of this Section, furnish each advisory client and prospective advisory client with:

(1) a brochure that contains all information required by Part 2A of Form ADV;

(2) a Part 2B brochure supplement for each individual

(A) providing investment advice and having direct contact with clients in this state; or

(B) exercising discretion over assets of clients in this state, even if no direct contact is involved;

(3) a Part 2A Appendix 1 wrap fee brochure if the investment adviser sponsors or participates in wrap fee accounts;

(4) a summary of material changes, if any, which may be included in Form ADV Part 2 or given as a separate document; and

(5) such other information as the Administrator may require.

(b) **Brochure compliance with Form ADV**. Any brochure or brochure supplement required by (a) of this Section must comply with the language, organizational format, and filing requirements specified in the Instructions to Form ADV, Part 2, except that a change in an

advisory fee constitutes a material change that triggers the need to file an amendment to the Form ADV Part 2A.

(c) **Delivery.**

(1) **Initial delivery.** An investment adviser shall deliver the documents required by (a) of this Section to an advisory client or prospective advisory client:

(A) not less than 48 hours prior to entering into any written investment advisory contract with such client or prospective client, or

(B) at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(2) **Annual delivery.** An investment adviser, except as provided in (3) of this subsection, must:

(A) Deliver within 120 days of the end of its fiscal year free copies of any updated brochure and brochure supplement that include or are accompanied by a summary of material changes; or

(B) Deliver a summary of material changes that includes an offer to provide a copy of any updated brochure and brochure supplement and information on how the client may obtain a copy of such documents. Should a client request a copy of any updated brochures or brochure supplements under this subsection, the requested documents must be mailed or delivered within seven (7) days of the receipt of the request.

(3) **Exceptions**. Delivery of any documents required by (1) and (2) of this subsection need not be made to:

(A) a client who is an officer, employee or other person related to the adviser that would be a qualified client of the adviser under 17 CFR Â§ 275.205-3(d)(1)(iii);

(B) clients who receive only impersonal advice and who pay less than $500 in fees per year;

(C) an investment company registered under the 1940 Act; or

(D) a business development company as defined in the 1940 Act and whose advisory contract meets the requirements of section 15(c) of that Act.

(4) **Electronic delivery.** Delivery of any brochure and brochure supplement may be made electronically if the investment adviser:

(A) in the case of an initial delivery to a potential client, obtains a verification that readable copies of the documents were received by the client;

(B) in the case of other than initial deliveries, obtains each client's prior consent to provide the documents electronically;

(C) prepares the electronically delivered documents in the format prescribed in (a) of this Section and instructions to Form ADV Part 2;

(D) delivers the documents in a format that can be retained by the client in either electronic or paper form; and

(E) establishes procedures to supervise personnel transmitting the brochure and any supplements and prevents violations of this Section.

(d) **Other disclosures.** Nothing in this Section shall relieve any investment adviser from any obligation pursuant to any provision of the Securities Act or the rules thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this Section.

(e) **"Entering into" exclusion.** For purposes of this Section, "entering into" does not include an extension or renewal without material change of any investment advisory contract which is in effect immediately prior to such extension or renewal.

660:11-7-44. Financial statements for investment advisers

(a) **Audited statements.** Applications for registration as investment advisers shall contain audited financial statements for the applicant as of the end of its last fiscal year. Applicants that have been in operation for less than twelve (12) months shall submit an unaudited statement of financial condition as of a date within ninety (90) days of the date of the filing of the application and an unaudited statement of income for the period beginning from the date of inception through the date as of which the statement of financial condition is prepared.

(b) **Unaudited interim financial statements.** If the audited financial statements required in the preceding (a) are not current to within ninety (90) days of the date of filing, additional unaudited financial statements shall be submitted covering the period from the beginning of the current fiscal year through a month ending within the 90-day time frame.

(c) **Sole proprietors.** Investment advisers who are individuals or sole proprietorships, in lieu of audited financial statements, may provide financial statements that have been prepared in accordance with generally accepted accounting principles and which have been reviewed and reported upon by independent accountants in accordance with the standards for the review of financial statements promulgated by the American Institute of Certified Public Accountants.

(d) **Exemption.** The financial statement requirements specified in this section shall not apply to an investment adviser unless the investment adviser has custody or possession of clients'

funds or securities or requires prepayment of advisory fees six (6) months or more in advance and in excess of $1,200.00 per client.

(e) **Waiver.** The Administrator in his discretion may waive any of the requirements of this section on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the reasons therefor.

660:11-7-45. Examination of investment advisers

(a) **Periodic examinations.** The business and records of each investment adviser registered under the Securities Act may be periodically examined by the Administrator and/or person(s) designated by him at such times and in such scope as the Administrator determines prudent and necessary for the protection of the public. A report of each such examination shall be prepared.

(b) **Department access.** Each investment adviser scheduled for examination shall provide the personnel of the Department access to business books, documents, and other records. Each investment adviser shall provide personnel with office space and facilities to conduct on-site examinations, and assistance in the physical inspection of assets and confirmation of liabilities. Failure of any applicant or registrant to provide such access shall constitute a violation of this section and shall be a basis for denial, suspension or revocation of the registration or application for registration.

11-7-46. Written policies and procedures

(a) **Required written policies and procedures.** It is unlawful for an investment adviser registered or required to be registered under section 1-403 of the Securities Act to provide investment advice to clients unless the investment adviser establishes, maintains, and enforces written policies and procedures tailored to the investment adviser's business model, taking into account the size of the firm, type(s) of services provided, and the number of locations of the investment adviser. The written policies and procedures must provide for at least the following:

(1) **Compliance Policies and Procedures.** The investment adviser must establish, maintain, and enforce written compliance policies and procedures reasonably designed to prevent violations by the investment adviser of the Act and the rules that the Administrator has adopted under the Act;

(2) **Supervisory Policies and Procedures.** The investment adviser must establish, maintain, and enforce written supervisory policies and procedures reasonably designed to prevent violations by the investment adviser's supervised persons of the Act and the rules that the Administrator has adopted under the Act. The following standards shall apply to supervisory procedures.

(A) Regardless of its size or complexity, every investment adviser registered or required to be registered under the Securities Act must adopt and implement supervisory procedures that are tailored specifically to their business and must address the activities of all its investment adviser representatives and associated persons. Supervisory procedures must be in writing and must be reasonably designed to achieve compliance with applicable securities laws and the rules adopted under the Securities Act. Ultimate responsibility for supervision rests with the investment adviser.

(B) Written supervisory procedures must identify who has supervisory responsibilities, a record of each associated person who has supervisory responsibilities and the date assigned, and procedures for each business line and applicable securities laws for which each supervisor is responsible.

(C) All written supervisory procedures should specifically identify the individual to perform a supervisory function; what specifically the supervisor will review; when or how often the review will take place and how the supervisor's review will be documented.

(3) **Proxy Voting**.

(A)If the investment adviser has the authority to vote client securities, the investment adviser must:

(i) Establish, maintain, and enforce written proxy voting policies and procedures that are reasonably designed to ensure that the investment adviser votes client securities in the best interest of clients, to include how the investment adviser addresses material conflicts that may arise between its interests and those of the investment adviser's clients;

(ii) Disclose to clients how they may obtain information from the investment adviser about how it voted with respect to their securities; and

(iii) Describe to clients the investment adviser's proxy voting policies and procedures to the requesting client.

(B) If the investment adviser does not have the authority to vote client securities, then disclose to clients that it does not have such authority.

(4) **Physical security and cybersecurity policies and procedures.** Every investment adviser registered or required to be registered shall establish, implement, update, and enforce written physical security and cybersecurity policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information. The policies and procedures must be tailored to the investment adviser’s business model, taking into account the size of the firm, type(s) of services provided, and the number of locations of the investment adviser.

(A) The physical security and cybersecurity policies and procedures must:

(i) Protect against reasonably anticipated threats or hazards to the security or integrity of client records and information;

(ii) Ensure that the investment adviser safeguards confidential client records and information; and

(iii) Protect any records and information the release of which could result in harm or inconvenience to any client.

(B) The physical security and cybersecurity policies and procedures must cover at least five functions:

(i) **Identify**. Develop the organizational understanding to manage information security risk to systems, assets, data, and capabilities;

(ii) **Protect**. Develop and implement the appropriate safeguards to ensure delivery of critical infrastructure services;

(iii) **Detect**. Develop and implement the appropriate activities to identify the occurrence of an information security event;

(iv) **Respond**. Develop and implement the appropriate activities to take action regarding a detected information security event; and

(v) **Recover**. Develop and implement the appropriate activities to maintain plans for resilience and to restore any capabilities or services that are impaired due to an information security event.

(C) The investment adviser must review, no less frequently than annually, and modify, as needed, these policies and procedures to ensure the adequacy of the security measures and the effectiveness of their implementation.

(5) **Privacy policy**. The investment adviser must deliver upon the investment adviser's engagement by a client, and on an annual basis thereafter, a privacy policy to each client that is reasonably designed to prevent the misuse of material, non-public information by the investment adviser or any person associated with the investment adviser, and to aid in the client's understanding of how the investment adviser collects and shares, to the extent permitted by state and federal law, non-public personal information. The investment adviser must promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.

(6) **Code of Ethics**.

(A) The investment adviser must establish, maintain, and enforce a written code of ethics that, at a minimum, includes:

(i) A standard (or standards) of business conduct that the investment adviser requires of its supervised persons, which must reflect the investment adviser's fiduciary obligations and those of its supervised persons;

(ii) Provisions requiring the investment adviser's supervised persons to comply with applicable State and Federal securities laws;

(iii) Provisions requiring all of the investment adviser's access persons to report, and the investment adviser to review, their personal securities transactions and holdings periodically as provided below;

(iv) Provisions requiring supervised persons to report any violations of the investment adviser's code of ethics promptly to its chief compliance officer or, provided the investment adviser's chief compliance officer also receives reports of all violations, to other persons designated in the investment adviser's code of ethics; and

(v) Provisions requiring the investment adviser to provide each of its supervised persons with a copy of the investment adviser's code of ethics and any amendments, and requiring the investment adviser's supervised persons to provide it with a written acknowledgment of their receipt of the code and any amendments.

(B) **Reporting Requirements.**

(i) **Holdings reports.** The code of ethics must require the investment adviser's access persons to submit to its chief compliance officer or other persons designated in the investment adviser's code of ethics a report of the access person's current securities holdings that meets the following requirements:

(I) Content of holdings reports. Each holdings report must contain, at a minimum, the title and type of security, and as applicable the exchange ticker symbol or CUSIP number, number of shares, and principal amount of each reportable security in which the access person has any direct or indirect beneficial ownership; the name of any broker, dealer, or bank with which the access person maintains an account in which any securities are held for the access person's direct or indirect benefit; and the date the access person submits the report.

(II) Timing of holdings reports. The investment adviser's access persons must each submit a holdings report no later than 10 days after the person becomes an access person, and the information must be current as of a date no more than 45

days prior to the date the person becomes an access person and at least once each 12-month period thereafter on a date selected by the investment adviser, and the information must be current as of a date no more than 45 days prior to the date the report was submitted.

(ii) **Transaction reports.** The code of ethics must require access persons to submit to the investment adviser's chief compliance officer or other persons designated in the investment adviser's code of ethics quarterly securities transactions reports that meet the following requirements:

(I) **Content of transaction reports.** Each transaction report must contain, at a minimum, the following information about each transaction involving a reportable security in which the access person had, or as a result of the transaction acquired, any direct or indirect beneficial ownership: the date of the transaction, the title, and as applicable the exchange ticker symbol or CUSIP number, interest rate and maturity date, number of shares, and principal amount of each reportable security involved; the nature of the transaction (i.e., purchase, sale or any other type of acquisition or disposition); the price of the security at which the transaction was effected; the name of the broker, dealer, or bank with or through which the transaction was effected; and the date the access person submits the report.

(II) **Timing of transaction reports.** Each access person must submit a transaction report no later than 30 days after the end of each calendar quarter, which report must cover, at a minimum, all transactions during the quarter.

(iii) **Exceptions from reporting requirements.** The investment adviser's code of ethics need not require an access person to submit:

(I) any report with respect to securities held in accounts over which the access person had no direct or indirect influence or control;

(II) a transaction report with respect to transactions effected pursuant to an automatic investment plan in which regular periodic purchases or withdrawals are made automatically in or from investment accounts in accordance with a predetermined schedule and allocation, including a dividend reinvestment plan;

(III) a transaction report if the report would duplicate information contained in broker trade confirmations or account statements that the investment adviser holds in its records so long as the investment adviser receives the confirmations or statements no later than 30 days after the end of the applicable calendar quarter.

(iv) **Pre-approval of certain investments**. The investment adviser's code of ethics must require its access persons to obtain the investment adviser's approval before

they directly or indirectly acquire beneficial ownership in any security in an initial public offering or in a limited offering.

(v) **Small advisers.** If the investment adviser has only one access person, it is not required to submit reports to itself or to obtain its own approval for investments in any security in an initial public offering or in a limited offering, if the investment adviser maintains records of all of its holdings and transactions that this section would otherwise require the investment adviser to report.

(7) **Material Non-Public Information Policy and Procedures.** The investment adviser must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the investment adviser or any person associated with the investment adviser.

(8) **Business continuity and succession plan.** The investment adviser shall establish, maintain, and enforce written policies and procedures relating to a business continuity and succession plan that includes at least the following:

(A) the protection, backup, and recovery of books and records.

(B) alternate means of communications with clients; key personnel; employees; vendors; service providers, including third-party custodians; and regulators, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities.

(C) office relocation in the event of temporary or permanent loss of a principal place of business.

(D) assignment of duties of qualified responsible persons in the event of the death or unavailability of key personnel.

(E) otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

(b) **Annual review.** The investment adviser must review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this Section and the effectiveness of their implementation.

(c) **Chief Compliance Officer.** The investment adviser must designate a supervised person as the chief compliance officer responsible for administering the investment adviser's policies and procedures.

660:11-7-47. Payments for client solicitations

(a) **Prohibition.** An investment adviser required to be registered pursuant to Section 1-403 of the Securities Act shall not compensate, directly or indirectly, to a solicitor with respect to solicitation activities unless:

(1) the investment adviser is registered under the Securities Act;

(2) the solicitor is registered as an investment adviser representative of this or another investment adviser registered under the Securities Act or separately registered as an investment adviser under the Securities Act;

(3) such compensation is paid pursuant to a written agreement to which the investment adviser is a party; and

(4) the only compensation paid for a referral of investment advisory clients to a solicitor other than one registered as an investment adviser representative of this investment adviser is paid to an investment adviser registered under the Securities Act or a federal covered investment adviser who has filed a notice under Section 1-405 of the Securities Act.

(b) **Written agreement.** If soliciting clients is the only service rendered on behalf of an investment adviser, the written agreement required by (a)(3) of this section shall:

(1) describe the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefor;

(2) contain an undertaking by the solicitor to perform his duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Securities Act and the rules thereunder; and

(3) require that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the customer with a current copy of the investment adviser's written disclosure statement required by 660:11-7-43 and a separate written disclosure document described in (d) of this section.

(c) **Investment adviser responsibilities.** The investment adviser shall receive from the client, prior to, or at the time of, entering into any written investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document. In addition, the investment adviser shall ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.

(d) **Disclosure by solicitor.** The separate written disclosure document required to be furnished by the solicitor to the customer pursuant to (b) of this section shall contain the following information:

(1) the name of the solicitor;

(2) the name of the investment adviser;

(3) the nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

(4) a statement that the solicitor will be compensated for his solicitation services by the investment adviser;

(5) the terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

(6) the amount, if any, for the cost of obtaining his account the customer will be charged in addition to the advisory fee, and the differential, if any, among customers with respect to the amount or level of advisory fees charged by the investment adviser if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting customers for, or referring customers to, the investment adviser.

660:11-7-48. Custody requirements for investment advisers

(a) **Definitions.** For purposes of this Subchapter:

(1) **"Control"** means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. Control includes:

(A) Each of the investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the investment adviser;

(B) A person is presumed to control a corporation if the person:

(i) directly or indirectly has the right to vote twenty-five (25) percent or more of a class of the corporation's voting securities; or

(ii) has the power to sell or direct the sale of twenty-five (25) percent or more of a class of the corporation's voting securities;

(C) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, twenty-five (25) percent or more of the capital of the partnership;

(D) A person is presumed to control a limited liability company if the person:

(i) directly or indirectly has the right to vote twenty-five (25) percent or more of a class of the interests of the limited liability company;

(ii) has the right to receive upon dissolution, or has contributed, twenty-five (25) percent or more of the capital of the limited liability company;

(iii) is an elected manager of the limited liability company; or

(E) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

(2) **"Custody"** means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them. The investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.

(A) Custody includes:

(i) possession of client funds or securities unless the investment adviser receives them inadvertently and returns them to the sender within three (3) business days of receiving them and the investment adviser maintains the records required under 660:11-7-41(a)(24);

(ii) any arrangement (including a general power of attorney) under which an investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and

(iii) any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another for another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser or its supervised person legal ownership of or access to client funds or securities.

(B) Receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within three (3) business days of receipt and the investment adviser maintains the records required under 660:11-7-41(a)(24).

(3) **"Independent certified public accountant"** means a certified public accountant that meets the standards of independence described in rule 2-01(b) and (c) of Regulation S-X [17 CFR 210.2-01(b) and (c)].

(4) **"Independent party"** means a person that:

(A) is engaged by the investment adviser to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;

(B) does not control and is not controlled by and is not under common control with the investment adviser;

(C) does not have, and has not had within the past two years, a material business relationship with the investment adviser; and

(D) shall not negotiate or agree to have material business relations or commonly controlled relations with an investment adviser for a period of two years after serving as the person engaged in an independent party agreement.

(5) **"Independent representative"** means a person who:

(A) acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

(B) does not control, is not controlled by, and is not under common control with the investment adviser; and

(C) does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(6) **"Qualified custodian"** means the following:

(A) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;

(B) A broker-dealer registered in this jurisdiction and with the SEC holding the client assets in customer accounts;

(C) A registered futures commission merchant registered under Section 6f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

(D) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

(7) **"Related person"** means any person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser.

(b) **Safekeeping required.** It is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment adviser, registered or required to be registered, to have custody of client funds or securities unless:

(1) **Notice to Administrator.** The investment adviser notifies the Administrator promptly in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV.

(2) **Qualified custodian.** A qualified custodian maintains those funds and securities:

(A) in a separate account for each client under that client's name; or

(B) in accounts that contain only the investment adviser's clients' funds and securities, under the investment adviser's name as agent or trustee for the clients, or, in the case of a pooled investment vehicle that the investment adviser manages, in the name of the pooled investment vehicle.

(3) **Notice to clients.** If an investment adviser opens an account with a qualified custodian on its client's behalf, under the client's name, under the name of the investment adviser as agent, or under the name of a pooled investment vehicle, the investment adviser must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. If the investment adviser sends account statements to a client to which the investment adviser is required to provide this notice, the investment adviser must include in the notification provided to that client and in any subsequent account statement the investment adviser sends that client a statement urging the client to compare the account statements from the custodian with those from the investment adviser.

(4) **Account statements.** The investment adviser has a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period.

(5) **Special rule for limited partnerships and limited liability companies.** If the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle),

(A) the account statements required under (4) of this subsection must be sent to each limited partner (or member or other beneficial owner), and

(B) the investment adviser must:

(i) enter into a written agreement with an independent party who is obliged to act in the best interest of the limited partners, members, or other beneficial owners to review all fees, expenses, and capital withdrawals from the pooled accounts;

(ii) send all invoices or receipts to the independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation such that the independent party can:

(I) determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement) and

(II) forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.

(6) **Independent verification.** The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year, by an independent certified public accountant, pursuant to a written agreement between the investment adviser and the independent certified public accountant, at a time that is chosen by the independent certified public accountant without prior notice or announcement to the investment adviser and that is irregular from year to year. The written agreement must provide for the first examination to occur within six months of becoming subject to this paragraph, except that, if the investment adviser maintains client funds or securities pursuant to this Section as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after obtaining the internal control report. The written agreement must require the independent certified public accountant to:

(A) file a certificate on Form ADV-E with the Administrator within 120 days of the time chosen by the independent certified public accountant in this paragraph, stating that it has examined the funds and securities and describing the nature and extent of the examination;

(B) notify the Administrator within one business day of the finding of any material discrepancies during the course of the examination, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Administrator; and

(C) file within four (4) business days of the resignation or dismissal from, or other termination of, the engagement, or removing itself or being removed from consideration for being reappointed, Form ADV-E accompanied by a statement that includes:

(i) the date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(ii) an explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

(7) **Investment advisers acting as qualified custodians.** If the investment adviser maintains, or if the investment adviser has custody because a related person maintains, client funds or securities pursuant to this Section as a qualified custodian in connection with advisory services the investment adviser provides to clients, the investment adviser must obtain, or receive from its related person, within six months of becoming subject to this paragraph and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent certified public accountant:

(A) The internal control report must include an opinion of an independent certified public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the investment adviser or a related person on behalf of the investment adviser's clients, during the year; and

(B) The independent certified public accountant must verify that the funds and securities are reconciled to a custodian other than the investment adviser or the investment adviser's related person.

(8) **Independent representatives.** A client may designate an independent representative to receive, on his behalf, notices and account statements as required under (3) and (4) of this subsection.

(c) **Exceptions.**

(1) **Shares of mutual funds.** With respect to shares of an open-end company as defined in Section 5(a)(1) of the 1940 Act [15 U.S.C. 80a-5(a)(1)] ("mutual fund"), the investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with (b) of this Section.

(2) **Certain privately offered securities**.

(A) The investment adviser is not required to comply with (b)(2) of this Section with respect to securities that are:

(i) acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(ii) uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

(iii) transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(B) Notwithstanding (A) of this paragraph, the provisions of this paragraph are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited and the audited financial statements are distributed as described in (4) of this subsection, and the investment adviser notifies the Administrator in writing that the investment adviser intends to provide audited financial statements as described in (4) of this subsection. Such notification is required to be given on Form ADV.

(3) **Fee deduction.** Notwithstanding (b)(6) of this Section, an investment adviser is not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if all of the following are met:

(A) The investment adviser has custody of the funds and securities solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee;

(B) The investment adviser has written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

(C) Each time a fee is directly deducted from a client account, the investment adviser concurrently:

(i) sends the independent party designated pursuant to (b)(5)(B)(i) of this Section an invoice or statement of the amount of the fee to be deducted from the client's account; and

(ii) sends the client an invoice or statement itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.

(D) The investment adviser notifies the Administrator in writing that the investment adviser intends to use the safeguards provided in this paragraph. Such notification is required to be given on Form ADV.

(4) **Limited partnerships subject to annual audit.** An investment adviser is not required to comply with (b)(3) and (b)(4) of this Section and shall be deemed to have complied with (b)(6) of this Section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) if each of the following conditions are met:

(A) The adviser sends to all limited partners (or members or other beneficial owners) at least quarterly, a statement showing:

(i) the total amount of all additions to and withdrawals from the fund as a whole as well as the opening and closing value of the fund at the end of the quarter based on the custodian's records;

(ii) a listing of all long and short positions on the closing date of the statement in accordance with FASB Rule ASC 946-210-50; and

(iii) the total amount of additions to and withdrawals from the fund by the investor as well as the total value of the investor's interest in the fund at the end of the quarter.

(B) At least annually the fund is subject to an audit and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year;

(C) The audit is performed by an independent certified public accountant;

(D) Upon liquidation, the adviser distributes the fund's final audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the Administrator promptly after the completion of such audit;

(E) The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, notify the Administrator within four business days accompanied by a statement that includes:

(i) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(ii) An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

(F) The investment adviser must also notify the Administrator in writing that the investment adviser intends to employ the use of the statement delivery and audit safeguards described in this paragraph. Such notification is required to be given on Form ADV.

(5) **Registered investment companies.** The investment adviser is not required to comply with this Section with respect to the account of an investment company registered under the 1940 Act [15 U.S.C. 80a-1 to 80a-64].

(6) **Delivery to Related Persons.** Sending an account statement under (b)(5) of this Section or distributing audited financial statements under (4) of this subsection shall not satisfy the requirements of this Section if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are related persons of the investment adviser.

660:11-7-49. Investment adviser representative continuing education requirements

(a) **Definitions.** For purposes of this Section, the following terms mean:

(1) "**Approved IAR Continuing Education Content**" means the materials, written, oral, or otherwise that have been approved by NASAA or its designee and which make up the educational program provided to an investment adviser representative under this Section.

(2) "**Authorized provider**" means a person that NASAA or its designee has authorized to provide continuing education content required by this Section.

(3) "**Credit**" means a unit that has been designated by NASAA or its designee as at least 50 minutes of educational instruction.

(4) "**Home state**" means the state in which the investment adviser representative has its principal office and place of business.

(5) "**IAR Ethics and Professional Responsibility Content**" means Approved IAR Continuing Education Content that addresses an investment adviser representative's ethical and regulatory obligations.

(6) "**IAR Products and Practice Content**" means Approved IAR Continuing Education Content that addresses an investment adviser representative's continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.

(7) "**Investment adviser representative**" means an individual who meets the definition of "investment adviser representative" under the Securities Act and an individual who meets the definition of "investment adviser representative" under 17 CFR 275.203A-3.

(8) "**Reporting period**" means the calendar year. An investment adviser representative's initial reporting period commences the first day of the first full reporting period after the individual is registered or required to be registered under the Securities Act.

(b) **IAR continuing education**. Every investment adviser representative registered under the Securities Act must complete a total of twelve (12) credits of continuing education requirements each reporting period as follows:

(1) **IAR Ethics and Professional Responsibility requirement.** An investment adviser representative must complete six (6) credits of IAR Ethics and Professional Responsibility Content offered by an authorized provider, with at least three (3) credits covering the topic of ethics; and

(2) **IAR Products and Practice requirement.** An investment adviser representative must complete six (6) credits of IAR Products and Practice Content offered by an authorized provider.

(c) **Agent of FINRA-registered broker-dealer compliance.** An investment adviser representative who is also registered as an agent of a FINRA member broker-dealer and who complies with FINRA's continuing education requirements is considered to be in compliance with subsection (b)(2) for each applicable reporting period so long as FINRA continuing education content meets all of the following baseline criteria:

(1) The continuing education content focuses on compliance, regulatory, ethical, and sales practices standards.

(2) The continuing education content is derived from state and federal investment advisory statutes, rules and regulations, securities industry rules and regulations, and accepted standards and practices in the financial services industry.

(3) The continuing education content requires that its participants demonstrate proficiency in the subject matter of the educational materials.

(d) **Credentialing organization continuing education compliance**. Credits of continuing education completed by an investment adviser representative who holds certifications determined by the Administrator to be acceptable in lieu of required examinations comply with subsection (b) of this Section provided all of the following are true:

(1) The investment adviser representative completes the credits of continuing education as a condition of maintaining the credential for the relevant reporting period.

(2) The credits of continuing education completed during the relevant Reporting Period by the investment adviser representative are mandatory to maintain the credential.

(3) The continuing education content provided by the credentialing organization during the relevant reporting period is Approved IAR Continuing Education Content.

(e) **IAR continuing education reporting**. Every investment adviser representative is responsible for ensuring that the authorized provider reports the investment adviser representative's completion of the applicable IAR continuing education requirements.

(f) **No carry-forward.** An investment adviser representative who completes credits of continuing education in excess of the amount required for the reporting period may not carry forward excess credits to a subsequent reporting period.

(g) **Failure to complete or report.** An investment adviser representative who fails to comply with this Section by the end of a reporting period will renew under the Securities Act as "CE Inactive" at the close of the calendar year until the investment adviser representative completes and reports all required IAR continuing education credits for all reporting periods as required by this Section. An investment adviser representative who is "CE-Inactive" at the close of the next calendar year is not eligible for investment adviser representative registration or renewal of an investment adviser representative registration.

(h) **Discretionary waiver by the Administrator.** The Administrator may, in the Administrator's discretion, waive any requirements of this Section.

(i) **Home state.** An investment adviser representative registered or required to be registered in this state who is registered as an investment adviser representative in the individual's home state is considered to be in compliance with this rule provided that both of the following are true:

(1) The investment adviser representative's home state has continuing education requirements that are at least as stringent as the requirements of this Section.

(2) The investment adviser representative is in compliance with the home state's investment adviser representative continuing education requirements.

(j) **Unregistered periods**. An investment adviser representative who was previously registered under the Securities Act and became unregistered for non-compliance with this Section must complete the continuing education requirements required by this Section for all reporting periods that occurred between the time that the investment adviser representative became unregistered and when the person applies to become registered again under the Securities Act unless the investment adviser representative takes and passes the required examinations or receives an examination waiver under 660:11-7-13 in connection with the subsequent application for registration.

PART 9. SEC COVERED INVESTMENT ADVISERS

660:11-7-51. SEC covered investment adviser notice filing

(a) **Initial filing.** A federal covered investment adviser making its initial notice filing in the state of Oklahoma pursuant to Section 1-405 of the Securities Act:

(1) shall file with the IARD:

(A) a new or amended Form ADV, designating Oklahoma on Item 2.B of Part 1A; and

(B) the investment adviser notice filing fee set forth in Section 1-612 of the Securities Act; and

(2) shall comply with existing federal requirements with regard to the Part 2 of the Form ADV.

(b) **Renewal.** Federal covered investment advisers who have made a notice filing pursuant to Section 1-405 of the Securities Act may renew their notice by submitting to the IARD the investment adviser notice filing fee set forth in Section 1-612 of the Securities Act.

SUBCHAPTER 9. REGISTRATION OF SECURITIES

PART 1. GENERAL PROVISIONS

Section

PART 3. REGISTRATION PROCEDURES

PART 5. GUIDELINES AND POLICIES APPLICABLE TO OFFERINGS OF REGISTERED SECURITIES

PART 7. REPORTING REQUIREMENTS

PART 1. GENERAL PROVISIONS

660:11-9-1. [RESERVED]

660:11-9-2. Amendments [Revoked]

PART 3. REGISTRATION PROCEDURES

660:11-9-11. Filing by coordination

An offering of securities for which an application for registration is not filed with and received by the Department prior to SEC effectiveness shall not be deemed to be in connection with the same offering of securities and therefore shall not be eligible for registration in the state of Oklahoma pursuant to Section 1-303 of the Securities Act.

660:11-9-12. Content of registration statement

In addition to the other requirements set forth in the Securities Act and the rules and regulations promulgated thereunder, a registration statement filed under the provisions of Sections 1-303 and 1-304 of the Securities Act shall contain the information that would be required in a registration statement filed with the SEC under Section 5 of the 1933 Act, as amended. Except for offerings attempting to register by use of the Form U-7, the registration statement shall be on the form that the issuer would be entitled to use if filing under the 1933 Act and in accordance with the specified instructions of said form.

660:11-9-13. Amendments to registration statements

(a) **Requirement to amend.** A correcting amendment to an effective Registration Statement shall be prepared and submitted to the Department any time that the information contained therein becomes inaccurate or incomplete in any material respect. The responsibility for identifying and reporting a material change lies with the registrant. Any of the following changes are likely to be the basis for filing a correcting amendment; however, the following is not intended to be a comprehensive listing of specific events or conditions which might give rise to such a filing:

(1) changes in officers, directors and other management personnel identified in the Registration Statement, including those persons who would have been identified in the Registration Statement had the change occurred prior to making the initial filing;

(2) a change of 10% or more in the equity ownership of the issuer by persons identified in the Registration Statement as principal security holders or by persons who would have been so described had the change occurred prior to making the initial filing;

(3) changes in the issuer's aims, objectives, business enterprise, operations or activities;

(4) a change in any designated Use of Proceeds item;

(5) impairment of the issuer's assets, the issuer's insolvency or the filing of a petition for bankruptcy by or for the issuer;

(6) management's intention to dispose of a significant portion of an issuer's assets, or the actual occurrence of such disposal;

(7) changes in the compensation arrangements described in the Registration Statement for promoters, general partners or sponsors of the issuer, including controlling persons of such promoters, general partners or sponsors, who are identified in the Registration Statement, or who would have been so identified had a change occurred prior to making the initial filing;

(8) changes in underwriting terms;

(9) any agreement in principle to enter into a business combination;

(10) changes in the industry, the economy, or in laws or regulations governing the industry, if disclosures in the Registration Statement are affected by the changes or if the condition resulting from such changes would have resulted in a disclosure requirement had the changes occurred prior to making the initial filing.

(b) **Time of filing and undertaking.**

(1) Every Registration Statement shall contain an undertaking by the applicant to file correcting amendments to the Registration Statement whenever the information in the Registration Statement becomes inaccurate or incomplete in any material respect by the earlier of:

(A) two business days after filing such amendment with the SEC, or

(B) fifteen business days following the event giving rise to the amendment.

(2) If not registered with the SEC, registrants shall file an amended Registration Statement if required within fifteen (15) business days following the event giving rise to the amendment, and in no event, not less often than annually as a part of the Annual Report required by 660:11-9-51.

(c) **Contents of filing.** Each filing of a correcting amendment to a Registration Statement shall contain a copy of each item of the Registration Statement which has been changed, with all changes clearly marked. To be complete, a filing of a correcting amendment to the Registration Statement shall contain a report of material changes setting forth a summary of each material change and indicating the location of such change in the documents filed. Neither the Administrator nor any member of his staff shall be held to have taken notice of any item of material change not summarized in such a report.

(d) **Effect of failure to amend.** Solicitation of prospective investors through utilization of a Prospectus containing information which is inaccurate or incomplete in any material respect is a violation of Section 1-501 of the Securities Act and constitutes a basis for suspending or revoking the effectiveness of a Registration Statement under Section 1-306.A.7.a of the Securities Act. Failure to report to the Department and disclose to prospective investors a material change that occurs after the effective date of a Registration Statement and prior to the sale of a security is a violation of Section 1-501 of the Securities Act and a basis for the

suspension or revocation of the registration under Section 1-306.A.7.a of the Securities Act. Nothing in this section shall be construed to require any open-end investment company registered under the 1940 Act and the Securities Act to disclose fluctuations in its investment portfolio.

660:11-9-14. Financial statements

(a) **Section 1-304 filings.** Except for applications made on the Form U-7, registration statements filed pursuant to Section 1-304 of the Securities Act shall contain Audited Financial Statements of the issuer for its last two (2) fiscal years. Registration statements filed with applications made on the Form U-7 shall contain the financial statements specified in the instructions to the Form U-7.

(b) **Unaudited interim financial statements.** If the Audited Financial Statements or unaudited Financial Statements required in (a) of this section are not current to within four (4) months of the Date of Filing of the registration statement, additional unaudited Financial Statements as of the issuer's last fiscal quarter or any later date designated by the Administrator shall be included.

(c) **Multiple financial statements.** If more than one balance sheet or more than one statement of income is required to be filed pursuant to (a) of this section, the statement shall be in comparative columnar form, the date or periods applicable to each column shall be clearly shown, and columns relating to unaudited Financial Statements shall be clearly designated "Unaudited."

(d) **Acquisitions.** If any part of the proceeds of the offering is to be applied to the purchase of any business, the same Financial Statements required in (a) of this section shall be filed for the business to be acquired. When appropriate for full and fair disclosure, the Administrator may require pro forma combined Financial Statements.

(e) **Application of Regulation S-X.** As to definitions, qualifications of accountants, content of accountant's certificates, requirements for consolidated or combined statements, and actual form and content of Financial Statements, the Administrator shall apply Regulation S-X of the SEC (17 C.F.R. Part 210) in its most currently amended form as of the date of the filing of the application to all Financial Statements filed with the Department in connection with the registration of securities.

(f) **Financial statements incorporated by reference.** Where Financial Statements in a prospectus are incorporated by reference from another document, the Administrator may require that such other document be filed with the Department and be delivered to investors with the prospectus.

(g) **Application of antifraud provisions.** Any Financial Statement distributed in connection with the offer or sale of securities under the Act shall be subject to the provisions of Section 1-501 of the Act. Any Financial Statement filed with the Department shall be subject to the provisions of Section 1-505 of the Act.

660:11-9-15. Change of accountant preceding or during effectiveness

(a) **Materiality of event.** One of the foundations of the administration of the disclosure requirements of securities law is reliance upon the reports of independent accountants regarding the financial statements of registrants. These reports provide the assurance of an outside expert's examination and opinion, thereby substantially enhancing the reliability of financial statements. Consequently, the resignation or dismissal of the principal auditing firm during a period immediately preceding or contemporaneous with an application for registration of securities in this state is considered to be of material importance.

(b) **Procedure.** If during the 18 months preceding registration and/or during the period of effective registration, the principal accountant or firm auditing the registrant's financial statements resigns or is dismissed, the following shall be required:

(1) Issuers which are SEC reporting companies shall file a copy of all Form 8-K's filed with the SEC during the 18 months preceding their filing with the Department as well as any that may be filed during the period of registration with the Department.

(2) All other issuers as a condition for initial and continuing registration, shall provide the following information to the Department:

(A) the date of such resignation or dismissal;

(B) disclosure of any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure to which the accountant would have made reference in his report in connection with the audits of the two most recent fiscal years and any subsequent interim period preceding the dismissal or resignation. Each disagreement should be disclosed whether it was resolved to the accountant's satisfaction or not;

(C) any principal accountant's report on the financial statements for any of the past two years containing a disclaimer of opinion or an adverse or qualified opinion; and

(D) a statement that the decision to change accountants was recommended or approved by either:

(i) the Audit Committee of the Board of Directors, if the issuer has such a committee; or,

(ii) the Board of Directors, if the issuer has no such committee.

(3) The registrant shall request the former accountant to furnish a letter addressed to the Administrator stating whether or not he agrees with the statements made by the registrant and, if not, stating the respects in which he does not agree. The former accountant's letter shall be attached as an exhibit to the information required in (b)(2) of this Section.

660:11-9-16. Abandoned filings

An application for registration of securities pursuant to Sections 1-303 or 1-304 of the Securities Act shall be deemed abandoned if such registration is not effective in the state of Oklahoma within one year from the date of receipt by the Department of the initial filing of the application for registration. Once deemed abandoned, the original application shall not be reinstated. A new application including the registration statement, appropriate exhibits and filing fees shall be required.

PART 5. GUIDELINES AND POLICIES APPLICABLE TO OFFERINGS OF REGISTERED SECURITIES

660:11-9-31. Prospectus delivery requirement

No offer or sale of any security registered under the Securities Act may be made unless concurrent with the initial solicitation or immediately thereafter there is furnished to the prospective purchaser, a prospectus, in such form and containing such information as may be required pursuant to the Securities Act or the rules and regulations promulgated thereunder or by order of the Administrator, which prospectus has been previously filed with and approved by the Administrator for use; provided, no prospectus shall be required in connection with offers or sales of securities or transactions exempted by Sections 1-201 through 1-203 of the Securities Act, except as may be specifically required by such Act or the rules and regulations promulgated thereunder or by order of the Administrator. In addition, after the effective date of the registration statement in the state of Oklahoma, all broker-dealers and agents effecting transactions in the securities registered under the Securities Act shall be required to deliver a prospectus prior to or concurrently with any transaction in said securities for the same time periods specified in Section 4(a)(3) of the 1933 Act and Rule 174 adopted by the SEC (17 CFR § 230.174) in its most currently amended form as of the date of the filing of the application. Nothing in this rule obviates the need for registrants to comply with the provisions of Section 1-501 of the Securities Act.

660:11-9-32. Impound agreements

(a) **General requirements.** In any instance where impoundment of the proceeds of sale of securities is determined to be in the public interest and necessary for the protection of investors, as a condition of registration the Administrator may require that the registrant deposit a specific percentage or amount of the proceeds from the sale of the registrant's securities in an acceptable depository pursuant to a written agreement between the registrant issuer and the depository. The proceeds shall be retained therein until a specific sum has been accumulated and the terms and conditions of the agreement have been performed.

(b) **Filing requirement.** Each impound agreement shall be negotiated between the depositor and the depository and an executed copy filed with the Administrator.

(c) **Required provisions.** Each such impound agreement shall substantially comply with the following guidelines and shall contain the following terms or information:

(1) the date of the agreement;

(2) the names and addresses of the depositor and the depository;

(3) the specified percentage or amount of gross proceeds from the sale of the securities involved to be deposited;

(4) the aggregate sum to be accumulated;

(5) the date on or before which such accumulation shall be completed;

(6) the conditions under which the impounded funds are to be released to the depositor, or are to be refunded to the persons entitled thereto, and by whom and in what manner such refunding is to be effected;

(7) a provision that interest and other earnings, if any, from the impounded funds shall be distributed to the public investors if the impounded offering proceeds are refunded;

(8) a statement that neither release nor refunding of the impounded funds is to be effected unless and until the depositor has given the Administrator and/or Commission ten (10) days written notice of the action to be taken. To be complete, such notice shall contain a sworn affidavit from the applicant that all the terms of the escrow agreement have been properly fulfilled.

(d) **Prohibited provisions.** An impound agreement will not be acceptable, except upon unusual circumstances with prior approval of the Department, if the agreement:

(1) provides for the depositor to make any levy or assessment or to apply any lien on or against the impounded funds. It is the intent and purpose hereof that all charges, fees, and costs incurred in respect to the impound agreement and its performance be charged to and be borne by the depositor;

(2) provides for or permits credit towards or inclusion in the specific sum to be accumulated of any monies deposited in the account, including interest or other earnings directly attributable to the impounded funds, if such monies constitute proceeds of any transaction or were derived from sources other than sales of the depositor's securities;

(3) provides for any rights of the depositor to require release of, or obligation on the part of the depository to release all or any part of the impounded funds, except after accumulation in the fund of a specific sum on or before the date fixed by the impound agreement for the accumulation to be completed.

660:11-9-33. Special requirements for promotional or development stage companies

(a) **Requirements.** Registration statements filed under Section 1-305 of the Securities Act or any exhibits filed therewith relating to securities of a promotional or development stage company must demonstrate in addition to meeting any other requirements that may apply, the issuer's ability to meet the following requirements:

(1) Taking into consideration the minimum net proceeds of the offering, past earnings, and accounts receivable, of the issuer, the prospectus must demonstrate the issuer's ability to operate for a period of at least six months without additional capital; or based on a business plan filed supplementally, the issuer must demonstrate its ability to operate for a period of at least 12 months. Any registrant may request that such business plan not be deemed filed with the registration statement and may request that it be held in confidence. A prospectus relating to an offering of debt securities must demonstrate the issuer's ability to service the debt. This can be demonstrated by submission of a compilation.

(2) No more than 25% of the proceeds of the offering net of offering costs shall be paid as remuneration to promoters, executive officers, directors or shareholders owning 10% or more of any class of outstanding stock of the issuer.

(3) The prospectus must demonstrate compliance with 660:11-9-35 regarding limitations on offering expenses and remuneration and with the NASAA statement of policy regarding promotional shares.

(4) Issuers shall not have granted, and shall agree not to grant in the future, options to acquire securities of the same class as those being offered, at an exercise price that is less than 85% of the fair market value of the securities at the time of the grant of the option. The prospectus shall disclose the dilution that would result from the exercise of all outstanding warrants or options to acquire securities of the same class as those being offered.

(5) The use of offering proceeds must be disclosed with specificity in the prospectus.

(b) **Waiver provisions.** The Administrator in his or her discretion may waive any of the above requirements upon written request of the registrant, if the Administrator finds that the requirement is not necessary to protect the public interest under the circumstances. Any such request shall be filed with the registration statement and shall indicate the reasons why the requirement is not necessary under the circumstances described in the registration statement.

660:11-9-34. NASAA guidelines

(a) **Application of guidelines.** The Administrator in his discretion may apply any Statements of Policy or guidelines adopted by NASAA, or its successors, to a registration of securities pursuant to the Securities Act.

(b) **Cross-reference sheet.** Issuers, or interested persons on the issuer's behalf, shall prepare a cross-reference sheet setting out each section of the statement of policy or guideline applied by the Administrator pursuant to this rule, and reflecting the document and page numbers where compliance with each section of the statement of policy or guideline is disclosed. Any variance or failure to comply with particular sections of an applicable statement of policy or guideline shall be noted by the issuer or his attorney, and the reasons for the variance shall be fully stated.

(c) **Waiver provisions.** The Administrator in his discretion may waive any of the requirements of the statements of policy or guidelines upon written request of the registrant, if the Administrator finds that the requirement is not necessary to protect the public interest under the circumstances. Any such request shall be filed with the registration statement and shall indicate the reasons why the requirement is not necessary under the circumstances described in the registration statement.

660:11-9-35. Limitations on offering expenses and remuneration

(a) **Issuer expenses.** Expenses incurred by an issuer of securities (including the sponsor or general partners of a limited partnership expended or being reimbursed from partnership funds) in connection with an offering of securities shall not exceed 20% of the amount of securities actually sold. Such expenses shall include, but are not necessarily limited to, the following:

(1) Sales commissions or discounts, including expense allowances and warrants issued gratis or at nominal prices.

(2) Finders fees, advisory fees and similar fees however designated.

(3) Promotional or carried interests granted, or sold at a price substantially different from the public offering price, to an underwriter, broker-dealer or agent.

(4) Organizational expenses of recently formed issuers.

(5) Advertising directly associated with the sale of the public offering being registered.

(6) Accountant's and attorney's fees for services in connection with the issue and sale of the securities and their qualification for sale under applicable laws and regulations.

(7) The cost of prospectuses, circulars and other documents required to comply with such laws and regulations.

(8) Other expenses directly incurred in connection with such qualifications and compliance with such laws and regulations (filing fees and investigation fees prior to registration).

(9) Cost of authorizing and preparing the securities and documents relating thereto, including issue taxes and stamps.

(10) Charges of transfer agents, registrars, indenture trustees, escrow holders, depositories, auditors, and of engineers, appraisers, and other experts.

(11) Those expenses required to be itemized in Part II of a registration statement filed with the SEC, and with an application for registration by coordination pursuant to Section 1-303 of the Securities Act.

(b) **Underwriters' or broker-dealers' remuneration.** Remuneration received directly or indirectly by any underwriter, broker-dealer, agent, or any other person performing similar functions, for effecting or attempting to effect transactions in securities, shall not exceed 15% of the sales price of the securities sold in each transaction, regardless of by whom such remuneration is paid. Further, the aggregate amount of remuneration received directly or indirectly by all underwriters, broker-dealers, agents, or other persons performing similar functions for effecting or attempting to effect transactions in securities, shall not exceed 15% of the aggregate amount of securities actually sold. For the purpose of this rule (including (a) of this section and 660:11-9-36) an interstate (or other jurisdiction) offering of securities shall be viewed in its entirety. Remuneration shall include, but is not necessarily limited to, the following:

(1) Sales commissions or discounts, including expense allowances and warrants issued gratis or at nominal prices.

(2) Finders fees, advisory fees and similar fees, however designated.

(3) Promotional or carried interests granted, or sold at a price substantially different from the public offering price.

(c) **Disclosure of expenses and remuneration.** The aggregate amounts (or good faith estimates of such amounts) of sales commission and offering expenses paid by an issuer of securities as discussed in (a) of this section and remuneration to be received by the seller of securities as discussed in (b) of this section, shall be clearly disclosed in the prospectus, offering circular, private placement memorandum or other offering document.

(d) **Waiver.** Where good cause is shown, the Administrator may waive or modify the percentage limitations set forth in this section. Consideration of such requests shall be on a case-by-case basis and only pursuant to a written request setting forth the reasons therefor.

660:11-9-36. Promoters' and organizers' equity contributions

(a) **Requirement.** Where an issuer is a promotional or development stage company as defined in 660:11-11-1, the ratio of equity investment by promoters or insiders must be determined as reasonable and equitable in light of the facts and circumstances presented in each particular case. Cases where the fair value of such equity investment is less than 10% of the total offering are discouraged, and in such instances, the proponents of the registration shall have the burden of establishing that the offering is being made without unfair or unreasonable amounts of promoters' profits or participation, as provided in Section 1-306.A.7.b of the Securities Act.

(b) **Presumption.** In those instances where only 5% or more has been contributed by promoters or organizers, but where they have entered into bona fide and binding subscription contracts exercisable within one year with the new enterprises for capital stock representing the difference between the amount contributed and 10%, then the burden of proof will be deemed to have been satisfied.

(c) **Determination of equity investment.** The fair value of equity investment shall be deemed to mean the total of all sums conveyed to the issuer in the form of paid-in or contributed cash or other assets with an established or determinable value. In those cases where the issuer has experienced losses from operations, the fair value of equity investment shall be the net worth of the issuer as of the date of the proposed offering determined in accordance with generally accepted accounting principles.

(d) **Burden of proof.** The burden of justifying as equitable the quantity of promotional securities to be issued for assets so conveyed, and of establishing reasonable or market value of said assets, shall rest with the applicant.

PART 7. REPORTING REQUIREMENTS

660:11-9-51. Registration renewal and sales reporting requirements

(a) **Registration renewal.** Pursuant to Section 1-305.H of the Securities Act, every registration statement ordered effective is effective for one (1) year after its effective date, and certain registration statements may be effective for any longer period during which the security is being offered. Registration statements, the effectiveness of which is to continue beyond one (1) year from their effective date, must have their effectiveness renewed annually. A renewal of the effectiveness of a registration statement may be obtained by submitting a registration renewal report to keep the information contained in the registration statement reasonably current and by paying appropriate fees.

(1) **Time of filing.** Each registration renewal report shall be submitted no more than thirty (30) days before or thirty (30) days after each anniversary of the registration effective date.

(2) **Content.** Each registration renewal report submitted shall contain:

(A) a written summary of any substantive changes in the registration statement since the later of the date of registration or the latest filing of a registration renewal report; and

(B) a copy of the latest post-effective amendment to the registration statement as filed with the SEC that has been marked for changes from the prior version of the registration statement as filed with the SEC; or, if not registered with the SEC, the proposed amendment to the registration statement that has been marked for changes from the prior version of the registration statement as filed with the Department.

(3) **Examination of report.** The Department shall conduct a special examination of each registration renewal report filed. The purpose for such special examination shall be to evaluate the reported changes in the registration statement and to determine whether the registration should continue. The examination report shall consist of notification to the registrant of the status of the registration.

(4) **Fee.** Each registration renewal report filed shall include the examination fee set forth in Section 1-612.B of the Securities Act.

(b) **Sales reporting.** Pursuant to Section 1-305.I of the Securities Act, and so long as a registration statement is effective, the Administrator may require the applicant, the issuer, or the broker-dealer to file reports not more often than quarterly to disclose the progress of the offering. Unless the Administrator requires more frequent sales reporting by request as to a specific registered security, a person who has filed a registration statement that has been ordered effective shall file one (1) registration sales report to disclose the progress of the offering for the initial one (1) year period of effectiveness and for each one (1) year renewal period of effectiveness thereafter.

(1) **Time of filing.** Each registration sales report shall be submitted no later than thirty (30) days after each anniversary of the effective date of the registration, or no later than thirty (30) days after the termination of the offering, whichever is earlier.

(2) **Content.** Each registration sales report submitted shall contain:

(A) the file number of the registration of securities to which the registration sales report relates;

(B) a statement as to whether the offering has been completed; and

(C) the dollar amount of each class of securities sold in the state for the entire one (1) year period of the registration, or from the beginning of the one (1) year period of registration through the completion of the offering, as applicable, in substantially the following form:

Balance unsold at beginning of period $
ADD: Additional authorizations
LESS: Amount sold during period
Balance unsold at end of period $

(3) **Fee.** Each registration sales report filed shall include the issuer sales report fee as required in Section 1-612 of the Securities Act.

(c) **Piecemeal filings.** Any report required under this section is not considered filed if it is incomplete. Piecemeal filings shall not be accepted.

660:11-9-52. [RESERVED]

660:11-9-53. Special examinations of registrations

(a) **Examination of application.** The Department shall conduct a special examination of each application for registration under Sections 1-303 and 1-304 of the Securities Act to determine the adequacy of disclosure and to fulfill the Department's obligations under Section 1-306 of the Securities Act. This examination shall be based upon material contained in the Registration Statement and any other documentation which the applicant may be required to submit. Each application for registration shall be accompanied by the examination fee set forth in Section 1-612.B of the Securities Act. The examination report shall consist of the Department's written comments regarding the filing.

(b) **On-site examinations of issuers.** The business and records of issuers registered pursuant to Sections 1-303 and 1-304 of the Securities Act may be subject to periodic on-site examinations by the Administrator, and/or his designee, at such times as he determines necessary for the protection of the public. The Division of Registrations shall prepare a special report of every such examination.

(c) **Department access.** Each issuer scheduled for examination shall provide the personnel of the Department access to business books, documents, and other records. Each issuer shall provide personnel with office space and facilities to conduct on-site examinations, and assistance in the physical inspection of assets and confirmation of liabilities. Failure of any applicant or registrant to comply with any provision hereof shall constitute a violation of this section and shall be a basis for denial, suspension or revocation of the registration or application for registration.

SUBCHAPTER 11. EXEMPTIONS FROM SECURITIES REGISTRATION

PART 1. GENERAL PROVISIONS

Section

PART 3. EXEMPT SECURITIES

PART 5. EXEMPT TRANSACTIONS

PART 7. FEDERAL COVERED SECURITIES

PART 1. GENERAL PROVISIONS

660:11-11-1. Definitions

The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Affiliate**" means a person who, directly or indirectly, controls, is controlled, by, or is under common control with a person as defined in this Section.

"**Associate**" means, when used to indicate a relationship with a person, includes:

(A) corporations, legal entities, other than the issuer or majority-owned subsidiaries of the issuer, of which a person is an officer, director, partner, or a direct or indirect, legal or beneficial owner of five percent (5%) or more of any class of equity securities.

(B) trusts or other estates in which a person has a substantial beneficial interest or for which a person serves as a trustee or in a similar capacity; and

(C) a person's spouse and relatives, by blood or by marriage, if that person is a promoter of the issuer, its subsidiaries, its affiliates, or its parent.

"**Class**" means the lowest level of subdivision of the securities offered by an issuer.

"**Control**" means the power to direct or influence the direction of the management or policies of a person, directly or indirectly, through the ownership of voting securities, by contract or otherwise. A presumption of control exists for any person who:

(A) is a director, general partner, member, manager, or officer exercising executive responsibility or has similar status or functions;

(B) has the right to vote twenty percent (20%) or more of a class of voting securities; or

(C) in the case of a partnership or limited liability company, has contributed or has the right to receive upon dissolution twenty percent (20%) or more of the capital.

"**Enterprise**" means a corporation, general partnership, limited partnership, joint venture and any other formal or informal entity, association or arrangement (other than a sponsor) in which the investors' rights, interests or participation constitute "securities" as defined by Section 1-102 of the Securities Act.

"**Equity securities**" means, including, but not limited to shares of common stock or similar securities, convertible securities, warrants, and options or rights that may be converted into or exercised to purchase shares of common stock or similar securities.

"**Net earnings**" means the issuer's after-tax earnings, excluding extraordinary and nonrecurring items, determined in accordance with generally accepted accounting principles.

"**Person**" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, limited liability partnership, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any legal or commercial entity.

"**Promoter**" means:

(A) a person, including, but not limited to, who:

(i) alone or in conjunction with one or more persons, directly, or indirectly, took the initiative in founding or organizing the issuer or controls the issuer;

(ii) directly or indirectly, receives, as consideration for property or for services rendered, five percent (5%) or more of any class of the issuer's equity securities or five percent (5%) or more of the proceeds from the sale of any class of the issuer's equity securities;

(iii) is an officer or director for the issuer;

(iv) legally or beneficially owns, directly or indirectly, five percent (5%) or more of any class of the issuer's equity securities; or

(v.) is an affiliate or an associate of a person specified in i through iv of this subparagraph.

(B) A promoter does not include:

(i) a person who receives securities or proceeds solely as underwriting compensation unless that person otherwise comes within the terms;

(ii) an unaffiliated institutional investor, who purchased the issuer's equity securities more than one year prior to the filing date of the issuer's registration statement; or

(iii) at the Administrator's discretion, an unaffiliated institutional investor, who purchased the issuer's equity securities on an arm's-length basis within one year prior to the filing date of the issuer's registration statement.

"**Promotional shares**" means equity securities that:

(A) A promotional or development stage company has issued within five (5) years before the filing of the registration statement or will issue to its promotors for cash or other consideration, including services rendered, patents, copyrights, and other intangibles; or

(B) An issuer that is not a promotional or development stage company has issued within three (3) years before the filing of the registration statement or will issue to promotors for cash or other consideration, including services rendered, patents, copyrights, and other intangibles.

"**Sponsor**" means any natural person, corporation, general partnership, limited partnership, joint venture or other entity which is directly or indirectly instrumental in organizing an enterprise or which will manage or participate in the management of an enterprise.

"**Unaffiliated institutional investor**" means the following investors if not affiliated with the issuer:

(A) an institutional investor as defined in 1-102(13) of the Securities Act; and

(B) a business development company as defined in Section 2(a)(48) of the 1940 Act.

660:11-11-2. Commissions

(a) **Definition.** As used in Sections 1-202 and 1-402 of the Securities Act, the term "commission" shall mean any economic benefit paid or given, directly or indirectly, for the offering, selling or purchasing of a security whether in the form of money or its equivalent, or any real or personal property or interest therein, or otherwise. Such economic benefit will be presumed to be paid or given for the offer, sale or purchase of a security if the amount of such benefit is based on the amount of securities offered, sold or purchased or is an inducement for an offer, sale or purchase.

(b) **Exceptions.** Notwithstanding (a) of this section, the following do not constitute a commission:

(1) **Benefit for property purchased or services performed.**

(A) A benefit paid or given, whether or not such benefit is paid from the proceeds of the sale of a security of an enterprise or is related to the sale of a security of an enterprise, if such benefit is paid or given for property purchased or services performed so long as:

(i) the property or services are reasonably related to the present or proposed business of the enterprise, and

(ii) the amount or value of the benefit paid or given is competitive with the amounts charged or paid in the same or comparable areas by persons not affiliated with the enterprise who are engaged in the business of rendering comparable services or providing comparable property.

(B) Payment to independent third party professional engineers, geologists, accountants, attorneys, or such other persons for professional services rendered or to be rendered for the enterprise does not constitute a commission.

(2) **Promotional or other interest of sponsor.**

(A) Any promotional or other interest of a sponsor of an enterprise in the revenues, assets or equity of the enterprise which is proportionately greater than the capital invested by such sponsor in the enterprise or the total costs and expenses of the enterprise borne by or charged to such sponsor, if:

(I) the interest received is reasonable or customary in the industry in which the enterprise operates or proposes to operate; and

(ii) the sponsor or entity receiving such interest has or will have substantial duties unrelated to the sale of a security in connection with the enterprise.

(B) For the purpose of this paragraph, the type and amount of interests allowed under any applicable guidelines adopted by NASAA or any other guidelines adopted by the Department for public offerings registered with the Department shall be presumed reasonable and customary.

(3) **Compensation to officer, director, partner or employee.** The payment of compensation to an officer, director, partner or employee of an enterprise or its sponsor if:

(A) such payment is not directly or indirectly related to the offer or sale of a security;

(B) the officer, director, partner or employee is a bona fide officer, director, partner or employee who has substantial duties that are unrelated to the sale of a security; and

(C) the officer, director, partner or employee's activity involving the offer or sale of a security is strictly incidental to such person's bona fide primary work duties.

(c) **Presumptions.** No presumption arises that a benefit constitutes a commission if the relevant conditions described in (b) of this section are not satisfied. The burden of proving that the conditions of this rule have been met remains with the person claiming an exemption addressed by this rule.

660:11-11-3. Number of purchasers

(a) **Exclusions.** For purposes of computing the number of persons to whom sales of the issuer's securities are made pursuant to Sections 1-202.14 and 1-202.16 of the Securities Act, sales to the following purchasers shall be excluded:

(1) any relative, spouse or relative of the spouse of a purchaser who has the same principal residence as such purchaser;

(2) any trust or estate in which a purchaser and any of the persons related to him as specified in (1) of this subsection or (3) of this subsection collectively have more than 50% of the beneficial interest (excluding contingent interests);

(3) any corporation or other organization of which a purchaser and any of the persons related to him as specified in (1) or (2) of this subsection collectively are beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests.

(b) **Entities as purchasers.** A corporation, partnership, or other entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor as defined in Section 501 of Regulation D, then, each beneficial owner of equity interests or equity securities in such entity shall count as a separate purchaser.

(c) **Sales to certain clients or customers.** Sales to clients of an investment adviser, customers of a broker or dealer, a trust administered solely by a bank trust department or persons with similar relationships, shall be considered as separate sales for purposes of this section regardless of the amount of discretion given to the investment adviser, broker or dealer, bank trust department, or other persons to act on behalf of the client, customer or trust.

(d) **Joint or common ownership.** A sale to persons who acquire the securities as joint tenants, or as tenants in common, shall be counted as sales to each tenant unless otherwise covered by the rules of attribution provided by this section.

660:11-11-4. Integration of offerings

(a) **General.** An offering made by an issuer attempting to rely on the exemptions from registration provided by Sections 1-202.14 of the Securities Act and/or 660:11-11-43 must be separate and distinct from any other offering. Offers and sales of an offering will be deemed integrated with offers and sales of another offering when a review of the integration factors provided by (b) of this section indicates that the offers and sales are part of a larger offering. Integration may occur between two (2) claimed exempt offerings as well as between a claimed exempt offering and a registered offering.

(b) **Factors.** The following five (5) factors are deemed relevant to a determination as to whether or not two (2) different offerings are in fact integrated and thus part of a larger offering:

(1) the different offerings are part of single plan of financing;

(2) the offerings involve the issuance of the same class of security;

(3) the offerings are made at or about the same time;

(4) the same type of consideration is to be received;

(5) the offerings are made for the same general purpose.

(c) **Case by case determination.** Determination as to whether or not integration has occurred between two offerings shall be made on a case by case basis. The presence of all the integration factors shall not be required to establish the integration of two (2) offerings.

PART 3. EXEMPT SECURITIES

660:11-11-21. Not for profit debt securities notice filing

(a) **Securities exempt.** With respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness, such issuers relying upon the exemption from registration provided in Section 1-201.7 of the Securities Act shall file a notice with the Administrator at least ten (10) full business days prior to the first offering of sale pursuant to such claim. Such exemption shall become effective ten (10) full business days after the filing of a complete notice if the Administrator has not disallowed the exemption.

(b) **Notice information.** The notice required in (a) shall specify, in writing, the material terms of the proposed offer or sale to include, although not limited to, the following:

(1) the identity of the issuer;

(2) the amount and type of securities to be sold pursuant to the exemption;

(3) a description of the use of proceeds of the securities; and

(4) the person or persons by whom offers and sales will be made.

(c) **Notice requirements.** The following items must be included as a part of the notice in (a):

(1) the offering statement, if any;

(2) a consent to service of process on Form U-2 and (if applicable) Form U-2A; and

(3) the fee required by Section 1-612 of the Securities Act.

(d) **Sales and advertising literature.** All proposed sales and advertising literature to be used in connection with the proposed offer or sale of the securities shall be filed with the Administrator only upon request.

(e) **NASAA Statements of Policy or guidelines.** The Statements of Policy or guidelines adopted by NASAA may be applied, as applicable, to the proposed offer or sale of a security for which a notice must be filed pursuant to this rule. Failure to comply with the provisions of an applicable Statement of Policy or guideline promulgated by NASAA may serve as the grounds for disallowance of the exemption from registration provided by Section 1-201.7 of the Securities Act.

(f) **Waiver.** The Administrator may waive any term or condition set forth in this rule.

PART 5. EXEMPT TRANSACTIONS

660:11-11-40. Manual exemption

(a) **Recognized securities manuals.** The publications recognized by the Administrator for purposes of the exemption from registration set forth in Section 1-202.2.d of the Securities Act are as follows:

(1) Best's Insurance Reports, Life-Health

(2) Mergent’s Industrial Manual

(3) Mergent’s International Manual

(4) OTC Markets Group Inc. with respect to securities included in the OTCQX and OTCQB markets.

(b) **Additional requirements.** To be eligible for the exemption from registration provided by Section 1-202.2.d of the Securities Act, the following additional conditions must be met:

(1) All information specified as required to be contained in the recognized securities manuals pursuant to Section 1-202.2.d of the Securities Act must be given to the purchaser with the confirmation by providing the purchaser with a copy of either:

(A) the information contained in the manual listing; or

(B) the information maintained by the broker-dealer effecting the transaction that is required to be kept by such broker-dealer pursuant to the requirements of SEC Rule 15c2-11 promulgated under the provisions of the 1934 Act.

(2) The information required under (1) of this subsection must be reasonably current in all material respects. The time for determining whether the information is current is at the date of the particular sale not the date the manual listing is published. For purposes of this paragraph, the term "reasonably current" has the meaning set forth in SEC Rule 15c2-11.

(3) The financial statements of the issuer required pursuant to Section 1-202.2.d of the Securities Act must be audited by an independent public accountant in accordance with generally accepted auditing standards, presenting fairly, in all material respects, the financial condition of the issuer; provided, if the issuer is an entity formed and operating under the laws of a foreign jurisdiction, the financial statements are to be audited in accordance with the auditing standards applicable in its jurisdiction of formation and operation.

(4) The issuer of the security, including any predecessors, has either:

(A) been in continuous business or operations for at least two (2) years, unless the issuer is an insurance company in which event it has been in business for at least five (5) years; or

(B) had a class of equity securities registered under Section 1-301 of the Securities Act within the past five (5) years.

(C) As used in this paragraph, "business or operations" means actual activities related to its current business or operations and does not include an issuer merely holding funds or assets for future use.

(5) Sales must be made by a broker-dealer, either as principal or agent, who is registered under the provisions of Section 1-401 of the Securities Act.

(6) The securities must be offered or sold at a price reasonably related to the current market price of such securities.

(7) The securities must be issued and outstanding. The exemption is not available for issuer transactions. For purposes of this paragraph, "issuer" includes all officers, directors and controlling (5% or more) shareholders of the issuer.

(8) The security does not constitute the whole or any part of an unsold allotment to, or subscription or participation by, the broker-dealer as an underwriter of the security.

(c) **Restriction for promotional or development stage companies.** This exemption may not be used to evade the registration requirements of Section 1-301 of the Securities Act. Accordingly, transactions in reliance on this exemption for the securities of an issuer which is a promotional or development stage company as defined in 660:11-11-1, involving securities that have not been registered for offer or sale in the state of Oklahoma and which securities would not have met the requirements for registration set forth in Sections 1-303 or 1-304 of the Securities Act and the rules promulgated thereunder, had the securities been filed for registration pursuant to such sections of the Securities Act, may be deemed to have violated this requirement unless proven otherwise.

(d) **Exemption.** The requirements of (b)(1) of this Section do not apply to the sale of the securities of an issuer who has net tangible assets in excess of $10,000,000.00 (U.S.) as determined by its most recent audited financial statements. For foreign issuers, the net tangible asset value may be determined by applying the exchange rate in effect as of the date of the financial statement relied upon unless there has been a material change in such exchange rate after the date of the financial statement that would reduce by greater than 20% the value in U.S. dollars. In that event, the exchange rate applied should be the rate effective as of the last day of the preceding month. Nothing in this Section releases the broker-dealer effecting the transaction from its obligation to maintain the information required by SEC Rule 15c2-11 and to deliver any such information to any person involved in a transaction effected in the security, upon request by such person.

660:11-11-41. [RESERVED]

660:11-11-42. Interpretation of 'existing security holders'

For purposes of the exemption from registration set forth in Section 1-202.15 of the Securities Act, the term "existing security holder" shall not include a person who is a security holder of an issuer only by the receipt of securities as a gift by said issuer; consequently, the exemption from registration set forth in Section 1-202.15 of the Securities Act would not be available in connection with transactions to such security holders. For purposes of this rule, a distribution of securities shall be deemed to be a gift if the security holder does not give consideration in exchange for the securities.

660:11-11-43. Coordinated limited offering exemption

(a) **Preliminary notes.**

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

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

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

(b) **Terms of the exemption.** By authority delegated to the Administrator in Section 1-203 of the Securities Act, the following transactions are determined to be classes of transactions for which registration is not necessary or appropriate for the protection of investors and are exempt from Sections 1-301 and 1-504 of the Securities Act: any offer or sale of securities exempted from Section 5 of the 1933 Act pursuant to Section 4(a)(5) thereof; or any offer or sale of securities offered or sold in compliance with the 1933 Act, under SEC Regulation D, Rule 504 [17 C.F.R. §230.504], including any offer or sale made exempt by application of SEC Regulation D, Rule 508(a) [17 C.F.R. §230.508(a)]; provided the following further conditions and limitations are satisfied:

(1) offering expenses do not exceed those allowed for securities registered pursuant to the provisions of this title;

(2) no general advertising or general solicitation is used; and

(3) the issuer files with the Administrator no later than fifteen (15) days after the first sale of securities subject to the Securities Act one (1) signed copy of the notice of sales on Form D as most recently filed with the SEC. Such filing shall also include the following:

(A) an undertaking by the issuer to furnish to the Administrator, upon written request, the information furnished by the issuer to offerees;

(B) unless otherwise available, a consent to service of process on Form U-2 and (if applicable) Form U-2A; and

(C) the notice of exemption fee required by Section 1-612.A.12 of the Securities Act.

(c) **Substantial compliance.** A failure to comply with a term, condition or requirement of (b)(3) of this Section will not result in the loss of the exemption from the requirements of Section 1-301 of the Securities Act for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

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

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

(3) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of (b)(3) of this Section.

(d) **Action by Administrator.** Where an exemption is established only through reliance upon (c) of this Section, the failure to comply shall nonetheless be actionable by the Administrator under the Securities Act.

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

(f) **Waiver of terms.** The Administrator may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption.

(g) **Title.** The exemption authorized by this section shall be known and may be cited as the "Oklahoma Coordinated Limited Offering Exemption".

660:11-11-44. [RESERVED]

660:11-11-45. [RESERVED]

660:11-11-46. [RESERVED]

660:11-11-47. [RESERVED]

660:11-11-48. [RESERVED]

660:11-11-49. Nonissuer transaction exemption for certain exchange-listed securities

By authority delegated to the Administrator in Section 1-203 of the Securities Act, the following transactions are determined to be classes of transactions for which registration is not necessary or appropriate for the protection of investors and are exempt from Sections 1-301 and 1-504 of the Securities Act: any nonissuer transaction involving a security issued and outstanding and listed or approved for listing upon notice of issuance on Tier 1 of the Chicago Stock Exchange or involving any security of the same issuer that is of senior or substantially equal rank, or that differs only in terms of voting rights, from the security so listed, or any warrant, option or right to purchase or subscribe to any such security so long as the standards for such listing remain substantially the same.

660:11-11-50. [RESERVED]

660:11-11-51. Cross-border transactions exemption

By authority delegated to the Administrator in Section 1-203 of the Securities Act, transactions effected by a Canadian broker-dealer and its agents that meet the requirements for exemption from registration pursuant to 660:11-5-20 are determined to be classes of transactions for which registration is not necessary or appropriate for the protection of investors and are exempt from Sections 1-301 and 1-504 of the Securities Act.

660:11-11-52. Oklahoma accredited investor exemption

Under the authority of Section 1-203 of the Securities Act, transactions meeting the following conditions are exempt from Sections 1-301 and 1-504 of the Securities Act:

(1) **Sales only to accredited investors.** Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited investors. For purposes of this Section, an "accredited investor" is a person who meets the definition set forth in 17 CFR § 230.501(a).

(2) **Investment intent.** The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under Sections 1-303 or 1-304 of the Securities Act or to an accredited investor pursuant to an exemption from securities registration under the Securities Act.

(3) **When exemption is unavailable.**

(A) The exemption is not available to a promotional or development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(B) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any promoters of the issuer presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

(i) within the last five years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the SEC;

(ii) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

(iii) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(iv) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(C) Subparagraph (3)(B) shall not apply if:

(i) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

(ii) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(iii) the issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph.

(4) **General announcement.**

(A) A general announcement of the proposed offering may be made by any means.

(B) The general announcement shall include only the following information, unless additional information is specifically permitted by the Administrator:

(i) The name, address and telephone number of the issuer of the securities;

(ii) The name, a brief description and price (if known) of any security to be issued;

(iii) A brief description of the business of the issuer in 25 words or less;

(iv) The type, number and aggregate amount of securities being offered;

(v) The name, address and telephone number of the person to contact for additional information; and

(vi) A statement that:

(I) sales will only be made to accredited investors;

(II) no money or other consideration is being solicited or will be accepted by way of this general announcement; and

(III) the securities have not been registered with or approved by any state securities agency or the SEC and are being offered and sold pursuant to an exemption from registration.

(5) **Additional information.** The issuer, in connection with an offer, may provide information in addition to the general announcement under (4), if such information:

(A) is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(B) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(6) **Telephone and electronic solicitation.**

(A) No telephone or electronic solicitation shall be permitted unless prior to placing the telephone or electronic solicitation, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(B) Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this order.

(7) **Notice filing.** The issuer shall file a notice of the transaction with the Department within 15 days after the first sale of securities subject to the Act. The notice must include the following: an executed copy of the NASAA Model Accredited Investor Exemption Uniform Notice of Transaction; the Oklahoma Accredited Investor Exemption Supplemental Information Form; a consent to service of process on Form U-2 and (if applicable) Form U-2A; a copy of the general announcement; and a fee as set forth in Section 1-612 of the Securities Act.

(8) **Disqualifying provision.** Failure to comply with (7) of this section shall not result in the loss of availability of the subject exemption unless the issuer, any of its predecessors or affiliates have been subject to a cease and desist order of the Administrator or any order, judgment, or decree by another state securities agency, the SEC or any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person for failure to comply with a notice filing requirement for a comparable exemption. This provision shall not apply if the Administrator determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied. Requests for waivers of the disqualifying provision of this subsection shall be in writing setting forth the reasons therefor.

660:11-11-53. Exemption for offers but not sales

Terms of the exemption. By authority delegated to the Administrator in Sections 1-202.18 and 1-203 of the Securities Act, the following transactions are determined to be classes of transactions for which registration is not necessary or appropriate for the protection of investors and are exempt from Sections 1-301 and 1-504 of the Securities Act: an offer to sell, but not a sale, of a security exempt from registration under the 1933 Act if:

(1) a registration statement has been filed under this act, but is not effective,

(2) the offeror is not aware of a stop order that has been issued by the Administrator under this act and does not know of an audit, inspection, or proceeding by the Department that may culminate in a stop order is by the offeror to be pending; and

(3) the offer consists only of:

(A) publication or distribution of a solicitation of interest document that complies with the requirements of 17 CFR § 230.555 and any subsequent oral communications with prospective investors and other broadcasts, also permitted by said section;

(B) a preliminary offering circular that complies with the requirements of 17 CFR § 230.254; or

(C) an offering document that contains the information required to be furnished in 17 CFR §230.502(b)(2).

660:11-11-54. Intrastate offering exemption

(a) **Terms of the Exemption**. Under the authority of Section 1-202.25 of the Securities Act, transactions meeting the following conditions are exempt from Sections 1-301 and 1-504 of the Securities Act:

(1) **Intrastate offers and sales**. The issuer meets all of the requirements set forth in Section 1-202.25 of the Securities Act.

(2) **Minimum offering amount.** Investors shall receive a return of all their subscription funds if the minimum offering amount is not raised by the time stated in the disclosure document. Non-cash contributions from control persons or other insiders shall not be considered in fulfilling the minimum offering amount.

(3) **Initial notice filing.** The issuer, at least ten (10) business days prior to the first sale of the securities, shall file a notice of the proposed offering directly with the Department. The notice must include the following:

(A) the names and addresses of the issuer, all persons who will be involved in the offer or sale of securities on behalf of the issuer, and any bank or other depository institution in which investor funds will be deposited;

(B) a copy of the disclosure document to be provided to each prospective purchaser in connection with the offering within a reasonable period of time before the date of sale containing at least the following:

(i) the name, legal status, physical address, and website address of the issuer;

(ii) the names of the directors, officers, and any other control persons with descriptions of each person's background and qualifications;

(iii) a description of the business of the issuer and the anticipated business plan of the issuer;

(iv) a description of the stated purpose and intended use of the proceeds of the offering sought by the issuer, including compensation paid to any officer, director, or control person;

(v) the target offering amount and the deadline to reach the target offering amount, and any minimum amount required to close the offering if such minimum is less than the target offering amount;

(vi) the amount of commission or other remuneration to be paid to any broker-dealer or agent involved in the offer or sale of the securities;

(vii) financial information about the issuer, certified by the issuer's chief executive officer and chief financial officer, or other individual serving in a similar capacity, to be true and complete in all material respects, including:

(I) annual financial statements, unless the issuer is newly organized and has not reached its first fiscal year end, that are dated as of the end of the issuer's most recently completed fiscal year; are prepared in accordance with generally accepted accounting principles in the United States; include a balance sheet, statement of income, statement of cash flows, statement of changes in stockholders' equity and notes to the financial statements; and comply with the applicable standard set forth in (4) of this subsection; and

(II) interim financial statements including an unaudited balance sheet and statement of income for the issuer's most recently completed fiscal quarter, but only if the issuer is newly organized and has not reached its first fiscal year end or the date of the issuer's most recently completed fiscal year end is more than one hundred twenty (120) days prior to the date of filing.

(C) a description of any litigation, legal proceedings, or pending regulatory action involving the issuer or its officers, directors, or control persons;

(D) a statement that:

(i) sales will only be made to any one person in an amount up to $5,000.00 unless the persons are accredited investors as that term is defined in Rule 501 of Regulation D of the Securities Act of 1933 (17 C.F.R. 230.501);

(ii) sales will only be made to residents of the state of Oklahoma at the time of the sale of the security;

(iii) the securities have not been registered with or approved by the state of Oklahoma and are being offered and sold pursuant to an exemption from registration and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under federal and state law;

(iv) for a period of six (6) months from the date of the sale by the issuer of the securities, any resale of the securities (or the underlying securities in the case of convertible securities) shall be made only to persons resident within the state of Oklahoma; and

(v) there is no ready market for the sale of the securities acquired from this offering and it may be difficult or impossible for a purchaser to sell or otherwise dispose of this investment.

(E) a copy of the escrow agreement;

(F) a consent to service of process on Form U-2 and (if applicable) Form U-2A; and

(G) the fee as set forth in Section 1-612 of the Securities Act.

(4) **Annual financial statement standards.** The annual financial statements required in (3)(B)(vii)(I) of this subsection must meet the following applicable standard:

(A) For offerings that have an aggregate offering amount of $500,000 or less, the issuer may provide unaudited and unreviewed financial statements. However, if the issuer has obtained financial statements that have been compiled, reviewed, or audited by an independent certified public accountant, the issuer must provide those financial statements;

(B) For offerings that have an aggregate offering amount of more than $500,000 but less than $1,000,000, the financial statements must be compiled by an independent certified public accountant. However, if the issuer has obtained financial statements that have either been reviewed or audited by an independent certified public accountant, the issuer must provide those financial statements; or

(C) For offerings that have an aggregate offering amount of $1,000,000 or more, the financial statements must be reviewed by an independent certified public accountant. However, if the issuer has obtained financial statements that have been audited by an independent certified public accountant, the issuer must provide those financial statements.

(5) **Continuing notice filings.** For offerings that continue beyond one year from the commencement date of the offering, the issuer shall file with the Department, no later than thirty (30) days after the end of each quarter, updated interim financial statements including an unaudited balance sheet and statement of income for the issuer's most recently completed fiscal quarter, certified by the issuer's chief executive officer and chief financial officer, or other individual serving in a similar capacity, to be true and complete in all material respects.

(6) **Final notice filing.** The Issuer shall file with the Department, no later than thirty (30) days after the termination of the offering, a final notice that the offering has been terminated. The final notice must include the following:

(A) the Oklahoma exemption file number for the offering of securities to which the final notice relates;

(B) the commencement date of the offering and the termination date of the offering;

(C) a sales report that discloses the dollar amount of securities sold in Oklahoma in connection with the offering, in the following format:

(i) Beginning offering amount;

(ii) Minus: Amount sold during the offering;

(iii) Balance unsold at the termination of the offering; and

(D) If the offering did not achieve the minimum offering amount, the Issuer shall provide written confirmation to the Department that all offering proceeds that were raised in the offering were returned to each purchaser and that each purchaser did receive their investment proceeds.

(7) **Fees.** There are no fees required to be paid for the continuing notices or the final notice.

(8) **Piecemeal filings.** Any notice required under this section is not considered filed if it is incomplete. Piecemeal filings shall not be accepted.

(9) **Required legend.** The issuer shall, in connection with any securities sold by it under this Section, place a prominent legend on the certificate or other document evidencing the security stating that: "Offers and sales of these securities were made under an exemption from registration and have not been registered under the Securities Act of 1933 or the Oklahoma Uniform Securities Act of 2004. For a period of six months from the date of the sale by the issuer of these securities, any resale of these securities (or the underlying securities in the case of convertible securities) shall be made only to persons resident within the state of Oklahoma."

(10) **Evidence from purchaser.** The issuer shall obtain from each purchaser a written representation of residency within the state of Oklahoma before a sale may be made. Such representation shall include an affirmation made by the purchaser that the purchaser is at least 18 years of age and purchasing the securities for investment. The issuer shall also obtain a copy of any one of the following from the purchaser:

(A) valid Oklahoma driver's license or official identification card issued by the State of Oklahoma;

(B) current Oklahoma voter registration card; or

(C) county property tax records showing the individual owns and occupies property in Oklahoma as his or her primary residence.

(b) **Application of NASAA Statements of Policy and guidelines.** The Department may apply the provisions of applicable Statements of Policy or guidelines adopted by NASAA to an offering of securities made pursuant to this exemption from registration. Failure to comply with any such provision may serve as the basis for withdrawing or further conditioning the exemption as to a particular offering.

PART 7. FEDERAL COVERED SECURITIES

660:11-11-60. Investment company notices

(a) **Notice requirement.** Pursuant to Section 1-302.A of the Securities Act, prior to the offer in this state of a Class of security of an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940, that is not otherwise exempt under Sections 1-201 through 1-203 of the Securities Act, the issuer must file a notice with the Administrator relating to such Class of security.

(b) **Content of notice.** Each required notice shall include the following:

(1) a properly completed Form NF;

(2) a consent to service of process on Form U-2 and (if applicable) Form U-2A; and

(3) the filing fee set forth in Section 1-612.C of the Securities Act.

(c) **Other documents.** Documents other than those required in (b) of this section, unless specifically requested by the Department, should not be filed with the Department. Documents that should be filed with the Department only if specifically requested include, but are not limited to, registration statements, prospectuses, amendments, statements of additional information, quarterly reports, annual reports, and sales literature.

(d) **Renewal of notice.** The effectiveness of a notice required pursuant to (a) of this section may be renewed each year for an additional one (1) year period of effectiveness by filing on or before the expiration of the effectiveness of such notice:

(1) a properly completed Form NF clearly indicating the state file number of the Notice to be renewed; and

(2) the filing fee required by Section 1-612.C of the Securities Act.

660:11-11-61. Regulation D Rule 506 federal covered security notice filing

(a) **Notice requirement.** Issuers offering a security in this state in reliance upon Section 1-301.1 of the Securities Act by reason of compliance with Regulation D, Rule 506, adopted by the SEC, shall be required to file a notice with the Administrator pursuant to the authority of Section 1-302.C.1 of the Securities Act if a sale of a security subject to the Securities Act occurs as a result of such offering. Such notice shall be filed no later than fifteen (15) days after the first sale of a security subject to the Securities Act for which a notice is required.

(b) **Content of notice filing.** Each required notice shall include the following:

(1) one copy of the notice of sales on Form D as most recently filed with the SEC;

(2) the notice filing fee required by Section 1-612.A.19 of the Securities Act.

660:11-11-62. Regulation A Tier 2 federal covered security notice filing

(a) **Notice requirement.** Issuers offering a security in this state in reliance upon Section 1-301.1 of the Securities Act by reason of compliance with Tier 2 of Regulation A, adopted by the SEC, shall be required to file a notice with the Administrator pursuant to the authority of Section 1 302.C.2 of the Securities Act. Such notice shall be filed prior to the first offer of securities in this state that is subsequent to qualification of the offering statement by the SEC.

(b) **Content of notice.** Each required notice shall include the following:

(1) a copy of Part I of Federal Form 1-A in conjunction with a completed Oklahoma Notice of Regulation A - Tier 2 Offering form (or equivalent uniform form), or copies of all documents filed with the SEC;

(2) a consent to service of process (if such is not included in the submitted Notice form); and,

(3) the notice filing fee required by Section 1-612.A.19. of the Securities Act.

SUBCHAPTER 13. SALES LITERATURE

Section

660:11-13-1. Purpose

The rules of this subchapter are adopted to provide procedures for complying with the provisions of Section 1-504 of the Securities Act relating to sales literature.

660:11-13-2. Definitions

The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Sales literature**" means material published, or designed for use, in social media, in a newspaper, magazine or other periodical, radio, television, telephone solicitation or tape recording, videotaped display, signs, billboards, motion pictures, telephone directories (other than routine listings), website, other public media and any other written or electronic communication distributed or made generally available to customers or the public and used

in connection with the offer or sale of securities or the services of a broker-dealer or investment adviser. Sales literature includes, but is not limited to, websites, prospectuses, pamphlets, circulars, form letters, market letters, telemarketing scripts, seminar texts, research reports, surveys, performance reports or summaries and reprints or excerpts of any other advertisement, sales literature or published material.

"**Sales literature package**" means all submissions of sales literature to the Department under one posting or delivery relating to a specific issue of securities or the services of one or more specific broker-dealers or investment advisers.

660:11-13-3. Filing requirements

(a) **Requirement of filing.** Section 1-504 of the Securities Act requires a filing of all sales literature for review and response by the Administrator before use or distribution in Oklahoma. A complete filing consists of:

(1) the sales literature package,

(2) the fee specified in Section 1-612 of the Securities Act, and

(3) a representation:

(A) by the applicant, issuer or broker-dealer, that reads substantially as follows: "I ----hereby attest and affirm that the enclosed sales literature or advertising package contains no false or misleading statements or misrepresentations of material facts, and that all information set forth therein is in conformity with the Company's most recently amended registration statement as filed with the Oklahoma Department of Securities on or about-----.", or

(B) by the applicant, broker-dealer or investment adviser, that reads substantially as follows: "I ------hereby attest and affirm that the enclosed sales literature or advertising package contains no false or misleading statements or misrepresentations of material facts, and that all information set forth therein is in conformity with the provider's current information on file with the Oklahoma Department of Securities."

(b) **Exclusions.** The following types of sales literature are excluded from the filing requirements set forth in this Section:

(1) Sales literature which does nothing more than identify a broker-dealer and/or offer a specific security at a stated price;

(2) Internal communications that are not distributed to the public;

(3) Prospectuses, preliminary prospectuses, prospectus supplements and offering circulars which have been filed with the Department as part of a registration statement, including a final printed copy if clearly identified as such;

(4) Sales literature solely related to the name of an entity and its personnel, location, ownership, offices, business structure, lines of business, officers or partners, or contact information;

(5) Sales literature that does not relate to securities, securities markets, the economy, or the qualifications or performance of an entity or its personnel; and

(6) Sales literature as defined in 660:11-13-2 that is subject to the regulation of FINRA or the SEC and in compliance with the pertinent regulatory requirements

(c) **Piecemeal filings.** The Department will only review sales literature packages that are complete filings. Piecemeal filings may result in the disapproval of any materials thus submitted.

660:11-13-4. Content

(a) **Application of antifraud provisions.** Sales literature used in any manner in connection with the offer and sale of securities or the offer of brokerage or advisory services is subject to the provisions of Section 1-501 and/or 1-502 of the Securities Act, whether or not such sales literature is required to be filed pursuant to Section 1-504 of the Securities Act or 660:11-13-3. Further, sales literature filed with the Department is subject to the provisions of Sections 1-501 and/or 1-502 and 1-505 of the Securities Act. Sales literature should be prepared accordingly and should not contain any ambiguity, exaggeration or other misstatement or omission of material fact, which might confuse or mislead an investor.

(b) **Prohibited disclosures.**

(1) Unless stating that the Commission, Administrator or Department has not approved the merits of the securities offering or the sales literature, no sales literature shall contain a reference to the Commission or the Department unless such reference is specifically required in a Departmental Prospectus Guide or requested by the Administrator.

(2) An investment adviser is prohibited from publishing, circulating or distributing any sales literature that:

(A) refers, directly or indirectly, to any testimonial concerning the investment adviser or any advice, analysis, report, or other service rendered by such investment adviser to include the use of any certifications, accreditations, or ratings issued by a third party unless

(i) the Administrator has determined that such certifications, accreditations, or ratings are acceptable in lieu of the examinations in 660:11-7-13: or

(ii) the sales literature simultaneously and prominently includes the standards the entity employs in issuing same;

(B) refers to past specific recommendations of the investment adviser that were or would have been profitable unless the investment adviser provides:

(i) all past recommendations made during the immediately preceding period of not less than one year,

(ii) additional information sufficient for a reader to evaluate the adviser's performance to include, but not be limited to, the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date, and

(iii) a disclaimer to the effect that past performance does not guarantee future success;

(C) represents that any graph, chart, formula or other device offered can in and of itself be used to make trading decisions without prominently disclosing in the advertisement any limitations or difficulties in its use; or

(D) contains any statement to the effect that any report, analysis, or service is free unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly.

SUBCHAPTER 15. MISCELLANEOUS PROVISIONS

Section

660:11-15-1. General rules for presentation of financial statements

(a) **Asset values.** The following rules shall apply in presenting asset values in all Financial Statements filed with the Department:

(1) A unilateral "write-up" of assets above historical cost is not considered in accordance with generally accepted accounting principles. Financial Statements containing a "write-up" of assets to appraisal values (irrespective of the soundness of the appraisal) shall not be accepted.

(2) A registrant acquiring assets in an "arms-length" transaction, solely or partly for its own capital stock, should record the transaction in its Financial Statements at either:

(A) the fair market value of the shares of stock given in consideration;

(B) the fair market value of the asset so acquired; or

(C) The amount selected should be one that has the preponderance of evidence substantiating its selection.

(3) Where a parent company (one owning more than 50% of other companies) or a subsidiary company or an affiliated company is the registrant, consolidated or combined Financial Statements shall be submitted. The consolidated statements must conform to generally accepted accounting principles and result in the elimination of "write-ups" or appraisal amounts not represented by "arms-length" transactions.

(4) Where the "promoters" of a registrant have transferred assets to the registrant solely or partly for capital stock, the tests referred to in (1), (2) and (3) of this subsection must be applied so as to result in either no "write-up" or one not greater than would have resulted from a transaction carried out at "arms-length." The registrant shall make full disclosure of all pertinent facts and substantiate the values used in its Financial Statements if not representing "historical cost" of acquisition from third parties.

(b) **Opinion of independent accountants.** Audited Financial Statements shall be accompanied by an opinion of the Independent Accountant. The opinion letter shall be dated, shall be manually signed, shall identify without detailed enumeration the Financial Statements covered by the opinion, shall state that the examination was conducted in accordance with generally accepted auditing standards and shall express the Independent Accountant's opinion as to the fairness or unfairness of the Financial Statements in accordance with generally accepted accounting principles or his inability to express such an opinion.

660:11-15-2. Protection from financial exploitation

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

"**Account**" means any account of a broker-dealer or investment adviser for which a Protected Adult has the authority to transact business.

"**Agencies**" means the one or more of the following: the Oklahoma Department of Human Services, the office of the district attorney in the county in which the suspected exploitation occurred, or the local municipal police or sheriff's department.

"**Financial exploitation**" means:

(A) the wrongful or unauthorized taking, withholding, appropriation or use of money, assets or property of a protected adult; or

(B) any act or omission taken by a person, including through the use of a power of attorney, guardianship, conservatorship or any other authority, regarding a protected adult, to:

(i) obtain control, through the use of intimidation, undue influence, coercion, harassment, duress, deception, false representation or false pretense, over the protected adult's money, assets or property; or

(ii) convert money, assets or property of the protected adult.

"**Protected adult**" means:

(A) an individual 62 years of age or older; or

(B) an incapacitated person or a vulnerable adult as such terms are defined in the Protective Services for Vulnerable Adults Act in Title 43A of the Oklahoma Statutes.

(b) **Agency Disclosures**. As required by the Protective Services for Vulnerable Adults Act in Title 43A of the Oklahoma Statutes, if a broker-dealer or investment adviser reasonably believes that financial exploitation of a protected adult in this state has occurred, is occurring, may have been attempted, is being attempted, or will be attempted, the broker-dealer or investment adviser shall promptly notify one or more of the Agencies.

(c) **Third-Party Disclosures**. If a broker-dealer or investment adviser reasonably believes that financial exploitation relating to a protected adult has occurred, is occurring, may have been attempted, is being attempted, or will be attempted, in and/or from this state, the broker-dealer or investment adviser may notify any third-party previously designated by the protected adult or any other third party that is reasonably associated with the protected adult.

(d) **Temporary Hold on Disbursements**.

(1) A broker-dealer or investment adviser transacting business in and/or from this state with a protected adult may place a temporary hold on a transaction in and/or a disbursement of funds or securities from an account of such protected adult or an account on which such protected adult is a beneficiary if:

(A) the broker-dealer or investment adviser reasonably believes that financial exploitation of a protected adult has occurred, is occurring, has been attempted, or will be attempted; and

(B) the broker-dealer or investment adviser:

(i) immediately, but in no event more than two business days after the date the temporary hold is first placed provides oral or written notification, which may be electronic, of the temporary hold and the reason therefor to all parties authorized to

transact business in the account; any third party previously designated by the protected adult to be contacted; and the Oklahoma Department of Securities; and

(ii) immediately initiates an internal review of the suspected or attempted financial exploitation of the protected adult, as necessary.

(2) Any temporary hold of a transaction or disbursement of funds or securities as authorized by this subsection will expire upon the earlier of:

(A) a determination by the broker-dealer or investment adviser that the transaction or disbursement of funds or securities will not result in financial exploitation of the protected adult; or

(B) not later than fifteen business days after the date on which the broker-dealer or investment adviser first placed the temporary hold on the transaction or disbursement of funds or securities, unless the broker-dealer or investment adviser's internal review of the facts and circumstances supports its reasonable belief that financial exploitation of the protected adult has occurred, is occurring, has been attempted, or will be attempted, in which case the broker-dealer or investment adviser may extend the temporary hold to not later than twenty-five business days after the date the broker-dealer or investment adviser first placed the temporary hold on the transaction or disbursement of the funds or securities; or

(C) at any time, an agency of competent jurisdiction or a court of competent jurisdiction may terminate or extend a temporary hold authorized by this subsection.

(e) **Disclosure exceptions.** Notwithstanding subsections (c) and (d) above, a notification permitted or required by this section shall not be made to any person the broker-dealer or investment adviser reasonably believes has engaged, is engaged, or will engage, in suspected or attempted financial exploitation of the protected adult.

(f) **Immunity from administrative liability.** A broker-dealer or investment adviser that, in good faith and exercising reasonable care, complies with this section shall be immune from any administrative liability imposed through an action by the Department that might otherwise arise from a disclosure, placing a temporary hold on a transaction or disbursement of funds or securities, or providing access to records in accordance with this section.

(g) **Records**. A broker-dealer or investment adviser shall retain and provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of a protected adult to the Oklahoma Department of Human Services and to law enforcement, either as part of a referral to, or upon request of, the Oklahoma Department of Human Services or law enforcement. The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation of a protected adult. Nothing in this provision shall limit or otherwise impede the authority of the Administrator of the Oklahoma Department of Securities to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

CHAPTER 15. OKLAHOMA TAKE-OVER DISCLOSURE ACT OF 1985

SUBCHAPTER 1. GENERAL PROVISIONS

Section

660:15-1-1. Purpose

The provisions of this Chapter have been adopted for the purpose of carrying out the provisions of the Oklahoma Take-over Disclosure Act of 1985 in compliance with Section 457 of that Act, including provisions governing take-over offers.

660:15-1-2. Statutory citations

Citations to statutes in this Chapter refer to the most recent codification of the Oklahoma Take-over Disclosure Act of 1985, 71 O.S., Sections 451 through 462.

660:15-1-3. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Take-over Act**" means the most recent codification of the Oklahoma Take-over Disclosure Act of 1985, 71 O.S., Sections 451 through 462.

SUBCHAPTER 3. REGISTRATION

Section

660:15-3-1. Review of take-over offer materials

The Administrator may require only those disclosures which are factual in nature, and may not require disclosures which involve an evaluation of the underlying fairness of the take-over offer nor shall the Administrator apply subjective standards as to the fairness of the take-over offer in his review.

660:15-3-2. Financial statements

If the offeror is other than a natural person, such offeror shall file audited financial statements for its last two (2) fiscal years. If the offeror's audited financial statements are not current to within four (4) months of the date of filing of the registration statement, the offeror shall submit reviewed financial statements for the interim period. The financial statements shall be prepared in accordance with generally accepted accounting principles and examined by independent accountants in accordance with generally accepted auditing standards and accompanied by an opinion of the accountants making such examination.

660:15-3-3. Summary suspension of take-over offer

(a) Pursuant to subsection D of Section 453 of the Take-over Act, the Administrator may summarily suspend the effectiveness of a take-over offer. Such an action shall be based solely upon a determination that:

(1) the registration statement required to be filed under Section 453 of the Take-over Act does not contain all the information required to be included under subsection F of Section 453 of the Take-over Act; or

(2) the take-over materials provided to offerees do not provide full disclosure to offerees of all material information concerning the take-over offer.

(b) The summary suspension shall be in effect only until a final determination is made by the Administrator following the hearing held pursuant to subsection E of Section 453 of the Take-over Act and in accordance with 660:15-3-4.

660:15-3-4. Time limits

Notwithstanding subsection E of Section 453 of the Take-over Act which provides that the Administrator may by rule or order prescribe different time limits than those specified in subsection E in connection with the suspension of a take-over offer following a hearing, the determination by the Administrator of whether to suspend a take-over offer must be made prior to the expiration of twenty (20) business days following the filing of the registration statement in connection with such take-over offer.

CHAPTER 20. OKLAHOMA SUBDIVIDED LAND SALES CODE

SUBCHAPTER 1. GENERAL PROVISIONS

Section

660:20-1-1. Purpose

The provisions of this Chapter have been adopted for the purpose of carrying out the provisions of the Oklahoma Subdivided Land Sales Code in compliance with Section 662 of that Act, including rules governing applications and reports and defining terms.

660:20-1-2. Statutory citations

Citations to statutes in this Chapter refer to the most recent codification of the Oklahoma Subdivided Land Sales Code, 71 O.S., Sections 601 through 667.

660:20-1-3. Definitions

Unless the context otherwise requires, or unless defined in this Section, terms used in this Chapter, if defined in the Land Sales Code, shall have the meaning as defined in the Land Sales Code. The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"CFPB" means the Consumer Financial Protection Bureau.

"Director of Corporate Finance" means the Department employee who leads the division responsible for the registration of securities, business opportunities, and subdivided lands as well as any exemptions from such registration requirements.

"**Department**" means the Oklahoma Department of Securities.

"**Land Sales Act**" means-the most recent codification of the Oklahoma Subdivided Land Sales Code, 71 O.S., Sections 601 through 667.

"**Vacation certificates**" means any material associated with a plan whereby a prospective purchaser would be entitled to lodging, food or other amenities and that is used by subdividers or their agents or distributors or any other person to induce prospective purchasers to visit the subdivision or attend or submit to a sales presentation by a subdivider or its agents or its distributors or any other person.

SUBCHAPTER 3. REGISTRATION OF SUBDIVIDED LAND

Section

660:20-3-1. Registration procedure

(a) **Applications filed with CFPB**. Application for registration of subdivided land shall be made by submitting to the Administrator at the office of the Department two (2) complete copies of a full registration application filed with the CFPB and the CFPB certificate of registration, provided, however, that only one copy of the exhibits to the CFPB filing shall be filed with the Administrator.

(b) **Applications on Form LRF-625**. In the event subdivided lands are not to be registered with the CFPB, then a registration shall be undertaken by filing with the Administrator a completed Form LRF-625, adopted by the Administrator as the application form for registration of subdivided lands.

(c) **Exhibits and additional information**. Any information required by Section 625 of the Land Sales Act which is not included, or not sufficiently covered in the CFPB registration application, or any condensed version thereof, shall be covered, expanded or explained by attaching additional sheets to the copies of the CFPB form of registration when necessary and where appropriate. All instruments, documents and other exhibits required by Section 625 of the Land Sales Act shall be included in the registration and those not otherwise attached or included in the form of registration required by the CFPB must be added and attached as exhibits to the copies of the registration application submitted to the Administrator for filing with the Department. Only one of each required exhibit shall be filed and such exhibits shall include. when applicable, but shall not be limited to the following.

(1) When the subdeveloper is a corporation or limited partnership, or if applicable a joint stock company, or business trust, which must be domesticated in Oklahoma to do business in Oklahoma, a copy of a certificate of domestication issued by the Secretary of State of Oklahoma, or if applicable other evidence of authority to do business in Oklahoma.

(2) If the subdivider is an unincorporated association, joint stock company, business trust or a general partnership using a fictitious name or any other form of business organization which may not file with the Secretary of state of Oklahoma, but which may be required to file copies of a trust instrument or certificates of fictitious name or a similar document with the clerk of the Oklahoma District Court in districts where company offices are located, real estate is owned or business is principally conducted, then a certified copy of each such filed document shall be attached as an exhibit.

(3) If the subdivider is a trustee, a certified copy of all instruments by which the trust was created or declared, and in which it is accepted and acknowledged.

(4) If the subdivider is a partnership or unincorporated association, or joint stock company or similar form of business organization, a certified copy of its articles of partnership or association and all other papers pertaining to formation and governance of the organization.

(5) An executed "Consent to Service of Process" irrevocably appointing the Administrator of the Department or the Administrator's successor in office, as attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against the applicant or the applicant's successor, executor or administrator which arises under the Land Sales Act or any rule or order issued thereunder after the Consent has been filed, with the same validity as if served personally on the person filing the Consent, all as provided in Subsection A of Section 664 of the Land Sales Act, and such "Consent to Service of Process" should be generally in the form of the Uniform Form U-2 promulgated and recommended by the North American Securities Administrators Association.

(6) A uniform form of "Corporate Resolution," or in the case of another form of business organization, a substantially similar and appropriate resolution, as applicable generally in the form of the Uniform Form U-2A as promulgated by the North American Securities Administrators Association.

(7) A list of all persons who are intended or expected to represent or assist the subdivider in selling or disposing the subdivided land to Oklahoma residents.

(8) A copy of agency franchise agreements, sales agreements and a copy of any agreements between the subdivider and salesmen and brokers.

(9) A detailed statement of the plan under which the subdivider proposes to develop the subdivision, offer and sell lots and generally transact business, sworn to or affirmed by an officer of the subdivider or a person occupying a similar position.

(10) A copy of all advertising material intended to be used for distribution, publication, or otherwise in connection with the subdivided land.

(11) An exact description of the real estate to be sold.

(12) A map or plat prepared by an independent, registered professional land surveyor showing the boundaries, dimensions, setback lines, roads, utility easements, public easements and all other similar information regarding the subdivided land including all common areas and lots of the subdivision.

(13) Copies of all zoning restrictions and deed restrictions affecting any of the subdivided land included in the filing.

(14) Copies of conveyances, bearing public record book and page number, by which the subdivider or owner acquired title. If the subdivider does not own the property, also attach copies of all instruments which give the subdivider authority to sell.

(15) Copies of all instruments presently creating liens, mortgages, encumbrances, reservations or defects upon or otherwise affecting the use or title of land included in the filing. The documents shall reflect the book and page number of the public records where they are recorded.

(16) A list of units by lot number and section number, as applicable, which relates each lot to all improvements which are dependent upon future performance according to any promise made by the subdivider.

(17) An up-to-date, current copy of either a master title insurance policy providing coverage for the purchasers of lots or a specimen copy of individual title insurance policies which will provide coverage for the purchasers of lots and an independent, as described in Section 625 of the Land Sales Act, attorney's title opinion regarding title to the subdivided land included in the filing and a consent to use the opinion in connection with the registration.

(18) A copy of the sales contract, including contract for a deed if applicable, to be used.

(19) A copy of any note, including mortgage note, to be used.

(20) A copy of the deed or other instrument to be used by the subdivider in conveying title to the purchasers.

(21) A copy of any mortgage trust escrow agreement.

(22) A copy of any improvement escrow agreement.

(23) A copy of an independent licensed engineer's report regarding the soil and topography of the subdivided land, and a consent to use the report in connection with the registration.

(24) A copy of any and all contracts for franchises with public utility companies or copies of all documents and instruments providing arrangement for services and facilities in lieu of those provided by any public utility companies.

(25) A copy of any and all completion bonds, performance bonds and agreements with public authorities which guarantee completion of improvements.

(26) A copy of all contracts or agreements to be used between any salesmen and the ultimate purchaser.

(27) An opinion of counsel regarding the legality of the proposed offering of subdivided land and a consent to use such opinion in connection with the registration.

(28) Audited financial statements including a schedule of real estate assets, and a consent to use the opinion of the independent accountant in connection with the registration.

(29) One (1) copy of the Public Offering Statement, for which the federal Property Report with supplements may be used.

(d) **Filing fee**. Each application for registration shall be accompanied by payment to the Department of the statutory filing fee of Two Hundred Fifty Dollars ($250.00) plus One Dollar ($1.00) for each lot included in the offering.

(e) **Examination fees**. After filing the application for registration and prior to the registration becoming effective, the subdivider shall deposit with the Department, upon request by the Administrator, such amounts as may be reasonably expected to be incurred as expenses by the Administrator and/or the Administrator's designated representative(s) in the investigation of the subdivision as provided in any or all parts of Subsection E of Section 627 of the Land Sales Act.

660:20-3-2. Financial statements

Whenever required by the Land Sales Act or any provision of this Chapter, financial statements shall mean a statement of financial position, a statement of income, a statement of retained earnings, a statement of changes in financial position and, when required elsewhere or otherwise required by the Administrator, a separately certified schedule of real estate assets. The separately certified schedule of real estate assets shall disclose real estate held in sufficient detail to identify the subdivided land being offered in Oklahoma and separate parcels thereof acquired at different times or at different costs per acre; the schedule shall disclose the number of acres in each such parcel; the date each such parcel was acquired; the original cost for each such parcel; the amounts of any improvements capitalized and added to the cost basis of each such parcel; and the total amount of the historical cost basis of each such parcel; the amounts of any improvements capitalized and added to the cost basis of each such parcel; and the total amount of historical cost basis of each such parcel, with improvements, adjusted for a depreciation of improvements. All financial statements shall be prepared in accordance with generally accepted accounting principles and practices, unless otherwise provided by the Administrator, and shall be audited and certified by independent accountants, unless otherwise provided elsewhere or by the Administrator.

660:20-3-3. Public offering statement

(a) **Receipt for public offering statement.** The subdivider shall use a Public Offering Statement as provided and required in Section 626.A of the Land Sales Act and prepared in the manner instructed by Form LRF-625.A, adopted by the Administrator as the "Public Offering Statement-Instruction Guide." The subdivider shall obtain and retain a receipt as provided and required therein. The receipt may be in such form as the subdivider chooses, but it shall not contain or constitute a release of any kind and shall cover and pertain only to the receipt of a copy of the Public Offering Statement by the purchaser. Also, the receipt shall state and disclose that the Oklahoma Public Offering Statement includes and consists of a Summary

Disclosure Statement, a Property Report as defined hereinafter, and, if applicable, Oklahoma Supplement to the Property Report; and the receipt shall acknowledge that the purchaser received a copy of each of the documents and instruments comprising the Oklahoma Public Offering Statement. The receipt should also state the name of the person from whom the Oklahoma Public Offering Statement was received by the purchaser, the address where it was received and the date when it was received. There also should be a place for the purchaser to sign and a place separately provided for the purchaser to write in the date he signed the receipt. The failure to obtain and retain such a fully completed receipt in compliance with the requirements of Section 626.A of the Land Sales Act shall give rise to a presumption on the part of the Administrator that a Public Offering Statement was not delivered and provided to a purchaser according to law.

(b) **Federal Property Report.** In cases where a full registration application is filed with the CFPB for use in Oklahoma, the federal Property Report used in connection with the CFPB filing shall be submitted accompanied by a Summary Disclosure Statement and, together, the two documents shall be used as the Oklahoma Public Offering Statement.

(c) **Summary Disclosure Statement.** The Summary Disclosure Statement required by Section 626.6 of the Land Sales Act should be prepared in a manner consistent with this Section and as instructed by FORM LRF-626.B, adopted by the Administrator as the "Summary Disclosure Statement Guide." The Summary Disclosure Statement should be on 8 1/2" x 11" letter size, white paper and the lettering thereon should be no smaller than twelve-point type. The Summary Disclosure Statement may be typewritten, printed, mimeographed or otherwise produced, but it should be legible and should conform to the minimum standards set out herein. The Summary Disclosure Statement should be no more than four (4) pages long. It may be made by using both the front and back of two (2) sheets, which shall be counted as four (4) pages. The Summary Disclosure Statement should contain and set out in brief, succinct, and concise language, using plain English and emphasizing the most negative aspects and greatest risk factors to the purchaser, a summary of the information required in Section 626.B of the Land Sales Act, except that no financial statements of the subdivider shall be required in the Summary Disclosure Statement. In addition to the other information required to be contained in the Summary Disclosure Statement, it shall contain the following additional two (2) items:

(1) a statement of the kind of title the purchaser will have upon completion of payment for any of the subdivided land and a description of what happens if the purchaser defaults on any payments and all forfeitures which may occur; and

(2) a schedule, in tabular, columnar form, showing the date on which the subdivided land was acquired by the subdivider, or the date on which each parcel of the subdivided lands was acquired if not all acquired at the same time and the number of acres in each parcel; a column showing the amounts paid for each parcel of the subdivided land; a column showing the cost of all improvements made by the subdivider on each parcel of the subdivided land; a column showing the total historical cost basis, adjusted for any depreciation of improvements, of each parcel of the subdivided land; and a column showing the proposed total sales price of all lots in each parcel of the subdivided lands. Every item in the Summary Disclosure Statement should be referenced to the part, section

and page number, when applicable, of the Property Report, or main body of the Public Offering Statement, wherein elaboration, explanation and additional information regarding that item can be found. The questions which should be set out and answered in the Summary Disclosure Statement are as follows:

(A) If I have any questions or there is trouble where do I find the seller and the seller's representatives? Here include the name, principal address and telephone number of the subdivider, and the subdivider's offices and agents in this state.

(B) What does this land look like and how large will the development be? Here include a general description of the subdivided land including a statement of the total number of lots to be offered.

(C) If a purchaser decides later to sell the lot, what kind of help can the purchaser get selling it and what kind of local property market can the purchaser expect? Here include the assistance, if any, that the subdivider, or the subdivider's agents or affiliates will provide to the purchaser in the resale of the property and the extent to which the subdivider, or the subdivider's agents or affiliates will be in competition in the event of resale.

(D) What kind of rights or title to the land do I get immediately and what kind of title do I have after the lot is paid for? Here include material terms of any encumbrances, easements, mortgages and liens. Also include the plans and efforts to remove such liens, encumbrances or mortgages and the results of the success or failure thereof.

(E) What kind of taxes and assessments will I have to pay? Here include the material terms of all existing taxes and existing or proposed special taxes or assessments, including required membership fees or dues, which affect the subdivided lands.

(F) How can I use this property? Here include material zoning restrictions, restrictive covenants and other regulations affecting the use of the land. Also include the intended use for which the land is sold and material physical limitations and restrictions of the land relative to the intended use.

(G) What kind of utilities and other improvements now exist on the land and what kind are promised for the future? Here include information about existing or proposed improvements including, but not limited to, streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal systems and customary utilities and the estimated cost. date of completion and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any lot in the subdivided lands.

(H) What is the soil and climate like? Here include topographic and climatic characteristics of the subdivided lands and adjacent area.

(I) What hospitals, churches, fire stations, police protection and other community services are available? Here include the existing provisions for access of the subdivision to community fire protection, the location of primary and secondary schools, the proximity to the municipalities and the population thereof, the improvements installed or to be installed, including off-site and on-site community and recreational facilities, by whom they were or are to be installed, maintained or paid for, and an estimate of completion thereof.

(J) What happens if I fail to make any payments, or if I make my payments but the seller fails to pay on the seller's mortgage? Can any of my rights in the land be forfeited? Here include the kind of title the purchaser will have upon completion of payment for any of the subdivided land and what happens if the purchaser defaults on any payments and all forfeitures which may occur. Also describe any and all "take-out" provisions for all mortgages or state that there are none and state the possible consequences.

(K) What kind of value did this land have prior of the present development and how much is being spent to improve it? Here provide a schedule, in tabular, columnar form, showing the date on which the subdivided lands were acquired by the subdivider, or the date on which each parcel of the subdivided land was acquired if all not acquired at the same time and the number of acres in each parcel; a column showing the amounts paid for each parcel of the subdivided land; a column showing the costs of all improvements made by the subdivider on each parcel of the subdivided land; a column showing the total historical cost basis, adjusted for any depreciation of improvements, of each parcel of the subdivided land; and a column showing the proposed total sales price of all lots in each parcel of subdivided land.

(d) **Supplement.** In the event any item of information required by Section 626.B of the Land Sales Act is not contained in the format of the federal Property Report, or is not included in sufficient detail to constitute adequate disclosure, then a supplement to the Property Report shall be prepared, in the same format, in which additional sufficient information is provided and disclosed to satisfy the requirements of Section 626.B of the Land Sales Act in a form and manner acceptable to the Administrator- and such supplement shall be used with the Summary Disclosure Statement and the main body of the Property Report as part of the Oklahoma Public Offering Statement.

660:20-3-4. Renewal procedures

Upon the expiration of an effective registration the Administrator may renew the registration for an additional period of one (1) year provided the registrant is in compliance with the Land Sales Act, has filed all reports required by the Administrator, including periodic and supplemental updates and sales reports, pays an examination fee of Two Hundred Fifty Dollars ($250.00), and renewal is requested by a letter signed by the registrant.

SUBCHAPTER 5. REGISTRATION OF SUBDIVIDED LAND SALES AGENTS

Section

660:20-5-1. Application for license

(a) **Application**. An application for a subdivided land sales agent license shall be made by filing with the Administrator a completed Form LRF-632, adopted by the Administrator as the "APPLICATION FOR LICENSE FOR SUBDIVIDED LAND SALES AGENT."

(b) **Additional requirements**. In addition to the completed Form LRF-632, the following items will be required before a license will be issued:

(1) an affidavit signed by the supervising broker for the subdivision within ninety (90) days from the date of applying for the Oklahoma Subdivided Land Sales Agent license, affirming the type of real estate license held by the applicant and that he is a licensee in good standing; and

(2) payment to the Oklahoma Department of Securities of the required filing fee specified in Section 652 of the Land Sales Act.

660:20-5-2. Renewal of license

Every subdivided land sales license may be renewed by submitting proof that the applicant holds a valid, current real estate broker's or real estate sales associate's license, the renewal fee specified in Section 652 of the Land Sales Act, and a submission of a letter signed by the applicant requesting such renewal. Proof of a valid, current real estate broker's or real estate sales associate's license should consist of an affidavit dated within ninety (90) days of the requested renewal date and signed by the supervising broker for the subdivision. The affidavit shall affirm the kind of license held by the applicant and that he is a licensee in good standing. The proof should also consist of a photostatic copy or picture of the applicant's current real estate license issued by the appropriate regulatory authority. Every such renewal shall be for a period of one (1) year. Applications for renewal will be accepted anytime within sixty (60) days prior to the expiration date of a license.

660:20-5-3. Records and reports

Every agent shall make and keep, for each subdivider he represents, a monthly report. A copy of each monthly report shall be provided by the agent to the subdivider for retention by the subdivider for at least six (6) years, and for the first three (3) years in a readily accessible location. Such monthly report shall be provided to the subdivider within fifteen (15) days following the last day of the month covered by the report. Each monthly report shall set out the name and address of the agent and the subdivider and state the period of time covered by

the report and shall be signed by the agent; shall identify and list all lots which have been sold by the agent for the subdivider during the month covered; shall state the name and address of the purchaser or purchasers of each lot; shall state the date and address of each sale; shall state the amount paid for each lot; and shall state the gross amount of the commission earned by the agent for each lot sold.

SUBCHAPTER 7. EXAMINATIONS

Section

660:20-7-1. Expenses of on-site examination of subdivider

Charges for an on-site examination of a subdivision conducted by the Department pursuant to Section 627 of the Land Sales Act shall be paid by the person being examined as set forth in Section 652 of the Land Sales Act.

660:20-7-2. Expenses of examination of licensed agents

Charges for an examination of the business and records of a licensed agent shall be paid by the agent whose business is examined as set forth in Section 652 of the Land Sales Act.

SUBCHAPTER 9. ADVERTISING GUIDELINES

Section

660:20-9-1. Application of Land Sales Act

Advertising pertaining to activities of or in a subdivision for which a Registration Statement has been filed with the Department, such as advertising material on home construction, home sales, motels, industrial parks, etc. used or employed by subdivider is subject to Department

approval when it pertains to the entire subdivision and will be used for the promotion or disposition of land therein.

660:20-9-2. Filing procedures

(a) **Transmittal Letter**. Every advertisement submitted to the Department, either as a part of a Registration Statement or as a subsequent filing, shall be accompanied by a letter of transmittal which gives a brief, written description of each advertisement filed with the Department to assure that all future correspondence and orders concerning the advertisement will clearly identify the advertisement in question. The letter of transmittal shall be signed by the subdivider or his duly authorized representative and shall verify that the statements made and the representations contained therein have been reviewed and the advertisement is truthful and correct to the best of his knowledge and belief with regard to the statements contained therein.

(b) **Fee**. Each letter of transmittal shall be accompanied by payment of a fee in the amount of Ten Dollars ($10.00) payable to the Department.

(c) **Time of filing**. All advertising except advertising related to subdivided land or transactions exempt pursuant to Sections 622 and 623 of the Land Sales Act shall be filed with the Administrator not later than ten (10) days prior to its use and shall not be used until a copy thereof has been approved for use by the Administrator except advertising which the Administrator exempts by rule or order.

(d) **File number**. All advertising filed with the Department either with the original registration statement or by subsequent filing shall be assigned a number by the Department in order that the Department or the registrant may refer by the number to any specific piece of advertising. When advertising relates to more than one subdivision owned by the same person or entity, or different persons or entities, but being sold through a common sales agent, an identifying designation shall be assigned such materials but this designation shall not be construed to permit filings related to subdivisions or portions of subdivisions which are not registered with this Department.

660:20-9-3. Approval or rejection of advertising

(a) **Presumptive approval**. Where an order of rejection or investigation is not entered within ten (10) days of its receipt by this Department, the advertising will be deemed approved unless the applicant has consented in writing to a delay.

(b) **Rejection**. The rejection of any advertising material by the Administrator shall constitute final action and any correction or amendment to a subsequent filing of advertising material which has been disapproved must be resubmitted.

660:20-9-4. Presumptions concerning advertising

It will be presumed that:

(1) All advertising filed for approval will be used within six (6) months of said filing, to offer for sale or to induce persons to acquire interest in the title to all lands which are described in or referred to in the material or supporting data filed with the Department unless express limitation is made.

(2) All advertising published, disseminated or broadcast by or in behalf of an owner or entity owning more than one subdivision is being used to offer lands in all subdivisions registered by such owner or entity unless express limitation is made by such owner or entity, to the Department or by the Department.

(3) All advertising published, disseminated by, or broadcast on behalf of a sales agent is being used to offer lands in all subdivisions for which said person is a sales agent unless an express limitation is made to or by the Department.

660:20-9-5. Legend requirement

The subdivider shall print on advertising material approved for use the following legend:

"OKLAHOMA OFFEREES SHOULD OBTAIN AN OKLAHOMA PUBLIC OFFERING STATEMENT FROM THE DEVELOPER AND READ IT BEFORE SIGNING ANY DOCUMENTS. THE OKLAHOMA SECURITIES COMMISSION NEITHER RECOMMENDS THE PURCHASE OF THE PROPERTY NOR APPROVES THE MERITS OF THE OFFERING."

660:20-9-6. Review of advertising

When advertising is accepted for filing, the same, together with all supporting data and facts discovered upon investigation or inquiry, will be examined by the designated personnel of the Department. If additional information is needed before a determination can properly be entered by the Department, it shall be the Director of Corporate Finance's duty to see that any matter requiring investigation is referred for investigation.

660:20-9-7. Standards of review

(a) **Authority of Administrator.** In reviewing the advertising submitted by a registrant under the Land Sales Act, the Administrator will determine whether the submitted material makes a full and fair disclosure or is false and misleading within the intent and meaning of the law, by examining the form, language and content of the material and supporting data and any other available information as to ascertain whether the express and implied representations therein are true and make full and fair disclosure. If it does not appear that the said representations are true and fair disclosure as to all subdivided lands to which the filing relates, no order of approval will be entered and the Administrator will enter such orders or rejection or take such action as may be necessary.

(b) **Implied representations and presumptions.** Any inference reasonably to be drawn from advertising or promotional material will be considered to be a positive assertion unless the

inference is negated therein in clear and unmistakable terms, or unless adequate safeguards have been provided by the owner to reasonably guarantee the occurrence of the thing inferred. Advertising or promotional material will be judged on the basis of the positive representations contained therein and the reasonable inferences to be drawn therefrom. Unless the contrary affirmatively appears in advertising or promotional material the following inferences will be assumed to have been intended in each case mentioned; to-wit:

(1) When homesites or building lots are advertised, the inference is that said lots are immediately usable for such purpose without any further improvement or development by the prospective purchaser and that there is an adequate potable water supply available; that the lands have been approved for installation of septic tanks or that an adequate sewage disposal system is installed; that no further major draining, fill-in or subsurface improvement is necessary to construct dwellings, except for reasonable preparation for construction; that the individual homesites or building lots are accessible by automobile without additional expense to the purchaser over existing right-of-way and that no other fact or circumstance exists to prohibit the use of the lots as a homesite or building lot.

(2) When title insurance, abstract or attorney's opinion is advertised, the inference is that the seller can and will convey fee simple title free and clear of all liens, encumbrances and defects except those which are disclosed in writing to the prospective purchaser prior to purchase.

(3) When lands are advertised as usable for any particular purpose other than homesites or building lots, the inference is that said lots or parcels are immediately accessible and usable for such purpose by purchaser without the necessity for draining, fill-in or other improvement prior to putting the lands to use for such purpose, except for reasonable preparation for construction, and that no fact or circumstance exists to prohibit the immediate use of said lands for such purposes.

(4) When any recreational facility, improvement, accommodation or privilege is advertised, the inference is that the same is on the lands at the present time and available without restriction to the purchasers of lots at no additional expense.

(5) When improvements are advertised, the inference is that the same are completed.

660:20-9-8. Guidelines for advertising

(a) General guidelines. The following guidelines apply to all advertising or sales literature:

(1) Claims or representations contained in the advertising shall be accurate and provable.

(2) Advertising shall not misrepresent the facts or create misleading impressions.

(3) Advertising shall not use statements, photographs, or sketches portraying the use to which advertised land can be put unless the land can be put to such use without unreasonable cost.

(4) Advertising shall not make a derogatory or unfair reference to competitive developments or properties.

(5) Advertising shall not contain asterisks or any other reference symbol as a means of contradicting or substantially changing any previously made statement or as a means of obscuring material facts.

(6) Advertising shall not use names or trade styles which imply that they are nonprofit research organizations, public bureaus, groups, etc. when such is not the case. Advertising of such an organization shall be prohibited when the true nature of the plan of sale or ownership is misrepresented or concealed.

(7) Maps, plats or representations shall clearly indicate the estimated date that the development will be completed. If completion dates are over a period of years, then a series of shadings, outlines, or coding may be used to indicate estimated dates of completion.

(b) Distances. The following standards apply to advertising relating to distances:

(1) When a community is referred to, advertising must include the location of the subdivision and the mileage from the approximate geographical center of the subdivision in road miles to the approximate geographical center of the community.

(2) Where a facility is referred to, advertising shall disclose with reasonable specificity, the location of such facility in relation to the geographic center of the subdivision.

(3) Advertising shall not use such terms as "minutes away," "short distance," "only miles" and "near" and terms of similar import to indicate distance unless the actual distance in road miles is used in conjunction with such terms.

(4) When the company offers more than one subdivision in a single advertising piece, or an offering exceeding five miles in length or width, advertising shall carry a disclaimer as follows:

"Distances indicated are from the location mentioned to (club house, center of subdivision, or other pertinent or prominent points); each purchaser should check the exact location of the property being offered him in relation to the club house, subdivision or other prominent locations."

(c) Computer-generated renderings, sketches, and pictorial representations. The following guidelines apply to sketches and pictures used in advertising:

(1) Advertisements shall not use computer-generated renderings or artists' sketches to portray proposed improvements or nonexistent scenes without a statement that such portrayal is a computer-generated rendering or artist's sketch and that the improvements or scenes are an accurate representation.

(2) Advertising shall not contain before and after pictures for comparative purposes without an accurate, detailed, comparative analysis of such pictures.

(d) **Improvements and facilities.** The following guidelines apply to advertising about improvements of facilities connected with subdivided land:

(1) Advertising of improvements on or to the property which are not completed must state in unmistakable terms that the improvements are merely proposed or under construction. Advertising of improvements on or to the property which are not completed must state precisely the anticipated price to the consumer to complete and the date of the promised completion.

(2) Advertising shall not make reference to a public facility unless money has been budgeted for actual construction of such facility and is available to the public authority having the responsibility of construction or an actual disclosure of the existing facts concerning a public facility is made.

(3) Advertising shall not refer to public facilities under study unless it is fully disclosed that the facility is merely proposed and under study and provided that no reference is made to the location or route of the facility until such has been decided by the responsible public authority.

(4) Advertising shall not contain a statement, photograph, or sketch relating to a facility for recreation, sports or other activities not presently in existence, unless it is stated that the facility is not completed or is merely proposed. If such a facility exists and it is not located within the subdivision the distance by conventional automobile must be given.

(e) **Roads, streets, waterways.** The following guidelines apply to advertising about roads, streets or waterways connected with subdivided land:

(1) Advertising which refers to "roads" and "streets" shall make affirmative disclosure as to the nature of the roads and streets, such as paved, gravel or dirt. To be described as improved or paved, a road and a street shall be constructed and surfaced according to county, city, or other acceptable authority specifications or satisfactory guarantees made for such construction and surfacing.

(2) Advertising shall not refer to property as waterfront unless the property being offered actually fronts on a canal or other body of water.

(3) Advertising which uses the term "canal" shall disclose the approximate width and approximate depth of water in the canal and whether or not it provides access to open water.

(f) **Special risks.** The following risks shall be included, if applicable, in advertising related to subdivided land:

(1) Advertising shall disclose if the land or any part of it is regularly flooded or substantially covered by standing water for extended periods of time during the year, unless adequate drainage is assured by bonding or other means acceptable to the Department.

(2) Advertising shall disclose if the land or any part of it is subject to mudslides, rockslides or other natural phenomena.

(g) **Access and easements.** The following guidelines apply to advertising describing access and easements relating to subdivided land:

(1) Advertising of land which does not have available legal access to the purchaser shall disclose that fact and-its effect.

(2) Advertising which refers to legal access shall be accompanied by phraseology to indicate whether the access is usable as a passage for conventional automobiles.

(3) Advertising shall not refer to the existence of a road easement or a road right-of-way unless the easement or right-of-way has been dedicated to -the public or to appropriate property owners and recorded in the public records -of the county where the property is located.

(4) Advertising which indicates the size of the tract offered shall indicate the size and kind of all easements to which the property may be subject. If the property is subject to easements which are unusual in size, this fact shall also be noted. Maps, plats, representations, or drawings shall indicate the dimensions of the tract and all easements.

(h) **Consideration, prices, values and additional costs.** The following guidelines apply to advertising relating to consideration, prices, values and additional costs of subdivided land:

(1) Land shall not be advertised as "free" if the prospective purchaser is required to give any consideration therefor. Land shall not be advertised for "closing costs only" when these costs are substantially more than normal, or when additional land has to be purchased at a higher price to render the land usable.

(2) Advertising which refers to a property exchange privilege shall state clearly any qualification concerning the exchange privilege.

(3) Advertising shall not refer to a predevelopment sale at a lower price because the land has not yet been developed unless there is a plan of development, and a subdivision plat has been recorded, or reasonable assurance is available that the plan will be completed.

(4) Advertising shall not indicate a discount on property that appears to effect a price reduction from the advertised price. A discount may be given for quantity purchases, cash, larger payments, or for any reasonable basis. The purpose of this standard is to eliminate the use of fictitious pricing and illusory discount.

(5) Advertising shall not contain statements concerning future price increases by the subdeveloper which are not specific as to amount and as to the date of the announced increase. Any such date shall be in the reasonable future and the increased price shall be maintained for a reasonable length of time.

(6) Advertising shall not make predictions of specific or immediate price or value increases of lots or parcels or units of advertised lands over which the subdivider does not have control.

(7) Forecasts of future events or population trends contained in advertising shall be made by qualified persons based upon objective criteria and shall pertain to the offering.

(8) Advertising shall be considered misleading if it infers or implies that the subdivider will resell or repurchase the property being offered at some future time unless the subdivider has made an undertaking with the Department to resell or repurchase property for or on behalf of purchasers and has given reasonable assurances to the Department to demonstrate the subdivider's ability to perform this undertaking.

(9) Advertising shall be deemed misleading if it represents that the property being offered for sale may be subdivided or resubdivided unless it includes all necessary and relevant information regarding the cost and feasibility of future subdividing.

(10) Advertising which contains statements regarding taxes and the amounts thereof shall employ the latest available figures.

(11) The word "guarantee" or phrase "guaranteed refund" or phrases of a similar import shall not be approved in advertising unless the refund is unconditional.

660:20-9-9. Approval of promotional plans

(a) **Vacation certificates.** Vacation certification shall be submitted to the Department and shall meet the advertising standards in this Subsection. Any vacation certificate used must be submitted with component parts, i.e., registration card, letter of congratulations, reservation form, confirmation form, signs, etc.

(1) The registration card will disclose eligibility requirements such as age limitation, affinity group, residency, marital status, proof of age, transportation, date of expiration.

(2) Letter of congratulations will contain seasonal charge, refund deposit, date of expiration, and cost of the certificate.

(3) The following must be prominently disclosed: "While on your vacation you will be invited to attend a land sales presentation by (name of subdeveloper) for its property registered by the state of Oklahoma. Attendance is/is not required to make this certificate valid." Certificates, advertising or other promotional material shall disclose the terms,

conditions and prerequisites to use and enjoyment of a visitation program, including the following:

(A) Eligibility requirements such as age limitations, affinity groups, residency, marital status, proof of age.

(B) Statement indicating state taxes are not included.

(C) Statement indicating whether transportation, food, lodging or other incidental expenses are included.

(D) Statement from the vacation certificate holder containing the following:

I have read the terms and conditions and have understood them fully.

Signed _____ (Prospective purchaser)

(b) **Promotional meetings.** If a land sales presentation is to be used in connection with the vacation plan, the standards of this Subsection shall be used as a guide in determining whether or not the nature and manner of conducting the meeting are such as to fully disclose all significant facts concerning the subdivision.

(1) If the meeting is to be held within the state of Oklahoma, the Department shall be notified in writing not less than fifteen (15) days before said meeting and shall be supplied with the names of the real estate brokers and/or agents involved. If the meeting is to be held outside the state of Oklahoma the subdeveloper is not required to give notice of meetings unless the Administrator so specifically requests. In all cases a written script of any and all slide and film presentations shall be submitted to the Administrator at least ten (10) days prior to their intended use.

(2) Department personnel as authorized by the Administrator shall have free access to the meeting and presentations.

(3) The advertising in the meeting is subject to the standards of advertising contained within this Subchapter.

(4) A false or dummy buyer shall not be used to initiate sales or buying climate or for any other purpose, nor shall it be indicated that lots, parcels, units of interest have been sold, when in fact, they have not been sold.

(5) An oral statement to a prospective purchaser at the meeting shall be consistent with written material approved by the Department.

(6) A prospective buyer who expresses a desire or intent to leave the meeting at any time during or after the meeting shall not be impeded from departing, pressured to remain, or

denied any benefit promised in exchange for attending the meeting, including any transportation.

CHAPTER 25. OKLAHOMA BUSINESS OPPORTUNITY SALES ACT

SUBCHAPTER 1. GENERAL PROVISIONS

Section

660:25-1-1. Purpose

The rules of this Chapter have been adopted for the purpose of carrying out the provisions of the Oklahoma Business Opportunity Sales Act in compliance with Section 816 of that Act, including rules governing disclosure documents, applications and reports and defining terms.

660:25-1-2. Statutory citations

Citations to statutes in this Chapter refer to the most recent codification of the Oklahoma Business Opportunity Sales Act, 71 O.S., Sections 801 through 827.

660:25-1-3. Definitions

Unless the context otherwise requires, or unless defined in this Section, terms used in this Chapter, if defined in the Business Opportunity Act, shall have the meaning as defined in the Business Opportunity Act. The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise.

"**Business Opportunity Act**" means the most recent codification of the Oklahoma Business Opportunity Sales Act in Title 71 of the Oklahoma Statutes.

"**Sales literature and advertising**" means material published in, or designed for use in, a newspaper, magazine, or other periodical, radio, television, telephone solicitation or tape recording, videotape display, signs, billboards, motion pictures, telephone directories (other than standard listings), other public media or any other written communication distributed or made generally available to customers or the public including but not limited to pamphlets, circulars, form letters, seminar texts, research reports, surveys, performance reports or summaries and reprints or excerpts of other sales literature or advertising to include publications in electronic format.

"**Sales literature or advertising package**" means all submissions to the Administrator under one posting or delivery relating to a specific business opportunity.

SUBCHAPTER 3. REGISTRATION REQUIREMENTS

Section

660:25-3-1. Registration filing fee

Every seller seeking registration of a business opportunity shall pay the filing fee specified in Section 807.C of the Business Opportunity Act.

660:25-3-2. Renewal of registration and sales reports

(a) **Renewal of registration.** In addition to filing a current disclosure document, all sellers seeking renewal of a registration shall submit a report indicating the total number of purchasers in the state of Oklahoma and the total amount of consideration received therefrom since the effective date of the initial registration. The renewal fee specified in Section 807.E of the Business Opportunity Act shall accompany each request for renewal of registration.

(b) **Post-registration sales reports.** All registrants shall submit sales reports to the Administrator. Each report shall be accompanied by the report filing fee specified in Section 807.E of the Business Opportunity Act and shall contain a statement of the total number of purchasers in the state of Oklahoma and the total amount of consideration received therefrom since the effective date of the initial registration. Said reports are due no later than six (6) months from the effective date of registration or the effective date of the renewal of a registration.

SUBCHAPTER 5. SALES LITERATURE OR ADVERTISING

Section

660:25-5-1. Filing of sales literature

(a) **Filing requirement.** All sales literature and advertising must be filed with and responded to by the Administrator prior to use. A filing shall include the sales literature or advertising package, the review fee specified in Section 807.F of the Business Opportunity Act and a representation by the seller that reads substantially as follows: "I hereby attest and affirm that the enclosed sales literature or advertising package contains no false or misleading statements or misrepresentations of material facts, and that all information contained therein is in conformity with the most recent disclosure document relating to the particular business opportunity offered thereby on file with the Administrator."

(b) **Exemption.** The disclosure document filed with the Administrator as part of the registration process pursuant to Section 806 of the Business Opportunity Act is exempted from the filing requirement specified in subsection (a) of this Section.

(c) **Content.** Sales literature and advertising used in any manner in connection with the offer and sale of business opportunities is subject to the provisions of Section 819 whether or not such sales literature and advertising is required to be filed pursuant to this rule. Furthermore, sales literature and advertising filed with the Administrator is subject to the provisions of Section 820 of the Business Opportunity Act.

(d) **Prohibited disclosure.** No sales literature or advertising shall contain a reference to the Oklahoma Securities Commission, the Oklahoma Department of Securities or the Administrator unless so requested by the Administrator.

SUBCHAPTER 7. OPINIONS

Section

660:25-7-1. Interpretive opinion requests

The Administrator in his discretion may honor requests from interested persons for interpretive opinions or no-action positions relating to a specific factual circumstance with respect to the Business Opportunity Act or any rule or statement of policy adopted thereunder. Requests relating to unnamed entities or persons or to hypothetical situations will not warrant a response. Such requests shall be in writing, shall set out all the facts necessary to reach a conclusion in the matter and shall be accompanied by the fee specified in Section 817.D of the Business Opportunity Act. Each request should also be accompanied by a signed opinion of legal counsel which states counsel's opinion in the matter, which may be expressed tentatively or conditioned upon concurrence by the Administrator, and the basis therefore.