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11 TITLE 12. SECURITIES ACT

12 CHAPTER 4001. GENERAL PROVISIONS

13 SUBCHAPTER A. SHORT TITLE; PURPOSES; CONSTRUCTION

14 Revised Law

15 Sec. 4001.001. SHORT TITLE. This title may be cited as The
16 Securities Act. (V.A.C.S. Art. 581-1.)

17 Source Law

18 Art. 581-1. This Act shall be known and may be
19 cited as "The Securities Act."

20 Revisor's Note

21 Article 581-1, Vernon's Texas Civil Statutes,
22 provides a short title for "[t]his Act," which is The
23 Securities Act (Article 581-1 et seq., Vernon's Texas
24 Civil Statutes). The provisions of The Securities Act
25 are revised as this title. The revised law throughout
26 this chapter therefore substitutes references to "this
27 title" for references to "this Act."

28 Revised Law

29 Sec. 4001.002. PURPOSES; CONSTRUCTION. (a) The general
30 purposes of this title are to:

31 (1) protect investors and, consistent with that
32 purpose, encourage capital formation, job formation, and free and
33 competitive securities markets;

34 (2) maximize coordination with federal and other

1 states' laws and administration, particularly with respect to
2 procedure, reports, forms, and exemptions; and

3 (3) minimize regulatory burdens on issuers and other
4 persons subject to this title, especially small businesses.

5 (b) This title may be construed and implemented to
6 effectuate the title's general purposes. (V.A.C.S. Art. 581-10-1.)

7 Source Law

8 Art. 581-10-1. A. This Act may be construed and
9 implemented to effectuate its general purpose to
10 maximize coordination with federal and other states'
11 law and administration, particularly with respect to:

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

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

21 Revised Law

22 Sec. 4001.003. SEVERABILITY. The provisions of this title
23 are severable. If any provision of this title is declared void or
24 unconstitutional, the remaining provisions of this title would have
25 been enacted notwithstanding such judicial determination of the
26 invalidity of the provision, and the remaining provisions shall
27 remain in effect. (V.A.C.S. Art. 581-38.)

28 Source Law

29 Art. 581-38. The provisions of this Act are
30 severable, and in the event that any provision thereof
31 should be declared void or unconstitutional, it is
32 hereby declared that the remaining provisions would
33 have been enacted notwithstanding such judicial
34 determination of the invalidity of any particular
35 provision or provisions in any respect, and said
36 sections shall remain in full force and effect.

37 Revisor's Note

38 Article 581-38, Vernon's Texas Civil Statutes,
39 refers to remaining provisions of The Securities Act
40 (Article 581-1 et seq., Vernon's Texas Civil Statutes)
41 remaining "in full force and effect" following the
42 invalidity of any particular provision of the act.
43 The revised law omits the reference to "full force"

1 because "full force" is included within the meaning of
2 "effect."

3 SUBCHAPTER B. DEFINITIONS

4 Revised Law

5 Sec. 4001.051. APPLICABILITY OF DEFINITIONS; CONSTRUCTION
6 OF CERTAIN CONJUNCTIONS. (a) The definition for a term provided by
7 this chapter applies in this title unless the context in which the
8 term is used indicates a different meaning.

9 (b) The term "and" may be construed to mean "or," and the
10 term "or" may be construed to mean "and." (V.A.C.S. Art. 581-4
11 (part); Art. 581-4, Subsec. J (part).)

12 Source Law

13 Art. 581-4. The following terms shall, unless
14 the context otherwise indicates, have the following
15 respective meanings:

16 J. . . . "and" may be read "or" and "or" may be
17 read "and".

18 Revised Law

19 Sec. 4001.052. AGENT. (a) Except as provided by Subsection
20 (b), "agent" includes a person or company employed, appointed, or
21 authorized by a dealer to sell, offer for sale or delivery, solicit
22 subscriptions to or orders for, or deal in any other manner in,
23 securities in this state directly or through a subagent.

24 (b) If a corporation or partnership is registered as a
25 dealer under this title, an officer of the corporation or partner of
26 the partnership is not deemed an agent solely because of the
27 officer's or partner's status as an officer or partner of that
28 entity. (V.A.C.S. Art. 581-4, Subsec. D.)

29 Source Law

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

1 Revisor's Note

2 Subsection D, Article 581-4, Vernon's Texas Civil
3 Statutes, which is a provision of The Securities Act
4 (Article 581-1 et seq., Vernon's Texas Civil
5 Statutes), refers to a corporation or partnership
6 registered as a dealer "hereunder," meaning under that
7 act. The revised law substitutes a reference to "under
8 this title" for the reference to "hereunder" for the
9 reason stated in the revisor's note to Section 4001.001
10 of this chapter.

11 Revised Law

12 Sec. 4001.053. BOARD. "Board" means the State Securities
13 Board. (New.)

14 Revisor's Note

15 The revised law adds a definition of "board" for
16 the convenience of the reader and to avoid the
17 frequent, unnecessary repetition of the substance of
18 the definition.

19 Revised Law

20 Sec. 4001.054. BROKER. "Broker" means "dealer" as defined
21 in this title. (V.A.C.S. Art. 581-4, Subsec. H.)

22 Source Law

23 H. "Broker" shall mean dealer as herein defined.

24 Revisor's Note

25 Subsection H, Article 581-4, Vernon's Texas Civil
26 Statutes, which is a provision of The Securities Act
27 (Article 581-1 et seq., Vernon's Texas Civil
28 Statutes), refers to a dealer "as herein defined,"
29 meaning under that act. The revised law substitutes a
30 reference to "in this title" for the reference to
31 "herein" for the reason stated in the revisor's note to
32 Section 4001.001 of this chapter.

33 Revised Law

34 Sec. 4001.055. COMMISSIONER. "Commissioner" means the

1 securities commissioner. (New.)

2 Revisor's Note

3 The revised law adds a definition of
4 "commissioner" for the convenience of the reader and
5 to avoid the frequent, unnecessary repetition of the
6 substance of the definition.

7 Revised Law

8 Sec. 4001.056. DEALER. (a) "Dealer" includes:

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

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

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

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

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

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

28 (d) Except as expressly provided otherwise in this title, a
29 person or company engaged in the sale of, offer for sale of,
30 solicitation of, subscription to, dealing in, or delivery of a
31 security made in a transaction or under a condition specified in
32 Subchapter A, Chapter 4005, is not deemed a dealer within the
33 meaning of this title. (V.A.C.S. Art. 581-4, Subsec. C; Art. 581-5
34 (part).)

1 Source Law

2 [Art. 581-4]

3 C. The term "dealer" shall include every person
4 or company other than an agent, who engages in this
5 state, either for all or part of his or its time,
6 directly or through an agent, in selling, offering for
7 sale or delivery or soliciting subscriptions to or
8 orders for, or undertaking to dispose of, or to invite
9 offers for any security or securities and every person
10 or company who deals in any other manner in any
11 security or securities within this state. Any issuer
12 other than a registered dealer of a security or
13 securities, who, directly or through any person or
14 company, other than a registered dealer, offers for
15 sale, sells or makes sales of its own security or
16 securities shall be deemed a dealer and shall be
17 required to comply with the provisions hereof;
18 provided, however, this section or provision shall not
19 apply to such issuer when such security or securities
20 are offered for sale or sold either to a registered
21 dealer or only by or through a registered dealer acting
22 as fiscal agent for the issuer; and provided further,
23 this section or provision shall not apply to such
24 issuer if the transaction is within the exemptions
25 contained in the provisions of Section 5 of this Act.

26 Art. 581-5. Except as hereinafter in this Act
27 specifically provided, [the provisions of this Act
28 shall not apply to the sale of any security when made
29 in any of the following transactions and under any of
30 the following conditions, and] the company or person
31 engaged therein shall not be deemed a dealer within the
32 meaning of this Act; that is to say, the provisions of
33 this Act shall not apply to any sale, offer for sale,
34 solicitation, subscription, dealing in or delivery of
35 any security under any of the following transactions
36 or conditions:
37 . . .

38 Revisor's Note

39 (1) Subsection C, Article 581-4, Vernon's Texas
40 Civil Statutes, refers to a registered dealer "of a
41 security or securities." The revised law omits the
42 quoted language as unnecessary because "registered
43 dealer" is defined by Subsection M, Article 581-4,
44 Vernon's Texas Civil Statutes, revised in this chapter
45 as Section 4001.065, as a dealer registered under
46 Article 581-15, Vernon's Texas Civil Statutes, revised
47 in this title as Sections 4004.054-4004.056. The
48 dealers who are required to obtain a registration
49 certificate issued under Section 4004.054 are dealers
50 of securities. See Article 581-12, Vernon's Texas
51 Civil Statutes, revised in relevant part as Section

1 4004.051 of this title.

2 (2) Subsection C, Article 581-4, Vernon's Texas
3 Civil Statutes, which is a provision of The Securities
4 Act (Article 581-1 et seq., Vernon's Texas Civil
5 Statutes), requires certain issuers of securities to
6 comply with the provisions "hereof," meaning of that
7 act. The revised law substitutes a reference to "this
8 title" for the reference to "hereof" for the reason
9 stated in the revisor's note to Section 4001.001 of
10 this chapter.

11 (3) Article 581-5, Vernon's Texas Civil
12 Statutes, states that the provisions of "this Act,"
13 meaning The Securities Act (Article 581-1 et seq.,
14 Vernon's Texas Civil Statutes), revised as this title,
15 do not apply to "the sale of any security when made in
16 any of the following transactions and under any of the
17 following conditions" specified in Article 581-5. The
18 provisions of Article 581-5 are revised as Subchapter
19 A, Chapter 4005, of this title. For clarity, the
20 revised law substitutes a reference to "Subchapter A,
21 Chapter 4005" for "Article 581-5."

22 (4) Article 581-5, Vernon's Texas Civil
23 Statutes, states "that is to say, the provisions of
24 this Act shall not apply to" in relation to the sale of
25 a security. The revised law omits "that is to say" as
26 unnecessary and redundant.

27 Revised Law

28 Sec. 4001.057. FEDERAL COVERED INVESTMENT ADVISER.
29 "Federal covered investment adviser" means an investment adviser
30 who is registered under the Investment Advisers Act of 1940 (15
31 U.S.C. Section 80b-1 et seq.). (V.A.C.S. Art. 581-4, Subsec. O.)

32 Source Law

33 O. "Federal covered investment adviser" means
34 an investment adviser who is registered under the
35 Investment Advisers Act of 1940 (15 U.S.C. Section

1 80b-1 et seq.), as amended.

2 Revisor's Note

3 Subsection O, Article 581-4, Vernon's Texas Civil
4 Statutes, refers to the Investment Advisers Act of
5 1940 (15 U.S.C. Section 80b-1 et seq.), as amended.
6 The revised law omits "as amended" because, under
7 Section 311.027, Government Code (Code Construction
8 Act), applicable to the revised law, a reference to a
9 statute applies to all reenactments, revisions, or
10 amendments of that statute, unless expressly provided
11 otherwise.

12 Revised Law

13 Sec. 4001.058. FRAUD; FRAUDULENT PRACTICE. (a) "Fraud"
14 and "fraudulent practice" include:

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

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

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

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

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

27 (b) Nothing in this section limits the full meaning of
28 "fraud," "fraudulent," or "fraudulent practice" as applied or
29 accepted in courts. (V.A.C.S. Art. 581-4, Subsec. F.)

30 Source Law

31 F. The terms "fraud" or "fraudulent practice"
32 shall include any misrepresentations, in any manner,
33 of a relevant fact; any promise or representation or
34 predication as to the future not made honestly and in
35 good faith, or an intentional failure to disclose a
36 material fact; the gaining, directly or indirectly,
37 through the sale of any security, of an underwriting or
38 promotion fee or profit, selling or managing

1 commission or profit, so gross or exorbitant as to be
2 unconscionable; any scheme, device or other artifice
3 to obtain such profit, fee or commission; provided,
4 that nothing herein shall limit or diminish the full
5 meaning of the terms "fraud," "fraudulent," and
6 "fraudulent practice" as applied or accepted in courts
7 of law or equity.

8 Revisor's Note

9 (1) Subsection F, Article 581-4, Vernon's Texas
10 Civil Statutes, provides that the description of fraud
11 and fraudulent practice "herein," meaning Subsection
12 F, does not limit the meaning of "fraud,"
13 "fraudulent," or "fraudulent practice," as applied or
14 accepted in court. The provisions of Subsection F are
15 revised as this section. For that reason, the revised
16 law substitutes "in this section" for "herein."

17 (2) Subsection F, Article 581-4, Vernon's Texas
18 Civil Statutes, provides that the description in that
19 subsection of the acts included as "fraud" or a
20 "fraudulent practice" does not "limit or diminish" the
21 meaning of "fraud," "fraudulent," or "fraudulent
22 practice." The revised law omits the reference to
23 "diminish" because, in context, "diminish" is included
24 within the meaning of "limit."

25 (3) Subsection F, Article 581-4, Vernon's Texas
26 Civil Statutes, refers to the meaning of terms "as
27 applied or accepted in courts of law or equity."
28 Throughout this chapter, the revised law omits "of law
29 or equity" as unnecessary because the phrase is
30 included within the meaning of "courts."

31 Revised Law

32 Sec. 4001.059. INVESTMENT ADVISER. "Investment adviser"
33 includes a person who, for compensation, engages in the business of
34 advising another, either directly or through publications or
35 writings, with respect to the value of securities or to the
36 advisability of investing in, purchasing, or selling securities or
37 a person who, for compensation and as part of a regular business,

1 issues or adopts analyses or a report concerning securities, as may
2 be further defined by board rule. The term does not include:

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

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

9 (3) a dealer or agent who receives no special
10 compensation for those services and whose performance of those
11 services is solely incidental to transacting business as a dealer
12 or agent;

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

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

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

21 (B) issued or guaranteed by a corporation in
22 which the United States has a direct or indirect interest and
23 designated by the United States Secretary of the Treasury under
24 Section 3(a)(12), Securities Exchange Act of 1934 (15 U.S.C.
25 Section 78c(a)(12)), as an exempt security for purposes of that
26 Act. (V.A.C.S. Art. 581-4, Subsec. N.)

27 Source Law

28 N. "Investment adviser" includes a person who,
29 for compensation, engages in the business of advising
30 another, either directly or through publications or
31 writings, with respect to the value of securities or to
32 the advisability of investing in, purchasing, or
33 selling securities or a person who, for compensation
34 and as part of a regular business, issues or adopts
35 analyses or a report concerning securities, as may be
36 further defined by board rule. The term does not
37 include:

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

1 an investment company;

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

6 (3) a dealer or agent who receives no
7 special compensation for those services and whose
8 performance of those services is solely incidental to
9 transacting business as a dealer or agent;

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

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

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

19 (B) issued or guaranteed by a
20 corporation in which the United States has a direct or
21 indirect interest and designated by the United States
22 Secretary of the Treasury under Section 3(a)(12),
23 Securities Exchange Act of 1934 (15 U.S.C. Section
24 78c(a)(12)), as amended, as an exempt security for
25 purposes of that Act.

26 Revisor's Note

27 Subsection N(1), Article 581-4, Vernon's Texas
28 Civil Statutes, refers to the Bank Holding Company Act
29 of 1956 (12 U.S.C. Section 1841 et seq.), as amended,
30 and Subsection N(5)(B), Article 581-4, Vernon's Texas
31 Civil Statutes, refers to Section 3(a)(12), Securities
32 Exchange Act of 1934 (15 U.S.C. Section 78c(a)(12)),
33 as amended. The revised law omits both instances of "as
34 amended" for the reason stated in the revisor's note to
35 Section 4001.057 of this chapter.

36 Revised Law

37 Sec. 4001.060. INVESTMENT ADVISER REPRESENTATIVE. (a)
38 Except as provided by Subsection (b), "investment adviser
39 representative" includes a person or company who, for compensation,
40 is employed, appointed, or authorized by an investment adviser to
41 solicit clients for the investment adviser or who provides
42 investment advice, directly or through subagents, as defined by
43 board rule, to an investment adviser's clients on behalf of the
44 investment adviser.

45 (b) "Investment adviser representative" does not include a
46 partner of a partnership or officer of a corporation or other entity

1 that is registered as an investment adviser under this title solely
2 because of the person's status as a partner or officer of that
3 entity. (V.A.C.S. Art. 581-4, Subsec. P.)

4 Source Law

5 P. "Investment adviser representative" or
6 "representative of an investment adviser" includes
7 each person or company who, for compensation, is
8 employed, appointed, or authorized by an investment
9 adviser to solicit clients for the investment adviser
10 or who, on behalf of an investment adviser, provides
11 investment advice, directly or through subagents, as
12 defined by Board rule, to the investment adviser's
13 clients. The term does not include a partner of a
14 partnership or an officer of a corporation or other
15 entity that is registered as an investment adviser
16 under this Act solely because of the person's status as
17 an officer or partner of that entity.

18 Revisor's Note

19 Subsection P, Article 581-4, Vernon's Texas Civil
20 Statutes, which is a provision of The Securities Act
21 (Article 581-1 et seq., Vernon's Texas Civil
22 Statutes), describes a person or company included or
23 excluded as an "investment adviser representative" or
24 "representative of an investment adviser" for purposes
25 of the act. The revised law omits the references to
26 "representative of an investment adviser" as
27 unnecessary because that term is not used elsewhere in
28 the act, which is revised as this title.

29 Revised Law

30 Sec. 4001.061. ISSUER. "Issuer" means and includes a
31 person or company who has issued, proposes to issue, or issues any
32 security. (V.A.C.S. Art. 581-4, Subsec. G.)

33 Source Law

34 G. "Issuer" shall mean and include every company
35 or person who proposes to issue, has issued, or shall
36 hereafter issue any security.

37 Revisor's Note

38 Subsection G, Article 581-4, Vernon's Texas Civil
39 Statutes, refers to a person or company who "shall
40 hereafter issue" a security. The revised law omits
41 "shall hereafter" because under Section 311.022,

1 Government Code (Code Construction Act), applicable to
2 the revised law, statutes are presumed to operate
3 prospectively unless expressly made retrospective.

4 Revised Law

5 Sec. 4001.062. MORTGAGE. "Mortgage" includes a deed of
6 trust to secure a debt. (V.A.C.S. Art. 581-4, Subsec. I.)

7 Source Law

8 I. "Mortgage" shall be deemed to include a deed
9 of trust to secure a debt.

10 Revised Law

11 Sec. 4001.063. NO PAR VALUE; PAR VALUE. (a) "No par value"
12 as applied to shares of stock or other securities means the
13 securities are without a given or specified par value.

14 (b) For purposes of classifying or computing the par value
15 of shares of stock or other securities of no par value, the amount
16 for which the securities are sold or offered for sale to the public
17 is used as a basis. (V.A.C.S. Art. 581-4, Subsec. K.)

18 Source Law

19 K. "No par value" or "non-par" as applied to
20 shares of stock or other securities shall mean that
21 such shares of stock or other securities are without a
22 given or specified par value. Whenever any
23 classification or computation in this Act mentioned is
24 based upon "par value" as applied to shares of stock or
25 other securities of no par value, the amount for which
26 such securities are sold or offered for sale to the
27 public shall be used as a basis of such classification
28 or computation.

29 Revisor's Note

30 Subsection K, Article 581-4, Vernon's Texas Civil
31 Statutes, which is a provision of The Securities Act
32 (Article 581-1 et seq., Vernon's Texas Civil
33 Statutes), defines "no par value" and "non-par" as
34 applied to shares of stock or other securities. The
35 revised law omits "non-par" as a defined term because
36 that term is not used elsewhere in the act, which is
37 revised as this title.

38 Revised Law

39 Sec. 4001.064. PERSON; COMPANY. (a) The terms "person" and

1 "company" include:

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

6 (A) a corporation;

7 (B) a person;

8 (C) a company, including a joint stock company;

9 (D) a partnership, including a limited
10 partnership;

11 (E) an association;

12 (F) a firm;

13 (G) a syndicate; or

14 (H) a trust; and

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

17 (b) As used in Subsection (a), "trust":

18 (1) is deemed to include a common law trust; and

19 (2) does not include a trust created or appointed
20 under or by virtue of a last will and testament or by a court.

21 (c) The definition of "person" assigned by Section 311.005
22 does not apply to any provision in this title. (V.A.C.S. Art.
23 581-4, Subsec. B; New.)

24 Source Law

25 B. The terms "person" and "company" shall
26 include a corporation, person, joint stock company,
27 partnership, limited partnership, association,
28 company, firm, syndicate, trust, incorporated or
29 unincorporated, heretofore or hereafter formed under
30 the laws of this or any other state, country,
31 sovereignty or political subdivision thereof, and
32 shall include a government, or a political subdivision
33 or agency thereof. As used herein, the term "trust"
34 shall be deemed to include a common law trust, but
35 shall not include a trust created or appointed under or
36 by virtue of a last will and testament or by a court of
37 law or equity.

38 Revisor's Note

39 (1) Subsection B, Article 581-4, Vernon's Texas
40 Civil Statutes, refers to an entity "heretofore or

1 hereafter" formed. The language does not exclude any
2 entity based on the time of the entity's formation, and
3 therefore does not impose an effective limitation on
4 the time during which the entity may be formed. The
5 revised law omits the reference because it does not add
6 to the clear meaning of the law.

7 (2) Section 311.005(2), Government Code (Code
8 Construction Act), defines "person" to include a
9 "corporation, organization, government or
10 governmental subdivision or agency, business trust,
11 estate, trust, partnership, association, and any other
12 legal entity." In the absence of an express provision
13 to the contrary, Section 311.005(2) would apply to the
14 revised law in this title as provided by Section 1.002,
15 Government Code. To ensure that no substantive change
16 is made by revision of the definition of "person" in
17 this title, the revised law adds a provision stating
18 that the definition in Section 311.005, Government
19 Code, does not apply to any provision in Title 12.

20 Revised Law

21 Sec. 4001.065. REGISTERED DEALER. "Registered dealer"
22 means a dealer the commissioner has registered under Sections
23 4004.054 and 4004.055, or Section 4004.056. (V.A.C.S. Art. 581-4,
24 Subsec. M.)

25 Source Law

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

29 Revisor's Note

30 Subsection M, Article 581-4, Vernon's Texas Civil
31 Statutes, refers to a dealer who has been "duly"
32 registered by the securities commissioner under
33 Article 581-15, Vernon's Texas Civil Statutes. The
34 revised law omits "duly" as unnecessary because a
35 dealer who has not properly registered is not

1 considered to be registered. The revised law also
2 substitutes a reference to Sections 4004.054,
3 4004.055, and 4004.056 of this title because Article
4 581-15 is revised as those sections.

5 Revised Law

6 Sec. 4001.066. REGISTERED INVESTMENT ADVISER. "Registered
7 investment adviser" means an investment adviser to whom the
8 commissioner has issued a registration certificate under Sections
9 4004.054 and 4004.055, or Section 4004.056. (V.A.C.S. Art. 581-4,
10 Subsec. Q.)

11 Source Law

12 Q. "Registered investment adviser" means an
13 investment adviser who has been issued a registration
14 certificate by the Commissioner under Section 15 of
15 this Act.

16 Revisor's Note

17 Subsection Q, Article 581-4, Vernon's Texas Civil
18 Statutes, refers to an investment adviser to whom a
19 registration certificate is issued under Article
20 581-15, Vernon's Texas Civil Statutes. The revised law
21 substitutes references to Sections 4004.054,
22 4004.055, and 4004.056 of this title because Article
23 581-15 is revised as those sections.

24 Revised Law

25 Sec. 4001.067. SALE; OFFER FOR SALE; SELL. (a) "Sale,"
26 "offer for sale," and "sell" include every disposition or attempted
27 disposition of a security for value.

28 (b) "Sale" means and includes:

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

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

34 (c) "Sale" or "offer for sale" includes a subscription, an
35 option for sale, a solicitation of sale, a solicitation of an offer

1 to buy, an attempt to sell, or an offer to sell, directly or by an
2 agent, by a circular, letter, or advertisement or otherwise,
3 including the deposit in any manner in the United States mail within
4 this state of a circular, letter, or other advertising matter.

5 (d) "Sell" means any act by which a sale is made.

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

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

11 (2) have been sold for value.

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

16 (g) This section does not limit the meaning of the terms
17 "sale," "offer for sale," or "sell" as used by or accepted in
18 courts. (V.A.C.S. Art. 581-4, Subsec. E (part).)

19 Source Law

20 E. The terms "sale" or "offer for sale" or
21 "sell" shall include every disposition, or attempt to
22 dispose of a security for value. The term "sale" means
23 and includes contracts and agreements whereby
24 securities are sold, traded or exchanged for money,
25 property or other things of value, or any transfer or
26 agreement to transfer, in trust or otherwise. Any
27 security given or delivered with or as a bonus on
28 account of any purchase of securities or other thing of
29 value, shall be conclusively presumed to constitute a
30 part of the subject of such purchase and to have been
31 sold for value. The term "sell" means any act by which
32 a sale is made, and the term "sale" or "offer for sale"
33 shall include a subscription, an option for sale, a
34 solicitation of sale, a solicitation of an offer to
35 buy, an attempt to sell, or an offer to sell, directly
36 or by an agent, by a circular, letter, or advertisement
37 or otherwise, including the deposit in a United States
38 Post Office or mail box or in any manner in the United
39 States mails within this State of a letter, circular or
40 other advertising matter. Nothing herein shall limit
41 or diminish the full meaning of the terms "sale,"
42 "sell" or "offer for sale" as used by or accepted in
43 courts of law or equity. The sale of a security under
44 conditions which entitle the purchaser or subsequent
45 holder to exchange the same for, or to purchase some
46 other security, shall not be deemed a sale or offer for
47 sale of such other security; but

1 Revisor's Note

2 Subsection E, Article 581-4, Vernon's Texas Civil
3 Statutes, which is a provision of The Securities Act
4 (Article 581-1 et seq., Vernon's Texas Civil
5 Statutes), states that "[n]othing herein shall limit
6 or diminish the full meaning of the terms 'sale,' 'sell'
7 or 'offer for sale' as used by or accepted in courts of
8 law or equity." The revised law substitutes a
9 reference to "[t]his section" for the reference to
10 "herein" because the only provisions of The Securities
11 Act that could be interpreted as limiting the meanings
12 of the terms are in Subsection E, Article 581-4, which
13 is revised as this section. In addition, the revised
14 law omits the reference to "diminish" for the reason
15 stated in Revisor's Note (2) to Section 4001.058 of
16 this chapter.

17 Revised Law

18 Sec. 4001.068. SECURITY. (a) The term "security":

19 (1) includes:

- 20 (A) a limited partner interest in a limited
21 partnership;
22 (B) a share;
23 (C) a stock;
24 (D) a treasury stock;
25 (E) a stock certificate under a voting trust
26 agreement;
27 (F) a collateral trust certificate;
28 (G) an equipment trust certificate;
29 (H) a preorganization certificate or receipt;
30 (I) a subscription or reorganization
31 certificate;
32 (J) a note, bond, debenture, mortgage
33 certificate, or other evidence of indebtedness;
34 (K) any form of commercial paper;

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

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

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

8 (O) an investment contract; and

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

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

14 (b) "Security" does not include an insurance policy,
15 endowment policy, annuity contract, or optional annuity contract,
16 or any contract or agreement in relation to and in consequence of
17 any such policy or contract, issued by an insurance company subject
18 to the supervision or control of the Texas Department of Insurance
19 when the form of such policy or contract has been filed with the
20 department as required by law. (V.A.C.S. Art. 581-4, Subsec. A.)

21 Source Law

22 A. The term "security" or "securities" shall
23 include any limited partner interest in a limited
24 partnership, share, stock, treasury stock, stock
25 certificate under a voting trust agreement, collateral
26 trust certificate, equipment trust certificate,
27 preorganization certificate or receipt, subscription
28 or reorganization certificate, note, bond, debenture,
29 mortgage certificate or other evidence of
30 indebtedness, any form of commercial paper,
31 certificate in or under a profit sharing or
32 participation agreement, certificate or any
33 instrument representing any interest in or under an
34 oil, gas or mining lease, fee or title, or any
35 certificate or instrument representing or secured by
36 an interest in any or all of the capital, property,
37 assets, profits or earnings of any company, investment
38 contract, or any other instrument commonly known as a
39 security, whether similar to those herein referred to
40 or not. The term applies regardless of whether the
41 "security" or "securities" are evidenced by a written
42 instrument. Provided, however, that this definition
43 shall not apply to any insurance policy, endowment
44 policy, annuity contract, optional annuity contract,
45 or any contract or agreement in relation to and in
46 consequence of any such policy or contract, issued by

1 an insurance company subject to the supervision or
2 control of the Texas Department of Insurance when the
3 form of such policy or contract has been duly filed
4 with the Department as now or hereafter required by
5 law.

6 Revisor's Note

7 (1) Subsection A, Article 581-4, Vernon's Texas
8 Civil Statutes, defines "security" and "securities."
9 The revised law omits "securities" as a separately
10 defined term because Section 311.012(b), Government
11 Code (Code Construction Act), applicable to the
12 revised law, provides that a reference to the singular
13 includes the plural and vice versa. Throughout this
14 chapter, references in which both the singular and
15 plural forms of the word are used are revised using
16 only one form of the term.

17 (2) Subsection A, Article 581-4, Vernon's Texas
18 Civil Statutes, refers to an instrument representing
19 or secured by an interest in "any or all" of the
20 capital, property, assets, profits, or earnings of a
21 company. The revised law omits the reference to "all"
22 of the listed items because, in context, "all" is
23 included within the meaning of "any."

24 (3) Subsection A, Article 581-4, Vernon's Texas
25 Civil Statutes, specifies certain items that are
26 included in the meaning of "security," and further
27 provides that the term includes any other instrument
28 commonly known as a security, whether similar to the
29 items referred to "herein," meaning in Subsection A,
30 the relevant portion of which is revised as Subsection
31 (a) of this section. The revised law substitutes a
32 reference to Subsection (a) of this section for
33 clarity.

34 (4) Subsection A, Article 581-4, Vernon's Texas
35 Civil Statutes, refers to an insurance policy or
36 contract the form of which is "duly" filed with the

1 Texas Department of Insurance. The revised law omits
2 "duly" for the reason stated in the revisor's note to
3 Section 4001.065 of this chapter.

4 (5) Subsection A, Article 581-4, Vernon's Texas
5 Civil Statutes, refers to certain policies and
6 contracts, the forms for which are filed with the Texas
7 Department of Insurance as "now or hereafter required
8 by law." The revised law omits the reference to "now
9 or hereafter" because, regardless of the quoted
10 phrase, the law that will apply to the filing of the
11 form of a policy or contract with the Texas Department
12 of Insurance is the law in effect at the time the
13 policy or contract is filed.

14 Revisor's Note
15 (End of Subchapter)

16 Subsections J and L, Article 581-4, Vernon's
17 Texas Civil Statutes, include various provisions
18 relating to the construction of certain words in The
19 Securities Act (Article 581-1 et seq., Vernon's Texas
20 Civil Statutes). Those provisions are omitted as
21 unnecessary because they duplicate provisions of
22 Sections 311.005 and 311.012, Government Code (Code
23 Construction Act), applicable to the revised law. The
24 omitted law reads:

25 J. If the sense requires it, words in
26 the present tense include the future tense,
27 in the masculine gender include the
28 feminine and neuter gender, in the singular
29 number include the plural number, and in the
30 plural number include the singular number;
31

32 L. The term "include" when used in a
33 definition contained in this Act shall not
34 be deemed to exclude other things or persons
35 otherwise within the meaning of the term
36 defined.

37 SUBCHAPTER C. GENERAL ADMINISTRATIVE PROVISIONS

38 Revised Law

39 Sec. 4001.101. SUFFICIENCY OF NOTICE. In this title unless

1 otherwise specified, a notice required by this title is sufficient
2 if sent by registered or certified mail addressed to a person at:

3 (1) the address designated in any filing the person
4 submitted to the commissioner; or

5 (2) the person's last known address. (V.A.C.S. Art.
6 581-26 (part).)

7 Source Law

8 Art. 581-26. Any notice required by this Act
9 shall be sufficient if sent by registered or certified
10 mail unless otherwise specified in this Act, addressed
11 to a person at the address designated in any filings
12 submitted by the person to the Commissioner or the
13 person's last known address. . . .

14 Revised Law

15 Sec. 4001.102. CONSENT FOR SERVICE OF PROCESS. (a) This
16 section applies only to an issuer, dealer, or investment adviser
17 that is:

18 (1) organized under the laws of any other state,
19 territory, or government; or

20 (2) domiciled in any other state.

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

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

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

1 (e) If the commissioner is served with process in accordance
2 with a provision executed under this section, the commissioner
3 shall forward the process by United States mail to the last known
4 address of the issuer, dealer, or investment adviser. (V.A.C.S.
5 Art. 581-8.)

6 Source Law

7 Art. 581-8. Unless the Board by rule otherwise
8 specifies, any application filed or notice filing
9 submitted by an issuer, or by a dealer or investment
10 adviser who is organized under the laws of any other
11 state, territory, or government, or domiciled in any
12 other state than Texas, shall contain a provision that
13 appoints the Commissioner the issuer's, dealer's, or
14 investment adviser's true and lawful attorney upon
15 whom all process may be served in any action or
16 proceedings against such issuer, dealer, or investment
17 adviser arising out of any transaction subject to this
18 Act with the same effect as if such issuer, dealer, or
19 investment adviser were organized or created under the
20 laws of this state and had been lawfully served with
21 process therein. The provision shall be duly executed
22 by an authorized agent of the issuer, dealer, or
23 investment adviser. Whenever the Commissioner shall
24 have been served with any process as is herein
25 provided, it shall be the duty of the Commissioner to
26 forward same by United States mail to the last known
27 address of such issuer, dealer, or investment adviser.

28 Revisor's Note

29 (1) Article 581-8, Vernon's Texas Civil
30 Statutes, refers to a "true and lawful attorney" for
31 service of process. The revised law omits the
32 references to "true" and "lawful" as unnecessary
33 because those terms do not add to the clear meaning of
34 the law.

35 (2) Article 581-8, Vernon's Texas Civil
36 Statutes, refers to an issuer, dealer, or investment
37 adviser "organized" under the laws of this state. The
38 revised law substitutes "formed" for "organized"
39 because "formed" conforms with the terminology of the
40 Business Organizations Code, which took effect January
41 1, 2006, and uses the term "certificate of formation"
42 to describe the document required to be filed with the
43 secretary of state to form most domestic entities in
44 this state on or after January 1, 2006.

1 (3) Article 581-8, Vernon's Texas Civil
2 Statutes, requires a provision of certain documents
3 designating an agent for service of process be "duly"
4 executed by an authorized agent. The revised law omits
5 "duly" as unnecessary because a designation of an
6 agent for service of process in a provision of
7 documents that has not been properly executed is not
8 considered to be executed.

9 SUBCHAPTER D. OTHER GENERAL PROVISIONS

10 Revised Law

11 Sec. 4001.151. PROSECUTION UNDER CERTAIN OTHER LAW.
12 Nothing in Chapter 269 (S.B. 294), Acts of the 55th Legislature,
13 Regular Session, 1957 (Article 581-1 et seq., Vernon's Texas Civil
14 Statutes), limits the liability of a person or company, or of its
15 officers or agents, imposed by law as of August 22, 1957, so as to
16 prevent the prosecution of the person or company, or of its officers
17 or agents, for violating another statute. (V.A.C.S. Art. 581-31.)

18 Source Law

19 Art. 581-31. Nothing herein contained shall
20 limit or diminish the liability of any person or
21 company, or of its officers or agents, now imposed by
22 law to prevent the prosecution of any person or
23 company, or of its officers or agents, for the
24 violation of the provisions of any other statute.

25 Revisor's Note

26 (1) Article 581-31, Vernon's Texas Civil
27 Statutes, states that "[n]othing herein contained,"
28 meaning contained in Chapter 269 (S.B. 294), Acts of
29 the 55th Legislature, Regular Session, 1957, which is
30 the act through which Article 581-31 was enacted,
31 limits the liability "now imposed by law" of certain
32 persons in a manner that would prevent prosecution of
33 those persons under another statute. To avoid making a
34 substantive change by altering the priority of the
35 applicability of Article 581-31 and other statutes
36 that were enacted after Article 581-31, the revised

1 law substitutes a reference to the act of the
2 legislature that enacted Article 581-31 for "herein"
3 and substitutes a reference to the effective date of
4 that act for "now."

5 (2) Article 581-31, Vernon's Texas Civil
6 Statutes, provides that nothing contained in The
7 Securities Act (Article 581-1 et seq., Vernon's Texas
8 Civil Statutes) shall "limit or diminish" certain
9 liability. The revised law omits the reference to
10 "diminish" for the reason stated in Revisor's Note (2)
11 to Section 4001.058 of this chapter.

12 Revised Law

13 Sec. 4001.152. GOOD FAITH. (a) A provision of this title
14 that imposes liability or a penalty does not apply to an act or
15 omission made in good faith in conformity with a board rule.

16 (b) This section applies regardless of whether the rule is
17 subsequently amended, rescinded, or determined by judicial or other
18 authority to be invalid for any reason. (V.A.C.S. Art. 581-28-1,
19 Subsec. E.)

20 Source Law

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

28 Revisor's Note

29 Subsection E, Article 581-28-1, Vernon's Texas
30 Civil Statutes, refers to a "rule or regulation" of the
31 State Securities Board. The revised law substitutes
32 "rule" for "rule or regulation" because in context the
33 terms are synonymous and under Section 311.005(5),
34 Government Code (Code Construction Act), applicable to
35 the revised law, a rule is defined to include a
36 regulation.

1 Revised Law

2 Sec. 4001.153. BURDEN OF PROOF ON EXEMPTION. (a) A
3 complaint, information or indictment, or a writ or proceeding
4 brought under this title is not required to negate an exemption
5 under this title.

6 (b) A party claiming an exemption under this title has the
7 burden of proof on the exemption. (V.A.C.S. Art. 581-37.)

8 Source Law

9 Art. 581-37. It shall not be necessary to
10 negative any of the exemptions in this Act in any
11 complaint, information or indictment, or any writ or
12 proceeding laid or brought under this Act; and the
13 burden of proof of any such exemption shall be upon the
14 party claiming the same.

15 Revised Law

16 Sec. 4001.154. CERTIFIED COPIES OF CERTAIN DOCUMENTS OR
17 INSTRUMENTS AS EVIDENCE. (a) Except as provided by Subsection (b),
18 a copy of a paper, document, or instrument filed in the office of
19 the commissioner and certified by the commissioner must be admitted
20 in evidence in a court and elsewhere in this state in any case in
21 which the original would be admitted in evidence.

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

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

31 (1) is under the state seal; and

32 (2) is signed by the commissioner.

33 (d) A certificate described by Subsection (c) is admissible
34 in evidence in an action to enforce this title. (V.A.C.S. Art.
35 581-30 (part).)

1 Source Law

2 Art. 581-30. Copies of all papers, instruments,
3 or documents filed in the office of the Commissioner,
4 certified by the Commissioner, shall be admitted to be
5 read in evidence in all courts of law and elsewhere in
6 this state in all cases where the original would be
7 admitted in evidence; provided, that in any proceeding
8 in the court having jurisdiction, the court may, on
9 cause shown, require the production of the originals.

10 . . .
11 In any prosecution, action, suit or proceeding
12 before any of the several courts of this state based
13 upon or arising out of or under the provisions of this
14 Act, a certificate under the state seal, duly signed by
15 the Commissioner, showing compliance or
16 non-compliance with the provisions of this Act
17 respecting compliance or non-compliance with the
18 provisions of this Act by any dealer, agent,
19 investment adviser, or investment adviser
20 representative, shall constitute prima facie evidence
21 of such compliance or of such non-compliance with the
22 provisions of this Act, as the case may be, and shall
23 be admissible in evidence in any action at law or in
24 equity to enforce the provisions of this Act.

25 Revisor's Note

26 (1) Article 581-30, Vernon's Texas Civil
27 Statutes, provides that copies of certain certified
28 documents shall be admitted into evidence in all
29 "courts of law." The revised law substitutes "courts"
30 for "courts of law" to conform to Texas law, which
31 grants courts both law and equity jurisdiction and
32 does not provide for separate "courts of law" and
33 "courts of equity."

34 (2) Article 581-30, Vernon's Texas Civil
35 Statutes, refers to a proceeding in a court "having
36 jurisdiction." The revised law omits the quoted
37 language because the general laws of civil
38 jurisdiction determine which courts have jurisdiction
39 over a matter and it is not necessary to identify a
40 court in which a proceeding takes place by specifying
41 that it has jurisdiction.

42 (3) Article 581-30, Vernon's Texas Civil
43 Statutes, refers to an action or proceeding "based
44 upon or arising out of or under" the provisions of The
45 Securities Act (Article 581-1 et seq., Vernon's Texas

1 Civil Statutes), which is revised as this title. The
2 revised law omits "based upon" and "arising out of"
3 because the terms are included within the meaning of
4 "arising under."

5 (4) Article 581-30, Vernon's Texas Civil
6 Statutes, refers to a certificate "duly" signed by the
7 securities commissioner. The revised law omits "duly"
8 as unnecessary because it does not add to the clear
9 meaning of the law.

10 (5) Article 581-30, Vernon's Texas Civil
11 Statutes, refers to a certificate showing compliance
12 or noncompliance with the provisions of The Securities
13 Act (Article 581-1 et seq., Vernon's Texas Civil
14 Statutes) "respecting compliance or non-compliance
15 with the provisions" of that act by certain persons.
16 The revised law omits the quoted language as
17 unnecessary because it is redundant of language
18 included elsewhere in the source law and revised in
19 this section.

20 (6) Article 581-30, Vernon's Texas Civil
21 Statutes, provides that certain evidence of compliance
22 or noncompliance is admissible in "any action at law or
23 in equity" to enforce the provisions of The Securities
24 Act (Article 581-1 et seq., Vernon's Texas Civil
25 Statutes). The revised law omits the reference to "at
26 law or in equity" as unnecessary because an action can
27 only be brought at law or in equity.

28 Revised Law

29 Sec. 4001.155. PROOF OF CERTAIN RECORDS. All records of the
30 former securities divisions of the offices of the secretary of
31 state and the former Board of Insurance Commissioners for which
32 custody was assumed by the commissioner under Chapter 269, Acts of
33 the 55th Legislature, Regular Session, 1957, shall be proven under
34 the commissioner's certificate. (V.A.C.S. Art. 581-30 (part).)

1 Source Law

2 Art. 581-30. . . . [The Commissioner shall
3 assume custody of all records of the Securities
4 Divisions within the offices of the Secretary of State
5 and of the Board of Insurance Commissioners, and]
6 henceforth these prior records shall be proven under
7 certificate of the Commissioner. . . .

8 Revisor's Note

9 Article 581-30, Vernon's Texas Civil Statutes,
10 requires the securities commissioner to "assume
11 custody of all records of the Securities Divisions
12 with the offices of the Secretary of State and of the
13 Board of Insurance Commissioners" and provides that
14 from that time those "records shall be proven under
15 certificate of the Commissioner." In 1957, Chapter
16 269, Acts of the 55th Legislature, Regular Session,
17 enacted The Securities Act, which created the State
18 Securities Board, with the securities commissioner as
19 its administrative head, and transferred all
20 regulatory authority over securities and persons
21 selling securities from the securities divisions of
22 the offices of the secretary of state and the Board of
23 Insurance Commissioners to the State Securities Board.
24 During that same legislative session, the Board of
25 Insurance Commissioners was abolished by Chapter 499,
26 Acts of the 55th Legislature, Regular Session, 1957,
27 and the powers and duties of that board were
28 transferred to the State Board of Insurance. Chapter
29 685, Acts of the 73rd Legislature, Regular Session,
30 1993, abolished the State Board of Insurance and
31 transferred its functions to the commissioner of
32 insurance and the Texas Department of Insurance.
33 Because the Board of Insurance Commissioners and the
34 securities divisions of the offices of that board and
35 the secretary of state no longer exist, the revised law
36 adds "former" to the references to those state

1 governmental bodies. In addition, the revised law
2 omits the portion of Article 581-30 that requires the
3 securities commissioner to assume custody of the
4 records of the securities divisions of the offices of
5 the secretary of state and the Board of Insurance
6 Commissioners as executed. The omitted law reads:

7 Art. 581-30. . . . The Commissioner
8 shall assume custody of all records of the
9 Securities Divisions within the offices of
10 the Secretary of State and of the Board of
11 Insurance Commissioners, and

12 Revisor's Note
13 (End of Chapter)

14 Article 581-39, Vernon's Texas Civil Statutes,
15 repeals certain acts in effect at the time of the
16 enactment of The Securities Act (Article 581-1 et
17 seq., Vernon's Texas Civil Statutes), preserves the
18 validity of certain permits and licenses in effect
19 under those acts on the effective date of the repeal,
20 which was 90 days after May 23, 1957, and provides that
21 any prosecution, civil or criminal cause of action,
22 administrative action, or legal or other proceeding
23 brought under those acts is not affected by their
24 repeal. The revised law omits the portion of Article
25 581-39 providing for the repeal of the acts as
26 executed. The revised law omits the remainder of the
27 provision because Section 311.031(a), Government Code
28 (Code Construction Act), provides that the
29 reenactment, revision, amendment, or repeal of a
30 statute does not affect matters occurring before or
31 pending on the reenactment, revision, amendment, or
32 repeal of the statute. The omitted law reads:

33 Art. 581-39. The Acts now in effect
34 being currently known as the Securities Act
35 of Texas and the Insurance Securities Act of
36 Texas, as embraced in Senate Bill No. 149,
37 Chapter 67, and House Bill No. 39, Chapter
38 384, Acts of the 54th Legislature, 1955, and
39 codified as Articles 579 and 580 of Vernon's
40 Civil Statutes of Texas, be and the same are

1 hereby repealed; provided, however, that
 2 all permits, orders, and licenses issued by
 3 the Secretary of State or Board of Insurance
 4 Commissioners pursuant to said laws prior
 5 to the effective date of this Act shall be
 6 valid during the period for which they were
 7 issued unless sooner revoked by the
 8 Commissioner for any cause for which the
 9 Commissioner is authorized by this Act to
 10 revoke hereunder; provided further, that
 11 all prosecutions and legal or other
 12 proceedings begun, and any violation of law
 13 whether prosecution or administrative
 14 action is commenced or not, and any cause of
 15 action of civil or criminal nature existing
 16 under the provisions of that law now in
 17 effect, shall continue in effect and remain
 18 in full force and effect until terminated as
 19 under the terms of the law now in force,
 20 notwithstanding the passage of this Act.

21 CHAPTER 4002. STATE SECURITIES BOARD AND SECURITIES COMMISSIONER

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32	<u>Source Law</u>		
33	N. The Board and Commissioner are subject to		
34	Chapters 551, 2001, and 2002, Government Code.		

1 Revised Law

2 Sec. 4002.002. SUNSET PROVISION. The State Securities
3 Board is subject to Chapter 325 (Texas Sunset Act). Unless
4 continued in existence as provided by that chapter, the board is
5 abolished and this title expires September 1, 2019. (V.A.C.S. Art.
6 581-2, Subsec. O.)

7 Source Law

8 O. The State Securities Board is subject to
9 Chapter 325, Government Code (Texas Sunset Act).
10 Unless continued in existence as provided by that
11 chapter, the board is abolished and this Act expires
12 September 1, 2019.

13 Revisor's Note

14 Subsection O, Article 581-2, Vernon's Texas Civil
15 Statutes, provides for the expiration of "this Act,"
16 which is The Securities Act (Article 581-1 et seq.,
17 Vernon's Texas Civil Statutes). The provisions of The
18 Securities Act are revised as this title. The revised
19 law throughout this chapter therefore substitutes
20 references to "this title" for references to "this
21 Act."

22 SUBCHAPTER B. STATE SECURITIES BOARD

23 Revised Law

24 Sec. 4002.051. APPOINTMENT OF BOARD. (a) The State
25 Securities Board consists of five citizens of this state appointed
26 by the governor with the advice and consent of the senate.

27 (b) Members of the board must be members of the general
28 public.

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

32 (d) A member of the board is eligible for reappointment.
33 (V.A.C.S. Art. 581-2, Subsecs. A (part), B (part).)

34 Source Law

35 Art. 581-2. A. The State Securities Board
36 The Board shall consist of five citizens of
37 the state appointed by the governor with the advice and

1 consent of the Senate. . . . Members shall be eligible
2 for reappointment. Appointments to the Board shall be
3 made without regard to the race, color, disability,
4 sex, religion, age, or national origin of the
5 appointees.

6 B. Board members must be members of the general
7 public. . . .

8 Revisor's Note

9 Subsection A, Article 581-2, Vernon's Texas Civil
10 Statutes, refers to the creation of the State
11 Securities Board. The revised law omits that
12 reference because it is executed law. The omitted law
13 reads:

14 Art. 581-2. A. [The State Securities
15 Board] is hereby created. . . .

16 Revised Law

17 Sec. 4002.052. MEMBERSHIP ELIGIBILITY. A person is not
18 eligible for appointment to the board if the person or the person's
19 spouse:

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

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

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

28 (4) has, other than as a consumer, a financial
29 interest in a business entity engaged in business as a securities
30 dealer or investment adviser. (V.A.C.S. Art. 581-2, Subsec. B
31 (part).)

32 Source Law

33 B. . . . A person is not eligible for
34 appointment as a member if the person or the person's
35 spouse:

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

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

43 (3) is employed by or participates in the

1 management of a business entity engaged in business as
2 a securities dealer or investment adviser; or
3 (4) has, other than as a consumer, a
4 financial interest in a business entity engaged in
5 business as a securities dealer or investment adviser.

6 Revised Law

7 Sec. 4002.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)

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

13 (b) A person may not be a member of the board or an employee
14 of the board employed in a "bona fide executive, administrative, or
15 professional capacity," as that phrase is used for purposes of
16 establishing an exemption to the overtime provisions of the federal
17 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.),
18 if:

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

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

25 (c) A person may not be a member of the board or act as the
26 general counsel to the board if the person is required to register
27 as a lobbyist under Chapter 305 because of the person's activities
28 for compensation on behalf of a profession related to the operation
29 of the board. (V.A.C.S. Art. 581-2-1.)

30 Source Law

31 Art. 581-2-1. A. In this section, "Texas trade
32 association" means a cooperative and voluntarily
33 joined association of business or professional
34 competitors in this state designed to assist its
35 members and its industry or profession in dealing with
36 mutual business or professional problems and in
37 promoting their common interest.

38 B. A person may not be a member of the Board and
39 may not be a Board employee employed in a "bona fide
40 executive, administrative, or professional capacity,"
41 as that phrase is used for purposes of establishing an
42 exemption to the overtime provisions of the federal

1 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201
2 et seq.) and its subsequent amendments, if:

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

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

9 C. A person may not be a member of the Board or
10 act as the general counsel to the Board if the person
11 is required to register as a lobbyist under Chapter
12 305, Government Code, because of the person's
13 activities for compensation on behalf of a profession
14 related to the operation of the Board.

15 Revisor's Note

16 Subsection B, Article 581-2-1, Vernon's Texas
17 Civil Statutes, refers to the federal Fair Labor
18 Standards Act of 1938 (29 U.S.C. Section 201 et seq.)
19 "and its subsequent amendments." The revised law
20 omits the quoted language because under Section
21 311.027, Government Code (Code Construction Act),
22 applicable to the revised law, unless expressly
23 provided otherwise, a reference to a statute or rule
24 applies to all reenactments, revisions, or amendments
25 of the statute or rule.

26 Revised Law

27 Sec. 4002.054. TERMS; VACANCY. (a) Members of the board
28 serve staggered six-year terms, with as near as possible to
29 one-third of the members' terms expiring January 20 of each
30 odd-numbered year.

31 (b) The governor shall fill a vacancy on the board for the
32 unexpired term. (V.A.C.S. Art. 581-2, Subsec. A (part).)

33 Source Law

34 Art. 581-2. A. . . . Members of the Board
35 serve for staggered terms of six years, with as near as
36 possible to one-third of the members' terms expiring
37 January 20 of each odd-numbered year. Vacancies shall
38 be filled by the Governor for the unexpired term. . . .

39 Revised Law

40 Sec. 4002.055. PRESIDING OFFICER. The governor shall
41 designate a member of the board as the board's presiding officer to
42 serve in that capacity at the will of the governor. (V.A.C.S. Art.
43 581-2, Subsec. D (part).)

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Source Law

D. . . . The Governor shall designate a member of the Board as the presiding officer of the Board to serve in that capacity at the will of the Governor.
. . .

Revised Law

Sec. 4002.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 4002.051;

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

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

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

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

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the board's presiding officer of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the commissioner shall notify the board's next highest ranking officer, who shall then notify the governor and the attorney general that a potential ground for removal exists. (V.A.C.S. Art. 581-2, Subsecs. E, F.)

Source Law

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

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

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

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

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

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

17 F. The validity of an action of the Board is not
18 affected by the fact that it is taken when a ground for
19 removal of a Board member exists. If the Commissioner
20 has knowledge that a potential ground for removal
21 exists, the Commissioner shall notify the presiding
22 officer of the Board of the potential ground. The
23 presiding officer shall then notify the Governor and
24 the attorney general that a potential ground for
25 removal exists. If the potential ground for removal
26 involves the presiding officer, the Commissioner shall
27 notify the next highest ranking officer of the Board,
28 who shall then notify the Governor and the attorney
29 general that a potential ground for removal exists.

30 Revised Law

31 Sec. 4002.057. PER DIEM. A member of the board is entitled
32 to a per diem as set by legislative appropriation for each day the
33 member engages in the business of the board. (V.A.C.S. Art. 581-2,
34 Subsec. D (part).)

35 Source Law

36 D. Each member of the Board is entitled to per
37 diem as set by legislative appropriation for each day
38 that the member engages in the business of the Board.
39 . . .

40 Revised Law

41 Sec. 4002.058. BOARD MEMBER TRAINING. (a) A person who is
42 appointed to and qualifies for office as a member of the board may
43 not vote, deliberate, or be counted as a member in attendance at a
44 meeting of the board until the person completes a training program
45 that complies with this section.

46 (b) The training program must provide the person with
47 information regarding:

48 (1) the legislation that created the board;

49 (2) the programs operated by the board;

50 (3) the role and functions of the board;

1 (4) the rules of the board, with an emphasis on the
2 rules that relate to disciplinary and investigatory authority;

3 (5) the current budget for the board;

4 (6) the results of the most recent formal audit of the
5 board;

6 (7) the requirements of:

7 (A) the open meetings law, Chapter 551;

8 (B) the public information law, Chapter 552;

9 (C) the administrative procedure law, Chapter
10 2001; and

11 (D) other laws relating to public officials,
12 including conflict-of-interest laws; and

13 (8) any applicable ethics policies adopted by the
14 board or the Texas Ethics Commission.

15 (c) A person appointed to the board is entitled to
16 reimbursement, as provided by the General Appropriations Act, for
17 travel expenses incurred in attending the training program
18 regardless of whether the attendance at the program occurs before
19 or after the person qualifies for office. (V.A.C.S. Art. 581-2-3.)

20 Source Law

21 Art. 581-2-3. A. A person who is appointed to
22 and qualifies for office as a member of the Board may
23 not vote, deliberate, or be counted as a member in
24 attendance at a meeting of the Board until the person
25 completes a training program that complies with this
26 section.

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

29 (1) the legislation that created the
30 Board;

31 (2) the programs operated by the Board;

32 (3) the role and functions of the Board;

33 (4) the rules of the Board with an emphasis
34 on the rules that relate to disciplinary and
35 investigatory authority;

36 (5) the current budget for the Board;

37 (6) the results of the most recent formal
38 audit of the Board;

39 (7) the requirements of:

40 (A) the open meetings law, Chapter
41 551, Government Code;

42 (B) the public information law,
43 Chapter 552, Government Code;

44 (C) the administrative procedure
45 law, Chapter 2001, Government Code; and

46 (D) other laws relating to public
47 officials, including conflict-of-interest laws; and

1 (8) any applicable ethics policies adopted
2 by the Board or the Texas Ethics Commission.

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

9 Revisor's Note
10 (End of Subchapter)

11 Subsection D, Article 581-2, Vernon's Texas Civil
12 Statutes, provides that a majority of the State
13 Securities Board constitutes a quorum for the
14 transaction of business. The revised law omits that
15 provision because it duplicates Section 311.013(b),
16 Government Code (Code Construction Act), applicable to
17 the revised law, which provides that a quorum of a
18 public body is a majority of the number of members
19 fixed by statute. The revised law also omits "for the
20 transaction of any business" because "quorum" means
21 the number of persons or votes necessary for a body to
22 act. The omitted law reads:

23 D. . . . A majority of the members
24 shall constitute a quorum for the
25 transaction of any business.

26 SUBCHAPTER C. SECURITIES COMMISSIONER AND EMPLOYEES OF BOARD

27 Revised Law

28 Sec. 4002.101. SECURITIES COMMISSIONER. The board shall
29 appoint a securities commissioner who serves at the pleasure of the
30 board and who, under the board's supervision, shall administer this
31 title. (V.A.C.S. Art. 581-2, Subsec. G (part).)

32 Source Law

33 G. The Board shall appoint a Securities
34 Commissioner who serves at the pleasure of the Board
35 and who shall, under the supervision of the Board,
36 administer the provisions of this Act. . . .

37 Revised Law

38 Sec. 4002.102. DEPUTY SECURITIES COMMISSIONER; SECURITIES
39 COMMISSIONER APPOINTEES. (a) The commissioner, with the consent
40 of the board, may designate a deputy securities commissioner who
41 shall perform all of the duties of the commissioner required by law

1 to be performed by the commissioner when the commissioner is absent
2 or unable to act for any reason.

3 (b) The commissioner shall appoint other persons as
4 necessary to carry out the powers and duties of the commissioner
5 under this title and under other laws granting jurisdiction to or
6 applicable to the board or the commissioner.

7 (c) The commissioner may delegate to a person appointed
8 under Subsection (b) powers and duties of the commissioner as the
9 commissioner considers necessary. (V.A.C.S. Art. 581-2, Subsec.
10 H.)

11 Source Law

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

25 Revised Law

26 Sec. 4002.103. DIVISION OF RESPONSIBILITIES. The board
27 shall develop and implement policies that clearly separate the
28 policy-making responsibilities of the board and the management
29 responsibilities of the commissioner and board employees.
30 (V.A.C.S. Art. 581-2-4.)

31 Source Law

32 Art. 581-2-4. The Board shall develop and
33 implement policies that clearly separate the
34 policymaking responsibilities of the Board and the
35 management responsibilities of the Commissioner and
36 employees of the Board.

37 Revised Law

38 Sec. 4002.104. STANDARDS OF CONDUCT INFORMATION. The
39 commissioner or the commissioner's designee shall provide to
40 members of the board and to board employees, as often as necessary,
41 information regarding the requirements for office or employment
42 under this title, including information regarding a person's

1 responsibilities under applicable laws relating to standards of
2 conduct for state officers or employees. (V.A.C.S. Art. 581-2-2.)

3 Source Law

4 Art. 581-2-2. The Commissioner or the
5 Commissioner's designee shall provide to members of
6 the Board and to Board employees, as often as
7 necessary, information regarding the requirements for
8 office or employment under this Act, including
9 information regarding a person's responsibilities
10 under applicable laws relating to standards of conduct
11 for state officers or employees.

12 Revised Law

13 Sec. 4002.105. CAREER LADDER PROGRAM; PERFORMANCE
14 EVALUATIONS. (a) The commissioner or the commissioner's designee
15 shall develop an intra-agency career ladder program. The program
16 must require intra-agency posting of each nonentry level position
17 at least 10 days before the date of any public posting.

18 (b) The commissioner or the commissioner's designee shall
19 develop a system of annual performance evaluations based on
20 measurable job tasks. All merit pay for board employees must be
21 based on the system established under this subsection. (V.A.C.S.
22 Art. 581-2, Subsec. K.)

23 Source Law

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

33 Revised Law

34 Sec. 4002.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)
35 The commissioner or the commissioner's designee shall prepare and
36 maintain a written policy statement that implements a program of
37 equal employment opportunity to ensure that all personnel decisions
38 are made without regard to race, color, disability, sex, religion,
39 age, or national origin.

40 (b) The policy statement must include:

41 (1) personnel policies, including policies relating

1 to recruitment, evaluation, selection, training, and promotion of
2 personnel, that show the intent of the board to avoid the unlawful
3 employment practices described by Chapter 21, Labor Code; and

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

8 (c) The policy statement must be:

9 (1) updated annually;

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

12 (3) filed with the governor's office. (V.A.C.S. Art.
13 581-2-7.)

14 Source Law

15 Art. 581-2-7. A. The Commissioner or the
16 Commissioner's designee shall prepare and maintain a
17 written policy statement that implements a program of
18 equal employment opportunity to ensure that all
19 personnel decisions are made without regard to race,
20 color, disability, sex, religion, age, or national
21 origin.

22 B. The policy statement must include:

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

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

34 C. The policy statement must:

35 (1) be updated annually;

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

39 (3) be filed with the governor's office.

40 Revisor's Note

41 Subsection C, Article 581-2-7, Vernon's Texas
42 Civil Statutes, refers to the "state Commission on
43 Human Rights." The revised law substitutes a
44 reference to the "Texas Workforce Commission civil
45 rights division" because Chapter 302, Acts of the 78th
46 Legislature, Regular Session, 2003, abolished the

1 Commission on Human Rights and transferred its powers
2 and duties to the Texas Workforce Commission civil
3 rights division.

4 Revised Law

5 Sec. 4002.107. WRITTEN EMPLOYEE COMPLAINT PROCEDURE. (a)

6 The commissioner or the commissioner's designee shall maintain a
7 file on each written complaint filed with the commissioner or board
8 concerning an employee or former employee. The file must include
9 the information listed in Section 4007.051 for files maintained
10 under that section for complaints against persons registered under
11 this title.

12 (b) The commissioner or the commissioner's designee shall
13 provide to the person filing the complaint and to each person who is
14 a subject of the complaint a copy of the board's policies and
15 procedures relating to complaint investigation and resolution.

16 (c) The commissioner or the commissioner's designee, at
17 least quarterly until final disposition of the complaint, shall
18 notify the person filing the complaint and each person who is a
19 subject of the complaint of the status of the investigation unless
20 the notice would jeopardize an undercover investigation. (V.A.C.S.
21 Art. 581-2-6, Subsecs. A (part), B, C; New.)

22 Source Law

23 Art. 581-2-6. A. The Commissioner or the
24 Commissioner's designee shall maintain a file on each
25 written complaint filed with the Commissioner or Board
26 concerning an employee, former employee, or
27 The file must include:

- 28 [(1) the name of the person who filed the
29 complaint;
30 (2) the date the complaint is received by
31 the Commissioner or Board;
32 (3) the subject matter of the complaint;
33 (4) the name of each person contacted in
34 relation to the complaint;
35 (5) a summary of the results of the review
36 or investigation of the complaint; and
37 (6) an explanation of the reason the file
38 was closed, if the Commissioner closed the file
39 without taking action other than to investigate the
40 complaint.]

41 B. The Commissioner or the Commissioner's
42 designee shall provide to the person filing the
43 complaint and to each person who is a subject of the
44 complaint a copy of the Board's policies and procedures
45 relating to complaint investigation and resolution.

1 C. The Commissioner or the Commissioner's
2 designee, at least quarterly until final disposition
3 of the complaint, shall notify the person filing the
4 complaint and each person who is a subject of the
5 complaint of the status of the investigation unless
6 the notice would jeopardize an undercover
7 investigation.

8 Revisor's Note

9 Subsection A, Article 581-2-6, Vernon's Texas
10 Civil Statutes, lists information that must be
11 contained in a complaint file maintained by the
12 securities commissioner for complaints against
13 employees or former employees. For clarity and to
14 avoid the unnecessary repetition of the substance of
15 the provision, the revised law in this section adds a
16 cross-reference to Section 4007.051 of this title for
17 the listed information because that information is
18 also revised in that section for complaints against
19 persons registered under this title.

20 SUBCHAPTER D. POWERS AND DUTIES OF BOARD AND COMMISSIONER

21 Revised Law

22 Sec. 4002.151. RULES. (a) Subject to Subsection (b), the
23 board may adopt rules as necessary to implement this title,
24 including rules:

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

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

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

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

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

37 (c) For the purpose of adopting rules, the board may

1 classify securities, persons, and matters within the board's
2 jurisdiction and prescribe different requirements for different
3 classes.

4 (d) The board, in the board's discretion, may waive a
5 requirement of a rule in a situation in which, in the board's
6 opinion, the requirement is not necessary in the public interest or
7 for the protection of investors. (V.A.C.S. Art. 581-28-1, Subsecs.
8 B, C.)

9 Source Law

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

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

36 Revisor's Note

37 (1) Subsection A, Article 581-28-1, Vernon's
38 Texas Civil Statutes, defines "rule and regulation"
39 for purposes of that article. Article 581-28-1 was
40 added by Chapter 78, Acts of the 64th Legislature,
41 Regular Session, 1975. During the same legislative
42 session, the legislature enacted the Administrative
43 Procedure and Texas Register Act (Chapters 2001 and
44 2002, Government Code), effective January 1, 1976, in
45 part to make rulemaking practices and procedures
46 uniform across state agencies. The original enactment

1 of the Administrative Procedure and Texas Register Act
2 included a definition of "rule" (Section 3 of former
3 Article 6252-13a, Vernon's Texas Civil Statutes) that
4 was substantially similar to the definition of "rule
5 and regulation" in Subsection A, Article 581-28-1.
6 See Chapter 61, Acts of the 64th Legislature, Regular
7 Session, 1975. In 1993, the relevant part of Article
8 6252-13a, Vernon's Texas Civil Statutes, was codified
9 as Chapter 2001, Government Code. Because the
10 definition of "rule" in Section 2001.003, Government
11 Code, is substantially similar to the definition of
12 "rule and regulation" in Subsection A, Article
13 581-28-1, the revised law omits that definition. The
14 omitted law reads:

15 Art. 581-28-1. A. For purposes of
16 this Section 28-1, the term "rule and
17 regulation" shall mean any statement by the
18 board of general and future applicability
19 that implements, interprets, or prescribes
20 law or policy or describes the
21 organization, procedure, or practice
22 requirements of the board. The term
23 includes the amendment or repeal of a prior
24 rule or regulation, but does not include
25 statements concerning only the internal
26 management of the board not affecting
27 private rights or procedures or forms or
28 orders adopted or made by the board or the
29 commissioner pursuant to other provisions
30 of this Act.

31 (2) Subsection B, Article 581-28-1, Vernon's
32 Texas Civil Statutes, refers to the State Securities
33 Board's authority to make or adopt rules and
34 regulations "from time to time." The revised law omits
35 the quoted language because the power to take an action
36 includes the power to act "from time to time."

37 (3) Subsection B, Article 581-28-1, Vernon's
38 Texas Civil Statutes, refers to the State Securities
39 Board's authority to make or adopt rules and
40 regulations "in accordance with the provisions of this
41 Section 28-1." The revised law omits the quoted

1 language as unnecessary because it is presumed that
2 any rules or regulations adopted by the board are
3 adopted in accordance with Article 581-28-1, Vernon's
4 Texas Civil Statutes, the relevant parts of which are
5 revised in this section and Sections 4002.152 and
6 4002.153 of this chapter.

7 (4) Subsection B, Article 581-28-1, Vernon's
8 Texas Civil Statutes, provides that the board may
9 "make or adopt" rules and regulations. Throughout
10 this chapter, the revised law substitutes "adopt" for
11 "make or adopt" because in context the terms are
12 synonymous, and the latter is more commonly used.

13 (5) Subsection B, Article 581-28-1, Vernon's
14 Texas Civil Statutes, refers to "rules and
15 regulations." Throughout this chapter, the revised
16 law substitutes "rule" for "rule and regulation" and
17 "rule or regulation" because in context the terms are
18 synonymous, and under Section 311.005(5), Government
19 Code (Code Construction Act), applicable to the
20 revised law, a rule is defined to include a regulation.

21 (6) Subsection B, Article 581-28-1, Vernon's
22 Texas Civil Statutes, refers to rules necessary to
23 "carry out and implement" the provisions of The
24 Securities Act (Article 581-1 et seq., Vernon's Texas
25 Civil Statutes), which is revised as this title. The
26 revised law omits "carry out" because that term is
27 included within the meaning of "implement."

28 (7) Subsection C, Article 581-28-1, Vernon's
29 Texas Civil Statutes, refers to the State Securities
30 Board making certain findings after notice and
31 opportunity for comment "in accordance with the
32 provisions of this Section 28-1." The revised law
33 omits the quoted language because, aside from this
34 reference, Article 581-28-1 does not include any other

1 provisions relating to notice or comment requirements
2 with respect to rulemaking. Chapter 2001, Government
3 Code, however, provides procedures for rulemaking,
4 including notice and comment requirements, that are
5 applicable to all state agencies, including the State
6 Securities Board.

7 Revised Law

8 Sec. 4002.152. RULES REGARDING COMPETITIVE BIDDING OR
9 ADVERTISING. (a) The board may not adopt rules restricting
10 competitive bidding or advertising by a person registered under
11 this title except to prohibit false, misleading, or deceptive
12 practices by the person.

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

16 (1) restricts the person's use of any advertising
17 medium;

18 (2) restricts the person's personal appearance or use
19 of the person's voice in an advertisement;

20 (3) relates to the size or duration of an
21 advertisement by the person; or

22 (4) restricts the person's advertisement under a trade
23 name.

24 (c) This section does not affect limitations on advertising
25 in Section 4005.012, 4005.013, or 4005.021 or in rules adopted by
26 the board under Section 4005.024. (V.A.C.S. Art. 581-28-1, Subsec.
27 F.)

28 Source Law

29 F. The Board may not adopt rules restricting
30 competitive bidding or advertising by a person
31 registered under this Act except to prohibit false,
32 misleading, or deceptive practices by the person. The
33 Board may not include in its rules to prohibit false,
34 misleading, or deceptive practices by a person
35 regulated by the Board a rule that restricts the
36 person's use of any medium for advertising, restricts
37 the person's personal appearance or use of his voice in
38 an advertisement, relates to the size or duration of an
39 advertisement by the person, or restricts the person's

1 advertisement under a trade name. However, this
2 section does not affect limitations on advertising
3 contained in Subsections I or Q of Section 5 of this
4 Act or in rules adopted by the Board under Subsection T
5 of Section 5 of this Act.

6 Revisor's Note

7 (1) Subsection F, Article 581-28-1, Vernon's
8 Texas Civil Statutes, refers to limitations on
9 advertising contained in Subsection I or Q, Article
10 581-5, Vernon's Texas Civil Statutes. The revised law
11 substitutes a reference to Sections 4005.012,
12 4005.013, and 4005.021 of this title because
13 Subsection I is revised as Sections 4005.012 and
14 4005.013 and Subsection Q is revised as Section
15 4005.021.

16 (2) Subsection F, Article 581-28-1, Vernon's
17 Texas Civil Statutes, refers to rules adopted by the
18 State Securities Board under Subsection T, Article
19 581-5, Vernon's Texas Civil Statutes. The revised law
20 substitutes a reference to Section 4005.024 of this
21 title because Subsection T is revised as that section.

22 Revised Law

23 Sec. 4002.153. BOARD DELEGATION OF RULEMAKING AUTHORITY.

24 (a) The board by rule may delegate to the commissioner or the
25 deputy securities commissioner the authority granted to the board
26 under Section 4002.151 or 4002.152 to adopt rules or to waive the
27 requirements of rules as the board considers appropriate.

28 (b) Any rule adopted by the commissioner or the deputy
29 securities commissioner based on the authority delegated under this
30 section must be adopted in accordance with Sections 4002.151 and
31 4002.152. (V.A.C.S. Art. 581-28-1, Subsec. D.)

32 Source Law

33 D. The board may, by rule or regulation adopted
34 in accordance with this Section 28-1, delegate to the
35 commissioner or the deputy commissioner such of the
36 authority granted to the board under this Section 28-1
37 to hold hearings for adoption of rules and regulations
38 and to make or adopt rules and regulations, or to waive
39 the requirements thereof, as it may, from time to time,
40 deem appropriate. All rules and regulations made or

1 adopted by the commissioner or the deputy commissioner
2 pursuant to such delegated authority shall be made or
3 adopted in accordance with this Section 28-1.

4 Revisor's Note

5 (1) Subsection D, Article 581-28-1, Vernon's
6 Texas Civil Statutes, refers to rules adopted by the
7 State Securities Board "in accordance with this
8 Section 28-1." The revised law omits the quoted
9 language as unnecessary because it is presumed that
10 any rules adopted by the board are adopted in
11 accordance with Article 581-28-1, Vernon's Texas Civil
12 Statutes, revised in relevant part in Sections
13 4002.151 and 4002.152 of this chapter.

14 (2) Subsection D, Article 581-28-1, Vernon's
15 Texas Civil Statutes, provides that the State
16 Securities Board may delegate to the securities
17 commissioner or the deputy securities commissioner the
18 board's authority under that article to "hold hearings
19 for adoption of rules and regulations." The board's
20 authority to hold hearings in connection with proposed
21 rules and regulations was found in Subsection H,
22 Article 581-28-1, Vernon's Texas Civil Statutes. In
23 1983, however, Chapter 465, Acts of the 68th
24 Legislature, Regular Session, repealed Subsection H,
25 Article 581-28-1, in addition to other provisions of
26 that article. Because the State Securities Board no
27 longer possesses the authority to hold hearings for
28 the adoption of rules and regulations, the revised law
29 omits the quoted language as unnecessary.

30 (3) Subsection D, Article 581-28-1, Vernon's
31 Texas Civil Statutes, refers to the State Securities
32 Board's authority to waive the requirements of rules
33 "from time to time." The revised law omits the quoted
34 language for the reason stated in Revisor's Note (2) to
35 Section 4002.151 of this chapter.

1 Revised Law

2 Sec. 4002.154. COMMISSIONER DISCRETION REGARDING RULES. In
3 applying the standards of this title, the commissioner may waive or
4 relax any restriction or requirement in a board rule that, in the
5 commissioner's opinion, is unnecessary for the protection of
6 investors in a particular case. (V.A.C.S. Art. 581-10, Subsec. D.)

7 Source Law

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

13 Revised Law

14 Sec. 4002.155. DEPOSIT OF RECEIPTS TO GENERAL REVENUE FUND.
15 The commissioner or board shall deposit money received from
16 assessments or charges under this title to the credit of the general
17 revenue fund. (V.A.C.S. Art. 581-36 (part).)

18 Source Law

19 Art. 581-36. Upon and after the effective date
20 of this Act all moneys received from . . .
21 assessments, or charges under this Act shall be paid by
22 the Commissioner or Board into the General Revenue
23 Fund. . . .

24 Revisor's Note

25 Article 581-36, Vernon's Texas Civil Statutes,
26 requires the securities commissioner or State
27 Securities Board to deposit certain money received
28 under The Securities Act (Article 581-1 et seq.,
29 Vernon's Texas Civil Statutes) to the general revenue
30 fund "[u]pon and after the effective date of this Act."
31 The revised law omits the quoted language as
32 unnecessary because Section 311.022, Government Code
33 (Code Construction Act), applicable to the revised
34 law, provides a presumption that all statutes have
35 prospective application unless expressly provided
36 otherwise.

37 Revised Law

38 Sec. 4002.156. BOARD AUTHORITY TO EXERCISE COMMISSIONER'S

1 POWERS. The board may exercise any power or perform any act the
2 commissioner is authorized to exercise or perform under this title.
3 (V.A.C.S. Art. 581-2, Subsec. G (part).)

4 Source Law

5 G. . . . the Board, or a majority thereof, may
6 exercise any power or perform any act authorized to the
7 Securities Commissioner by the provisions of this Act.

8 Revisor's Note

9 Subsection G, Article 581-2, Vernon's Texas Civil
10 Statutes, provides that the State Securities Board or
11 "a majority thereof" may exercise any power or perform
12 any act that the securities commissioner is authorized
13 to exercise or perform under The Securities Act (Art.
14 581-1 et seq., Vernon's Texas Civil Statutes). The
15 revised law omits the quoted language because it
16 duplicates Section 311.013(a), Government Code (Code
17 Construction Act), applicable to the revised law,
18 which provides that a grant of authority to a public
19 body confers the authority on a majority of the public
20 body.

21 Revised Law

22 Sec. 4002.157. LIST OF SECURITIES OFFERED. At any time, the
23 commissioner may, in the exercise of reasonable discretion under
24 this title, require a dealer to file with the commissioner a partial
25 or complete list of securities that the dealer:

26 (1) is offering or advertising for sale in this state
27 at the time of the request; or

28 (2) has offered or advertised for sale in this state
29 during the six-month period preceding the date of the request.

30 (V.A.C.S. Art. 581-23, Subsec. D.)

31 Source Law

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

1 Revised Law

2 Sec. 4002.159. RECORD OF CERTAIN FILINGS AND ORDERS. (a)

3 The commissioner shall maintain a record of:

4 (1) the names and addresses of all registered dealers,
5 registered agents, registered investment advisers, registered
6 investment adviser representatives, and persons who have submitted
7 a notice filing under this title; and

8 (2) all orders of the commissioner denying,
9 suspending, or revoking a registration.

10 (b) A record maintained under Subsection (a) must be open
11 for public inspection.

12 (c) This section does not apply to information made
13 confidential by Section 4002.161, 4007.052, or 4007.056 or other
14 law. (V.A.C.S. Art. 581-11 (part).)

15 Source Law

16 Art. 581-11. . . . The Commissioner shall
17 maintain a record, which shall be open for public
18 inspection, upon which shall be entered the names and
19 addresses of all registered dealers, registered
20 agents, registered investment advisers, registered
21 investment adviser representatives, and persons who
22 have submitted a notice filing under this Act, and all
23 orders of the Commissioner denying, suspending or
24 revoking registration. This section does not affect
25 information considered confidential by Section 13-1 or
26 28 of this Act or other law.

27 Revisor's Note

28 Article 581-11, Vernon's Texas Civil Statutes,
29 provides that the provisions of that article do not
30 apply to information made confidential by Article
31 581-13-1 or 581-28, Vernon's Texas Civil Statutes. The
32 revised law substitutes a reference to Section
33 4002.161 of this chapter and references to Sections
34 4007.052 and 4007.056 of this title because the
35 relevant portion of Article 581-13-1 is revised as
36 Section 4007.052 and the relevant portions of Article
37 581-28 are revised as Sections 4002.161 and 4007.056.

38 Revised Law

39 Sec. 4002.160. COMMISSIONER'S ACCESS TO RECORDS AND REPORTS

1 OF OTHER STATE AGENCIES. (a) During an investigation for the
2 purpose of enforcing this title or in connection with the
3 application of a person or company for registration or for a permit
4 qualifying securities for sale, the commissioner or deputy
5 securities commissioner shall have free access to all records of,
6 all reports of, and all reports made to an agency or department of
7 this state.

8 (b) If the commissioner or deputy securities commissioner
9 discloses any information made confidential by law, the affected
10 person or company has a right of action on the official bond of the
11 commissioner or deputy securities commissioner for the person's or
12 company's injuries in a suit brought in the name of the state at the
13 relation of the person or company.

14 (c) This section may not be interpreted to prohibit or limit
15 the publication of rulings or decisions of the commissioner.
16 (V.A.C.S. Art. 581-28, Subsec. A (part).)

17 Source Law

18 A. . . . Nothing in this section shall be
19 interpreted to prohibit or limit the publication of
20 rulings or decisions of the Commissioner

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

35 Revisor's Note

36 (1) Subsection A, Article 581-28, Vernon's Texas
37 Civil Statutes, provides that "[n]othing in this
38 section" may be interpreted to limit the publication
39 of rulings or decisions of the securities
40 commissioner. The reference to "in this section"
41 refers to Article 581-28, Vernon's Texas Civil
42 Statutes, the relevant parts of which are revised in

1 this section, Section 4002.161 of this chapter, and
2 other sections of Chapter 4007 of this title. For that
3 reason, the substance of Subsection A, Article 581-28,
4 that is referred to in this revisor's note is revised
5 separately in this section and in each of those other
6 provisions of this title in which the relevant parts of
7 Article 581-28 are revised.

8 (2) Subsection A, Article 581-28, Vernon's Texas
9 Civil Statutes, refers to an application "to qualify
10 securities." The only reference to an application to
11 qualify securities in The Securities Act (V.A.C.S.
12 Article 581-1 et seq.), revised as this title, is found
13 in Subsection A, Article 581-10, Vernon's Texas Civil
14 Statutes, revised as Section 4003.006 of this title,
15 which refers to an "application for qualifying
16 securities under Section 7A," meaning Subsection A,
17 Article 581-7, Vernon's Texas Civil Statutes. The
18 revised law substitutes an application "for a permit
19 qualifying securities for sale" for an application "to
20 qualify securities" for the reason stated in the
21 revisor's note to Section 4003.006.

22 (3) Subsection A, Article 581-28, Vernon's Texas
23 Civil Statutes, refers to a "corporation, firm or
24 person" and contains other similar references. The
25 revised law omits as unnecessary the references to
26 "corporation" and "firm" because Subsection B, Article
27 581-4, Vernon's Texas Civil Statutes, revised as
28 Section 4001.064 of this title, defines both "person"
29 and "company" to include a "corporation" or "firm."

30 Revised Law

31 Sec. 4002.161. CONFIDENTIALITY OF CERTAIN INFORMATION. (a)
32 To the extent not otherwise provided by this title, any
33 intra-agency or interagency notes, memoranda, reports, or other
34 communications consisting of advice, analyses, opinions, or

1 recommendations are confidential.

2 (b) Except as provided by Subsection (c) or Section
3 4007.056(b) or (c), the commissioner may not disclose a document or
4 other information made confidential by Subsection (a) unless the
5 disclosure is made to the public under court order for good cause
6 shown.

7 (c) The commissioner, at the commissioner's discretion, may
8 disclose confidential information in the commissioner's possession
9 to:

10 (1) a governmental or regulatory authority or any
11 association of governmental or regulatory authorities approved by
12 board rule; or

13 (2) any receiver appointed under Section 4007.151.

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

16 (e) This section may not be interpreted to prohibit or limit
17 the publication of rulings or decisions of the commissioner.
18 (V.A.C.S. Art. 581-28, Subsecs. A (part), B; New.)

19 Source Law

20 A. . . . [provided, however, that . . . all
21 internal notes, memoranda, reports, or communications
22 made in connection with an investigation shall be
23 treated as confidential by the Commissioner and shall
24 not be disclosed to the public except under order of
25 court for good cause shown.] Nothing in this section
26 shall be interpreted to prohibit or limit the
27 publication of rulings or decisions of the
28 Commissioner [nor shall this limitation apply if
29 disclosure is made, in the discretion of the
30 Commissioner, as part of an administrative proceeding
31 or a civil or criminal action to enforce this Act.]
32 . . .

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

41 B. Confidentiality of Certain
42 Registration-Related and Other Materials. To the
43 extent not already provided for by this Act, any
44 intraagency or interagency notes, memoranda, reports,
45 or other communications consisting of advice,
46 analyses, opinions, or recommendations shall be
47 treated as confidential by the Commissioner and shall
48 not be disclosed to the public, except under order of

1 court, for good cause shown. The Commissioner may, at
2 the Commissioner's discretion, disclose any
3 confidential information in the Commissioner's
4 possession to any governmental or regulatory authority
5 or association of governmental or regulatory
6 authorities approved by Board rule or to any receiver
7 appointed under Section 25-1 of this Act. The
8 disclosure does not violate any other provision of
9 this Act or Chapter 552, Government Code.

10 Revisor's Note

11 (1) Subsections A and B, Article 581-28,
12 Vernon's Texas Civil Statutes, contain provisions that
13 authorize the securities commissioner to disclose to
14 certain persons, without a court order, information
15 made confidential by that article. Those provisions
16 are revised in this section and Sections 4007.056(b)
17 and (c) of this title. For clarity and the convenience
18 of the reader, the revised law includes in this section
19 cross-references to Sections 4007.056(b) and (c).

20 (2) Subsection B, Article 581-28, Vernon's Texas
21 Civil Statutes, refers to a receiver appointed under
22 Article 581-25-1, Vernon's Texas Civil Statutes. The
23 revised law substitutes a reference to Section
24 4007.151 of this title because Article 581-25-1 is
25 revised as that section.

26 Revised Law

27 Sec. 4002.162. BOARD ACCESS TO OFFICES AND RECORDS. Each
28 member of the board shall have access to all of the offices and
29 records under the commissioner's supervision. (V.A.C.S. Art.
30 581-2, Subsec. G (part).)

31 Source Law

32 G. [The Board shall appoint a Securities
33 Commissioner . . . who shall, under the supervision of
34 the Board, administer the provisions of this Act.]
35 Each member of the Board shall have access to all
36 offices and records under his supervision, and

37 Revised Law

38 Sec. 4002.163. ANNUAL REPORT. On or before January 1 of
39 each year, the board, with the advice of the commissioner, shall
40 report to the governor and the presiding officer of each house of

1 the legislature about the administration of this title and plans
2 and needs for future securities regulation. The report must
3 include a detailed accounting of all funds received and disbursed
4 by the board during the preceding year. (V.A.C.S. Art. 581-2,
5 Subsec. J.)

6 Source Law

7 J. On or before January 1 of each year, the
8 Board, with the advice of the Commissioner, shall
9 report to the Governor and the presiding officer of
10 each house of the Legislature as to its administration
11 of this Act, as well as plans and needs for future
12 securities regulation. The report must include a
13 detailed accounting of all funds received and
14 disbursed by the Board during the preceding year.

15 Revisor's Note
16 (End of Subchapter)

17 Subsection M, Article 581-2, Vernon's Texas Civil
18 Statutes, provides that the financial transactions of
19 the State Securities Board are subject to audit by the
20 state auditor in accordance with Chapter 321,
21 Government Code. The revised law omits that provision
22 as unnecessary. Section 321.013, Government Code,
23 requires the state auditor to conduct audits of all
24 departments as specified in the audit plan as defined
25 in Section 321.001 of that code. The omitted law
26 reads:

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

31 SUBCHAPTER E. CONSUMER INTEREST AND OTHER PUBLIC INTEREST
32 INFORMATION

33 Revised Law

34 Sec. 4002.201. CONSUMER INTEREST INFORMATION. (a) The
35 board shall prepare information of consumer interest describing:

36 (1) the regulatory functions of the board and
37 commissioner; and

38 (2) the procedures by which consumer complaints are
39 filed with and resolved by the board or commissioner.

1 (b) The board shall make the information available to the
2 public and appropriate state agencies. (V.A.C.S. Art. 581-2,
3 Subsec. L (part).)

4 Source Law

5 L. The Board shall prepare information of
6 consumer interest describing the regulatory functions
7 of the Board and Commissioner and describing the
8 Board's and Commissioner's procedures by which
9 consumer complaints are filed with and resolved by the
10 Board or Commissioner. The Board shall make the
11 information available to the general public and
12 appropriate state agencies. . . .

13 Revised Law

14 Sec. 4002.202. PUBLIC PARTICIPATION. The board by rule
15 shall develop and implement policies that provide the public with a
16 reasonable opportunity to appear before the board and to speak on
17 any issue under the board's jurisdiction. (V.A.C.S. Art. 581-2-5.)

18 Source Law

19 Art. 581-2-5. The Board by rule shall develop
20 and implement policies that provide the public with a
21 reasonable opportunity to appear before the Board and
22 to speak on any issue under the jurisdiction of the
23 Board.

24 Revised Law

25 Sec. 4002.203. DOCUMENTS AND OTHER INFORMATION FILED WITH
26 COMMISSIONER; PUBLIC RECORDS. (a) All information, papers,
27 documents, instruments, and affidavits required by this title to be
28 filed with the commissioner are public records.

29 (b) All information, papers, documents, instruments, and
30 affidavits required by this title to be filed with the commissioner
31 must be open to inspection and examination by a purchaser or
32 prospective purchaser of securities, or by the agent or
33 representative of a purchaser or prospective purchaser of
34 securities. The commissioner shall:

35 (1) provide to a purchaser or prospective purchaser of
36 securities, or an agent or representative of those persons, any
37 information required to be filed with the commissioner under this
38 title; and

39 (2) on request by a person described by Subdivision

1 (1), provide a certified copy of any paper, document, instrument,
2 or affidavit filed with the commissioner under this title.

3 (c) This section does not apply to information made
4 confidential by Section 4002.161, 4007.052, or 4007.056 or other
5 law. (V.A.C.S. Art. 581-11 (part).)

6 Source Law

7 Art. 581-11. All information, papers,
8 documents, instruments and affidavits required by this
9 Act to be filed with the Commissioner shall be deemed
10 public records of this state, and shall be open to the
11 inspection and examination of any purchaser or
12 prospective purchaser of said securities or the agent
13 or representative of such purchaser or prospective
14 purchaser; and the Commissioner shall give out to any
15 such purchaser or prospective purchaser or his agent
16 or representative any information required to be filed
17 with him under the provisions of this section, or any
18 other part of this Act, and shall furnish any such
19 purchaser, prospective purchaser, or his agent or
20 representative requesting it, certified copies of any
21 and all papers, documents, instruments and affidavits
22 filed with him under the provisions of this section or
23 of any part of this Act. . . . This section does not
24 affect information considered confidential by Section
25 13-1 or 28 of this Act or other law.

26 Revisor's Note

27 (1) Article 581-11, Vernon's Texas Civil
28 Statutes, refers to certified copies of "any and all"
29 papers and other documents filed with the
30 commissioner. The revised law omits the reference to
31 "all" because, in context, "all" is included within
32 the meaning of "any."

33 (2) Article 581-11, Vernon's Texas Civil
34 Statutes, provides that the provisions of that article
35 do not apply to information made confidential under
36 Article 581-13-1 or 581-28, Vernon's Texas Civil
37 Statutes. The revised law substitutes a reference to
38 Section 4002.161 of this chapter and references to
39 Sections 4007.052 and 4007.056 of this title for the
40 reasons stated in the revisor's note to Section
41 4002.159 of this chapter.

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24 CHAPTER 4003. SECURITIES

25 SUBCHAPTER A. PERMIT QUALIFYING SECURITIES FOR SALE

26 Revised Law

27 Sec. 4003.001. PERMIT REQUIRED; EXCEPTIONS. (a) A dealer
28 or agent may not sell or offer for sale any securities issued after
29 September 6, 1955, unless the commissioner has issued a permit
30 qualifying securities for sale for those securities to the issuer
31 of the securities or a registered dealer.

32 (b) This section does not apply to:

33 (1) securities that have been registered by
34 notification under Subchapter B or by coordination under Subchapter

1 C; or

2 (2) transactions or securities that are exempt under
3 Chapter 4005. (V.A.C.S. Art. 581-7, Subsec. A, Subdiv. (1) (part);
4 Art. 581-10, Subsec. B (part).)

5 Source Law

6 Art. 581-7. A. Qualification of Securities.
7 (1) No dealer or agent shall sell or offer for sale any
8 securities issued after September 6, 1955, except
9 those which shall have been registered by Notification
10 under subsection B or by Coordination under subsection
11 C of this Section 7 and except those which come within
12 the classes enumerated in Section 5 or Section 6 of
13 this Act, until the issuer of such securities or a
14 dealer registered under the provisions of this Act
15 shall have been granted a permit by the Commissioner;
16 and

17 [Art. 581-10]

18 B. . . . No permit instrument need be issued if
19 securities are registered under Sections 7B or C of
20 this Act, but

21 Revisor's Note

22 (1) Subsection A, Article 581-7, Vernon's Texas
23 Civil Statutes, prohibits a dealer or agent from
24 selling or offering for sale certain securities until
25 the securities commissioner has issued a "permit" for
26 those securities to the issuer of the securities or a
27 registered dealer. The revised law throughout this
28 subchapter substitutes "permit qualifying securities
29 for sale" for "permit" and other similar references
30 for clarity and consistency of terminology. It is
31 clear from the portion of Subsection A, Article 581-7,
32 revised as this section and from other provisions of
33 The Securities Act that the referenced permit
34 authorizes the permit holder to offer for sale and sell
35 securities. See, for example, the portion of
36 Subsection B, Article 581-10, Vernon's Texas Civil
37 Statutes, revised as Section 4003.005 of this chapter,
38 which refers to "permits to sell securities."
39 Furthermore, Subsection A, Article 581-10, revised as
40 Section 4003.006 of this chapter, refers to an

1 "application for qualifying securities" under
2 Subsection A, Article 581-7, which is an application
3 for a permit, and the portion of Subsection B, Article
4 581-10, revised as Section 4003.007 of this chapter,
5 describes the form of a "permit qualifying
6 securities." Read together, the portions of The
7 Securities Act referencing a permit provide that the
8 permit both qualifies certain securities to be sold
9 and authorizes the permit holder to offer for sale and
10 sell the securities. The permit is therefore a "permit
11 qualifying securities for sale."

12 (2) Subsection A, Article 581-7, Vernon's Texas
13 Civil Statutes, provides an exception to the
14 prohibition against dealers or agents from selling or
15 offering for sale certain securities without a permit
16 qualifying securities for sale for "those which come
17 within the classes enumerated in Section 5 or Section 6
18 of this Act," meaning Article 581-5 or 581-6 of The
19 Securities Act (Article 581-1 et seq., Vernon's Texas
20 Civil Statutes), revised as this title. Article
21 581-5, revised in relevant part as Subchapter A,
22 Chapter 4005, of this title, exempts certain
23 transactions from the provisions of that act, and
24 Article 581-6, revised in relevant part as Subchapter
25 B, Chapter 4005, of this title, exempts certain
26 securities from the provisions of that act. For
27 clarity and the convenience of the reader, the revised
28 law refers to "transactions or securities that are
29 exempt under Chapter 4005."

30 (3) Subsection A, Article 581-7, Vernon's Texas
31 Civil Statutes, refers to a "dealer registered under
32 the provisions of this Act," meaning The Securities
33 Act (Article 581-1 et seq., Vernon's Texas Civil
34 Statutes), revised as this title. Throughout this

1 chapter, the revised law substitutes "registered
2 dealer" for the quoted language because Subsection M,
3 Article 581-4, Vernon's Texas Civil Statutes, revised
4 as Section 4001.065 of this title, defines "registered
5 dealer" for the purposes of the law revised in this
6 title as a "dealer . . . who has been duly registered
7 by the Commissioner as in Section 15 of this Act."

8 Revised Law

9 Sec. 4003.002. PERMIT APPLICATION TO QUALIFY SECURITIES FOR
10 SALE. (a) The commissioner may not issue a permit qualifying
11 securities for sale required by Section 4003.001 until the issuer
12 of the securities or a registered dealer files with the
13 commissioner an application for the permit in the form of a
14 statement containing the following information:

15 (1) the name, residence, and post office address of
16 each of the company's officers and directors;

17 (2) the location of the company's principal office and
18 each branch office in this state;

19 (3) a copy of the company's certificate of formation or
20 articles of incorporation or partnership or association and any
21 amendments to those documents;

22 (4) if the company is a corporation, a copy of:

23 (A) all minutes of any proceedings of the
24 company's directors, stockholders, or members relating to or
25 affecting the issuance of the securities; and

26 (B) the company's bylaws and any amendments to
27 the bylaws;

28 (5) if the company is a trustee, a copy of all
29 instruments by which the trust is created and in which the trust is
30 accepted, acknowledged, or declared;

31 (6) a statement showing:

32 (A) the amount of capital stock and, if there is
33 no capital stock, the amount of capital of the issuer that is
34 contemplated to be employed;

1 (B) the number of shares into which the stock is
2 divided or, if not divided into shares, what division is to be made
3 or is contemplated;

4 (C) the par value of each share or, if there are
5 shares with no par value, the price at which the security is
6 proposed to be sold; and

7 (D) the promotional fees or commissions to be
8 paid for the sale of the securities, including:

9 (i) all compensation of every nature
10 allowed to be paid to the promoters or allowed for the sale of the
11 securities;

12 (ii) how the compensation is to be paid,
13 whether in cash, securities, service or otherwise, or partly of
14 either or both;

15 (iii) the amount of cash to be paid or
16 securities to be issued, given, transferred, or sold to promoters
17 for promotion or organization services and expenses; and

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

21 (7) a copy of:

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

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

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

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

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

34 (1) verified under oath by an executive officer or

1 partner of the issuer or registered dealer filing the application;
2 and

3 (2) attested by the secretary or partner of the issuer
4 or registered dealer filing the application. (V.A.C.S. Art. 581-7,
5 Subsec. A, Subdiv. (1) (part).)

6 Source Law

7 (1) . . . no such permit shall be granted
8 by the Commissioner until the issuer of such
9 securities or a dealer registered under the provisions
10 of this Act shall have filed with the Commissioner a
11 sworn statement verified under the oath of an
12 executive officer or partner of the issuer, or of such
13 registered dealer, and attested by the secretary or
14 partner thereof, setting forth the following
15 information:

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

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

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

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

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

58 f. 1. A detailed statement . . .
59 [showing all the assets and all the liabilities of the
60 issuer] . . . Such application shall also include a
61 detailed income statement,

1 Revisor's Note

2 (1) Subdivision (1), Subsection A, Article
3 581-7, Vernon's Texas Civil Statutes, prohibits the
4 securities commissioner from issuing a permit
5 qualifying securities for sale under that subsection
6 until a "sworn statement verified under oath" that
7 contains certain information is filed with the
8 commissioner. The revised law omits "sworn" as
9 duplicative of "verified under oath."

10 (2) Subdivision (1), Subsection A, Article
11 581-7, Vernon's Texas Civil Statutes, prohibits the
12 securities commissioner from issuing a permit
13 qualifying securities for sale under that subsection
14 until a "statement" that contains certain information
15 is filed with the commissioner. Subparagraph 1,
16 Paragraph f, Subdivision (1), Subsection A, Article
17 581-7, and Subsection A, Article 581-10, Vernon's
18 Texas Civil Statutes, revised respectively as Sections
19 4003.003 and 4003.006 of this chapter, refer to this
20 filing with the commissioner as an "application."
21 Throughout this chapter, in the context of a permit
22 qualifying securities for sale issued under Subsection
23 A, Article 581-7, the revised law substitutes
24 "application . . . in the form of a statement" for
25 "statement" for clarity and consistency with
26 terminology used in this chapter.

27 (3) Paragraph c, Subdivision (1), Subsection A,
28 Article 581-7, Vernon's Texas Civil Statutes, refers
29 to a copy of a company's "articles of incorporation or
30 partnership or association." The revised law adds a
31 reference to "certificate of formation" to conform to
32 the terminology of the Business Organizations Code,
33 which took effect January 1, 2006, and refers to the
34 term "certificate of formation" to describe the

1 document required to be filed with the secretary of
2 state to form a domestic filing entity, including a
3 corporation, an association, and certain
4 partnerships, on or after January 1, 2006.

5 (4) Paragraph d, Subdivision (1), Subsection A,
6 Article 581-7, Vernon's Texas Civil Statutes, refers
7 to "no par stock." The revised law substitutes "shares
8 with no par value" for "no par stock" because the terms
9 are synonymous and "no par value" is the defined term
10 under Subsection K, Article 581-4, Vernon's Texas
11 Civil Statutes, revised as Section 4001.063 of this
12 title.

13 (5) Paragraph d, Subdivision (1), Subsection A,
14 Article 581-7, Vernon's Texas Civil Statutes, requires
15 an issuer of securities or a registered dealer to
16 submit to the securities commissioner a statement
17 detailing "any and all compensations" of every nature
18 that will be paid or otherwise allowed to a promoter
19 for the sale of securities. The revised law omits the
20 reference to "any" because, in context, "any" is
21 included within the meaning of "all."

22 (6) Paragraph f, Subdivision (1), Subsection A,
23 Article 581-7, Vernon's Texas Civil Statutes, requires
24 an issuer of securities or a registered dealer to
25 submit to the securities commissioner a detailed
26 statement showing the financial condition of the
27 issuer. Under generally accepted accounting
28 principles (GAAP) adopted by the United States
29 Securities Exchange Commission and generally accepted
30 auditing standards (GAAS), such a statement is
31 referred to as a "statement of financial condition."
32 For consistency with those standards and principles
33 and for the convenience of the reader, the revised law
34 adds the term "statement of financial condition" to

1 refer to that statement. The revised law also adds a
2 reference to Section 4003.003 of this chapter because
3 the relevant provisions of law governing the content
4 of the statement are revised as that section.

5 Revised Law

6 Sec. 4003.003. STATEMENT OF FINANCIAL CONDITION AND INCOME
7 STATEMENT. (a) In this section, "current liabilities" means all
8 liabilities that will mature and become due not later than the first
9 anniversary of the date the application listing the liabilities is
10 filed under this subchapter.

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

13 (1) be detailed;

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

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

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

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

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

30 (A) the assets' actual cost in money;

31 (B) the assets' present market value; or

32 (C) some other value of the assets;

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

34 (8) state whether the value listed in the statement is

1 greater or less than the assets':

2 (A) actual cost value in money; and

3 (B) present market value.

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

7 (d) The statement under Subsection (b) must describe any
8 assets consisting of anything other than cash or real property in
9 detail to give the commissioner the fullest possible information.
10 The commissioner may require the filing of additional information
11 as the commissioner considers necessary to determine whether the
12 true value of those assets is reflected in the statement.

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

17 (1) the terms of the agreement; and

18 (2) the amount and character of the assets subject to
19 the agreement.

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

22 (1) be detailed;

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

26 (3) cover the lesser of:

27 (A) the preceding three years of the issuer's
28 operations; or

29 (B) the period the issuer has been operating.

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

33 (1) show the operations of the concern taken over for
34 the three years preceding the taking over of the concern; and

1 (2) clearly reflect the amount of net income or net
2 loss incurred during each year shown. (V.A.C.S. Art. 581-7,
3 Subsec. A, Subdiv. (1) (part), Subsec. D (part).)

4 Source Law

5 [Subsec. A]

6 (1) . . . no such permit shall be granted
7 . . . [until the issuer of such securities or a dealer
8 . . . shall have filed . . .] a sworn statement . . .
9 setting forth the following information:

10 f. 1. A detailed statement prepared
11 in accordance with generally accepted auditing
12 standards and procedures and generally accepted
13 accounting principles, showing all the assets and all
14 the liabilities of the issuer, said statement to
15 reflect the financial condition of the issuer on a day
16 not more than ninety (90) days prior to the date such
17 statement is filed. Such statement shall list all
18 assets in detail and shall show how the value of such
19 assets was determined, that is, whether the value set
20 forth in said statement represents the actual cost in
21 money of such assets, or whether such value represents
22 their present market value, or some other value than
23 the actual cost in money, and shall show the present
24 actual value of said assets; also, whether the value
25 set forth in the statement is greater or less than the
26 actual cost value in money and greater or less than the
27 present market value of such assets. If any of the
28 assets consist of real estate, then said statement
29 shall show the amount for which said real estate is
30 rendered for State and county taxes, or assessed for
31 taxes. If any such assets listed shall consist of
32 anything other than cash and real estate, same shall be
33 set out in detail so as to give the Commissioner the
34 fullest possible information concerning same, and the
35 Commissioner shall have the power to require the
36 filing of such additional information as the
37 Commissioner may deem necessary to determine whether
38 or not the true value of said assets are reflected in
39 the statement filed. Should any of the assets listed
40 in said statement be subject to any repurchase
41 agreement, or any other agreement of like character,
42 by the terms of which the absolute ownership of, or
43 title to said assets is qualified or limited in any
44 way, then the terms and conditions of said agreement by
45 which the absolute ownership of, or title to said
46 assets is qualified or limited, as well as the amount
47 and character of the assets subject thereto shall be
48 fully stated. Said statement shall list all current
49 liabilities, that is, all liabilities which will
50 mature and become due within one year from the date of
51 such application, and shall list separately from such
52 current liabilities, all other liabilities,
53 contingent or otherwise, showing the amount of those
54 which are secured by mortgage or otherwise, the assets
55 of the issuer which are subject to such mortgage, and
56 the dates of maturity of any such mortgage
57 indebtedness. Such application shall also include a
58 detailed income statement, prepared in accordance with
59 generally accepted auditing standards and procedures
60 and generally accepted accounting principles, which
61 shall cover the last three (3) years' operations of the
62 issuer, if such issuer has been in operation for three
63

1 (3) years, but if not, said income statement shall
2 cover the time that said issuer has been operating. If
3 said issuer has not been operating, but is taking over
4 a concern of any kind which has been previously
5 operating, an income statement showing the operations
6 of the concern thus taken over for a period of the last
7 three (3) years next preceding the taking over of said
8 concern shall be included in said statement; said
9 income statement shall clearly reflect the amount of
10 net income or net loss incurred during each of the
11 years shown. . . .

12 D. . . . [the financial statements required in
13 Subsections A . . . of this Section 7,] which must be
14 as of a date not more than 90 days prior to the date of
15 filing,

16 Revisor's Note

17 (1) Subparagraph 1, Paragraph f, Subdivision
18 (1), Subsection A, Article 581-7, Vernon's Texas Civil
19 Statutes, requires that a detailed statement under
20 that subparagraph reflect the "financial condition" of
21 the issuer of securities on a certain date before "the
22 date such statement is filed." The revised law adds a
23 reference to "statement of financial condition" in
24 reference to the detailed statement for the reason
25 stated in Revisor's Note (6) to Section 4003.002 of
26 this chapter. Additionally, the revised law adds a
27 reference to the date "the issuer or registered
28 dealer" files the statement, which is contained in an
29 application for a permit qualifying securities for
30 sale, for clarity and because Subsection A, Article
31 581-7, Vernon's Texas Civil Statutes, revised in
32 relevant part as Section 4003.001 of this chapter,
33 requires the issuer of the securities or a registered
34 dealer to obtain the permit.

35 (2) Subparagraph 1, Paragraph f, Subdivision
36 (1), Subsection A, Article 581-7, Vernon's Texas Civil
37 Statutes, refers to "real estate." The revised law
38 substitutes "real property" for "real estate" because
39 the terms are synonymous and "real property" is more
40 commonly used in the Property Code.

41 (3) Subparagraph 1, Paragraph f, Subdivision

1 (1), Subsection A, Article 581-7, Vernon's Texas Civil
2 Statutes, refers to "terms and conditions" of certain
3 agreements concerning assets. The revised law omits
4 the reference to "conditions" because, in context,
5 "conditions" is included within the meaning of
6 "terms."

7 (4) Subparagraph 1, Paragraph f, Subdivision
8 (1), Subsection A, Article 581-7, Vernon's Texas Civil
9 Statutes, refers to all liabilities that will mature
10 and become due within one year from the date of "such
11 application" and provides that "[s]uch application"
12 shall also include a detailed income statement. It is
13 clear from the context that the application referenced
14 is an application filed under Subsection A, Article
15 581-7, Vernon's Texas Civil Statutes, revised as this
16 subchapter, and the revised law is drafted
17 accordingly.

18 Revised Law

19 Sec. 4003.004. EXCEPTIONS TO CERTIFICATION REQUIREMENT FOR
20 FINANCIAL STATEMENTS. (a) Financial statements filed as required
21 by this subchapter are not required to be certified by an
22 independent certified public accountant or independent public
23 accountant if:

24 (1) the fiscal year of the issuer of the securities to
25 be qualified for sale ended on a date earlier than the 90th day
26 before the date of the filing; and

27 (2) financial statements in addition to those required
28 by this subchapter are filed that:

29 (A) contain the information required by Section
30 4003.003; and

31 (B) are certified by an independent certified
32 public accountant or independent public accountant as of the end of
33 the issuer's preceding fiscal year.

34 (b) Instead of being audited and certified, the financial

1 statements described by Section 4003.003 of a small business
2 issuer, as defined by board rule, that meets all other requirements
3 the board by rule or order prescribes, conditionally or
4 unconditionally, may be reviewed by an independent certified public
5 accountant in accordance with the Statements on Standards for
6 Accounting and Review Services promulgated by the American
7 Institute of Certified Public Accountants. (V.A.C.S. Art. 581-7,
8 Subsec. A, Subdiv. (1) (part), Subsec. D (part).)

9 Source Law

10 [Subsec. A]

11 (1) . . .
12 f. . . .

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

25 D. Termination Of Fiscal Year; Certification Of
26 Statements. If the fiscal year of the issuer
27 terminated on a date more than 90 days prior to the
28 date of the filing, then the financial statements
29 required in Subsections A and . . . of this Section 7,
30 . . . need not be certified by an independent
31 certified public or independent public accountant if
32 there are filed in addition thereto financial
33 statements containing the information required by the
34 applicable subdivision which are certified by an
35 independent certified public or independent public
36 accountant as of the end of the preceding fiscal year
37 of the issuer.

38 Revisor's Note

39 (1) Subparagraph 2, Paragraph f, Subdivision
40 (1), Subsection A, Article 581-7, Vernon's Texas Civil
41 Statutes, refers to requirements that the State
42 Securities Board may prescribe by "rule, regulation,
43 or order." The revised law omits "regulation" because
44 under Section 311.005(5), Government Code (Code
45 Construction Act), applicable to the revised law, a
46 rule is defined to include a regulation.

47 (2) Subsection D, Article 581-7, Vernon's Texas

1 Civil Statutes, provides that the financial statements
2 required in Subsection A of that article do not need to
3 be certified under certain circumstances if certified
4 financial statements for the preceding fiscal year
5 that contain the information required by the
6 "applicable subdivision" are filed in addition to the
7 required financial statements. The applicable
8 provision of Subsection A pertaining to the
9 requirements for financial statements under that
10 subsection is Paragraph f, Subdivision (1), revised in
11 relevant part as Section 4003.003 of this chapter, and
12 the revised law is drafted accordingly.

13 Revised Law

14 Sec. 4003.005. PERMIT FEE. The commissioner shall charge
15 the fees provided by Chapter 4006 for the issuance of a permit
16 qualifying securities for sale. (V.A.C.S. Art. 581-10, Subsec. B
17 (part).)

18 Source Law

19 B. . . . The Commissioner shall charge such fees
20 for the issuance of permits to sell securities as are
21 hereinafter provided. . . .

22 Revisor's Note

23 Subsection B, Article 581-10, Vernon's Texas
24 Civil Statutes, requires the securities commissioner
25 to charge fees for the issuance of a permit qualifying
26 securities for sale as are "hereinafter provided,"
27 meaning provided in The Securities Act (Article 581-1
28 et seq., Vernon's Texas Civil Statutes), revised as
29 this title. The relevant provision of The Securities
30 Act pertaining to fees established in connection with
31 the issuance of permits qualifying securities for sale
32 under that act is Article 581-35, Vernon's Texas Civil
33 Statutes, which is revised in various provisions of
34 Chapter 4006 of this title, and the revised law is
35 drafted accordingly.

1 Revised Law

2 Sec. 4003.006. EXAMINATION OF AND DETERMINATION ON PERMIT
3 APPLICATION. (a) On the filing of an application for a permit
4 qualifying securities for sale under this subchapter, the
5 commissioner shall examine the application and the papers and
6 documents filed with the application.

7 (b) After the examination, the commissioner shall:

8 (1) issue a permit to the applicant authorizing the
9 applicant to issue and dispose of the securities if the
10 commissioner determines that:

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

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

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

21 (2) deny the application for a permit and notify the
22 applicant in writing of the commissioner's decision if the
23 commissioner determines that the applicant's proposed plan of
24 business appears to be unfair, unjust, or inequitable. (V.A.C.S.
25 Art. 581-10, Subsec. A.)

26 Source Law

27 Art. 581-10. A. Commissioner to Examine
28 Application; Grant or Deny. Upon the filing of an
29 application for qualifying securities under Section
30 7A, it shall be the duty of the Commissioner to examine
31 the same and the papers and documents filed therewith.
32 If he finds that the proposed plan of business of the
33 applicant appears to be fair, just and equitable, and
34 also that any consideration paid, or to be paid, for
35 such securities by promoters is fair, just and
36 equitable when such consideration for such securities
37 is less than the proposed offering price to the public,
38 and that the securities which it proposes to issue and
39 the methods to be used by it in issuing and disposing
40 of the same are not such as will work a fraud upon the
41 purchaser thereof, the Commissioner shall issue to the

1 applicant a permit authorizing it to issue and dispose
2 of such securities. Should the Commissioner find that
3 the proposed plan of business of the applicant appears
4 to be unfair, unjust or inequitable, he shall deny the
5 application for a permit and notify the applicant in
6 writing of his decision.

7 Revisor's Note

8 Subsection A, Article 581-10, Vernon's Texas
9 Civil Statutes, refers to an "application for
10 qualifying securities under Section 7A," meaning
11 Subsection A, Article 581-7, Vernon's Texas Civil
12 Statutes. The only application referred to in
13 Subsection A of that article is an application for a
14 permit which, for the reasons stated in Revisor's Note
15 (1) to Section 4003.001 of this chapter, is a permit
16 qualifying securities for sale. The revised law
17 substitutes "application for a permit qualifying
18 securities for sale" for "application for qualifying
19 securities" for clarity and consistency with the
20 terminology used in this subchapter.

21 Revised Law

22 Sec. 4003.007. FORM AND CONTENTS OF PERMIT. A permit
23 qualifying securities for sale must:

- 24 (1) be in the form the commissioner prescribes; and
25 (2) state in bold type that the issuance of the permit
26 is permissive only and does not constitute a recommendation or
27 endorsement of the securities permitted to be issued. (V.A.C.S.
28 Art. 581-10, Subsec. B (part).)

29 Source Law

30 B. Permit, Form and Contents; Term and Renewals.
31 Every permit qualifying securities shall be in such
32 form as the Commissioner may prescribe, and shall
33 recite in bold type that the issuance thereof is
34 permissive only, and does not constitute a
35 recommendation or endorsement of the securities
36 permitted to be issued. . . .

37 Revised Law

38 Sec. 4003.008. TERM OF PERMIT. A permit qualifying
39 securities for sale that is issued under this subchapter is valid
40 for one year. (V.A.C.S. Art. 581-10, Subsec. B (part).)

1 Source Law

2 B. . . . Such permit shall be for a period of one
3 (1) year; provided, however, that

4 Revised Law

5 Sec. 4003.009. RENEWAL OF PERMIT. (a) An issuer or
6 registered dealer may file a renewal application with the
7 commissioner if the securities authorized to be sold under a permit
8 qualifying securities for sale that is issued under this subchapter
9 are not sold before the permit expires.

10 (b) The renewal application must:

11 (1) state:

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

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

16 (C) the total number of shares outstanding;

17 (2) contain a detailed balance sheet;

18 (3) contain an operating statement; and

19 (4) provide any other information the commissioner may
20 require.

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

25 (d) If issued, a renewal permit:

26 (1) is valid for one year; and

27 (2) must be in the form the commissioner prescribes.

28 (V.A.C.S. Art. 581-10, Subsec. B (part).)

29 Source Law

30 B. . . . if the securities authorized to be sold
31 are not sold within the term provided by the permit, a
32 renewal application may be filed with the
33 Commissioner. Such renewal application shall recite
34 the total number of shares sold in Texas, the total
35 number of shares sold elsewhere, total number of
36 shares outstanding, and shall contain a detailed
37 balance sheet, an operating statement, and such other
38 information as the Commissioner may require. The
39 Commissioner shall examine applications for renewal by

1 the same standards as stated in subsection A of this
2 section for original applications and upon that basis
3 issue or deny renewal permits; such permits, if
4 issued, shall be for a period of one (1) year and be in
5 such form as the Commissioner may prescribe. . . .

6 Revisor's Note

7 Subsection B, Article 581-10, Vernon's Texas
8 Civil Statutes, provides that a permit renewal
9 application may be filed with the securities
10 commissioner if the securities authorized to be sold
11 under a previously issued permit qualifying securities
12 for sale are not sold before the permit expires. The
13 revised law adds a reference to "an issuer or
14 registered dealer" as the persons authorized to file a
15 permit renewal application for clarity and because
16 under Subsection A, Article 581-7, Vernon's Texas
17 Civil Statutes, revised in relevant part as Section
18 4003.002 of this chapter, only the issuer of the
19 securities or a registered dealer may apply for the
20 original permit.

21 Revised Law

22 Sec. 4003.010. USE OF PERMIT FOR CERTAIN PURPOSES
23 PROHIBITED. A dealer, issuer, or agent may not use a permit
24 qualifying securities for sale in connection with a sale or effort
25 to sell a security. (V.A.C.S. Art. 581-10, Subsec. C.)

26 Source Law

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

32 SUBCHAPTER B. REGISTRATION BY NOTIFICATION

33 Revised Law

34 Sec. 4003.051. ELIGIBILITY FOR REGISTRATION BY
35 NOTIFICATION. (a) Securities may be registered by notification
36 under this subchapter if the securities are issued by an issuer
37 that:

38 (1) has been in continuous operation for at least

1 three years; and

2 (2) has shown, during at least the three years
3 preceding the date of registration under this subchapter, average
4 annual net earnings after deducting all prior charges, including
5 income taxes but not including charges on securities to be retired
6 out of the proceeds of sale, as follows:

7 (A) for interest-bearing securities, not less
8 than one and one-half times the annual interest charges on those
9 securities and on all other outstanding interest-bearing
10 securities of equal rank;

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

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

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

23 (1) is construed as the issuer's proportionate
24 ownership of that corporation; and

25 (2) permits the inclusion of that corporation's
26 earnings applicable to the payment of dividends on the stock owned
27 in the earnings of the issuer of the securities being registered by
28 notification. (V.A.C.S. Art. 581-7, Subsec. B, Subdiv. (1).)

29 Source Law

30 B. Registration by Notification. (1)
31 Securities may be registered by notification under
32 this subsection B if they are issued by an issuer which
33 has been in continuous operation for not less than
34 three (3) years and which has shown, during the period
35 of not less than three (3) years next prior to the date
36 of registration under this section, average annual net
37 earnings after deducting all prior charges including
38 income taxes except charges upon securities to be

1 retired out of the proceeds of sale, as follows:

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

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

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

26 Revisor's Note

27 Subdivision (1), Subsection B, Article 581-7,
28 Vernon's Texas Civil Statutes, refers to the date of
29 registration "under this section," meaning Article
30 581-7, Vernon's Texas Civil Statutes. It is clear from
31 the context of Subdivision (1) that the reference to
32 the date of registration under "this section" refers
33 to the date of registration of securities by
34 notification under Subsection B, Article 581-7,
35 revised as this subchapter, and not to the date of
36 registration of securities under another provision of
37 Article 581-7, and the revised law is drafted
38 accordingly.

39 Revised Law

40 Sec. 4003.052. REGISTRATION STATEMENT REQUIRED. (a) To
41 register securities by notification that are entitled to that
42 registration, an issuer of the securities or a registered dealer
43 must file with the commissioner a registration statement that
44 complies with this section.

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

46 (1) be in the form the commissioner prescribes;

1 (2) be signed by the applicant filing the statement;
2 and

3 (3) contain the following information:

4 (A) the name and business address of the main
5 office of the issuer of the securities to be registered and the
6 address of the issuer's principal office, if any, in this state;

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

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

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

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

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

20 (i) a certified income statement;
21 (ii) a certified balance sheet; and
22 (iii) a certified statement of
23 stockholders' equity;

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

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

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

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

1 registration statement.

2 (d) Filing a registration statement that complies with this
3 section constitutes the registration of the securities by
4 notification, subject to Section 4003.055. (V.A.C.S. Art. 581-7,
5 Subsec. B, Subdiv. (2) (part), Subsec. D (part).)

6 Source Law

7 [Subsec. B]

8 (2) Securities entitled to registration by
9 notification shall be registered by the filing with
10 the Commissioner by the issuer or by a registered
11 dealer of a registration statement as required by
12 paragraph a of this subdivision, and . . . :

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

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

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

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

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

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

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

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

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

48 b. Such filing with the Commissioner
49 shall constitute the registration of securities by
50 notification and [such registration shall become
51 effective five (5) days after receipt of the
52 registration statement and all accompanying papers by
53 the Commissioner; provided that the Commissioner may
54 . . . waive or reduce the five (5) days waiting period]
55

56 D. . . . [the financial statements required in
57 Subsections . . . B of this Section 7,] which must be
58 as of a date not more than 90 days prior to the date of
59 filing,

1 Revisor's Note

2 (1) Subparagraph 3, Paragraph a, Subdivision
3 (2), Subsection B, Article 581-7, Vernon's Texas Civil
4 Statutes, refers to the amount of the registration
5 fee, computed "as hereinafter provided," meaning
6 provided in The Securities Act (Article 581-1 et seq.,
7 Vernon's Texas Civil Statutes), revised as this title.
8 The revised law substitutes "as provided by Chapter
9 4006" for the quoted language because the relevant
10 provision of The Securities Act pertaining to the
11 computation of fees in connection with the
12 registration of securities under that act is Article
13 581-35, Vernon's Texas Civil Statutes, which is
14 revised in various provisions of Chapter 4006 of this
15 title.

16 (2) Subparagraph 6, Paragraph a, Subdivision
17 (2), Subsection B, Article 581-7, Vernon's Texas Civil
18 Statutes, requires financial statements contained in a
19 registration statement to include a certified income
20 statement, balance sheet, and statement of
21 stockholders' equity. However, Subsection D, Article
22 581-7, Vernon's Texas Civil Statutes, revised in
23 relevant part as Section 4003.053 of this chapter,
24 specifies that certain financial statements are not
25 required to be certified. For clarity and the
26 convenience of the reader, the revised law adds a
27 reference to the exception provided by Section
28 4003.053 of this chapter.

29 (3) Subparagraph 8, Paragraph a, Subdivision
30 (2), Subsection B, Article 581-7, Vernon's Texas Civil
31 Statutes, refers to an issuer of securities that is not
32 "incorporated" under the laws of this state.
33 Throughout this chapter, the revised law adds a
34 reference to "formed" to conform to the terminology of

1 the Business Organizations Code, which took effect
2 January 1, 2006, and refers to the term "certificate of
3 formation" to describe the document required to be
4 filed with the secretary of state to form a domestic
5 filing entity, including a corporation, an
6 association, and certain partnerships, on or after
7 January 1, 2006.

8 (4) Paragraph b, Subdivision (2), Subsection B,
9 Article 581-7, Vernon's Texas Civil Statutes, provides
10 that the filing of a registration statement under
11 Paragraph a of that subdivision constitutes the
12 registration of securities by notification. For the
13 convenience of the reader, the revised law adds
14 "subject to Section 4003.055" because a subsequent
15 provision of Paragraph b, revised in relevant part as
16 Section 4003.055 of this chapter, states when that
17 registration takes effect.

18 Revised Law

19 Sec. 4003.053. EXCEPTION TO CERTIFICATION REQUIREMENT FOR
20 FINANCIAL STATEMENTS. Financial statements filed as required by
21 this subchapter are not required to be certified by an independent
22 certified public accountant or independent public accountant if:

23 (1) the fiscal year of the issuer of the securities to
24 be registered ended on a date earlier than the 90th day before the
25 date of the filing; and

26 (2) financial statements in addition to those required
27 by this subchapter are filed that:

28 (A) contain the information required by Section
29 4003.052; and

30 (B) are certified by an independent certified
31 public accountant or independent public accountant as of the end of
32 the issuer's preceding fiscal year. (V.A.C.S. Art. 581-7, Subsec.
33 D (part).)

- 1 (B) any prospectus;
2 (C) payment of the filing fee and registration
3 fee; and
4 (D) a consent to service of process, if required.
5 (V.A.C.S. Art. 581-7, Subsec. B, Subdiv. (2) (part); Art. 581-10,
6 Subsec. B (part).)

7 Source Law

8 [Art. 581-7, Subsec. B]

9 (2) Securities entitled to registration by
10 notification shall be registered by . . . completion
11 of the procedures outlined in paragraph b of this
12 subdivision:

13 . . .
14 b. . . . Upon the receipt of a
15 registration statement, prospectus, if any, payment of
16 the filing fee and registration fee, and, if required,
17 a consent to service of process, the Commissioner
18 shall record the registration by notification of the
19 securities described. . . .

20 [Art. 581-10]

21 B. . . . [No permit instrument need be issued if
22 securities are registered under Sections 7B . . . of
23 this Act, but] the Commissioner will examine the
24 registration papers to determine their sufficiency
25 under the requirements there stated.

26 Revised Law

27 Sec. 4003.055. EFFECTIVE DATE OF REGISTRATION BY
28 NOTIFICATION. (a) Except as provided by Subsection (b), the
29 registration of securities by notification takes effect five days
30 after the date the commissioner receives the registration statement
31 filed under Section 4003.052 and all accompanying papers.

32 (b) The commissioner may waive or reduce the five-day
33 waiting period if the commissioner determines that the public will
34 not be injured by the waiver or reduction of the waiting period.
35 (V.A.C.S. Art. 581-7, Subsec. B, Subdiv. (2) (part).)

36 Source Law

37 (2) . . .

38 b. [Such filing with the Commissioner
39 shall constitute the registration of securities by
40 notification and] such registration shall become
41 effective five (5) days after receipt of the
42 registration statement and all accompanying papers by
43 the Commissioner; provided that the Commissioner may
44 in his discretion waive or reduce the five (5) days
45 waiting period in any case where he finds no injury to
46 the public will result therefrom. . . .

1 Revised Law

2 Sec. 4003.056. EFFECT OF REGISTRATION BY NOTIFICATION. On
3 registration of securities by notification, the securities may be
4 sold in this state by a registered dealer or a registered agent.
5 (V.A.C.S. Art. 581-7, Subsec. B, Subdiv. (2) (part).)

6 Source Law

7 (2) . . .
8 b. . . . Upon such registration by
9 notification, securities may be sold in this state by
10 registered dealers and registered salesmen. . . .

11 Revisor's Note

12 Paragraph b, Subdivision (2), Subsection B,
13 Article 581-7, Vernon's Texas Civil Statutes, refers
14 to registered "salesmen." Before the enactment of
15 Chapter 1091 (H.B. 2255), Acts of the 77th
16 Legislature, Regular Session, 2001, Subsection D,
17 Article 581-4, Vernon's Texas Civil Statutes, defined
18 the terms "salesman" and "agent" with the same
19 meaning. Section 2.01 of Chapter 1091 removed the
20 defined term "salesman" from Subsection D, Article
21 581-4, and other provisions of Chapter 1091 either
22 removed other references to "salesman" in The
23 Securities Act (Article 581-1 et seq., Vernon's Texas
24 Civil Statutes), revised as this title, or, when
25 appropriate, replaced references to "salesman" with
26 references to "agent" in that act. Because the
27 remaining reference to "salesmen" in Paragraph b is an
28 oversight, the revised law substitutes "agent" for
29 "salesmen."

30 Revised Law

31 Sec. 4003.057. TERM OF REGISTRATION. A registration of
32 securities by notification is effective for one year. (V.A.C.S.
33 Art. 581-7, Subsec. B, Subdiv. (2) (part).)

34 Source Law

35 (2) . . .
36 b. . . . [the Commissioner shall

1 record the registration by notification of the
2 securities described.] Such registration shall be
3 effective for a period of one (1) year and

4 Revised Law

5 Sec. 4003.058. RENEWAL OF REGISTRATION. A registration of
6 securities by notification may be renewed for additional periods of
7 one year if:

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

10 (2) a new filing is made under this subchapter
11 together with the payment of the renewal fee of \$10. (V.A.C.S. Art.
12 581-7, Subsec. B, Subdiv. (2) (part).)

13 Source Law

14 (2)
15 b. . . . [the Commissioner shall
16 record the registration by notification of the
17 securities described.] Such registration . . . may be
18 renewed for additional periods of one (1) year, if the
19 securities are entitled to registration under this
20 subsection at the time of renewal, by a new filing
21 under this section together with the payment of the
22 renewal fee of Ten Dollars (\$10.00).
23 . . .

24 Revised Law

25 Sec. 4003.059. INSUFFICIENT OR FRAUDULENT REGISTRATION
26 STATEMENT. (a) If at any time, in the commissioner's opinion, the
27 information in a registration statement filed under this subchapter
28 is insufficient to establish that the securities described in the
29 statement are or were entitled to registration by notification
30 under this subchapter, or that the registration information
31 contains or contained false, misleading, or fraudulent facts, the
32 commissioner may order the applicant who filed the statement to
33 cease and desist from selling or offering for sale the securities
34 registered or proposed to be registered by notification under this
35 subchapter until additional information is filed with the
36 commissioner that in the commissioner's judgment is necessary to
37 establish that those securities are or were entitled to
38 registration by notification under this subchapter.

39 (b) The provisions of Section 4007.107 relating to hearings
40 apply to an order entered under this section. (V.A.C.S. Art. 581-7,

1 Subsec. B, Subdiv. (2) (part).)

2 Source Law

3 (2)
4 c. If at any time, before or after
5 registration of securities under this section, in the
6 opinion of the Commissioner the information in a
7 registration statement filed with him is insufficient
8 to establish the fact that the securities described
9 therein are, or were, entitled to registration by
10 notification under this section, or that the
11 registration information contains, or contained,
12 false, misleading or fraudulent facts, he may order
13 the applicant who filed such statement to cease and
14 desist from selling, or offering for sale, such
15 securities registered, or proposed to be registered,
16 under provisions of this section, until there is filed
17 with the Commissioner such further information as may
18 in his judgment be necessary to establish the fact that
19 such securities are, or were, entitled to registration
20 under this section. The provisions of Section 24 of
21 this Act as to hearing shall be applicable to an order
22 issued hereunder.

23 Revisor's Note

24 (1) Paragraph c, Subdivision (2), Subsection B,
25 Article 581-7, Vernon's Texas Civil Statutes, provides
26 that the securities commissioner may issue a cease and
27 desist order if "at any time, before or after
28 registration of securities under this section" the
29 commissioner is of the opinion that information in a
30 registration statement is insufficient or that
31 registration information contains false, misleading,
32 or fraudulent facts. The revised law omits the
33 reference to "before or after registration of
34 securities under this section" as unnecessary because
35 the phrase is included within the meaning of "at any
36 time."

37 (2) Paragraph c, Subdivision (2), Subsection B,
38 Article 581-7, Vernon's Texas Civil Statutes, refers
39 to the registration of securities under "this section"
40 and contains other similar references with respect to
41 registration by notification. It is clear from the
42 context that the registration references to "this
43 section" refer to registration by notification under

1 Article 581-7, Vernon's Texas Civil Statutes. The
2 applicable provision of Article 581-7 that authorizes
3 registration by notification is Subsection B, revised
4 as this subchapter, and the revised law is drafted
5 accordingly.

6 SUBCHAPTER C. REGISTRATION BY COORDINATION

7 Revised Law

8 Sec. 4003.101. ELIGIBILITY FOR REGISTRATION BY
9 COORDINATION. A security may be registered by coordination if a
10 registration statement has been filed under the Securities Act of
11 1933 (15 U.S.C. Section 77a et seq.) in connection with the same
12 offering. (V.A.C.S. Art. 581-7, Subsec. C, Subdiv. (1) (part).)

13 Source Law

14 C. Registration by Coordination. (1) Any
15 security for which a registration statement has been
16 filed under the federal Securities Act of 1933, as
17 amended, in connection with the same offering, may be
18 registered by coordination. . . .

19 Revisor's Note

20 Subdivision (1), Subsection C, Article 581-7,
21 Vernon's Texas Civil Statutes, refers to the "federal
22 Securities Act of 1933, as amended." The revised law
23 substitutes "Securities Act of 1933 (15 U.S.C. Section
24 77a et seq.)" for the quoted language for the following
25 reasons. The revised law substitutes "Securities Act
26 of 1933" for "federal Securities Act of 1933" because
27 15 U.S.C. Section 77a provides that the proper
28 citation for the act is "Securities Act of 1933." The
29 revised law omits "as amended" because under Section
30 311.027, Government Code (Code Construction Act),
31 applicable to the revised law, unless expressly
32 provided otherwise, a reference to a statute or rule
33 applies to all reenactments, revisions, or amendments
34 of the statute or rule. For the convenience of the
35 reader, the revised law also includes a reference to
36 the United States Code citation for the entire act.

1 Similar changes are made throughout this chapter.

2 Revised Law

3 Sec. 4003.102. REGISTRATION STATEMENT REQUIRED. To
4 register securities by coordination, an issuer of the securities or
5 a registered dealer must file with the commissioner a registration
6 statement that contains:

7 (1) the following information:

8 (A) the amount of securities to be offered in
9 this state;

10 (B) the states in which a registration statement
11 or similar document in connection with the offering has been or is
12 expected to be filed; and

13 (C) any adverse order, judgment, or decree
14 previously entered in connection with the offering by a court or the
15 Securities and Exchange Commission;

16 (2) one copy of the prospectus filed under the
17 Securities Act of 1933 (15 U.S.C. Section 77a et seq.) together with
18 all amendments to the prospectus;

19 (3) a copy of:

20 (A) the articles of incorporation and bylaws, or
21 their substantial equivalents, currently in effect;

22 (B) any agreements with or among underwriters;
23 and

24 (C) any indenture or other instrument governing
25 the issuance of the securities to be registered;

26 (4) a specimen or copy of the security;

27 (5) any other information or copies of any other
28 documents filed under the Securities Act of 1933 (15 U.S.C. Section
29 77a et seq.) the commissioner requests;

30 (6) an undertaking to promptly forward all amendments
31 to the federal registration statement other than an amendment that
32 delays the effective date only; and

33 (7) a consent to service of process conforming to the
34 requirements of Section 4001.102 if:

1 (A) the registration statement is filed by the
2 issuer or by a dealer that will offer the securities for sale as the
3 issuer's agent; and

4 (B) the issuer is not a resident of this state or
5 incorporated or formed under the laws of this state. (V.A.C.S. Art.
6 581-7, Subsec. C, Subdiv. (1) (part).)

7 Source Law

8 (1) . . . A registration statement under
9 this section shall be filed with the Commissioner by
10 the issuer or any registered dealer, shall contain the
11 following information, and shall be accompanied by the
12 following documents:

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

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

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

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

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

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

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

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

46 Revisor's Note

47 Subdivision (1), Subsection C, Article 581-7,
48 Vernon's Texas Civil Statutes, refers to a
49 registration statement "under this section," meaning
50 Article 581-7, Vernon's Texas Civil Statutes. It is
51 clear from the context of Subsection C, Article 581-7,
52 that the reference to a registration statement "under

1 this section" refers to a registration statement for
2 securities registered by coordination under
3 Subsection C, Article 581-7, revised as this
4 subchapter, and not a registration statement for
5 securities registered by notification under
6 Subsection B, Article 581-7, revised as Subchapter B
7 of this chapter, and the revised law is drafted
8 accordingly.

9 Revised Law

10 Sec. 4003.103. EXAMINATION OF AND DETERMINATION ON
11 REGISTRATION STATEMENT. (a) In this section, "price amendment"
12 means the final federal amendment that includes a statement of the
13 offering price, underwriting and selling discounts or commissions,
14 amount of proceeds, conversion rates, call prices, and other
15 matters dependent on the offering price.

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

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

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

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

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

33 (d) If the commissioner enters an order denying the
34 registration of securities under this subchapter, the commissioner

1 shall notify the registrant immediately.

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

6 (1) the commissioner has not entered an order denying
7 registration of the securities;

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

10 (3) a statement of the maximum and minimum proposed
11 offering prices and the maximum underwriting discounts and
12 commissions has been on file for two full business days or a shorter
13 period as the commissioner expressly permits and the offering is
14 made within those limitations.

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

17 (g) The registrant shall promptly:

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

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

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

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

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

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

1 section.

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

6 (k) If the registrant advises the commissioner of the date
7 the federal registration statement is expected to become effective,
8 the commissioner shall promptly advise the registrant by telephone
9 or telegram, at the registrant's expense, whether all the
10 conditions are satisfied and whether the commissioner then
11 contemplates the issuance of an order denying registration. This
12 advice by the commissioner does not preclude the issuance of the
13 order at any time. (V.A.C.S. Art. 581-7, Subsec. C, Subdiv. (2)
14 (part); Art. 581-10, Subsec. B (part).)

15 Source Law

16 [Art. 581-7, Subsec. C]

17 (2) Upon receipt of a registration
18 statement under this section the Commissioner shall
19 examine such registration statement and he may enter
20 an order denying registration of the securities
21 described therein if he finds that the registrant has
22 not proven the proposed plan of business of the issuer
23 to be fair, just and equitable, and also that any
24 consideration paid, or to be paid, for such securities
25 by promoters is fair, just and equitable when such
26 consideration for such securities is less than the
27 proposed offering price to the public, and that the
28 securities which it proposes to issue and the methods
29 to be used by it in issuing and disposing of the same
30 will be such as will not work a fraud upon the
31 purchaser thereof. If the Commissioner enters an
32 order denying the registration of securities under
33 this section, he shall notify the registrant
34 immediately. . . . A registration statement under this
35 section automatically becomes effective at the moment
36 the federal registration statement becomes effective
37 if all the following conditions are satisfied:

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

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

43 c. A statement of the maximum and
44 minimum proposed offering prices and the maximum
45 underwriting discounts and commissions has been on
46 file for two full business days or such shorter period
47 as the Commissioner expressly permits and the offering
48 is made within those limitations. The registrant
49 shall promptly notify the Commissioner by telephone or
50 telegram of the date and time when the federal
51 registration statement became effective and the
52 content of the price amendment, if any, and shall

1 promptly file a post-effective amendment containing
2 the information and documents in the price amendment.
3 "Price amendment" means the final federal amendment
4 which includes a statement of the offering price,
5 underwriting and selling discounts or commissions,
6 amount of proceeds, conversion rates, call prices, and
7 other matters dependent upon the offering price.

8 Upon failure to receive the required notification
9 and post-effective amendment with respect to the price
10 amendment, the Commissioner may enter a stop order,
11 without notice or hearing, retroactively denying
12 effectiveness to the registration statement or
13 suspending its effectiveness until compliance with
14 this subsection, if he promptly notifies the
15 registrant by telephone or telegram (and promptly
16 confirms by letter or telegram when he notifies by
17 telephone) of the issuance of the order. If the
18 registrant proves compliance with the requirements of
19 this subsection as to notice and post-effective
20 amendment, the stop order is void as of the time of its
21 entry. The Commissioner may waive either or both of
22 the conditions specified in clauses b and c. If the
23 federal registration statement becomes effective
24 before all these conditions are satisfied and they are
25 not waived, the registration statement automatically
26 becomes effective as soon as all the conditions are
27 satisfied. If the registrant advises the Commissioner
28 of the date when the federal registration statement is
29 expected to become effective the Commissioner shall
30 promptly advise the registrant by telephone or
31 telegram, at the registrant's expense, whether all the
32 conditions are satisfied and whether he then
33 contemplates the issuance of an order denying
34 registration; but this advice by the Commissioner
35 does not preclude the issuance of such an order at any
36 time.

37 [Art. 581-10]

38 B. . . . [No permit instrument need be issued if
39 securities are registered under Sections 7B or C of
40 this Act, but] the Commissioner will examine the
41 registration papers to determine their sufficiency
42 under the requirements there stated.

43 Revisor's Note

44 (1) Subdivision (2), Subsection C, Article
45 581-7, Vernon's Texas Civil Statutes, refers to a
46 registration statement "under this section," meaning
47 Article 581-7, Vernon's Texas Civil Statutes. It is
48 clear from the context of Subsection C, Article 581-7,
49 that the reference to a registration statement "under
50 this section" refers to a registration statement for
51 securities registered by coordination under
52 Subsection C, Article 581-7, revised as this
53 subchapter, and not a registration statement for
54 securities registered by notification under

1 Subsection B, Article 581-7, revised as Subchapter B
2 of this chapter, and the revised law is drafted
3 accordingly.

4 (2) Subdivision (2), Subsection C, Article
5 581-7, Vernon's Texas Civil Statutes, refers to an
6 order by the securities commissioner denying the
7 registration of securities "under this section,"
8 meaning Article 581-7, Vernon's Texas Civil Statutes.
9 It is clear from the context of Subdivision (2),
10 Subsection C, Article 581-7, Vernon's Texas Civil
11 Statutes, that the reference to an order by the
12 commissioner denying the registration of securities
13 "under this section" refers to an order by the
14 commissioner denying the registration of securities by
15 coordination under Subsection C, Article 581-7,
16 revised as this subchapter, and not an order denying
17 the registration of securities by notification under
18 Subsection B, Article 581-7, revised as Subchapter B
19 of this chapter, and the revised law is drafted
20 accordingly.

21 (3) Subdivision (2), Subsection C, Article
22 581-7, Vernon's Texas Civil Statutes, states that
23 Section 24 of The Securities Act (Article 581-24,
24 Vernon's Texas Civil Statutes), revised in this title
25 as Section 4007.107, applies to a hearing on an order
26 denying the registration of securities under Article
27 581-7 of that act, the relevant portion of which is
28 revised as this subchapter. The revised law omits that
29 provision as unnecessary because Article 581-24
30 applies by its own terms. The omitted law reads:

31 (2) . . . The provisions of
32 Section 24 of this Act as to hearing shall
33 be applicable to an order issued hereunder.
34 . . .

35 (4) Paragraph c, Subdivision (2), Subsection C,

1 Article 581-7, Vernon's Texas Civil Statutes, refers
2 to the conditions specified in "clauses b and c,"
3 meaning Paragraphs b and c, Subdivision (2),
4 Subsection C, Article 581-7, Vernon's Texas Civil
5 Statutes. The provisions of Paragraphs b and c that
6 specify conditions under those paragraphs are revised
7 respectively as Subsections (e)(2) and (3) of this
8 section, and the revised law is drafted accordingly.

9 Revised Law

10 Sec. 4003.104. TERM OF REGISTRATION. (a) Except as
11 provided by this section, a registration by coordination of
12 securities under this subchapter is effective until the first
13 anniversary of the date the commissioner declares the registration
14 to be effective.

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

19 (c) The registration by coordination of securities of a unit
20 investment trust, as defined by the Investment Company Act of 1940
21 (15 U.S.C. Section 80a-1 et seq.), is effective until the first
22 anniversary of the date of effectiveness granted by the Securities
23 and Exchange Commission. (V.A.C.S. Art. 581-7, Subsec. C, Subdiv.
24 (3) (part).)

25 Source Law

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

29 a. The initial registration of
30 securities of an open-end investment company, as
31 defined in the Investment Company Act of 1940, shall be
32 effective until two (2) months after the end of the
33 issuer's fiscal year. . . .

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

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

1 Revisor's Note

2 Paragraphs a and b, Subdivision (3), Subsection
3 C, Article 581-7, Vernon's Texas Civil Statutes, refer
4 to the "Investment Company Act of 1940." For the
5 convenience of the reader, the revised law includes
6 references to the United States Code citation for the
7 entire act.

8 Revised Law

9 Sec. 4003.105. RENEWAL OF REGISTRATION. (a) Except as
10 provided by Subsection (b) and subject to Subsection (c), a
11 registration of securities under Section 4003.104 may be renewed
12 for additional periods of one year if the appropriate registration
13 forms and renewal fees are received before the expiration date of
14 the registration to be renewed.

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

20 (c) The same standards of fairness, justice, and equity
21 prescribed by this subchapter for original approval of a
22 registration apply to the renewal of the registration. (V.A.C.S.
23 Art. 581-7, Subsec. C, Subdivs. (3) (part), (4).)

24 Source Law

25 (3) . . .
26 a. . . . After the initial
27 registration, the issuer or its agent may renew the
28 registration by submitting the appropriate
29 registration forms and renewal fees within two (2)
30 months after the end of the issuer's fiscal year.

31 . . .
32 (4) Registrations of securities under
33 subdivision (3) may be renewed for additional periods
34 of one (1) year if the appropriate registration forms
35 and renewal fees are received prior to the expiration
36 date. The same standards of fairness, justice and
37 equity as prescribed by this subsection for original
38 approval will apply to the renewal of all
39 registrations.

40 SUBCHAPTER D. PROHIBITED SALES

1 Revised Law

2 Sec. 4003.151. CERTAIN SALES PROHIBITED. If the sale of a
3 security entitles the purchaser or subsequent holder to exchange
4 that security for another, or to purchase another security, the
5 sale of, including an exchange for, the other security may not be
6 made unless the sale is authorized under this title, if not exempt
7 under this title, or by another provision of law. (V.A.C.S. Art.
8 581-4, Subsec. E (part).)

9 Source Law

10 E. . . . The sale of a security under conditions
11 which entitle the purchaser or subsequent holder to
12 exchange the same for, or to purchase some other
13 security, . . . no exchange for or sale of such other
14 security shall ever be made unless and until the sale
15 thereof shall have been first authorized in Texas
16 under this Act, if not exempt hereunder, or by other
17 provisions of law.

18 Revisor's Note

19 (1) Subsection E, Article 581-4, Vernon's Texas
20 Civil Statutes, refers to an "exchange for or sale of"
21 a certain security. The revised law substitutes "sale
22 of, including an exchange for," for the quoted
23 language because the portion of Subsection E, Article
24 581-4, Vernon's Texas Civil Statutes, revised as
25 Section 4001.067 of this title defines "sale" for the
26 purposes of the law revised as this title to include
27 every disposition of a security for value, including
28 an agreement in which a security is exchanged for money
29 or another thing of value.

30 (2) Subsection E, Article 581-4, Vernon's Texas
31 Civil Statutes, refers to "unless and until." The
32 revised law omits "until" because, in context, the
33 meaning of that word is included within the meaning of
34 "unless."

35 (3) Subsection E, Article 581-4, Vernon's Texas
36 Civil Statutes, provides that a sale of or exchange for
37 a security may not be made unless the sale of the

1 security is first authorized "in Texas under this
2 Act," meaning The Securities Act (Article 581-1 et
3 seq., Vernon's Texas Civil Statutes). The provisions
4 of The Securities Act are revised as this title. The
5 revised law throughout this chapter therefore
6 substitutes references to "this title" for references
7 to "this Act." The revised law also omits "in Texas"
8 as unnecessary because a sale of a security authorized
9 under The Securities Act is authorized "in Texas."

10 SUBCHAPTER E. REGULATION OF OFFERS

11 Revised Law

12 Sec. 4003.201. DEFINITION. In this subchapter, "broadcast
13 offer" means an offer disseminated by radio, television, recorded
14 telephone presentation, or other mass media. (V.A.C.S. Art. 581-22,
15 Subsecs. A (part), B (part).)

16 Source Law

17 A. . . . a broadcast offer (i.e., an offer
18 disseminated by radio, television, recorded telephone
19 presentation, or other mass media)
20 B. . . . [An oral] offer ([not] broadcast,
21 [i.e., not] disseminated by radio, television,
22 recorded telephone presentation, or other mass media)
23

24 Revised Law

25 Sec. 4003.202. APPLICABILITY. This subchapter does not
26 apply to transactions or securities exempt under Chapter 4005.
27 (V.A.C.S. Art. 581-22, Subsec. E.)

28 Source Law

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

32 Revisor's Note

33 Subsection E, Article 581-22, Vernon's Texas
34 Civil Statutes, refers to transactions or securities
35 exempt "under Section 5 or Section 6," meaning Article
36 581-5 or 581-6, Vernon's Texas Civil Statutes. The
37 relevant provisions of Articles 581-5 and 581-6
38 pertaining to exempt transactions and securities are

1 revised in Chapter 4005 of this title, and the revised
2 law is drafted accordingly.

3 Revised Law

4 Sec. 4003.203. AUTHORIZED WRITTEN, PRINTED, OR BROADCAST
5 OFFERS. A person may make in this state a written or printed offer,
6 including a pictorial demonstration with any accompanying script,
7 or broadcast offer to sell a security if:

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

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

13 (3) either:

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

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

20 (4) for a registration for the security that has not
21 become effective under Subchapter B or C or for a permit that has
22 not been issued under Subchapter A, the offer prominently states on
23 the first page of a written or printed offer or as a preface to any
24 pictorial or broadcast offer either:

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

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

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

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

3 (B) has received notice of an order described by
4 Paragraph (A) but the order is no longer in effect; and

5 (6) payment is not accepted from the offeree and no
6 contract of sale is made before registration of the security is
7 effective under Subchapter B or C or a permit is issued under
8 Subchapter A. (V.A.C.S. Art. 581-22, Subsec. A (part).)

9 Source Law

10 Art. 581-22. A. Permitted Written, Pictorial, or
11 Broadcast Offers. A written or printed offer
12 (including a pictorial demonstration with any
13 accompanying script) or a broadcast offer . . . to
14 sell a security may be made in this State if:

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

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

22 (3) either:

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

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

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

36 (a)

37 INFORMATIONAL ADVERTISING ONLY.

38 THE SECURITIES HEREIN DESCRIBED HAVE NOT BEEN
39 QUALIFIED OR REGISTERED FOR SALE IN TEXAS. ANY
40 REPRESENTATION TO THE CONTRARY OR CONSUMMATION OF SALE
41 OF THESE SECURITIES IN TEXAS PRIOR TO QUALIFICATION OR
42 REGISTRATION THEREOF IS A CRIMINAL OFFENSE.

43 or

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

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

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

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

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

1 Revisor's Note

2 (1) Subdivision (2), Subsection A, Article
3 581-22, Vernon's Texas Civil Statutes, requires a
4 person making or distributing a written, printed, or
5 broadcast offer in this state to be a registered dealer
6 or a registered agent of a registered dealer, "as
7 required by this Act," meaning The Securities Act
8 (Article 581-1 et seq., Vernon's Texas Civil
9 Statutes), revised as this title. The revised law
10 omits the quoted language as unnecessary because the
11 provisions of that act that require a person to be a
12 registered dealer or a registered agent of a
13 registered dealer before making or distributing an
14 offer in this state apply by their own terms.

15 (2) Subdivisions (3), (4), and (6), Subsection
16 A, Article 581-22, Vernon's Texas Civil Statutes,
17 refer to a permit issued "under Section 10," meaning
18 Article 581-10, Vernon's Texas Civil Statutes. The
19 provisions of Article 581-10 pertaining to an
20 application for and the issuance of a permit are
21 revised in Subchapter A of this chapter, and the
22 revised law is drafted accordingly.

23 Revised Law

24 Sec. 4003.204. AUTHORIZED ORAL OFFERS. (a) In this
25 section, "oral offer" means an offer that is not a broadcast offer.

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

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

31 (2) either:

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

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

4 (3) the person making or distributing the offer:

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

7 (B) has received notice of an order described by
8 Paragraph (A) but the order is no longer in effect; and

9 (4) payment is not accepted from the offeree and no
10 contract of sale is made before registration of the security is
11 effective under Subchapter B or C or a permit is issued under
12 Subchapter A. (V.A.C.S. Art. 581-22, Subsec. B (part).)

13 Source Law

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

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

23 (2) either:

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

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

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

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

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

38 (4) payment is not accepted from the
39 offeree and no contract of sale is made before
40 registration is effective under Subsection B or C of
41 Section 7 or before a permit is granted under Section
42 10.

43 Revisor's Note

44 Subdivision (1), Subsection B, Article 581-22,
45 Vernon's Texas Civil Statutes, requires a person
46 making an oral offer in this state to be a registered
47 dealer or a registered agent of a registered dealer,
48 "as required by this Act," meaning The Securities Act

1 (Article 581-1 et seq., Vernon's Texas Civil
2 Statutes), revised as this title. The revised law
3 omits the quoted language as unnecessary for the
4 reason stated in Revisor's Note (1) to Section
5 4003.203.

6 Revised Law

7 Sec. 4003.205. DEALER NAMED IN OFFER. A dealer whose name
8 is included in a written, printed, or broadcast offer along with the
9 name of a registered dealer is not deemed, on that fact alone, to
10 have made an offer in this state to sell a security. (V.A.C.S. Art.
11 581-22, Subsec. F.)

12 Source Law

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

18 Revised Law

19 Sec. 4003.206. EFFECT OF COMPLIANCE OR NONCOMPLIANCE. (a)
20 An offer to sell a security that complies with Section 4003.203 or
21 4003.204 does not violate Subchapter A, B, or C.

22 (b) An offer to sell a security that does not comply with
23 Section 4003.203 or 4003.204 violates this title. (V.A.C.S. Art.
24 581-22, Subsecs. C, D.)

25 Source Law

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

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

32 Revisor's Note

33 Subsection D, Article 581-22, Vernon's Texas
34 Civil Statutes, provides that an offer that does not
35 comply with Subsection A or B of that article is
36 "unlawful and a violation of this Act." The revised
37 law omits the reference to "unlawful" because, in
38 context, "unlawful" is included within the meaning of

1 "violation of this Act."

2 SUBCHAPTER F. CROWDFUNDING

3 Revised Law

4 Sec. 4003.251. DEFINITION. In this subchapter, "authorized
5 small business development entity" means:

- 6 (1) a Type A corporation authorized under Chapter 504,
7 Local Government Code;
- 8 (2) a Type B corporation authorized under Chapter 505,
9 Local Government Code;
- 10 (3) a nonprofit organization authorized by an agency
11 or authority of the federal government to distribute housing and
12 community development block grants;
- 13 (4) a municipal corporation;
- 14 (5) the Texas Veterans Commission; or
- 15 (6) a nonprofit community development financial
16 institution certified by the Community Development Financial
17 Institutions Fund. (V.A.C.S. Art. 581-44, Subsec. (c).)

18 Source Law

19 (c) In this section, "authorized small business
20 development entity" means:

- 21 (1) a Type A corporation authorized under
22 Chapter 504, Local Government Code;
- 23 (2) a Type B corporation authorized under
24 Chapter 505, Local Government Code;
- 25 (3) a nonprofit organization authorized by
26 an agency or authority of the federal government to
27 distribute housing and community development block
28 grants;
- 29 (4) a municipal corporation;
- 30 (5) the Texas Veterans Commission; or
- 31 (6) a nonprofit community development
32 financial institution certified by the Community
33 Development Financial Institutions Fund.

34 Revised Law

35 Sec. 4003.252. CROWDFUNDING. (a) The board shall adopt
36 rules to regulate and facilitate online intrastate crowdfunding
37 applicable to authorized small business development entities. The
38 board may create other requirements necessary to carry out this
39 subchapter.

40 (b) The rules must:

- 41 (1) allow an authorized small business development

1 entity to list on the entity's web portal offerings of securities by
2 issuers in which the entity is financially interested;

3 (2) allow an authorized small business development
4 entity and the entity's web portal to list offerings of securities
5 without offering investment advice;

6 (3) allow an authorized small business development
7 entity to subcontract the operations of a crowdfunding web portal
8 to a third party as permitted by board rule; and

9 (4) limit the offerings of securities on an authorized
10 small business development entity's web portal to securities of
11 issuers located within the service area of the entity. (V.A.C.S.
12 Art. 581-44, Subsecs. (a), (b).)

13 Source Law

14 Art. 581-44. (a) The Board shall adopt rules to
15 regulate and facilitate online intrastate
16 crowdfunding applicable to authorized small business
17 development entities. The Board may create other
18 requirements necessary to carry out this section.

19 (b) The rules for authorized small business
20 development entities must:

21 (1) allow authorized small business
22 development entities to list on their web portals
23 offerings of securities by issuers in which they are
24 financially interested;

25 (2) allow authorized small business
26 development entities and their portals to list
27 offerings of securities without offering investment
28 advice;

29 (3) allow authorized small business
30 development entities to subcontract the operations of
31 a crowdfunding web portal to a third party as permitted
32 by Board rule; and

33 (4) limit the offerings of securities on
34 an authorized small business development entity's web
35 portal to securities of issuers located within the
36 service area of the authorized small business
37 development entity.

38 Revisor's Note

39 Subdivision (2), Subsection (b), Article 581-44,
40 Vernon's Texas Civil Statutes, refers to small
41 business entities' "portals." Subdivisions (1) and
42 (3), Subsection (b), Article 581-44, refer to the
43 entities' "web portals" and to a crowdfunding "web
44 portal," respectively. The revised law substitutes
45 "web portal" for "portals" for consistency with the

1 terminology used within the section and because in
2 context, the quoted phrases are synonymous.

3 SUBCHAPTER G. PROTECTION FOR PURCHASERS OF SECURITIES

4 Revised Law

5 Sec. 4003.301. DEPOSIT IN TRUST ACCOUNT. (a) If the
6 commissioner considers it necessary to protect the interests of
7 prospective purchasers of securities a company sells or offers for
8 sale, the commissioner may require the company to deposit in a trust
9 account at a bank or trust company approved by the commissioner and
10 doing business in this state:

11 (1) all or part of the proposed securities; or

12 (2) subject to Subsection (b), all or part of the money
13 and other funds received from the sale of those securities.

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

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

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

31 (e) If a proposed or existing company that deposits funds in
32 a trust account as provided by this section does not sell the
33 minimum amount of capital necessary under the escrow agreement
34 within two years, the commissioner may authorize the bank or trust

1 company at which the funds are deposited to return to the
2 subscribers the portion of the funds that were deposited or
3 escrowed under the escrow agreement. The bank or trust company
4 shall return the funds to the subscribers on receipt of
5 authorization from the commissioner under this subsection. If the
6 bank or trust company holds securities under the escrow agreement,
7 the bank or trust company may return the securities to the
8 corporation only after the bank or trust company receives from the
9 issuer evidence of cancellation thereof.

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

13 (1) the names of the purchasers of or subscribers for
14 the securities; and

15 (2) the amount of money paid by each. (V.A.C.S. Art.
16 581-9, Subsec. A.)

17 Source Law

18 Art. 581-9. A. In the event any company, as
19 defined herein, shall sell, or offer for sale, any
20 securities, as defined in this Act, the Commissioner,
21 if he deems it necessary to protect the interests of
22 prospective purchasers of such securities, may require
23 the company so offering such securities for sale to
24 deposit all, or any part, of the proposed securities,
25 or all, or any part, of the moneys and funds received
26 from the sale thereof, except such amounts thereof as
27 the Commissioner deems necessary to be used, and not to
28 exceed the amount allowed as expenses and commissions
29 for the sale of such securities, to be deposited in a
30 trust account in some bank or trust company approved by
31 the Commissioner and doing business in the State of
32 Texas, until such time as such proposed company or
33 existing company shall have sold a specified monetary
34 amount or number of shares of such securities as in his
35 opinion will reasonably assure protection of the
36 public. When the Commissioner makes a written finding
37 that the terms of the escrow agreement have been fully
38 met, the bank or trust company shall transfer such
39 funds to the proposed or existing corporation and its
40 executive officers for the purpose of permitting it to
41 use such securities or money in its business. In the
42 event such proposed or existing company shall fail
43 within two (2) years to sell the minimum amount of
44 capital necessary under the escrow agreement, the
45 Commissioner may authorize, and the bank or trust
46 company shall return to the subscribers, upon receipt
47 of such authority from the Commissioner, that portion
48 of the funds which were deposited or escrowed under
49 such escrow agreement; provided, however, that any
50 securities held by such bank or trust company under the

1 escrow agreement shall be returned to the corporation
2 only after the bank or trust company has received
3 evidence of cancellation thereof from the issuer. At
4 the time of making the deposits, as herein provided
5 for, the dealer or issuer shall furnish to such bank or
6 trust company, and to the Commissioner, the names of
7 the persons purchasing or subscribing for such
8 securities, and the amount of money paid in by each.

9 Revisor's Note

10 Subsection A, Article 581-9, Vernon's Texas Civil
11 Statutes, refers to any company, "as defined herein,"
12 and any securities, "as defined in this Act," meaning
13 The Securities Act (Article 581-1 et seq., Vernon's
14 Texas Civil Statutes), revised as this title. The
15 revised law omits the quoted language as unnecessary
16 because the definitions of "company" and "securities"
17 in that act, revised respectively as Sections 4001.064
18 and 4001.068 of this title, apply by their own terms.

19 Revised Law

20 Sec. 4003.302. MARKETING EXPENSES. (a) Total expenses for
21 marketing securities, including all commissions for the sale of the
22 securities, and all other incidental selling expenses, may not in
23 the aggregate exceed 20 percent of the price at which the stock or
24 other securities of a proposed or existing company are to be sold or
25 offered for sale to the public of this state.

26 (b) The commissioner may reduce the percentage listed in
27 Subsection (a) to a percentage that in the commissioner's opinion
28 is fair, just, and equitable under the facts of the particular case.
29 (V.A.C.S. Art. 581-9, Subsec. B.)

30 Source Law

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

41 Revised Law

42 Sec. 4003.303. PROSPECTUS REQUIRED FOR CERTAIN OFFERS. (a)

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

5 (1) fairly discloses the material facts about the plan
6 of finance and business; and

7 (2) must be filed with and approved by the
8 commissioner.

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

14 (c) Failure to comply with the prospectus requirements of
15 this section violates this title. (V.A.C.S. Art. 581-9, Subsec. C.)

16 Source Law

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

32 Revisor's Note

33 (1) Subsection C, Article 581-9, Vernon's Texas
34 Civil Statutes, refers to a prospectus or offering
35 circular filed with the "S.E.C." under the Securities
36 Act of 1933. The revised law substitutes a reference
37 to the "Securities and Exchange Commission" because
38 that is the full name of that agency.

39 (2) Subsection C, Article 581-9, Vernon's Texas
40 Civil Statutes, provides that the failure to comply
41 with the requirements of that subsection is a

1 violation of The Securities Act (V.A.C.S. Art. 581-1
2 et seq.), revised as this title, "subjecting the
3 parties responsible to the consequences thereof as
4 provided herein." The revised law omits the quoted
5 language as unnecessary because the provisions of that
6 act pertaining to the consequences of a violation of
7 the act apply by their own terms.

8 Revised Law

9 Sec. 4003.304. INVESTOR EDUCATION. (a) The commissioner,
10 with board approval, shall develop and implement investor education
11 initiatives to inform the public about the basics of investing in
12 securities. The initiatives must place a special emphasis on the
13 prevention and detection of securities fraud. Materials developed
14 for and distributed as part of the initiatives must be published in
15 both English and Spanish.

16 (b) In developing and implementing the initiatives, the
17 commissioner shall use the commissioner's best efforts to
18 collaborate with public or nonprofit entities with an interest in
19 investor education.

20 (c) For use in providing investor education initiatives and
21 subject to Chapter 575, the commissioner may accept grants and
22 donations from:

23 (1) a person who is not affiliated with the securities
24 industry; or

25 (2) a nonprofit association, regardless of whether the
26 entity is affiliated with the securities industry. (V.A.C.S. Art.
27 581-43.)

28 Source Law

29 Art. 581-43. A. The Commissioner, with Board
30 approval, shall develop and implement investor
31 education initiatives to inform the public about the
32 basics of investing in securities, with a special
33 emphasis placed on the prevention and detection of
34 securities fraud. Materials developed for and
35 distributed as part of the initiatives must be
36 published in both Spanish and English.

37 B. In developing and implementing the
38 initiatives, the Commissioner shall use the
39 Commissioner's best efforts to collaborate with public

1 or nonprofit entities with an interest in investor
2 education.

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

10 CHAPTER 4004. REGULATION OF DEALERS, INVESTMENT ADVISERS, DEALERS'
11 AGENTS, AND INVESTMENT ADVISER REPRESENTATIVES

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10 CHAPTER 4004. REGULATION OF DEALERS, INVESTMENT ADVISERS, DEALERS'
11 AGENTS, AND INVESTMENT ADVISER REPRESENTATIVES

12 SUBCHAPTER A. GENERAL PROVISIONS

13 Revised Law

14 Sec. 4004.001. RULES FOR EXEMPTION FROM REGISTRATION
15 REQUIREMENTS. The board may adopt rules that exempt certain
16 classes of persons from the dealer, agent, investment adviser, and
17 investment adviser representative registration requirements, or
18 provide conditional exemptions from registration, if the board
19 determines that the rules are consistent with the purposes of this
20 title. (V.A.C.S. Art. 581-12, Subsec. C.)

21 Source Law

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

30 Revisor's Note

31 (1) Subsection C, Article 581-12, Vernon's Texas
32 Civil Statutes, refers to "rules and regulations."
33 The revised law omits the reference to "regulations"
34 because under Section 311.005(5), Government Code
35 (Code Construction Act), applicable to the revised
36 law, a rule is defined to include a regulation.

37 (2) Subsection C, Article 581-12, Vernon's Texas

1 Civil Statutes, refers to rules and regulations that
2 are consistent with the purposes of "this Act,"
3 meaning The Securities Act (Article 581-1 et seq.,
4 Vernon's Texas Civil Statutes). The provisions of The
5 Securities Act are revised as this title. The revised
6 law throughout this chapter therefore substitutes
7 references to "this title" for references to "this
8 Act."

9 Revised Law

10 Sec. 4004.002. CERTAIN DISPLAYS OR ADVERTISEMENT OF
11 REGISTRATION PROHIBITED. Except as expressly provided by this
12 title, a dealer, agent, investment adviser, or investment adviser
13 representative may not by public display or advertisement use the
14 fact that the person is registered under this title, the person's
15 registration certificate or evidence of registration, or a
16 certified copy of the certificate or evidence of registration in
17 connection with any sale or effort to sell any security or any
18 rendering of services as an investment adviser. (V.A.C.S. Art.
19 581-20.)

20 Source Law

21 Art. 581-20. It shall be unlawful for any
22 dealer, agent, investment adviser, or investment
23 adviser representative to use the fact of his
24 registry, by public display or advertisement, except
25 as hereinafter expressly provided, for the
26 registration certificate or evidence of registration
27 or any certified copy thereof, in connection with any
28 sale or effort to sell any security or any rendering of
29 services as an investment adviser.

30 Revisor's Note

31 Article 581-20, Vernon's Texas Civil Statutes,
32 states that in connection with the sale of a security
33 or the rendering of services as an investment adviser,
34 a person may not use the fact of the person's registry,
35 by public display or advertisement "for the
36 registration certificate or evidence of registration
37 or any certified copy thereof." When that provision
38 was enacted by Section 20, Chapter 269 (S.B. 294), Acts

1 of the 55th Legislature, Regular Session, 1957, the
2 law stated that a person may not use the fact of the
3 person's registry, by public display or advertisement
4 "or the registration certificate [or evidence of
5 registration] or any certified copy thereof." The
6 revised law substitutes "or" for "for" to correct an
7 apparent typographical error.

8 Revised Law

9 Sec. 4004.003. DISPLAY OF INFORMATION REGARDING
10 COMPLAINTS. A dealer, agent, investment adviser, or investment
11 adviser representative regulated under this title shall
12 prominently display at all times in the person's place of business:

13 (1) a sign containing the name, mailing address, and
14 telephone number of the board; and

15 (2) a statement informing consumers that complaints
16 against a dealer, agent, investment adviser, or investment adviser
17 representative may be directed to the board. (V.A.C.S. Art. 581-2,
18 Subsec. L (part).)

19 Source Law

20 L. . . . There shall be prominently displayed at
21 all times in the place of business of each dealer,
22 agent, investment adviser, or investment adviser
23 representative regulated under this Act, a sign
24 containing the name, mailing address, and telephone
25 number of the Board and a statement informing
26 consumers that complaints against a dealer, agent,
27 investment adviser, or investment adviser
28 representative may be directed to the Board.

29 SUBCHAPTER B. REGISTRATION OF DEALERS AND INVESTMENT ADVISERS

30 Revised Law

31 Sec. 4004.051. REGISTRATION OF DEALERS REQUIRED. Except as
32 provided by Section 4001.056(d) or Subchapter A, Chapter 4005, a
33 dealer or other person or company, including a corporation or firm,
34 may not, directly or through the dealer's or other person's or
35 company's agents, offer for sale, sell, or make a sale of any
36 securities in this state unless the dealer or other person or
37 company is first registered as provided by this chapter. (V.A.C.S.
38 Art. 581-12, Subsec. A (part).)

1 Source Law

2 Art. 581-12. A. Except as provided in Section 5
3 of this Act, no person, firm, corporation or dealer
4 shall, directly or through agents, offer for sale,
5 sell or make a sale of any securities in this state
6 without first being registered as in this Act
7 provided. . . .

8 Revisor's Note

9 (1) Subsection A, Article 581-12, Vernon's Texas
10 Civil Statutes, refers to an exception provided by
11 "Section 5 of this Act," meaning Article 581-5,
12 Vernon's Texas Civil Statutes. Article 581-5 is
13 revised as Section 4001.056(d) and Subchapter A,
14 Chapter 4005, of this title, and the revised law is
15 drafted accordingly.

16 (2) Subsection A, Article 581-12, Vernon's Texas
17 Civil Statutes, refers to a "person, firm, corporation
18 or dealer." The revised law substitutes "dealer or
19 other person or company, including a corporation or
20 firm" for the quoted language because Subsection B,
21 Article 581-4, Vernon's Texas Civil Statutes, revised
22 as Section 4001.064 of this title, defines "person"
23 and "company" to include a corporation or firm and
24 because Subsection C, Article 581-4, Vernon's Texas
25 Civil Statutes, revised as Section 4001.056 of this
26 title, defines "dealer" to include a "person or
27 company" that engages in certain activities with
28 respect to securities.

29 (3) Subsection A, Article 581-12, Vernon's Texas
30 Civil Statutes, requires a dealer or other person or
31 company to first register before selling or offering
32 for sale securities in this state "directly or through
33 agents." The revised law substitutes "directly or
34 through the dealer's or other person's or company's
35 agents" for the quoted language to make clear that a
36 dealer may sell or offer for sale securities through

1 agents only if the agents are registered as such for
2 that particular dealer, as provided by another
3 provision of Subsection A, Article 581-12, Vernon's
4 Texas Civil Statutes, which is revised as Section
5 4004.101 of this chapter.

6 (4) Subsection A, Article 581-12, Vernon's Texas
7 Civil Statutes, refers to a person being registered as
8 provided "in this Act," meaning The Securities Act
9 (Article 581-1 et seq., Vernon's Texas Civil
10 Statutes), revised as this title. The provisions of
11 The Securities Act specifically relating to the
12 registration requirements and procedures for a dealer,
13 agent, investment adviser, or investment adviser
14 representative are revised in various provisions of
15 this chapter. Throughout this chapter, the revised
16 law substitutes "this chapter" for "this Act" when the
17 context indicates that "this Act" is referring only to
18 the registration requirements and procedures revised
19 in this chapter.

20 Revised Law

21 Sec. 4004.052. REGISTRATION OF INVESTMENT ADVISERS
22 REQUIRED. Except as provided by Subchapter A, Chapter 4005, a
23 person may not, directly or through the person's investment adviser
24 representative, render services as an investment adviser in this
25 state unless the person:

26 (1) is registered under this chapter;

27 (2) submits a notice filing as provided by Subchapter

28 G; or

29 (3) is otherwise exempt under this title. (V.A.C.S.
30 Art. 581-12, Subsec. B (part).)

31 Source Law

32 B. Except as provided by Section 5 of this Act, a
33 person may not, directly or through an investment
34 adviser representative, render services as an
35 investment adviser in this state unless the person is
36 registered under this Act, submits a notice filing as

1 provided by Section 12-1 of this Act, or is otherwise
2 exempt under this Act. . . .

3 Revisor's Note

4 (1) Subsection B, Article 581-12, Vernon's Texas
5 Civil Statutes, refers to an exception provided by
6 "Section 5 of this Act," meaning Article 581-5,
7 Vernon's Texas Civil Statutes. The relevant
8 provisions of Article 581-5 are revised in Subchapter
9 A, Chapter 4005, of this title, and throughout this
10 chapter, the revised law is drafted accordingly.

11 (2) Subsection B, Article 581-12, Vernon's Texas
12 Civil Statutes, requires that a person must satisfy
13 certain requirements before the person may render
14 services in this state as an investment adviser
15 "directly or through an investment adviser
16 representative." The revised law substitutes
17 "directly or through the person's investment adviser
18 representative" for the quoted language to make clear
19 that an investment adviser may render services only
20 through an investment adviser representative who is
21 registered or submits a notice filing as such for that
22 particular investment adviser, as provided by another
23 provision of Subsection B, Article 581-12, Vernon's
24 Texas Civil Statutes, which is revised as Section
25 4004.102 of this chapter.

26 Revised Law

27 Sec. 4004.053. APPLICATION FOR REGISTRATION. (a) To be
28 registered, a dealer or investment adviser must submit to the
29 commissioner a sworn application that must be in the form the
30 commissioner prescribes and must state:

- 31 (1) the applicant's principal place of business;
- 32 (2) the location of the applicant's principal place of
33 business and all branch offices of the applicant in this state;
- 34 (3) the name or style of doing business and the address
35 of the applicant;

1 (4) the name, residence, and business address of each
2 person interested in the business as a principal, officer,
3 director, or managing agent of the applicant's business, specified
4 by capacity and title;

5 (5) the general plan and character of the applicant's
6 business;

7 (6) the period the applicant has been engaged in the
8 business; and

9 (7) the places at which the applicant has engaged in
10 the business.

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

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

20 (1) the applicant; and

21 (2) the directors, officers, copartners, or
22 principals of the applicant.

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

27 (1) articles of incorporation or similar
28 organizational instrument, and all amendments to the document or
29 instrument, as applicable, certified by the appropriate officer of
30 the corporation or of the state or other jurisdiction in which the
31 corporation is organized;

32 (2) regulations; and

33 (3) bylaws.

34 (e) For an applicant that is a limited partnership, the

1 application must be accompanied by either:

2 (1) a copy of the articles of copartnership or similar
3 organizational instrument of the partnership; or

4 (2) a verified statement of the partnership's plan of
5 doing business.

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

13 (g) The commissioner shall:

14 (1) prescribe the application form to be used by an
15 applicant under this section; and

16 (2) provide copies of the application form for
17 registration to all persons who seek to submit an application to
18 register as a dealer or investment adviser. (V.A.C.S. Art. 581-13,
19 Subsecs. A, B, C, G, H, I, J.)

20 Source Law

21 Art. 581-13. A. A dealer or investment adviser
22 to be registered must submit a sworn application
23 therefor to the Commissioner, which shall be in such
24 form as the Commissioner may determine and which shall
25 state:

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

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

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

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

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

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

1 fraud.

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

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

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

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

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

30 Revisor's Note

31 Subsections G and H, Article 581-13, Vernon's
32 Texas Civil Statutes, refer to the "[a]rticles of
33 [i]ncorporation" of a foreign corporation and the
34 "[a]rticles of [c]opartnership" of a limited
35 partnership, respectively. In both contexts, the
36 revised law adds "or similar organizational
37 instrument" after each reference to recognize that
38 other jurisdictions may refer to similar filings using
39 other terminology.

40 Revised Law

41 Sec. 4004.054. ISSUANCE OF REGISTRATION CERTIFICATE. The
42 commissioner shall issue a certificate of registration to an
43 applicant for registration as a dealer or investment adviser if:

44 (1) the commissioner is satisfied that the applicant
45 has complied with the requirements of this chapter; and

46 (2) the applicant:

47 (A) if applicable, has filed a written consent to
48 service that complies with Section 4001.102; and

1 (B) has paid the fees required by Chapter 4006.
2 (V.A.C.S. Art. 581-15 (part).)

3 Source Law

4 Art. 581-15. If the Commissioner is satisfied
5 that the applicant for a dealer's or investment
6 adviser's certificate of registration has complied
7 with the requirements of the Act above, that the
8 applicant has filed a written consent to service as and
9 when required by Section 8 of this Act, and upon the
10 payment of the fees required by Section 35 of this Act,
11 the Commissioner shall register the applicant and
12 issue to it or him a registration certificate,

13 Revisor's Note

14 Article 581-15, Vernon's Texas Civil Statutes,
15 states that the securities commissioner shall register
16 an applicant and then issue to the applicant a
17 certificate of registration if the applicant complies
18 with all the statutory requirements for registration.
19 The revised law omits the reference to the
20 commissioner registering an applicant because, in
21 practice, the issuance of a certificate of
22 registration to an applicant constitutes
23 registration, and therefore the use of both references
24 is redundant.

25 Revised Law

26 Sec. 4004.055. FORM AND CONTENTS OF REGISTRATION
27 CERTIFICATE. The registration certificate must be in the form the
28 commissioner prescribes and must state:

29 (1) the principal place of business and address of the
30 dealer or investment adviser;

31 (2) the name and business address of each person
32 interested in the business as a principal, officer, director, or
33 managing agent of the dealer or investment adviser; and

34 (3) that the dealer or investment adviser has been
35 registered for a current calendar year as a dealer in securities or
36 as an investment adviser, as appropriate. (V.A.C.S. Arts. 581-15
37 (part), 581-17 (part).)

1 Source Law

2 Art. 581-15. . . . [the Commissioner shall
3 register the applicant and issue to it or him a
4 registration certificate,] stating the principal
5 place of business and address of the dealer or
6 investment adviser, the names and business addresses
7 of all persons interested in the business as
8 principals, officers, directors or managing agents,
9 and the fact that the dealer or investment adviser has
10 been registered for a current calendar year as a dealer
11 in securities or as an investment adviser. . . .

12 Art. 581-17. The certificate shall be in such
13 form as the Commissioner may determine. . . .

14 Revised Law

15 Sec. 4004.056. TEMPORARY PERMISSION TO ENGAGE IN BUSINESS
16 AS DEALER OR INVESTMENT ADVISER. (a) Pending final disposition of
17 an application under this subchapter, the commissioner may, for
18 special cause shown, grant an applicant temporary permission to
19 engage in business as a dealer or investment adviser under this
20 title, subject to any terms and conditions that the commissioner
21 prescribes.

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

24 (c) A dealer or investment adviser acting under temporary
25 permission granted under this section is considered to be a
26 registered dealer or registered investment adviser for any purpose
27 of this title. (V.A.C.S. Art. 581-15 (part).)

28 Source Law

29 Art. 581-15. . . . Pending final disposition of
30 an application, the Commissioner may, for special
31 cause shown, grant temporary permission, revocable at
32 any time and subject to such terms and conditions as
33 the Commissioner may prescribe, to transact business
34 as a dealer or investment adviser under this Act. Any
35 dealer or investment adviser acting under such a
36 temporary permission, shall be considered a registered
37 dealer or investment adviser for all purposes of this
38 Act.

39 Revised Law

40 Sec. 4004.057. AMENDMENT OF REGISTRATION CERTIFICATE. (a)
41 A dealer or investment adviser shall immediately certify under oath
42 to the commissioner any change in the personnel of a partnership or
43 in the principals, officers, directors, or managing agents of the

1 dealer or investment adviser.

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

6 (c) On the issuance of an amended registration certificate,
7 the dealer or investment adviser shall promptly surrender the
8 original certificate and any outstanding certified copies of the
9 original certificate to the commissioner. (V.A.C.S. Art. 581-17
10 (part).)

11 Source Law

12 Art. 581-17. . . . Any changes in the personnel
13 of a partnership or in the principals, officers,
14 directors or managing agents of any dealer or
15 investment adviser shall be immediately certified
16 under oath to the Commissioner and any change in the
17 certificate necessitated thereby may be made at any
18 time, upon written application setting forth the fact
19 necessitating the change. Upon the issue of the
20 amended certificates, the original certificate and the
21 certified copies thereof outstanding shall be promptly
22 surrendered to the Commissioner.

23 Revised Law

24 Sec. 4004.058. POSTING REGISTRATION CERTIFICATES. On
25 receipt of a registration certificate issued under this chapter,
26 the dealer or investment adviser named in the certificate shall
27 immediately post and conspicuously display the certificate at all
28 times in the dealer's or investment adviser's principal place of
29 business, if the dealer's or investment adviser's principal place
30 of business is maintained in this state. The dealer or investment
31 adviser shall similarly post and conspicuously display a duplicate
32 copy of the dealer's or investment adviser's certificate in each
33 branch office located in this state. (V.A.C.S. Art. 581-21.)

34 Source Law

35 Art. 581-21. Immediately upon receipt of the
36 dealer's or investment adviser's registration
37 certificate issued pursuant to the authority of this
38 Act, the dealer or investment adviser named therein
39 shall cause such certificate to be posted and at all
40 times conspicuously displayed in such dealer's or
41 investment adviser's principal place of business, if
42 one is maintained in this state, and shall likewise
43 forthwith cause a duplicate of such certificate to be

1 posted and at all times conspicuously displayed in
2 each branch office located within this state.

3 SUBCHAPTER C. REGISTRATION OF AGENTS AND INVESTMENT ADVISER

4 REPRESENTATIVES

5 Revised Law

6 Sec. 4004.101. REGISTRATION OF AGENTS. (a) An agent may
7 not, on behalf of a registered dealer, sell, offer for sale, or make
8 a sale of any securities in this state unless the agent is
9 registered as an agent for that particular registered dealer under
10 this chapter.

11 (b) On written application by a registered dealer, and on
12 satisfactory compliance with the requirements of this title, the
13 commissioner shall register a person as an agent of the registered
14 dealer. (V.A.C.S. Art. 581-12, Subsec. A (part); Art. 581-18
15 (part).)

16 Source Law

17 Art. 581-12. A. . . . No agent shall, in behalf
18 of any dealer, sell, offer for sale, or make sale of
19 any securities within the state unless registered as
20 an agent for that particular registered dealer under
21 the provisions of this Act.

22 Art. 581-18. Upon written application by a
23 registered dealer or . . . and upon satisfactory
24 compliance with the requirements of the Act above, the
25 Commissioner shall register as an agent of such dealer
26 or . . . such persons as the dealer or . . . may
27 request. . . .

28 Revised Law

29 Sec. 4004.102. REGISTRATION OF INVESTMENT ADVISER
30 REPRESENTATIVES. (a) A person may not act or render services as an
31 investment adviser representative for an investment adviser in this
32 state unless the person is registered or submits a notice filing as
33 an investment adviser representative for that particular
34 investment adviser as provided by this subchapter and Subchapter G.

35 (b) On written application by an investment adviser and on
36 satisfactory compliance with the requirements of this title, the
37 commissioner shall register a person as an investment adviser
38 representative of that investment adviser. (V.A.C.S. Art. 581-12,
39 Subsec. B (part); Art. 581-18 (part).)

1 Source Law

2 [Art. 581-12]

3 B. . . . A person may not act or render services
4 as an investment adviser representative for a certain
5 investment adviser in this state unless the person is
6 registered or submits a notice filing as an investment
7 adviser representative for that particular investment
8 adviser as provided in Section 18 or 12-1 of this Act.

9 Art. 581-18. Upon written application by a
10 . . . investment adviser, and upon satisfactory
11 compliance with the requirements of the Act above, the
12 Commissioner shall register . . . as a representative
13 of the investment adviser such persons as the . . .
14 investment adviser may request. . . .

15 Revised Law

16 Sec. 4004.103. APPLICATION FOR REGISTRATION. The
17 application described by Sections 4004.101 and 4004.102 must:

18 (1) be in the form the commissioner prescribes;

19 (2) state:

20 (A) the residence and address of the person whose
21 registration as an agent or investment adviser representative is
22 requested through the application; and

23 (B) any other information relating to that
24 person's previous history, record, and associations that the
25 commissioner may require; and

26 (3) be signed and sworn to by the person whose
27 registration as an agent or investment adviser representative is
28 requested through the application. (V.A.C.S. Art. 581-18 (part).)

29 Source Law

30 Art. 581-18. . . . The application shall be in
31 such form as the Commissioner may prescribe and shall
32 state the residences and addresses of the persons
33 whose registration is requested, together with such
34 information as to such agent's or investment adviser
35 representative's previous history, record and
36 association as may be required by the Commissioner.
37 Such application shall also be signed and sworn to by
38 the agent or investment adviser representative for
39 whom registration is requested. . . .

40 Revisor's Note

41 Article 581-18, Vernon's Texas Civil Statutes,
42 lists the information that must be contained in an
43 application of the person "whose registration is
44 requested" and "for whom registration is requested."

1 The revised law adds "[whose registration] . . . is
2 requested through the application" to provide context
3 and for the convenience of the reader.

4 Revised Law

5 Sec. 4004.104. ISSUANCE OF EVIDENCE OF REGISTRATION. For
6 each person registered under this subchapter, the commissioner
7 shall issue evidence of registration of the agent or investment
8 adviser representative to the registered dealer or investment
9 adviser who requested the person's registration, as appropriate.
10 The registered dealer or investment adviser who requested the
11 person's registration shall retain the evidence of registration for
12 the dealer's agents or investment adviser's representatives, as
13 appropriate. (V.A.C.S. Art. 581-18 (part).)

14 Source Law

15 Art. 581-18. . . . The Commissioner shall issue
16 to such dealer or investment adviser, to be retained by
17 such dealer or investment adviser for each person so
18 registered, evidence of registration

19 Revised Law

20 Sec. 4004.105. FORM AND CONTENTS OF EVIDENCE OF
21 REGISTRATION. The evidence of registration described by Section
22 4004.104 must:

23 (1) be in the form the commissioner prescribes; and

24 (2) state:

25 (A) the name of the agent or investment adviser
26 representative;

27 (B) the address of the registered dealer or
28 investment adviser, as appropriate; and

29 (C) that the person is registered for the current
30 calendar year as an agent of the dealer or as an investment adviser
31 representative of the investment adviser, as appropriate.

32 (V.A.C.S. Art. 581-18 (part).)

33 Source Law

34 Art. 581-18. . . . [evidence of registration]
35 stating the person's name, the address of the dealer or
36 investment adviser, and the fact that the person is
37 registered for the current calendar year as an agent or

1 investment adviser representative of the dealer or
2 investment adviser, as appropriate. The evidence of
3 registration shall be in such form as the Commissioner
4 shall determine. . . .

5 Revised Law

6 Sec. 4004.106. CANCELLATION OF REGISTRATION. On
7 application by a registered dealer or investment adviser, the
8 commissioner shall cancel the registration of the registered
9 dealer's agent or the investment adviser's representative.
10 (V.A.C.S. Art. 581-18 (part).)

11 Source Law

12 Art. 581-18. . . . Upon application by the
13 dealer or the investment adviser, the registration of
14 any agent or investment adviser representative shall
15 be cancelled.

16 SUBCHAPTER D. EXAMINATION REQUIREMENTS

17 Revised Law

18 Sec. 4004.151. EXAMINATION REQUIREMENTS. (a) Except as
19 provided by Subsection (c), the commissioner shall require that, to
20 be registered under this chapter, each applicant must pass a
21 written examination to determine whether the applicant possesses
22 the qualifications and competency to engage in the business of
23 dealing in and selling securities as a dealer or agent, or rendering
24 services as an investment adviser or investment adviser
25 representative. If the applicant is a corporation or partnership,
26 the officers, directors, or partners to be licensed by the
27 corporation or partnership must pass the written examination
28 described by this section.

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

33 (c) The board may waive the examination requirement under
34 Subsection (a) for any applicant or class of applicants. (V.A.C.S.
35 Art. 581-13, Subsecs. D, K.)

36 Source Law

37 D. The Commissioner shall require as a condition
38 of registration for all registrations granted after

1 the effective date of this Subsection D that the
2 applicant (and, in the case of a corporation or
3 partnership, the officers, directors or partners to be
4 licensed by the applicant) pass successfully a written
5 examination to determine the applicant's
6 qualifications and competency to engage in the
7 business of dealing in and selling securities as a
8 dealer or agent, or rendering services as an
9 investment adviser or investment adviser
10 representative. This condition may be waived as to any
11 applicant or class of applicants by action of the State
12 Securities Board.

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

17 Revisor's Note

18 Subsection D, Article 581-13, Vernon's Texas
19 Civil Statutes, provides for an examination
20 requirement for "all registrations granted after the
21 effective date of this Subsection D." The revised law
22 omits the quoted language because Section 311.022,
23 Government Code (Code Construction Act), applicable to
24 the revised law, provides that a statute is presumed to
25 be prospective in its operation unless expressly made
26 retrospective.

27 Revised Law

28 Sec. 4004.152. EXAMINATION RESULTS. (a) Except as
29 provided by Subsection (b), the board shall notify each examinee of
30 the results of a registration examination required by this
31 subchapter not later than the 30th day after the date the examinee
32 takes the examination.

33 (b) If an examination is graded or reviewed by a testing
34 service:

35 (1) the board shall notify each examinee of the
36 results of the examination not later than the 14th day after the
37 date the board receives the results from the testing service; and

38 (2) if notice of the examination results will be
39 delayed for longer than 90 days after the examination date, the
40 board shall notify each examinee of the reason for the delay before
41 the 90th day.

1 (c) The board may require a testing service to notify an
2 examinee of the results of the examination.

3 (d) If requested in writing by an examinee who fails an
4 examination administered under this subchapter, the board shall
5 provide the examinee with an analysis of the examinee's performance
6 on the examination. (V.A.C.S. Art. 581-13, Subsecs. E, F.)

7 Source Law

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

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

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

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

28 SUBCHAPTER E. DENIAL OR REVOCATION OF REGISTRATION

29 Revised Law

30 Sec. 4004.201. DENIAL OF REGISTRATION. The commissioner
31 may deny an application for registration under this chapter in
32 accordance with Section 4007.105. (New.)

33 Revisor's Note

34 Article 581-14, Vernon's Texas Civil Statutes,
35 contains the procedures governing the denial,
36 suspension, or revocation of the registration of a
37 dealer, agent, investment adviser, or investment
38 adviser representative. The revised law places the
39 substance of Article 581-14 in Section 4007.105 of
40 this title. Because the denial of a person's
41 registration is related to the registration
42 requirements and procedures revised in this chapter,
43 the revised law adds a reference to Section 4007.105

1 for guidance and for the reader's convenience.

2 Revised Law

3 Sec. 4004.202. AUTOMATIC REVOCATION OF REGISTRATION OF
4 AGENTS AND INVESTMENT ADVISER REPRESENTATIVES AFTER REVOCATION OF
5 REGISTRATION OF DEALER OR INVESTMENT ADVISER. (a) The revocation
6 of the registration of a dealer or an investment adviser under
7 Section 4007.105 constitutes a revocation of the registration of
8 any agent of the dealer or of any investment adviser representative
9 of the investment adviser, as appropriate.

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

14 (c) All evidences of registration that have been revoked
15 shall be immediately surrendered to the commissioner on request.
16 (V.A.C.S. Art. 581-25 (part).)

17 Source Law

18 Art. 581-25. The revocation of a dealer's or
19 investment adviser's registration shall constitute a
20 revocation of the registration of any agent of the
21 dealer or any investment adviser representative of the
22 investment adviser and notice of its operation on such
23 agent or investment adviser representative shall be
24 forthwith sent by the Commissioner to each of such
25 agents or investment adviser representatives. All
26 . . . evidences of registration revoked shall at once
27 be surrendered to the Commissioner upon request.

28 Revisor's Note

29 (1) Article 581-14, Vernon's Texas Civil
30 Statutes, contains the procedures governing the
31 denial, suspension, or revocation of the registration
32 of a dealer, agent, investment adviser, or investment
33 adviser representative. The revised law places the
34 substance of Article 581-14 in Section 4007.105 of
35 this title. Because the revocation of a person's
36 registration is related to the registration
37 requirements and procedures revised in this chapter,
38 the revised law adds a reference to Section 4007.105

1 for guidance and for the reader's convenience.

2 (2) Article 581-25, Vernon's Texas Civil
3 Statutes, requires the securities commissioner to send
4 a notice of revocation of registration to a dealer's
5 agent or to an investment adviser representative
6 "forthwith." The revised law substitutes "promptly"
7 for "forthwith" because in context the terms are
8 synonymous and "promptly" is more consistent with
9 modern usage.

10 SUBCHAPTER F. EXPIRATION AND RENEWAL OF REGISTRATION

11 Revised Law

12 Sec. 4004.251. EXPIRATION OF REGISTRATION. Except as
13 provided by Sections 4004.252, 4004.253, and 4004.255, all
14 registrations expire at the end of the calendar year. (V.A.C.S.
15 Art. 581-19, Subsec. A (part).)

16 Source Law

17 Art. 581-19. A. Except as provided in
18 Subsections B and C of this section, all registrations
19 shall expire at the close of the calendar year, but
20

21 Revised Law

22 Sec. 4004.252. RENEWAL OF REGISTRATION. (a) A person may
23 renew an unexpired registration by filing a renewal application in
24 the form the commissioner prescribes and by paying the required
25 renewal fee to the board before the registration's expiration date.

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

32 (c) The filing of additional statements or the provision of
33 additional information is not required for renewal unless
34 specifically requested by the commissioner. (V.A.C.S. Art. 581-19,
35 Subsecs. A (part), C, Subdiv. (1).)

1

Source Law

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

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

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Revised Law

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Sec. 4004.253. STAGGERED RENEWAL; PRORATION OF

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REGISTRATION RENEWAL FEE. (a) The board by rule may adopt a system

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under which registrations expire on various dates during the year.

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(b) For the year in which the registration expiration date

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is changed, registration fees payable after the 60th day and before

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the 30th day before January 1 of the next year shall be prorated on a

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monthly basis so that each person pays only that portion of the

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registration fee that is allocable to the number of months during

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which the registration is valid. On renewal of the registration on

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the new expiration date, the total registration renewal fee is

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payable. (V.A.C.S. Art. 581-19, Subsec. B.)

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Source Law

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

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Revised Law

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Sec. 4004.254. NOTICE OF EXPIRATION REQUIRED. Not later

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than the 30th day before the date a person's registration is

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scheduled to expire, the commissioner shall send written notice of

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the impending expiration to the person at the person's last known

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address according to the board's records. (V.A.C.S. Art. 581-19,

1 Subsec. C, Subdiv. (5).)

2 Source Law

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

9 Revised Law

10 Sec. 4004.255. RENEWAL OF EXPIRED REGISTRATION. (a) A
11 person whose registration has been expired for 90 days or less may
12 renew the registration by:

13 (1) filing a renewal application with the
14 commissioner; and

15 (2) paying to the board:

16 (A) the required renewal fee; and

17 (B) a fee that is equal to one-half of the
18 original registration application fee.

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

21 (1) filing a renewal application with the
22 commissioner; and

23 (2) paying to the board:

24 (A) all unpaid renewal fees; and

25 (B) a fee that is equal to the original
26 registration application fee.

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

33 (V.A.C.S. Art. 581-19, Subsec. C, Subdivs. (2), (3), (4).)

34 Source Law

35 (2) If a person's registration has been
36 expired for ninety (90) days or less, the person may
37 renew the registration by filing a renewal application
38 with the Commissioner and paying to the Board the

1 required renewal fee and a fee that is equal to
2 one-half of the original application fee for the
3 registration.

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

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

19 Revised Law

20 Sec. 4004.256. EFFECT OF EXPIRED REGISTRATION. A person
21 who sells securities or who renders investment advising services
22 after the person's registration has expired but before the
23 registration is renewed is subject to the sanctions provided by
24 this title for selling securities or rendering investment advice
25 without being registered. (V.A.C.S. Art. 581-19, Subsec. C,
26 Subdiv. (6).)

27 Source Law

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

34 Revised Law

35 Sec. 4004.257. CONTINUING EDUCATION. (a) The board may
36 recognize, prepare, or administer continuing education programs
37 for a person who is registered under this chapter.

38 (b) A person who is registered under this chapter must
39 participate in continuing education programs if the board requires
40 participation as a condition of maintaining the person's
41 certificate or evidence of registration. (V.A.C.S. Art. 581-19,
42 Subsec. D.)

43 Source Law

44 D. The Board may recognize, prepare, or
45 administer continuing education programs for a person
46 who is registered under this Act. If participation is
47 required by the Board as a condition of maintaining the

1 certificate or evidence of registration, a person who
2 is registered under this Act must participate in the
3 continuing education programs.

4 SUBCHAPTER G. NOTICE FILINGS OF FEDERAL COVERED INVESTMENT
5 ADVISERS AND CERTAIN REPRESENTATIVES OF FEDERAL COVERED INVESTMENT
6 ADVISERS

7 Revised Law

8 Sec. 4004.301. APPLICABILITY. This subchapter does not
9 apply to an investment adviser or investment adviser representative
10 who is exempt from registration under this title or by board rule.
11 (V.A.C.S. Art. 581-12-1, Subsec. A.)

12 Source Law

13 Art. 581-12-1. A. This section does not apply
14 to an investment adviser or investment adviser
15 representative that is exempt from registration under
16 this Act or Board rule.

17 Revised Law

18 Sec. 4004.302. NOTICE FILING. The board by rule shall
19 authorize a federal covered investment adviser or a representative
20 of a federal covered investment adviser to render services as an
21 investment adviser in this state if the commissioner receives:

22 (1) a notice filing submitted by the adviser or
23 representative that:

24 (A) is on the form and contains the information
25 the commissioner prescribes; and

26 (B) if applicable, contains a consent to service
27 appointing the commissioner as the adviser's attorney for service
28 of process, as required by Section 4001.102; and

29 (2) a notice filing fee in the amount determined under
30 Chapter 4006. (V.A.C.S. Art. 581-12-1, Subsec. B.)

31 Source Law

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

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

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

4 Revisor's Note

5 (1) Subsection B, Article 581-12-1, Vernon's
6 Texas Civil Statutes, refers to the appointment of the
7 securities commissioner as "the adviser's agent for
8 service of process under Section 8 of this Act,"
9 meaning Article 581-8, Vernon's Texas Civil Statutes,
10 which is revised as Section 4001.102 of this title.
11 The revised law substitutes "adviser's attorney" for
12 "adviser's agent" to conform with the terminology in
13 Article 581-8, which refers to the appointment of the
14 securities commissioner as the "attorney upon whom all
15 process may be served."

16 (2) Subsection B, Article 581-12-1, Vernon's
17 Texas Civil Statutes, refers to Article 581-41,
18 Vernon's Texas Civil Statutes. Throughout this
19 chapter, the revised law omits the reference to
20 Article 581-41 because that provision was repealed by
21 Section 31(1), Chapter 448 (H.B. 7), Acts of the 84th
22 Legislature, Regular Session, 2015.

23 Revised Law

24 Sec. 4004.303. EFFECTIVE DATE OF NOTICE FILING. On the
25 commissioner's receipt of a notice filing and fee payment that meet
26 the requirements of Section 4004.302, the notice filing takes
27 effect and is valid for the remainder of the calendar year.
28 (V.A.C.S. Art. 581-12-1, Subsec. C (part).)

29 Source Law

30 C. After the notice filing fee is paid and all
31 the requirements for a notice filing under Subsection
32 B of this section are met, a notice filing submitted
33 under this section takes effect and is valid for the
34 remainder of the calendar year. . . .

35 Revised Law

36 Sec. 4004.304. RENEWAL. A federal covered investment
37 adviser or a representative of a federal covered investment adviser

1 may renew a notice filing on or before the filing's expiration date
2 if the commissioner receives:

3 (1) a renewal notice filing submitted by the adviser
4 or representative; and

5 (2) a renewal fee in the amount determined under
6 Chapter 4006. (V.A.C.S. Art. 581-12-1, Subsec. C (part).)

7 Source Law

8 C. . . . A federal covered investment adviser or
9 federal covered investment adviser representative may
10 renew a notice filing on or before its expiration date
11 on submission to and receipt by the Commissioner of:

12 (1) a renewal notice filing; and
13 (2) a renewal fee in the amount determined
14 under Sections 35 and 41 of this Act.

15 Revisor's Note

16 Subsection C, Article 581-12-1, Vernon's Texas
17 Civil Statutes, refers to a "federal covered
18 investment adviser representative." The revised law
19 substitutes "a representative of a federal covered
20 investment adviser" for the quoted language for
21 consistency with Subsection B, Article 581-12-1,
22 Vernon's Texas Civil Statutes, revised as Section
23 4004.302 of this chapter, and to correct an error
24 because it is clear from the context of the source law
25 this is the person to whom the provision applies.

26 SUBCHAPTER H. REQUIREMENTS FOR PROTECTION OF VULNERABLE ADULTS
27 FROM FINANCIAL EXPLOITATION

28 Revised Law

29 Sec. 4004.351. DEFINITIONS. In this subchapter:

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

32 (2) "Exploitation," "financial exploitation," and
33 "vulnerable adult" have the meanings assigned by Section 280.001,
34 Finance Code.

35 (3) "Securities professional" means an agent, an
36 investment adviser representative, or a person who serves in a
37 supervisory or compliance capacity for a dealer or investment

1 adviser. (V.A.C.S. Art. 581-45, Subsec. A.)

2 Source Law

3 Art. 581-45. A. In this section:

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

6 (2) "Exploitation," "financial
7 exploitation," and "vulnerable adult" have the
8 meanings assigned by Section 280.001, Finance Code.

9 (3) "Securities professional" means an
10 agent, an investment adviser representative, or a
11 person who serves in a supervisory or compliance
12 capacity for a dealer or investment adviser.

13 Revisor's Note

14 Subsection A, Article 581-45, Vernon's Texas
15 Civil Statutes, provides definitions for "this
16 section," meaning Article 581-45. The revised law
17 substitutes a reference to "this subchapter" for the
18 reference to "this section" because Article 581-45 is
19 revised as this subchapter.

20 Revised Law

21 Sec. 4004.352. REPORTING SUSPECTED FINANCIAL EXPLOITATION
22 OF VULNERABLE ADULTS. (a) If a securities professional or a person
23 serving in a legal capacity for a dealer or investment adviser has
24 cause to believe that financial exploitation of a vulnerable adult
25 who is an account holder with the dealer or investment adviser has
26 occurred, is occurring, or has been attempted, the securities
27 professional or person serving in a legal capacity for the dealer or
28 investment adviser shall notify the dealer or investment adviser of
29 the suspected financial exploitation.

30 (b) If a dealer or investment adviser is notified of
31 suspected financial exploitation under Subsection (a) or otherwise
32 has cause to believe that financial exploitation of a vulnerable
33 adult who is an account holder with the dealer or investment adviser
34 has occurred, is occurring, or has been attempted, the dealer or
35 investment adviser shall assess the suspected financial
36 exploitation and submit a report to the commissioner, in accordance
37 with rules adopted under Section 4004.353, and the department in
38 the same manner as and containing the same information required to

1 be included in a report under Section 48.051, Human Resources Code.
2 The dealer or investment adviser shall submit the reports required
3 by this subsection not later than the earlier of:

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

7 (2) the fifth business day after the date the dealer or
8 investment adviser is notified of the suspected financial
9 exploitation under Subsection (a) or otherwise has cause to believe
10 that the suspected financial exploitation has occurred, is
11 occurring, or has been attempted.

12 (c) A dealer or investment adviser who submits a report to
13 the department of suspected financial exploitation of a vulnerable
14 adult under Subsection (b) is not required to make an additional
15 report of suspected abuse, neglect, or exploitation under Section
16 48.051, Human Resources Code, for the same conduct constituting the
17 reported suspected financial exploitation.

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

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

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

25 (e) The policies, programs, plans, or procedures adopted
26 under Subsection (d) may authorize the dealer or investment adviser
27 to report the suspected financial exploitation to other appropriate
28 agencies and entities in addition to the commissioner and the
29 department, including the attorney general, the Federal Trade
30 Commission, and the appropriate law enforcement agency. (V.A.C.S.
31 Art. 581-45, Subsecs. B, C, D, E.)

32 Source Law

33 B. If a securities professional or a person
34 serving in a legal capacity for a dealer or investment
35 adviser has cause to believe that financial

1 exploitation of a vulnerable adult who is an account
2 holder with the dealer or investment adviser has
3 occurred, is occurring, or has been attempted, the
4 securities professional or person serving in a legal
5 capacity for the dealer or investment adviser shall
6 notify the dealer or investment adviser of the
7 suspected financial exploitation.

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

24 (1) the date the dealer or investment
25 adviser completes the dealer's or investment adviser's
26 assessment of the suspected financial exploitation; or
27 (2) the fifth business day after the date
28 the dealer or investment adviser is notified of the
29 suspected financial exploitation under Subsection B of
30 this section or otherwise has cause to believe that the
31 suspected financial exploitation has occurred, is
32 occurring, or has been attempted.

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

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

57 Revisor's Note

58 Subsection E, Article 581-45, Vernon's Texas
59 Civil Statutes, authorizes certain actions taken
60 pursuant to policies or procedures adopted under "this
61 subsection," meaning Subsection E, Article 581-45.
62 The revised law substitutes a reference to "Subsection

1 (d)" for the reference to "this subsection" because
2 the relevant provisions of Subsection E, Article
3 581-45, are revised as Subsection (d) of this section.

4 Revised Law

5 Sec. 4004.353. FORM AND CONTENT OF REPORT. The board by
6 rule shall prescribe the form and content of the report required to
7 be submitted by a dealer or investment adviser to the commissioner
8 under Section 4004.352(b). (V.A.C.S. Art. 581-45, Subsec. N.)

9 Source Law

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

14 Revised Law

15 Sec. 4004.354. NOTIFYING THIRD PARTIES OF SUSPECTED
16 FINANCIAL EXPLOITATION OF VULNERABLE ADULTS. If a dealer or
17 investment adviser submits reports of suspected financial
18 exploitation of a vulnerable adult to the commissioner and the
19 department under Section 4004.352(b), the dealer or investment
20 adviser may at the time the dealer or investment adviser submits the
21 reports also notify a third party reasonably associated with the
22 vulnerable adult of the suspected financial exploitation, unless
23 the dealer or investment adviser suspects the third party of
24 financial exploitation of the vulnerable adult. (V.A.C.S. Art.
25 581-45, Subsec. F.)

26 Source Law

27 F. If a dealer or investment adviser submits
28 reports of suspected financial exploitation of a
29 vulnerable adult to the Securities Commissioner and
30 the department under Subsection C of this section, the
31 dealer or investment adviser may at the time the dealer
32 or investment adviser submits the reports also notify
33 a third party reasonably associated with the
34 vulnerable adult of the suspected financial
35 exploitation, unless the dealer or investment adviser
36 suspects the third party of financial exploitation of
37 the vulnerable adult.

38 Revised Law

39 Sec. 4004.355. TEMPORARY HOLD ON TRANSACTIONS IN CERTAIN
40 CASES OF SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS.

1 (a) Notwithstanding any other law, if a dealer or investment
2 adviser submits reports of suspected financial exploitation of a
3 vulnerable adult to the commissioner and the department under
4 Section 4004.352(b), the dealer or investment adviser:

5 (1) may place a hold on any transaction that:

6 (A) involves an account of the vulnerable adult;
7 and

8 (B) the dealer or investment adviser has cause to
9 believe is related to the suspected financial exploitation; and

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

13 (b) Subject to Subsection (c), a hold placed on any
14 transaction under Subsection (a) expires on the 10th business day
15 after the date the dealer or investment adviser submits the reports
16 under Section 4004.352(b).

17 (c) A dealer or investment adviser may extend a hold placed
18 on any transaction under Subsection (a) for a period not to exceed
19 30 business days after the expiration of the period prescribed by
20 Subsection (b) if requested by a state or federal agency or a law
21 enforcement agency investigating the suspected financial
22 exploitation. The dealer or investment adviser may also petition a
23 court to extend a hold placed on any transaction under Subsection
24 (a) beyond the period prescribed by Subsection (b). A court may
25 enter an order extending or shortening a hold or providing other
26 relief.

27 (d) Each dealer and investment adviser shall adopt internal
28 policies, programs, plans, or procedures for placing a hold on a
29 transaction involving an account of a vulnerable adult under
30 Subsection (a). (V.A.C.S. Art. 581-45, Subsecs. G, H, I, J.)

31 Source Law

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

1 adviser:
2 (1) may place a hold on any transaction
3 that:

4 (A) involves an account of the
5 vulnerable adult; and

6 (B) the dealer or investment adviser
7 has cause to believe is related to the suspected
8 financial exploitation; and

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

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

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

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

36 Revised Law

37 Sec. 4004.356. IMMUNITY. (a) A securities professional or
38 person serving in a legal capacity for a dealer or investment
39 adviser who makes a notification under Section 4004.352(a), a
40 dealer or investment adviser that submits a report under Section
41 4004.352(b) or makes a notification to a third party under Section
42 4004.354, or a securities professional or person serving in a legal
43 capacity who or dealer or investment adviser that testifies or
44 otherwise participates in a judicial proceeding arising from a
45 notification or report is immune from any civil or criminal
46 liability arising from the notification, report, testimony, or
47 participation in the judicial proceeding, unless the securities
48 professional, person serving in a legal capacity for the dealer or
49 investment adviser, or dealer or investment adviser acted in bad
50 faith or with a malicious purpose.

51 (b) A dealer or investment adviser that in good faith and

1 with the exercise of reasonable care places or does not place a hold
2 on any transaction under Section 4004.355(a)(1) is immune from
3 civil or criminal liability or disciplinary action resulting from
4 the action or failure to act. (V.A.C.S. Art. 581-45, Subsecs. K,
5 L.)

6 Source Law

7 K. A securities professional or person serving
8 in a legal capacity for a dealer or investment adviser
9 who makes a notification under Subsection B of this
10 section, a dealer or investment adviser that submits a
11 report under Subsection C of this section or makes a
12 notification to a third party under Subsection F of
13 this section, or a securities professional or person
14 serving in a legal capacity who or dealer or investment
15 adviser that testifies or otherwise participates in a
16 judicial proceeding arising from a notification or
17 report is immune from any civil or criminal liability
18 arising from the notification, report, testimony, or
19 participation in the judicial proceeding, unless the
20 securities professional, person serving in a legal
21 capacity for the dealer or investment adviser, or
22 dealer or investment adviser acted in bad faith or with
23 a malicious purpose.

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

30 Revised Law

31 Sec. 4004.357. RECORDS. To the extent permitted by state or
32 federal law, a dealer or investment adviser, on request, shall
33 provide access to or copies of records relevant to the suspected
34 financial exploitation of a vulnerable adult to the commissioner,
35 the department, a law enforcement agency, or a prosecuting
36 attorney's office, either as part of a report to the commissioner,
37 department, law enforcement agency, or prosecuting attorney's
38 office or at the request of the commissioner, department, law
39 enforcement agency, or prosecuting attorney's office in accordance
40 with an investigation. (V.A.C.S. Art. 581-45, Subsec. M.)

41 Source Law

42 M. To the extent permitted by state or federal
43 law, a dealer or investment adviser, on request, shall
44 provide access to or copies of records relevant to the
45 suspected financial exploitation of a vulnerable adult
46 to the Securities Commissioner, the department, a law
47 enforcement agency, or a prosecuting attorney's
48 office, either as part of a report to the Securities

1 Commissioner, department, law enforcement agency, or
2 prosecuting attorney's office or at the request of the
3 Securities Commissioner, department, law enforcement
4 agency, or prosecuting attorney's office in accordance
5 with an investigation.

6 CHAPTER 4005. EXEMPTIONS

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12 Sec. 4005.105. WITHDRAWAL OF APPROVAL 194

13 CHAPTER 4005. EXEMPTIONS

14 SUBCHAPTER A. EXEMPT TRANSACTIONS

15 Revised Law

16 Sec. 4005.001. SCOPE OF EXEMPTION. Except as expressly

17 provided otherwise in this title, this title does not apply to any

18 sale of, offer for sale of, solicitation of, subscription to,

19 dealing in, or delivery of a security made in a transaction or under

20 a condition specified in this subchapter. (V.A.C.S. Art. 581-5

21 (part).)

22 Source Law

23 Art. 581-5. Except as hereinafter in this Act

24 specifically provided, the provisions of this Act

25 shall not apply to [the sale of any security when made]

26 in any of the following transactions and under any of

27 the following conditions, and . . . that is to say, the

28 provisions of this Act shall not apply to any sale,

29 offer for sale, solicitation, subscription, dealing in

30 or delivery of any security under any of the following

31 transactions or conditions:

32 . . .

33 Revisor's Note

34 (1) Article 581-5, Vernon's Texas Civil

35 Statutes, refers to "this Act," which is The

36 Securities Act (Article 581-1 et seq., Vernon's Texas

37 Civil Statutes). The provisions of The Securities Act

38 are revised as this title. The revised law throughout

1 this chapter therefore substitutes references to "this
2 title" for references to "this Act."

3 (2) Article 581-5, Vernon's Texas Civil
4 Statutes, states "that is to say, the provisions of
5 this Act shall not apply to" in relation to the sale of
6 a security. The revised law omits "that is to say" as
7 unnecessary and redundant.

8 Revised Law

9 Sec. 4005.002. COURT SUPERVISED SALES. The exemption
10 provided by Section 4005.001 applies to the sale of a security made:

11 (1) at a judicial, executor's, administrator's,
12 guardian's, or conservator's sale; or

13 (2) by a receiver or trustee in insolvency or
14 bankruptcy. (V.A.C.S. Art. 581-5, Subsec. A.)

15 Source Law

16 Art. 581-5. [Except as hereinafter in this Act
17 specifically provided, the provisions of this Act
18 shall not apply to] the sale of any security when made
19 [in any of the following transactions and under any of
20 the following conditions,] . . . that is to say, the
21 provisions of this Act shall not apply to any sale,
22 offer for sale, solicitation, subscription, dealing in
23 or delivery of any security under any of the following
24 transactions or conditions:

25 A. At any judicial, executor's,
26 administrator's, guardian's or conservator's sale, or
27 any sale by a receiver or trustee in insolvency or
28 bankruptcy.

29 Revised Law

30 Sec. 4005.003. PLEDGED SECURITIES. The exemption provided
31 by Section 4005.001 applies to the sale of a security pledged in
32 good faith as security for a bona fide debt that is made by or for
33 the account of a pledge holder or mortgagee that is selling the
34 security or offering the security for sale or delivery in the
35 ordinary course of business to liquidate the debt. (V.A.C.S. Art.
36 581-5, Subsec. B.)

37 Source Law

38 Art. 581-5. [Except as hereinafter in this Act
39 specifically provided, the provisions of this Act
40 shall not apply to] the sale of any security when made
41 [in any of the following transactions and under any of
42 the following conditions,] . . . that is to say, the

1 provisions of this Act shall not apply to any sale,
2 offer for sale, solicitation, subscription, dealing in
3 or delivery of any security under any of the following
4 transactions or conditions:

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

10 Revised Law

11 Sec. 4005.004. ISOLATED TRANSACTIONS. (a) The exemption
12 provided by Section 4005.001 applies to the sale of a security that
13 is made by a vendor or on a vendor's behalf by a dealer or other
14 agent and is made in the ordinary course of a bona fide personal
15 investment of the vendor's personal holdings or a change in the
16 investment if:

17 (1) the vendor is not engaged in the business of
18 selling securities; and

19 (2) the sale is an isolated transaction not made in the
20 course of repeated and consecutive transactions of a like
21 character.

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

28 (c) A person acting as an agent for a vendor in any sale or
29 offer for sale under Subsection (a) must be registered under this
30 title. (V.A.C.S. Art. 581-5, Subsec. C (part).)

31 Source Law

32 Art. 581-5. [Except as hereinafter in this Act
33 specifically provided, the provisions of this Act
34 shall not apply to] the sale of any security when made
35 [in any of the following transactions and under any of
36 the following conditions,] . . . that is to say, the
37 provisions of this Act shall not apply to any sale,
38 offer for sale, solicitation, subscription, dealing in
39 or delivery of any security under any of the following
40 transactions or conditions:

41 C. (1) Sales of securities made by or in behalf
42 of a vendor, whether by dealer or other agent, in the
43 ordinary course of bona fide personal investment of

1 the personal holdings of such vendor, or change in such
2 investment, if such vendor is not engaged in the
3 business of selling securities and the sale or sales
4 are isolated transactions not made in the course of
5 repeated and successive transactions of a like
6 character; provided, that in no event shall such sales
7 or offerings be exempt from the provisions of this Act
8 when made or intended by the vendor or his agent, for
9 the benefit, either directly or indirectly, of any
10 company or corporation except the individual vendor
11 (other than a usual commission to said agent), and
12 provided further, that any person acting as agent for
13 said vendor shall be registered pursuant to this Act;
14

. . .

15 Revisor's Note

16 (1) Subsection C, Article 581-5, Vernon's Texas
17 Civil Statutes, refers to "sale" and "sales." The
18 revised law omits "sales" as a separate term because
19 Section 311.012(b), Government Code (Code
20 Construction Act), applicable to the revised law,
21 provides that a reference to the singular includes the
22 plural and vice versa. Throughout this chapter,
23 references in which both the singular and plural forms
24 of the word are used are revised using only one form of
25 the term.

26 (2) Subsection C, Article 581-5, Vernon's Texas
27 Civil Statutes, refers to the sale or offering of a
28 security for the benefit of a "company or corporation"
29 other than a vendor described by that subsection. The
30 revised law omits the reference to "corporation"
31 because Subsection B, Article 581-4, Vernon's Texas
32 Civil Statutes, revised as Section 4001.064 of this
33 title, defines "company" to include a "corporation."

34 Revised Law

35 Sec. 4005.005. INSURANCE COMPANY SALES. (a) The exemption
36 provided by Section 4005.001 applies to the sale of a security made
37 by or on behalf of an insurance company that:

38 (1) is subject to the supervision or control of the
39 Texas Department of Insurance; and

40 (2) owns the security as a legal and bona fide
41 investment.

1 (b) A sale or offer for sale under Subsection (a) is not
2 exempt from this title if the sale or offer is made or intended to be
3 made directly or indirectly for the benefit of another company.
4 (V.A.C.S. Art. 581-5, Subsec. C (part).)

5 Source Law

6 Art. 581-5. [Except as hereinafter in this Act
7 specifically provided, the provisions of this Act
8 shall not apply to] the sale of any security when made
9 [in any of the following transactions and under any of
10 the following conditions,] . . . that is to say, the
11 provisions of this Act shall not apply to any sale,
12 offer for sale, solicitation, subscription, dealing in
13 or delivery of any security under any of the following
14 transactions or conditions:

15 C. . . .

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

25 Revisor's Note

26 Subdivision (2), Subsection C, Article 581-5,
27 Vernon's Texas Civil Statutes, provides that the
28 exemption under Article 581-5 that applies to a
29 transaction described by that subdivision does not
30 apply to a sale or offer for the benefit of "any other
31 company as that term is defined in this Act," meaning
32 The Securities Act (Article 581-1 et seq., Vernon's
33 Texas Civil Statutes), revised as this title. The
34 revised law omits "as that term is defined in this Act"
35 as unnecessary because the definition of "company" in
36 The Securities Act, revised as Section 4001.064 of
37 this title, applies on its own terms.

38 Revised Law

39 Sec. 4005.006. STOCK DIVIDENDS. The exemption provided by
40 Section 4005.001 applies to a distribution of securities by a
41 corporation directly to the corporation's stockholders as a stock
42 dividend or other distribution paid out of earnings or surplus.

1 (V.A.C.S. Art. 581-5, Subsec. D.)

2 Source Law

3 Art. 581-5. [Except as hereinafter in this Act
4 specifically provided, the provisions of this Act
5 shall not apply to] the sale of any security when made
6 [in any of the following transactions and under any of
7 the following conditions,] . . . that is to say, the
8 provisions of this Act shall not apply to any sale,
9 offer for sale, solicitation, subscription, dealing in
10 or delivery of any security under any of the following
11 transactions or conditions:

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

16 Revised Law

17 Sec. 4005.007. EXISTING SECURITY HOLDERS. (a) In this
18 section, "existing security holder" includes a person who is a
19 holder of a convertible security or nontransferable warrant at the
20 time of the transaction.

21 (b) The exemption provided by Section 4005.001 applies to an
22 offer by the issuer of its securities to the issuer's existing
23 security holders and to any transaction pursuant to the offer if no
24 commission or other remuneration, other than a stand-by commission,
25 is paid or given directly or indirectly for soliciting any security
26 holder in this state. (V.A.C.S. Art. 581-5, Subsec. E.)

27 Source Law

28 Art. 581-5. [Except as hereinafter in this Act
29 specifically provided, the provisions of this Act
30 shall not apply to] the sale of any security when made
31 [in any of the following transactions and under any of
32 the following conditions,] . . . that is to say, the
33 provisions of this Act shall not apply to any sale,
34 offer for sale, solicitation, subscription, dealing in
35 or delivery of any security under any of the following
36 transactions or conditions:

37 E. Any offer and any transaction pursuant to any
38 offer by the issuer of its securities to its existing
39 security holders (including persons who at the time of
40 the transaction are holders of convertible securities
41 or nontransferable warrants) if no commission or other
42 remuneration (other than a stand-by commission) is
43 paid or given directly or indirectly for soliciting
44 any security holder in this State.

45 Revised Law

46 Sec. 4005.008. FINANCIAL DISTRESS. (a) The exemption
47 provided by Section 4005.001 applies to the issuance in good faith

1 of securities by a company:

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

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

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

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

14 (2) the security holders or creditors do not pay,
15 give, or promise any consideration, and are not obligated to pay or
16 give any consideration, for the securities issued other than the
17 securities of or claims against the company or the company's
18 predecessor held or owned by the security holders or creditors at
19 the time of the issuance. (V.A.C.S. Art. 581-5, Subsec. F.)

20 Source Law

21 Art. 581-5. [Except as hereinafter in this Act
22 specifically provided, the provisions of this Act
23 shall not apply to] the sale of any security when made
24 [in any of the following transactions and under any of
25 the following conditions,] . . . that is to say, the
26 provisions of this Act shall not apply to any sale,
27 offer for sale, solicitation, subscription, dealing in
28 or delivery of any security under any of the following
29 transactions or conditions:

30 F. The issue in good faith of securities by a
31 company to its security holders, or creditors, in the
32 process of a bona fide reorganization of the company
33 made in good faith, or the issue in good faith of
34 securities by a company, organized solely for the
35 purpose of taking over the assets and continuing the
36 business of a predecessor company, to the security
37 holders or creditors of such predecessor company,
38 provided that in either such case such securities are
39 issued in exchange for the securities of such holders
40 or claims of such creditors, or both, and in either
41 such case security holders or creditors do not pay or
42 give or promise and are not obligated to pay or give
43 any consideration for the securities so issued other
44 than the securities of or claims against said company
45 or its predecessor then held or owned by them.

1 Revised Law

2 Sec. 4005.009. MERGER, CONSOLIDATION, AND ASSET SALES.

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

- 10 (1) a merger;
11 (2) a consolidation; or
12 (3) a sale of corporate assets.

13 (b) The exemption provided by Section 4005.001 applies to an
14 issuance or sale described by Subsection (a) only if the security
15 holders do not pay, give, or promise any consideration, and are not
16 obligated to pay or give any consideration, for the securities
17 issued or sold other than the corporation's securities held by the
18 security holders at the time of the issuance or sale. (V.A.C.S.
19 Art. 581-5, Subsec. G (part).)

20 Source Law

21 Art. 581-5. [Except as hereinafter in this Act
22 specifically provided, the provisions of this Act
23 shall not apply to] the sale of any security when made
24 [in any of the following transactions and under any of
25 the following conditions,] . . . that is to say, the
26 provisions of this Act shall not apply to any sale,
27 offer for sale, solicitation, subscription, dealing in
28 or delivery of any security under any of the following
29 transactions or conditions:

30 G. The issue or sale of securities (a) by one
31 corporation to another corporation or the security
32 holders thereof pursuant to a vote by one or more
33 classes of such security holders, as required by the
34 certificate of incorporation or the applicable
35 corporation statute, in connection with a merger,
36 consolidation or sale of corporate assets, or . . .
37 provided that in any such case such security holders do
38 not pay or give or promise and are not obligated to pay
39 or give any consideration for the securities so issued
40 or sold other than the securities of the corporation
41 then held by them.

42 Revisor's Note

43 Subdivision (a), Subsection G, Article 581-5,

1 Vernon's Texas Civil Statutes, refers to a company's
2 "certificate of incorporation or the applicable
3 corporation statute." The revised law adds a
4 reference to a "certificate of formation" to conform
5 to the terminology of the Business Organizations Code,
6 which uses the term "certificate of formation" to
7 describe the document required to be filed with the
8 secretary of state to form a domestic filing entity,
9 including a corporation, an association, and certain
10 partnerships, on or after January 1, 2006.

11 Revised Law

12 Sec. 4005.010. EXCHANGE OF SHARES. (a) The exemption
13 provided by Section 4005.001 applies to the issuance or sale of
14 securities by one corporation to the corporation's stockholders in
15 connection with:

16 (1) the change of par value stock to no par value stock
17 or vice versa; or

18 (2) the exchange of outstanding shares for the same or
19 a greater or smaller number of shares.

20 (b) The exemption provided by Section 4005.001 applies to an
21 issuance or sale described by Subsection (a) only if the security
22 holders do not pay, give, or promise any consideration, and are not
23 obligated to pay or give any consideration, for the securities
24 issued or sold other than the corporation's securities held by the
25 security holders at the time of the issuance or sale. (V.A.C.S.
26 Art. 581-5, Subsec. G (part).)

27 Source Law

28 Art. 581-5. [Except as hereinafter in this Act
29 specifically provided, the provisions of this Act
30 shall not apply to] the sale of any security when made
31 [in any of the following transactions and under any of
32 the following conditions,] . . . that is to say, the
33 provisions of this Act shall not apply to any sale,
34 offer for sale, solicitation, subscription, dealing in
35 or delivery of any security under any of the following
36 transactions or conditions:

37 G. The issue or sale of securities . . . (b) by
38 one corporation to its own stockholders in connection
39 with the change of par value stock to no par value

1 stock or vice versa, or the exchange of outstanding
2 shares for the same or a greater or smaller number of
3 shares; provided that in any such case such security
4 holders do not pay or give or promise and are not
5 obligated to pay or give any consideration for the
6 securities so issued or sold other than the securities
7 of the corporation then held by them.

8 Revised Law

9 Sec. 4005.011. INSTITUTIONAL INVESTORS. The exemption
10 provided by Section 4005.001 applies to the sale of a security to:

- 11 (1) a bank;
- 12 (2) a trust company;
- 13 (3) a building and loan association;
- 14 (4) a savings and loan association;
- 15 (5) an insurance company;
- 16 (6) a surety or guaranty company;
- 17 (7) a savings institution;
- 18 (8) an investment company as defined by the Investment
19 Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.);
- 20 (9) a small business investment company as defined by
21 the Small Business Investment Act of 1958 (15 U.S.C. Section 661 et
22 seq.); or
- 23 (10) a registered dealer actually engaged in buying
24 and selling securities. (V.A.C.S. Art. 581-5, Subsec. H.)

25 Source Law

26 Art. 581-5. [Except as hereinafter in this Act
27 specifically provided, the provisions of this Act
28 shall not apply to] the sale of any security when made
29 [in any of the following transactions and under any of
30 the following conditions,] . . . that is to say, the
31 provisions of this Act shall not apply to any sale,
32 offer for sale, solicitation, subscription, dealing in
33 or delivery of any security under any of the following
34 transactions or conditions:

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

44 Revisor's Note

- 45 (1) Subsection H, Article 581-5, Vernon's Texas

1 Civil Statutes, refers to the Small Business
2 Investment Act of 1958 "as amended." The revised law
3 omits "as amended" because under Section 311.027,
4 Government Code (Code Construction Act), applicable to
5 the revised law, a reference to a statute or rule
6 applies to all reenactments, revisions, or amendments
7 of the statute or rule unless expressly provided
8 otherwise.

9 (2) Subsection H, Article 581-5, Vernon's Texas
10 Civil Statutes, refers to the "Investment Company Act
11 of 1940" and the "Small Business Investment Act of
12 1958." For the convenience of the reader, the revised
13 law includes a reference to the United States Code
14 citation for each act.

15 (3) Subsection H, Article 581-5, Vernon's Texas
16 Civil Statutes, refers to a "building and loan
17 association." The revised law adds a reference to
18 "savings and loan association" because the terms are
19 synonymous and the latter is the term used in this
20 state.

21 Revised Law

22 Sec. 4005.012. PRIVATE LIMITED OFFERINGS. (a) The
23 exemption provided by Section 4005.001 applies to the following
24 sales made without any public solicitation or advertisement:

25 (1) the sale of a security by the issuer of the
26 security if the total number of security holders of the issuer does
27 not exceed 35 persons after the sale; or

28 (2) the sale by an issuer of the issuer's securities to
29 not more than 15 persons during the 12-month period ending with the
30 date of the sale if the persons purchased the securities for their
31 own account and not for distribution.

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

34 (1) a purchaser of a security in a transaction exempt

1 under another provision of this subchapter;

2 (2) a purchaser of a security exempt under Subchapter
3 B; and

4 (3) a purchaser of a security that is part of an
5 offering registered under Subchapter A, B, or C, Chapter 4003.
6 (V.A.C.S. Art. 581-5, Subsec. I (part).)

7 Source Law

8 Art. 581-5. [Except as hereinafter in this Act
9 specifically provided, the provisions of this Act
10 shall not apply to] the sale of any security when made
11 [in any of the following transactions and under any of
12 the following conditions,] . . . that is to say, the
13 provisions of this Act shall not apply to any sale,
14 offer for sale, solicitation, subscription, dealing in
15 or delivery of any security under any of the following
16 transactions or conditions:

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

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

23 . . .
24 (c) the sale by an issuer of its securities
25 during the period of twelve (12) months ending with the
26 date of the sale in question to not more than fifteen
27 (15) persons (excluding, in determining such fifteen
28 (15) persons, purchasers of securities in transactions
29 exempt under other provisions of this Section 5,
30 purchasers of securities exempt under Section 6 hereof
31 and purchasers of securities which are part of an
32 offering registered under Section 7 hereof), provided
33 such persons purchased such securities for their own
34 account and not for distribution.

35 Revisor's Note

36 Subdivision (c), Subsection I, Article 581-5,
37 Vernon's Texas Civil Statutes, refers to an offering
38 registered under Section 7. The revised law
39 substitutes a reference to "Subchapter A, B, or C,
40 Chapter 4003" of this title for the reference to
41 Section 7 because Article 581-7, Vernon's Texas Civil
42 Statutes, is revised as those subchapters.

43 Revised Law

44 Sec. 4005.013. COMPENSATION PLANS AND CONTRACTS. The
45 exemption provided by Section 4005.001 applies to the sale or
46 distribution of a security without any public solicitation or

1 advertisement if the sale or distribution is made:

2 (1) by an issuer of the security or any participating
3 subsidiary of the issuer; and

4 (2) under a bona fide thrift, savings, stock purchase,
5 retirement, pension, profit-sharing, option, bonus, appreciation
6 right, incentive, or similar written compensation plan or written
7 compensation contract established by the issuer or the issuer's
8 subsidiary for the benefit of:

9 (A) employees, directors, general partners,
10 managers, or officers of the issuer or subsidiary;

11 (B) the issuer's or subsidiary's trustees, if the
12 issuer or subsidiary is a business trust; or

13 (C) consultants or advisers who provide to the
14 issuer or subsidiary bona fide services unrelated to the offer or
15 sale of securities in a capital-raising transaction. (V.A.C.S.
16 Art. 581-5, Subsec. I (part).)

17 Source Law

18 Art. 581-5. [Except as hereinafter in this Act
19 specifically provided, the provisions of this Act
20 shall not apply to] the sale of any security when made
21 [in any of the following transactions and under any of
22 the following conditions,] . . . that is to say, the
23 provisions of this Act shall not apply to any sale,
24 offer for sale, solicitation, subscription, dealing in
25 or delivery of any security under any of the following
26 transactions or conditions:

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

29 . . .
30 (b) the sale or distribution by an issuer
31 or a participating subsidiary of the issuer, if any, of
32 a security under a bona fide thrift, savings, stock
33 purchase, retirement, pension, profit-sharing,
34 option, bonus, appreciation right, incentive, or
35 similar written compensation plan or written
36 compensation contract established by the issuer or its
37 subsidiary for the benefit of employees, directors,
38 general partners, managers, or officers of the issuer
39 or subsidiary, for the benefit of its trustees if the
40 issuer or subsidiary is a business trust, or for the
41 benefit of consultants or advisors who provide to the
42 issuer or subsidiary bona fide services unrelated to
43 the offer or sale of securities in a capital-raising
44 transaction; or
45 . . .

46 Revised Law

47 Sec. 4005.014. MORTGAGES AND LIENS. The exemption provided

1 by Section 4005.001 applies to a single transaction in which:

2 (1) the securities disposed of consist exclusively of
3 notes or bonds secured by a mortgage or vendor's lien on real
4 property or tangible personal property; and

5 (2) the entire mortgage or lien is sold or transferred
6 with all of the notes or bonds secured by the mortgage or lien.

7 (V.A.C.S. Art. 581-5, Subsec. J.)

8 Source Law

9 Art. 581-5. [Except as hereinafter in this Act
10 specifically provided, the provisions of this Act
11 shall not apply to] the sale of any security when made
12 [in any of the following transactions and under any of
13 the following conditions,] . . . that is to say, the
14 provisions of this Act shall not apply to any sale,
15 offer for sale, solicitation, subscription, dealing in
16 or delivery of any security under any of the following
17 transactions or conditions:

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

24 Revisor's Note

25 Subsection J, Article 581-5, Vernon's Texas Civil
26 Statutes, refers to the disposition of securities
27 consisting exclusively of "notes or bonds secured by
28 [a] mortgage or vendor's lien upon real estate," but
29 subsequently refers to only "the entire mortgage."
30 The revised law adds "or lien" to the second reference
31 to the mortgage in Subsection J to conform to the first
32 reference to mortgage in the subsection and to provide
33 consistency with the terminology throughout Section
34 4005.014. The revised law also substitutes "real
35 property" for "real estate" because the terms are
36 synonymous and the former is the term used in the
37 Property Code.

38 Revised Law

39 Sec. 4005.015. NONPROFITS. The exemption provided by
40 Section 4005.001 applies to the disposition of a security or

1 membership:

2 (1) issued by a corporation or association:

3 (A) that is organized exclusively for a
4 religious, educational, benevolent, fraternal, charitable, or
5 reformatory purpose;

6 (B) that is not organized for pecuniary profit;
7 and

8 (C) for which no part of the net earnings inures
9 to the benefit of any stockholder, shareholder, or individual
10 member of the corporation or association; and

11 (2) for which no commission or remuneration is paid or
12 given or is to be paid or given. (V.A.C.S. Art. 581-5, Subsec. K.)

13 Source Law

14 Art. 581-5. [Except as hereinafter in this Act
15 specifically provided, the provisions of this Act
16 shall not apply to] the sale of any security when made
17 [in any of the following transactions and under any of
18 the following conditions,] . . . that is to say, the
19 provisions of this Act shall not apply to any sale,
20 offer for sale, solicitation, subscription, dealing in
21 or delivery of any security under any of the following
22 transactions or conditions:

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

33 Revised Law

34 Sec. 4005.016. FINANCIAL INSTITUTIONS. The exemption
35 provided by Section 4005.001 applies to:

36 (1) the sale, by the issuer itself or by a registered
37 dealer, of any security issued or guaranteed by:

38 (A) a bank organized and subject to regulation
39 under the laws of:

40 (i) the United States; or

41 (ii) a state, territory, or insular
42 possession of the United States; or

1 (B) a savings and loan association organized and
2 subject to regulation under the laws of this state; or

3 (2) the sale, by the issuer itself, of any security
4 issued by a federal savings and loan association. (V.A.C.S. Art.
5 581-5, Subsec. L.)

6 Source Law

7 Art. 581-5. [Except as hereinafter in this Act
8 specifically provided, the provisions of this Act
9 shall not apply to] the sale of any security when made
10 [in any of the following transactions and under any of
11 the following conditions,] . . . that is to say, the
12 provisions of this Act shall not apply to any sale,
13 offer for sale, solicitation, subscription, dealing in
14 or delivery of any security under any of the following
15 transactions or conditions:

16 L. The sale by the issuer itself, or by a
17 registered dealer, of any security issued or
18 guaranteed by any bank organized and subject to
19 regulation under the laws of the United States or under
20 the laws of any State or territory of the United
21 States, or any insular possession thereof, or by any
22 savings and loan association organized and subject to
23 regulation under the laws of this State, or the sale by
24 the issuer itself of any security issued by any federal
25 savings and loan association.

26 Revised Law

27 Sec. 4005.017. GOVERNMENT ISSUANCE OR GUARANTEE. The
28 exemption provided by Section 4005.001 applies to the sale, by the
29 issuer itself or by a registered dealer, of any security either
30 issued or guaranteed by:

31 (1) the United States;

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

34 (3) a political subdivision of a state of the United
35 States, including a county, city, municipal corporation, district,
36 and authority; or

37 (4) a public or governmental agency or instrumentality
38 of an entity described by Subdivisions (1)-(3). (V.A.C.S. Art.
39 581-5, Subsec. M.)

40 Source Law

41 Art. 581-5. [Except as hereinafter in this Act
42 specifically provided, the provisions of this Act
43 shall not apply to] the sale of any security when made
44 [in any of the following transactions and under any of

1 the following conditions,] . . . that is to say, the
2 provisions of this Act shall not apply to any sale,
3 offer for sale, solicitation, subscription, dealing in
4 or delivery of any security under any of the following
5 transactions or conditions:

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

16 Revisor's Note

17 Subsection M, Article 581-5, Vernon's Texas Civil
18 Statutes, refers to a political subdivision of a state
19 of the United States, "including but not limited to"
20 several local governmental entities. The revised law
21 omits "but not limited to" because Section
22 311.005(13), Government Code (Code Construction Act),
23 applicable to the revised law, provides that
24 "includes" and "including" are terms of enlargement
25 and not of limitation and do not create a presumption
26 that components not expressed are excluded.

27 Revised Law

28 Sec. 4005.018. COOPERATIVES. (a) The exemption provided
29 by Section 4005.001 applies to:

30 (1) the sale and issuance of:

31 (A) any securities issued by a farmers'
32 cooperative marketing association organized under Chapter 52,
33 Agriculture Code, or the predecessor of that law (Article 5737 et
34 seq., Revised Statutes);

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

38 or

39 (C) any equity securities issued by a cooperative
40 association organized under the Texas Cooperative Association Law
41 as described by Section 1.008(i), Business Organizations Code, or

1 the predecessor of that law (Article 1396-50.01, Vernon's Texas
2 Civil Statutes); or

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

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

11 (1) nonmembers; or

12 (2) members and a commission is paid or contracted to
13 be paid to the agent. (V.A.C.S. Art. 581-5, Subsec. N.)

14 Source Law

15 Art. 581-5. [Except as hereinafter in this Act
16 specifically provided, the provisions of this Act
17 shall not apply to] the sale of any security when made
18 [in any of the following transactions and under any of
19 the following conditions,] . . . that is to say, the
20 provisions of this Act shall not apply to any sale,
21 offer for sale, solicitation, subscription, dealing in
22 or delivery of any security under any of the following
23 transactions or conditions:

24 N. The sale and issuance of any securities
25 issued by any farmers' cooperative marketing
26 association organized under Chapter 52, Agriculture
27 Code, or the predecessor of that law (Article 5737 et
28 seq., Revised Statutes); the sale and issuance of any
29 securities issued by any mutual loan corporation
30 organized under Chapter 54, Agriculture Code, or the
31 predecessor of that law (Article 2500 et seq., Revised
32 Statutes); the sale and issuance of any equity
33 securities issued by any cooperative association
34 organized under the Cooperative Association Act, as
35 amended (Article 1396-50.01, Vernon's Texas Civil
36 Statutes); and the sale of any securities issued by any
37 farmers' cooperative society organized under Chapter
38 51, Agriculture Code, or the predecessor of that law
39 (Article 2514 et seq., Revised Statutes). Provided,
40 however, this exemption shall not be applicable to
41 agents of any farmers' cooperative marketing
42 association, mutual loan corporation, cooperative
43 association, or farmers' cooperative society when the
44 sale of such securities is made to non-members, or when
45 the sale of such securities is made to members or
46 non-members and a commission is paid or contracted to
47 be paid to the said agents.

48 Revisor's Note

49 Subsection N, Article 581-5, Vernon's Texas Civil

1 Statutes, refers to "the Cooperative Association Act,
2 as amended (Article 1396-50.01, Vernon's Texas Civil
3 Statutes)." Section 1, Chapter 182, Acts of the 78th
4 Legislature, Regular Session, 2003, codified the
5 Cooperative Association Act as the Texas Cooperative
6 Association Law as described by Section 1.008(i),
7 Business Organizations Code. The revised law is
8 drafted accordingly. The revised law also omits "as
9 amended" for the reason stated in Revisor's Note (1) to
10 Section 4005.011 of this chapter.

11 Revised Law

12 Sec. 4005.019. SECONDARY MARKET SALES. (a) In this
13 section, "recognized securities manual" means a nationally
14 distributed manual of securities that is approved by the board for
15 use under this section.

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

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

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

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

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

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

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

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

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

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

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

11 (9) either:

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

14 (i) qualified for sale by a permit issued
15 under Subchapter A, Chapter 4003;

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

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

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

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

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

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

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

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

1 years.

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

9 (d) Notice of any court injunction enjoining the sale or
10 resale of a security described by this section, or of an order
11 revoking or suspending the exemption under Subsection (c) with
12 respect to a security, shall be mailed by certified or registered
13 mail with return receipt requested or otherwise delivered to any
14 dealer believed to be selling or offering for sale the type of
15 securities referred to in the notice. Subsections (b)(6) and (7) do
16 not apply to a dealer until the dealer has received from the
17 commissioner actual notice of the revocation or suspension.

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

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

26 (g) A judgment in favor of the plaintiff does not prevent
27 the board from revoking the recognition of a manual previously
28 approved under this section for any proper cause that may accrue or
29 be discovered. (V.A.C.S. Art. 581-5, Subsec. O.)

30 Source Law

31 Art. 581-5. [Except as hereinafter in this Act
32 specifically provided, the provisions of this Act
33 shall not apply to] the sale of any security when made
34 [in any of the following transactions and under any of
35 the following conditions,] . . . that is to say, the
36 provisions of this Act shall not apply to any sale,
37 offer for sale, solicitation, subscription, dealing in

1 or delivery of any security under any of the following
2 transactions or conditions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

61 The Commissioner may issue a stop order or by
62 order prohibit, revoke or suspend the exemption under
63 this Subsection O with respect to any security if the
64 Commissioner has reasonable cause to believe that the
65 plan of business of the issuer of such security, the
66 security, or the sale thereof would tend to work a
67 fraud or deceit upon any purchaser or purchasers

1 thereof, such order to be subject to review in the
2 manner provided by Section 24 of this Act. Notice of
3 any court injunction enjoining the sale, or resale, of
4 any such security, or of an order revoking or
5 suspending the exemption under this subdivision with
6 respect to any security, shall be delivered or shall be
7 mailed by certified or registered mail with return
8 receipt requested, to any dealers believed to be
9 selling, or offering for sale, securities of the type
10 referred to in the notice; and the prohibitions of (6)
11 and (7) above of this Subsection O shall be
12 inapplicable to any dealer until the dealer has
13 received actual notice from the commissioner of such
14 revocation or suspension.

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

28 Revisor's Note

29 (1) Subsection O, Article 581-5, Vernon's Texas
30 Civil Statutes, refers to the suspension or revocation
31 of recognition "hereunder" of any manuals previously
32 approved under Subsection O, and to an application
33 submitted by a plaintiff for approval of its manual
34 "hereunder." In each instance, it is clear from the
35 context that "hereunder" refers to Subsection O,
36 Article 581-5, revised as Section 4005.019 of this
37 chapter. For that reason, the revised law substitutes
38 a reference to "this section" for the reference to
39 "hereunder."

40 (2) Subdivision (6), Subsection O, Article
41 581-5, Vernon's Texas Civil Statutes, refers to a court
42 "of competent jurisdiction." The revised law omits
43 the quoted language as unnecessary. The determination
44 of whether a particular court has jurisdiction over a
45 matter is made under other law, and it is not necessary
46 to refer to that determination in this section.

47 (3) Subdivision (7), Subsection O, Article

1 581-5, Vernon's Texas Civil Statutes, refers to a
2 revocation or suspension that is not in "force and
3 effect." The revised law omits "force" because, in
4 context, "force" is included within the meaning of
5 "effect."

6 (4) Subdivision (9), Subsection O, Article
7 581-5, Vernon's Texas Civil Statutes, refers to a
8 security "registered by qualification . . . under
9 Section 7 of this Act," meaning Article 581-7 of The
10 Securities Act (V.A.C.S. Article 581-1 et seq.),
11 revised in this title. There are no references to
12 "registration by qualification" in Article 581-7,
13 Vernon's Texas Civil Statutes. However, Subsection A,
14 Article 581-10, Vernon's Texas Civil Statutes, revised
15 as Section 4003.006 of this title, references "an
16 application for qualifying securities under Section
17 7A," meaning Subsection A, Article 581-7, Vernon's
18 Texas Civil Statutes. Subsection B, Article 581-10,
19 Vernon's Texas Civil Statutes, revised as Section
20 4003.007 of this title, also references a "permit
21 qualifying securities." It is clear from the portion
22 of Subsection A, Article 581-7, revised in Chapter
23 4003 of this title and from other provisions of The
24 Securities Act that the referenced permit authorizes
25 the permit holder to offer for sale and sell
26 securities. The revised law substitutes securities
27 "qualified for sale by a permit issued under
28 Subchapter A, Chapter 4003" for "securities registered
29 by qualification" for the reason stated in Revisor's
30 Note (1) to Section 4003.001.

31 (5) Subdivision (9), Subsection O, Article
32 581-5, Vernon's Texas Civil Statutes, refers to
33 securities "registered by . . . notification or
34 coordination under Section 7 of this Act." The

1 provisions of Article 581-7, Vernon's Texas Civil
2 Statutes, relating to the registration of securities
3 by notification and coordination are Subsections B and
4 C of that article, revised as Subchapters B and C,
5 Chapter 4003, of this title, respectively, and the
6 revised law is drafted accordingly.

7 (6) Subsection O, Article 581-5, Vernon's Texas
8 Civil Statutes, refers to a hearing before the State
9 Securities Board or a hearings officer concerning the
10 revocation or suspension of a previously approved
11 manual as "now or hereafter required by law." Chapter
12 2003, Government Code, which was enacted after
13 Subsection O, Article 581-5, requires an
14 administrative law judge of the State Office of
15 Administrative Hearings to conduct an administrative
16 hearing for a state agency in certain circumstances.
17 The revised law is drafted to take that requirement
18 into account. The revised law omits the reference to
19 "now or hereafter" because, regardless of the quoted
20 phrase, the law that will apply to a hearing is the law
21 in effect at the time the recognition of a previously
22 approved manual is revoked or suspended.

23 Revised Law

24 Sec. 4005.020. UNSOLICITED ORDERS. The exemption provided
25 by Section 4005.001 applies to a dealer's execution of an
26 unsolicited order for the purchase of securities for which the
27 initial offering of the securities has been completed if the
28 dealer:

- 29 (1) acts solely as an agent for the purchaser;
- 30 (2) does not have a direct or indirect interest in the
31 sale or distribution of securities ordered; and
- 32 (3) does not receive a commission, profit, or other
33 compensation from any source other than the purchaser. (V.A.C.S.
34 Art. 581-5, Subsec. P.)

1 the following conditions,] . . . that is to say, the
2 provisions of this Act shall not apply to any sale,
3 offer for sale, solicitation, subscription, dealing in
4 or delivery of any security under any of the following
5 transactions or conditions:

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

20 Revisor's Note

21 Subsection Q, Article 581-5, Vernon's Texas Civil
22 Statutes, refers to sales of certain property
23 interests made on behalf of certain owners of the
24 interests by agents "licensed" under this title. The
25 revised law substitutes "registered" for "licensed"
26 because Subsection A, Article 581-12, Vernon's Texas
27 Civil Statutes, revised as Section 4004.101 of this
28 title, requires agents to be registered, not licensed,
29 under The Securities Act (Article 581-1 et seq.,
30 Vernon's Texas Civil Statutes), revised as this title.

31 Revised Law

32 Sec. 4005.022. ISSUER SALES OF EXEMPT SECURITIES. (a) The
33 exemption provided by Section 4005.001 applies to the sale by the
34 issuer itself or by a subsidiary of the issuer of any securities
35 that would be exempt under Subchapter B if sold by a registered
36 dealer.

37 (b) This section does not apply to securities that would be
38 exempt under Section 4005.053. (V.A.C.S. Art. 581-5, Subsec. R.)

39 Source Law

40 Art. 581-5. [Except as hereinafter in this Act
41 specifically provided, the provisions of this Act
42 shall not apply to] the sale of any security when made
43 [in any of the following transactions and under any of
44 the following conditions,] . . . that is to say, the
45 provisions of this Act shall not apply to any sale,
46 offer for sale, solicitation, subscription, dealing in

1 or delivery of any security under any of the following
2 transactions or conditions:

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

7 Revised Law

8 Sec. 4005.023. OPTIONS. (a) In this section, "option"
9 means and includes a put, call, straddle, or other option or
10 privilege of buying from another person or selling to another
11 person a specified number of securities at a specified price,
12 without being obligated to do so, on or before a specified date. The
13 term does not include an option or privilege that by its terms may
14 terminate before the specified date on the occurrence of a
15 specified event.

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

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

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

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

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

30 (A) exempted under Section 4005.054; or

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

33 (5) the sale is not directly or indirectly for the
34 purposes of providing or furthering a scheme to violate or evade
35 this title. (V.A.C.S. Art. 581-5, Subsec. S.)

1 Revisor's Note (1) to Section 4005.011 of this chapter.
2 For the convenience of the reader, the revised law
3 includes a reference to the United States Code
4 citation for the entire act.

5 (2) Subdivision (1), Subsection S, Article
6 581-5, Vernon's Texas Civil Statutes, refers to
7 compliance with "regulations" adopted by the State
8 Securities Board. Throughout this chapter, the
9 revised law substitutes "rules" or "rule" for
10 "regulations" or "regulation" because under Section
11 311.005(5), Government Code (Code Construction Act),
12 applicable to the revised law, a rule is defined to
13 include a regulation.

14 Revised Law

15 Sec. 4005.024. EXEMPTIONS BY RULE OR ORDER. The exemption
16 provided by Section 4005.001 applies to the sale of a security made
17 in other transactions or under other conditions not specified in
18 this subchapter as the board by rule or order may define or
19 prescribe, conditionally or unconditionally. (V.A.C.S. Art.
20 581-5, Subsec. T.)

21 Source Law

22 Art. 581-5. [Except as hereinafter in this Act
23 specifically provided, the provisions of this Act
24 shall not apply to] the sale of any security when made
25 [in any of the following transactions and under any of
26 the following conditions,] . . . that is to say, the
27 provisions of this Act shall not apply to any sale,
28 offer for sale, solicitation, subscription, dealing in
29 or delivery of any security under any of the following
30 transactions or conditions:

31 T. Such other transactions or conditions as the
32 board by rule, regulation, or order may define or
33 prescribe, conditionally or unconditionally.

34 Revised Law

35 Sec. 4005.025. ISSUANCE OR TRANSFER TO NONPROFITS. The
36 exemption provided by Section 4005.001 applies to the issuance or
37 transfer of securities by the issuer of its securities to a
38 corporation or association organized exclusively for a religious,
39 educational, benevolent, fraternal, charitable, or reformatory

1 purpose and not for pecuniary profit, only if:

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

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

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

12 (4) the issuance or transfer is not directly or
13 indirectly for the purposes of providing or furthering a scheme to
14 violate or evade this title. (V.A.C.S. Art. 581-5, Subsec. U.)

15 Source Law

16 Art. 581-5. [Except as hereinafter in this Act
17 specifically provided, the provisions of this Act
18 shall not apply to] the sale of any security when made
19 [in any of the following transactions and under any of
20 the following conditions,] . . . that is to say, the
21 provisions of this Act shall not apply to any sale,
22 offer for sale, solicitation, subscription, dealing in
23 or delivery of any security under any of the following
24 transactions or conditions:

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

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

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

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

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

1 SUBCHAPTER B. EXEMPT SECURITIES

2 Revised Law

3 Sec. 4005.051. SCOPE OF EXEMPTION. Except as expressly
4 provided otherwise in this title, this title does not apply to a
5 security described by this subchapter when offered for sale, sold,
6 or dealt in by a registered dealer or a registered dealer's agent.
7 (V.A.C.S. Art. 581-6 (part).)

8 Source Law

9 Art. 581-6. Except as hereinafter in this Act
10 expressly provided, the provisions of this Act shall
11 not apply to any of the following securities when
12 offered for sale, or sold, or dealt in by a registered
13 dealer or agent of a registered dealer:
14 . . .

15 Revised Law

16 Sec. 4005.052. RAILROADS OR UTILITIES. The exemption
17 provided by Section 4005.051 applies to:

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

24 (A) the Texas Department of Transportation; or

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

27 (i) the government of the United States;

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

31 (iii) Canada or a province of Canada; or

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

34 (A) that are based on chattel mortgages, leases
35 or agreements for conditional sale of cars, motive power or other
36 rolling stock mortgages, leased or sold to or provided for the use

1 of or on a railroad or other public service utility corporation if
2 the corporation is subject to regulation or supervision as
3 described by Subdivision (1); or

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

8 (i) the United States;

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

11 (iii) Canada or a province of Canada.

12 (V.A.C.S. Art. 581-6, Subsec. D.)

13 Source Law

14 Art. 581-6. [Except as hereinafter in this Act
15 expressly provided, the provisions of this Act shall
16 not apply to] any [of the following] securities when
17 offered for sale, or sold, or dealt in by a registered
18 dealer or agent of a registered dealer:

19 D. Any security issued or guaranteed either as
20 to principal, interest, or dividend, by a corporation
21 owning or operating a railroad or any other public
22 service utility; provided, that such corporation is
23 subject to regulation or supervision either as to its
24 rates and charges or as to the issue of its own
25 securities by the Railroad Commission of Texas, or by a
26 public commission, agency, board or officers of the
27 Government of the United States, or of any territory or
28 insular possession thereof, or of any state or
29 municipal corporation, or of the District of Columbia,
30 or of the Dominion of Canada, or any province thereof;
31 also equipment trust certificates or equipment notes
32 or bonds based on chattel mortgages, leases or
33 agreements for conditional sale of cars, motive power
34 or other rolling stock mortgages, leased or sold to or
35 furnished for the use of or upon a railroad or other
36 public service utility corporation, provided that such
37 corporation is subject to regulation or supervision as
38 above; or equipment trust certificates, or equipment
39 notes or bonds where the ownership or title of such
40 equipment is pledged or retained in accordance with
41 the provisions of the laws of the United States, or of
42 any state, territory or insular possession thereof, or
43 of the District of Columbia, or the Dominion of Canada,
44 or any province thereof, to secure the payment of such
45 equipment trust certificates, bonds or notes.

46 Revisor's Note

47 Subsection D, Article 581-6, Vernon's Texas Civil
48 Statutes, refers to a corporation subject to
49 regulation or supervision by the "Railroad Commission

1 of Texas" regarding the corporation's rates and
2 charges or the corporation's issuance of its own
3 securities. The revised law substitutes "Texas
4 Department of Transportation" for "Railroad
5 Commission of Texas" because as provided by Section
6 111.003, Transportation Code, all powers and duties of
7 the Railroad Commission of Texas that related to
8 railroads and the regulation of railroads and that
9 existed on October 1, 2005, were transferred to the
10 Texas Department of Transportation, as provided by
11 Chapter 281, Acts of the 79th Legislature, Regular
12 Session, 2005.

13 Revised Law

14 Sec. 4005.053. NONPROFIT CORPORATIONS. The exemption
15 provided by Section 4005.051 applies to a security issued and sold
16 by a domestic corporation that:

- 17 (1) is not organized and engaged in business for
18 profit; and
19 (2) does not have capital stock. (V.A.C.S. Art. 581-6,
20 Subsec. E.)

21 Source Law

22 Art. 581-6. [Except as hereinafter in this Act
23 expressly provided, the provisions of this Act shall
24 not apply to] any [of the following] securities when
25 offered for sale, or sold, or dealt in by a registered
26 dealer or agent of a registered dealer:

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

30 Revised Law

31 Sec. 4005.054. LISTED SECURITIES. (a) The exemption
32 provided by Section 4005.051 applies to securities that at the time
33 of sale:

- 34 (1) are fully listed on:
35 (A) the American Stock Exchange;
36 (B) the Boston Stock Exchange;
37 (C) the Chicago Stock Exchange;

1 (D) the New York Stock Exchange; or

2 (E) a recognized and responsible stock exchange
3 approved by the commissioner, as provided by Subchapter C;

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

7 (3) are senior to, or if of the same issue, on a parity
8 with, any securities listed or designated as described by
9 Subdivision (1) or (2) or represented by subscription rights that
10 are listed or designated as described by Subdivision (1) or (2), or
11 evidence of indebtedness guaranteed by a company, any stock of
12 which is listed or designated as described by Subdivision (1) or
13 (2).

14 (b) Securities described by Subsection (a) are exempt only
15 so long as the exchange on which the securities are listed remains
16 approved under this section or Subchapter C. (V.A.C.S. Art. 581-6,
17 Subsec. F (part).)

18 Source Law

19 Art. 581-6. [Except as hereinafter in this Act
20 expressly provided, the provisions of this Act shall
21 not apply to] any [of the following] securities when
22 offered for sale, or sold, or dealt in by a registered
23 dealer or agent of a registered dealer:

24 F. Securities which at the time of sale have
25 been fully listed upon the American Stock Exchange,
26 the Boston Stock Exchange, the Chicago Stock Exchange
27 or the New York Stock Exchange, have been designated or
28 approved for designation on notice of issuance on the
29 national market system of the NASDAQ stock market, or
30 have been fully listed upon any recognized and
31 responsible stock exchange approved by the
32 Commissioner as hereinafter in this section provided,
33 and also all securities senior to, or if of the same
34 issues, upon a parity with, any securities so listed or
35 designated or represented by subscription rights which
36 have been so listed or designated, or evidence of
37 indebtedness guaranteed by any company, any stock of
38 which is so listed or designated, such securities to be
39 exempt only so long as the exchange upon which such
40 securities are so listed remains approved under the
41 provisions of this Section. . . .

42 Revised Law

43 Sec. 4005.055. COMMERCIAL PAPER. The exemption provided by
44 Section 4005.051 applies to:

1 (1) commercial paper that:
2 (A) arises out of a current transaction or the
3 proceeds of which have been or are to be used for current
4 transactions; and
5 (B) evidences an obligation to pay cash not later
6 than the ninth month after the issuance date of the commercial
7 paper, not including days of grace;
8 (2) a renewal of commercial paper described by
9 Subdivision (1) that is similarly limited; or
10 (3) a guarantee of commercial paper described by
11 Subdivision (1) or of a renewal described by Subdivision (2).
12 (V.A.C.S. Art. 581-6, Subsec. H.)

13 Source Law

14 Art. 581-6. [Except as hereinafter in this Act
15 expressly provided, the provisions of this Act shall
16 not apply to] any [of the following] securities when
17 offered for sale, or sold, or dealt in by a registered
18 dealer or agent of a registered dealer:

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

26 Revised Law

27 Sec. 4005.056. SECURED DEBT. The exemption provided by
28 Section 4005.051 applies to notes, bonds, or other evidence of
29 indebtedness or certificates of ownership that:

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

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

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

39 (B) Section 4005.052, if the deposited

1 securities have an aggregate par value of not less than 125 percent
2 of the par value of the securities being secured. (V.A.C.S. Art.
3 581-6, Subsec. I.)

4 Source Law

5 Art. 581-6. [Except as hereinafter in this Act
6 expressly provided, the provisions of this Act shall
7 not apply to] any [of the following] securities when
8 offered for sale, or sold, or dealt in by a registered
9 dealer or agent of a registered dealer:

10 I. Notes, bonds, or other evidence of
11 indebtedness or certificates of ownership which are
12 equally and proportionately secured without reference
13 of priority of one over another, and which, by the
14 terms of the instrument creating the lien, shall
15 continue to be so secured by the deposit with a trustee
16 of recognized responsibility approved by the
17 Commissioner of any of the securities specified in
18 Subsection M of Section 5 or Subsection D of Section 6;
19 such deposited securities, if of the classes described
20 in Subsection M of Section 5, having an aggregate par
21 value of not less than one hundred and ten per cent
22 (110%) of the par value of the securities thereby
23 secured, and if of class specified in Subsection D of
24 Section 6, having an aggregate par value of not less
25 than one hundred and twenty five per cent (125%) of the
26 par value of the securities thereby secured.

27 Revised Law

28 Sec. 4005.057. NONPROFIT DEBT. The exemption provided by
29 Section 4005.051 applies to notes, bonds, or other evidence of
30 indebtedness of a religious, charitable, or benevolent
31 corporation. (V.A.C.S. Art. 581-6, Subsec. J.)

32 Source Law

33 Art. 581-6. [Except as hereinafter in this Act
34 expressly provided, the provisions of this Act shall
35 not apply to] any [of the following] securities when
36 offered for sale, or sold, or dealt in by a registered
37 dealer or agent of a registered dealer:

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

41 Revised Law

42 Sec. 4005.058. SUSPENSION OF EXEMPT STATUS OF TRADING
43 SYSTEM. (a) The commissioner, by the same procedures described by
44 Section 4005.105, may at any time suspend the exempt status of any
45 trading system exempted by the legislature on or after January 1,
46 1989, if at the time of the hearing the trading system does not meet
47 the applicable standards for approval of exchanges provided by this

1 title.

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

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

7 (1) has corrected each deficiency on which the
8 suspension was based; and

9 (2) maintains standards and procedures that provide
10 reasonable protection to the public. (V.A.C.S. Art. 581-6, Subsec.
11 F (part).)

12 Source Law

13 F. . . .

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

28 SUBCHAPTER C. PROCEDURES FOR APPROVAL OF STOCK EXCHANGE

29 Revised Law

30 Sec. 4005.101. APPLICATION FOR APPROVAL. An organized
31 stock exchange may apply to the commissioner for approval in the
32 manner and on the forms the commissioner prescribes. (V.A.C.S. Art.
33 581-6, Subsec. F (part).)

34 Source Law

35 F. . . . Application for approval by the
36 Commissioner may be made by any organized stock
37 exchange in such manner and upon such forms as may be
38 prescribed by the Commissioner, but

39 Revised Law

40 Sec. 4005.102. APPROVAL OF STOCK EXCHANGE. The
41 commissioner may approve a stock exchange only if the commissioner
42 finds that the facts and data provided with the application

1 establish that:

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

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

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

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

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

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

22 (i) to be financially embarrassed or
23 irresponsible; or

24 (ii) guilty of misconduct in the member's
25 business dealings or of conduct prejudicial to the rights and
26 interests of the member's customers. (V.A.C.S. Art. 581-6, Subsec.
27 F (part).)

28 Source Law

29 F. . . . no approval of any exchange shall be
30 given unless the facts and data supplied with the
31 application shall be found to establish:

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

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

38 1st: An adequate examination into the
39 affairs of the issuer of the securities which are to be

1 listed before permitting trading therein;

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

7 3rd: Securities listed and traded in
8 on such exchange to be restricted to those of
9 ascertained, sound asset or income value;

10 4th: A reasonable surveillance of its
11 members, including a requirement for periodical
12 financial statements and a determination of the
13 financial responsibility of its members and the right
14 and obligation in the governing body of such exchange
15 to suspend or expel any member found to be financially
16 embarrassed or irresponsible or found to have been
17 guilty of misconduct in his business dealings, or
18 conduct prejudicial of the rights and interests of his
19 customers;

20 . . .

21 Revised Law

22 Sec. 4005.103. INVESTIGATION AND HEARING. The commissioner
23 may approve a stock exchange only after a reasonable investigation
24 and hearing. (V.A.C.S. Art. 581-6, Subsec. F (part).)

25 Source Law

26 F. . . .
27 The approval of any such exchange by the
28 Commissioner shall be made only after a reasonable
29 investigation and hearing, and

30 Revised Law

31 Sec. 4005.104. ORDER OF APPROVAL. The commissioner's
32 approval of a stock exchange must be made by a written order based
33 on a finding of fact substantially in accordance with the
34 requirements of Sections 4005.101 and 4005.102. (V.A.C.S. Art.
35 581-6, Subsec. F (part).)

36 Source Law

37 F. . . .
38 The approval of any such exchange by the
39 Commissioner [shall be made only after a reasonable
40 investigation and hearing, and] shall be by a written
41 order of approval upon a finding of fact substantially
42 in accordance with the requirements hereinabove
43 provided. . . .

44 Revised Law

45 Sec. 4005.105. WITHDRAWAL OF APPROVAL. At any time, the
46 commissioner, on 10 days' notice and hearing, may withdraw approval
47 of a stock exchange that at the time of the hearing does not meet the
48 standards for approval under this title. On the withdrawal of

1 approval, securities listed on the exchange are not exempt from
2 this title until the commissioner issues an order approving the
3 exchange. (V.A.C.S. Art. 581-6, Subsec. F (part).)

4 Source Law

5 F. . . .
6 . . . The Commissioner, upon ten (10) days notice
7 and hearing, shall have power at any time to withdraw
8 approval theretofore granted by him to any such stock
9 exchange which does not at the time of hearing meet the
10 standards of approval under this Act, and thereupon
11 securities so listed upon such exchange shall be no
12 longer entitled to the benefit of such exemption
13 except upon the further order of said Commissioner
14 approving such exchange.
15 . . .

16 CHAPTER 4006. FEES

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12 CHAPTER 4006. FEES

13 SUBCHAPTER A. CERTAIN REGISTRATION AND NOTICE FILING FEES

14 Revised Law

15 Sec. 4006.001. CERTAIN REGISTRATION AND NOTICE FILING FEES.

16 The board shall establish the following fees in amounts so that the
17 aggregate amount that exceeds the amount of the fees on September 1,
18 2002, produces sufficient revenue to cover the costs of
19 administering and enforcing this title:

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

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

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

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

33 (5) for filing a renewal application for each agent,
34 officer, or investment adviser representative or submitting a

1 renewal notice filing for each representative of a federal covered
2 investment adviser, an amount not to exceed \$100. (V.A.C.S. Art.
3 581-35, Subsec. A.)

4 Source Law

5 Art. 581-35. A. The Board shall establish the
6 following fees in amounts so that the aggregate amount
7 that exceeds the amount of the fees on September 1,
8 2002, produces sufficient revenue to cover the costs
9 of administering and enforcing this Act:

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

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

17 (3) for the filing of any renewal
18 application of a dealer or investment adviser or for
19 the submission of a renewal notice filing for a federal
20 covered investment adviser, an amount not to exceed
21 \$100;

22 (4) for the filing of any original
23 application for each agent, officer, or investment
24 adviser representative or for the submission of a
25 notice filing for each representative of a federal
26 covered investment adviser, an amount not to exceed
27 \$100; and

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

34 Revisor's Note

35 (1) Article 581-35, Vernon's Texas Civil
36 Statutes, provides that the State Securities Board
37 shall establish fees in an amount sufficient to cover
38 the costs of administering and enforcing "this Act,"
39 which is The Securities Act (Article 581-1 et seq.,
40 Vernon's Texas Civil Statutes). The provisions of The
41 Securities Act are revised as this title. The revised
42 law throughout this chapter therefore substitutes
43 references to "this title" for references to "this
44 Act."

45 (2) Subdivision (1), Subsection A, Article
46 581-35, Vernon's Texas Civil Statutes, refers to fees
47 for "the filing of any original, amended, or renewal
48 application to sell or dispose of securities." The

1 revised law substitutes "application or registration
2 statement" for "application" because Subsections B and
3 C, Article 581-7, Vernon's Texas Civil Statutes,
4 revised as Subchapters B and C of Chapter 4003 of this
5 title, authorize the sale or disposal of securities by
6 the issuer or a registered dealer through the filing of
7 a registration statement, not an application.

8 SUBCHAPTER B. EXEMPTION FEES AND OTHER FEES

9 Revised Law

10 Sec. 4006.051. NOTICE FOR SECONDARY TRADING EXEMPTION. The
11 commissioner or board shall charge and collect:

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

14 (2) a fee of \$500 for filing a secondary trading
15 exemption renewal notice. (V.A.C.S. Art. 581-35, Subsec. B
16 (part).)

17 Source Law

18 B. The Commissioner or Board shall charge and
19 collect the following fees and . . . :

20 . . .
21 (6) for the filing of an initial notice
22 required by the Commissioner to claim a secondary
23 trading exemption, a fee of \$500, and for the filing of
24 a secondary trading exemption renewal notice, a fee of
25 \$500;

26 . . .

27 Revised Law

28 Sec. 4006.052. NOTICE FOR LIMITED OFFERING EXEMPTION. (a)
29 Subject to Subsection (b), for filing an initial notice required by
30 the commissioner to claim a limited offering exemption, the
31 commissioner or board shall charge and collect a fee of one-tenth of
32 one percent of the aggregate amount of securities described as
33 being offered for sale.

34 (b) A fee charged under this section may not exceed \$500.
35 (V.A.C.S. Art. 581-35, Subsec. B (part).)

36 Source Law

37 B. The Commissioner or Board shall charge and
38 collect the following fees . . . :

39 . . .

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

8 Revised Law

9 Sec. 4006.053. APPLICATION FOR APPROVAL OF STOCK EXCHANGE.

10 The commissioner or board shall charge and collect a fee of \$10,000
11 for filing an application for approval of a stock exchange.

12 (V.A.C.S. Art. 581-35, Subsec. B (part).)

13 Source Law

14 B. The Commissioner or Board shall charge and
15 collect the following fees . . . :

16 . . .
17 (4) for the filing of any application for
18 approval of a stock exchange so that securities fully
19 listed thereon will be exempt, a fee of \$10,000;
20 . . .

21 Revisor's Note

22 Subsection B, Article 581-35, Vernon's Texas
23 Civil Statutes, refers to filing an application for
24 approval of a stock exchange "so that securities fully
25 listed thereon will be exempt." The revised law omits
26 the quoted language as unnecessary because Subsection
27 F, Article 581-6, Vernon's Texas Civil Statutes,
28 revised in this title as Section 4005.054, provides
29 that securities listed on a stock exchange approved by
30 the securities commissioner are exempt from The
31 Securities Act (Article 581-1 et seq., Vernon's Texas
32 Civil Statutes), revised as this title.

33 Revised Law

34 Sec. 4006.054. AMENDMENT OR DUPLICATE OF REGISTRATION
35 CERTIFICATE OR EVIDENCE OF REGISTRATION; REGISTRATION OF BRANCH
36 OFFICE. The commissioner or board shall charge and collect a fee of
37 \$25 for a filing to:

38 (1) amend the registration certificate of a dealer or
39 investment adviser or the evidence of registration of an agent or
40 investment adviser representative;

1 (2) issue a duplicate certificate or evidence of
2 registration; or

3 (3) register a branch office. (V.A.C.S. Art. 581-35,
4 Subsec. B (part).)

5 Source Law

6 B. The Commissioner or Board shall charge and
7 collect the following fees . . . :

8 (1) for any filing to amend the
9 registration certificate of a dealer or investment
10 adviser or evidence of registration of an agent or
11 investment adviser representative, issue a duplicate
12 certificate or evidence of registration, or register a
13 branch office, \$25;

14 . . .

15 Revised Law

16 Sec. 4006.055. EXAMINATION OF CERTAIN APPLICATIONS OR
17 REGISTRATION STATEMENTS. (a) For the examination of an original or
18 amended application or registration statement filed under
19 Subchapter A, B, or C, Chapter 4003, the commissioner or board shall
20 charge and collect a fee of one-tenth of one percent of the
21 aggregate amount of securities described and proposed to be sold to
22 persons located in this state based on the price at which the
23 securities will be offered to the public.

24 (b) A fee under this section applies regardless of whether
25 the application or registration statement is denied, abandoned,
26 withdrawn, or approved. (V.A.C.S. Art. 581-35, Subsec. B (part).)

27 Source Law

28 B. The Commissioner or Board shall charge and
29 collect the following fees . . . :

30 . . .
31 (2) for the examination of any original or
32 amended application filed under Subsection A, B, or C
33 of Section 7 of this Act, regardless of whether the
34 application is denied, abandoned, withdrawn, or
35 approved, a fee of one-tenth (1/10) of one percent (1%)
36 of the aggregate amount of securities described and
37 proposed to be sold to persons located within this
38 state based upon the price at which such securities are
39 to be offered to the public;

40 . . .

41 Revisor's Note

42 Subdivision (2), Subsection B, Article 581-35,
43 Vernon's Texas Civil Statutes, refers to the fee for
44 the examination of an "application filed under

1 Subsection A, B, or C of Section 7 of this Act,"
2 meaning Subsection A, B, or C of Article 581-7,
3 Vernon's Texas Civil Statutes, revised as Subchapters
4 A, B, and C, Chapter 4003, of this title. The revised
5 law substitutes "application or registration
6 statement" for "application" for the reason stated in
7 Revisor's Note (2) to Section 4006.001 of this chapter.

8 Revised Law

9 Sec. 4006.056. CERTIFIED COPIES. (a) For a certified copy
10 of any papers filed in the office of the commissioner, the
11 commissioner shall charge and collect a fee that is reasonably
12 related to the costs of producing the certified copy.

13 (b) A fee charged under this section may not be more than a
14 fee that the secretary of state is authorized to charge for a
15 similar service. (V.A.C.S. Art. 581-35, Subsec. B (part).)

16 Source Law

17 B. The Commissioner or Board shall charge and
18 collect the following fees . . . :

19 . . .
20 (3) for certified copies of any papers
21 filed in the office of the Commissioner, the
22 Commissioner shall charge such fees as are reasonably
23 related to costs; however, in no event shall such fees
24 be more than those which the Secretary of State is
25 authorized to charge in similar cases;
26 . . .

27 Revised Law

28 Sec. 4006.057. REQUEST TO TAKE EXAMINATION. The
29 commissioner or board shall charge and collect a fee of \$35 for
30 filing a request to take the Texas Securities Law Examination.
31 (V.A.C.S. Art. 581-35, Subsec. B (part).)

32 Source Law

33 B. The Commissioner or Board shall charge and
34 collect the following fees . . . :

35 . . .
36 (5) for the filing of a request to take the
37 Texas Securities Law Examination, \$35;
38 . . .

39 Revised Law

40 Sec. 4006.058. INTERPRETATION BY GENERAL COUNSEL. (a)
41 Except as provided by Subsection (b), the commissioner or board

1 shall charge and collect a fee of \$100 for an interpretation by the
2 board's general counsel of this title or a rule adopted under this
3 title.

4 (b) An officer or employee of a governmental entity and the
5 entity that the officer or employee represents are exempt from the
6 fee under this section if the officer or employee is conducting
7 official business of the entity. (V.A.C.S. Art. 581-35, Subsec. B
8 (part).)

9 Source Law

10 B. The Commissioner or Board shall charge and
11 collect the following fees . . . :

12 . . .
13 (8) for an interpretation by the Board's
14 general counsel of this Act or a rule adopted under
15 this Act, a fee of \$100, except that an officer or
16 employee of a governmental entity and the entity that
17 the officer or employee represents are exempt from the
18 fee under this subsection when the officer or employee
19 is conducting official business of the entity.

20 SUBCHAPTER C. PROVISIONS APPLICABLE TO CERTAIN FEES

21 Revised Law

22 Sec. 4006.101. REASONABLE AND NECESSARY REQUIREMENT.
23 Subject to Subchapter A, the board shall set a fee under Subchapters
24 A and B in an amount that is reasonable and necessary to defray
25 costs. (V.A.C.S. Art. 581-35, Subsec. C.)

26 Source Law

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

30 Revisor's Note

31 Subsection C, Article 581-35, Vernon's Texas
32 Civil Statutes, requires the State Securities Board to
33 set fees "under this section," meaning Article 581-35,
34 Vernon's Texas Civil Statutes. The provisions of
35 Article 581-35 pertaining to setting fees under that
36 article are revised as various provisions in
37 Subchapters A and B of this chapter, and the revised
38 law is drafted accordingly.

1 Revised Law

2 Sec. 4006.102. REDUCED FEES. (a) The board by rule may
3 adopt reduced fees under Section 4006.001 for original and renewal
4 applications of dealers, agents, officers, investment advisers, or
5 investment adviser representatives who have assumed inactive
6 status as defined by the board.

7 (b) The board by rule may adopt reduced fees under Section
8 4006.001 as appropriate to accommodate a small business required by
9 this title to register in two or more of the following capacities:

- 10 (1) dealer;
11 (2) agent;
12 (3) investment adviser;
13 (4) investment adviser representative; or
14 (5) officer.

15 (c) A person is not required to pay more than one fee
16 required under Section 4006.001 to engage in business in this state
17 concurrently for the same person or company as:

- 18 (1) a dealer and an investment adviser; or
19 (2) an agent and investment adviser representative.

20 (V.A.C.S. Art. 581-42.)

21 Source Law

22 Art. 581-42. A. The Board by rule may adopt
23 reduced fees, under Sections 35 and 41 of this Act, for
24 original and renewal applications of dealers, agents,
25 officers, investment advisers, or investment adviser
26 representatives who have assumed inactive status as
27 defined by the Board.

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

- 32 (1) dealer;
33 (2) agent;
34 (3) investment adviser;
35 (4) investment adviser representative; or
36 (5) officer.

37 C. Notwithstanding Sections 35 and 41 of this
38 Act, a person shall pay only one fee required under
39 those sections to engage in business in this state
40 concurrently for the same person or company as:

- 41 (1) a dealer and an investment adviser; or
42 (2) an agent and investment adviser
43 representative.

1 Revisor's Note

2 (1) Article 581-42, Vernon's Texas Civil
3 Statutes, refers to the authority of the State
4 Securities Board to adopt reduced fees under Article
5 581-35, Vernon's Texas Civil Statutes. In Subsections
6 (a) and (b) of the revised law, "Section 4006.001" is
7 substituted for references to Article 581-35 because
8 the fees to which those subsections refer are
9 contained in Subsection A, Article 581-35, which is
10 revised in this chapter as Section 4006.001.

11 (2) Subsections A and B, Article 581-42,
12 Vernon's Texas Civil Statutes, refer to the authority
13 of the State Securities Board to adopt reduced fees
14 under Article 581-41. Subsection C, Article 581-42,
15 refers to payment of a fee, notwithstanding Article
16 581-41. The revised law omits the references to that
17 provision because Article 581-41 was repealed by
18 Chapter 448, Acts of the 84th Legislature, Regular
19 Session, 2015.

20 (3) Subsection C, Article 581-42, Vernon's Texas
21 Civil Statutes, provides that a person is not required
22 to pay more than one fee under Article 581-35, Vernon's
23 Texas Civil Statutes, to engage in business in this
24 state concurrently for the same person or company as a
25 dealer and an investment adviser or as an agent and an
26 investment adviser representative. The provisions of
27 Article 581-35 pertaining to the payment of original
28 or renewal application fees necessary to engage in
29 business as a dealer, an investment adviser, an agent,
30 or an investment adviser representative are revised in
31 Section 4006.001 of this chapter, and the revised law
32 is drafted accordingly.

33 Revised Law

34 Sec. 4006.103. PAYMENT OF CERTAIN COSTS. A cost incurred by

1 the board in administering this title may be paid only from a fee
2 collected under Section 4006.001. (V.A.C.S. Art. 581-35,
3 Subsec. D.)

4 Source Law

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

8 Revised Law

9 Sec. 4006.104. REFUND OF REGISTRATION FEE. If the
10 commissioner or board determines that all or part of a registration
11 fee should be refunded, the commissioner may make the refund by
12 warrant on the state treasury from money appropriated from the
13 general revenue fund for that purpose. (V.A.C.S. Art. 581-36
14 (part).)

15 Source Law

16 Art. 581-36. . . . If the Commissioner or Board
17 determines that all or part of a registration fee
18 should be refunded, the Commissioner may make the
19 refund by warrant on the State Treasury from funds
20 appropriated from the General Revenue Fund for that
21 purpose.

22 Revisor's Note

23 Article 581-36, Vernon's Texas Civil Statutes,
24 refers to "funds" appropriated from the general
25 revenue fund. The revised law substitutes "money" for
26 "funds" because, in context, the meaning is the same
27 and "money" is the more commonly used term.

28 SUBCHAPTER D. FEES FOR CERTAIN SALES OR OFFERS OF SECURITIES

29 Revised Law

30 Sec. 4006.151. FEE FOR SALE OF EXCESS SECURITIES. (a) An
31 offeror who sells securities in this state in excess of the
32 aggregate amount of securities registered for the offering may
33 apply to register the excess securities by paying:

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

37 (2) if the registration is no longer in effect,

1 interest on that amount computed at the rate provided by Section
2 302.002, Finance Code, from the date the registration was no longer
3 in effect until the date the subsequent application is filed; and

4 (3) the amendment fee prescribed by Section
5 4006.001(1).

6 (b) If an application to register excess securities is
7 granted under Subsection (a), the registration of the excess
8 securities is effective retroactively to the effective date of the
9 initial registration for the offering. (V.A.C.S. Art. 581-35-1,
10 Subsec. A.)

11 Source Law

12 Art. 581-35-1. A. An offeror who sells
13 securities in this State in excess of the aggregate
14 amount of securities registered for the offering may
15 apply to register the excess securities by paying
16 three times the difference between the initial fee
17 paid and the fee required under Subsection B(2) of
18 Section 35, plus, if the registration is no longer in
19 effect, interest on that amount computed at the rate
20 provided by Section 302.002, Finance Code, from the
21 date the registration was no longer in effect until the
22 date the subsequent application is filed, for the
23 securities sold to persons within this State, plus the
24 amendment fee prescribed by Subsection A(1) of Section
25 35. Registration of the excess securities, if
26 granted, shall be effective retroactively to the
27 effective date of the initial registration for the
28 offering.

29 Revised Law

30 Sec. 4006.152. FEE FOR EXCEEDING LIMITED OFFERING

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

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

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

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

39 (b) An offeror may:

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

42 (2) pay:

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

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

7 (c) An amended notice filed under Subsection (b) is
8 retroactive to the date of the initial filing of the notice to claim
9 the exemption. (V.A.C.S. Art. 581-35-1, Subsec. B.)

10 Source Law

11 B. An offeror who has filed a notice to claim a
12 limited offering exemption, who paid less than the
13 maximum fee prescribed in Subsection B(7) of Section
14 35, and who offered a greater amount of securities in
15 the offering than authorized pursuant to the formula
16 prescribed in Subsection B(7) of Section 35, may file
17 an amended notice disclosing the amount of securities
18 offered and paying three times the difference between
19 the fee initially paid and the fee which should have
20 been paid, plus interest on that amount computed at the
21 rate provided by Section 302.002, Finance Code, from
22 the date the original notice was received by the
23 Commissioner until the date the amended notice is
24 received by the Commissioner. The amended notice
25 shall be retroactive to the date of the initial filing.

26 Revised Law

27 Sec. 4006.153. FEE FOR SALES OF UNREGISTERED SECURITIES.

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

33 (1) six times the amount that would have been paid if
34 the issuer had filed an application or registration statement to
35 register the securities and paid the fee required under Section
36 4006.055 based on the aggregate amount of sales made in this state
37 in the preceding three years; and

38 (2) interest on that amount at the rate provided by
39 Section 302.002, Finance Code, from the date of the first such sale
40 made in this state until the date the fee is paid.

41 (b) Payment of the fee prescribed by this section does not

1 effect registration of the securities or affect the application of
2 any other provision of this title.

3 (c) Payment of the fee prescribed by this section is not an
4 admission that the transactions or securities were not exempt and
5 is not admissible as evidence in a suit or proceeding for failure to
6 register the securities. (V.A.C.S. Art. 581-35-2.)

7 Source Law

8 Art. 581-35-2. If, after notice and hearing,
9 the commissioner or any court of competent
10 jurisdiction finds that an offeror has sold securities
11 in this State pursuant to an offering no part of which
12 has been registered under Section 7 or 10 of this Act
13 and for which the transactions or securities are not
14 exempt under Section 5 or 6 of this Act, the
15 commissioner or said court may impose a fee equal to
16 six times the amount that would have been paid if the
17 issuer had filed an application to register the
18 securities and paid the fee prescribed by Subsection
19 B(2) of Section 35 based on the aggregate amount of
20 sales made in this State within the prior three years,
21 plus interest on that amount at the rate provided by
22 Section 302.002, Finance Code, from the date of the
23 first such sale made in this State until the date the
24 fee is paid. The payment of the fee prescribed by this
25 Section does not effect registration of the securities
26 or affect the application of any other Section of this
27 Act. The payment of the fee prescribed by this Section
28 is not an admission that the transactions or
29 securities were not exempt and is not admissible as
30 evidence in a suit or proceeding for failure to
31 register the securities.

32 Revisor's Note

33 (1) Article 581-35-2, Vernon's Texas Civil
34 Statutes, refers to a court "of competent
35 jurisdiction." The revised law omits the quoted
36 language because the general laws of civil
37 jurisdiction determine which courts have jurisdiction
38 over a matter. For example, see Sections
39 24.007-24.011, Government Code, for the general
40 jurisdiction of district courts.

41 (2) Article 581-35-2, Vernon's Texas Civil
42 Statutes, refers to a sale of securities pursuant to an
43 offering that is not registered under "Section 7 or 10
44 of this Act," meaning Articles 581-7 and 581-10,
45 Vernon's Texas Civil Statutes, or securities or

1 transactions that are not exempt under "Section 5 or 6
2 of this Act," meaning Articles 581-5 and 581-6,
3 Vernon's Texas Civil Statutes. The provisions of
4 Articles 581-7 and 581-10 pertaining to registration
5 under that article are revised as various provisions
6 in Chapter 4003 and the relevant provisions of
7 Articles 581-5 and 581-6 pertaining to exemptions of
8 transactions or securities are revised as various
9 provisions in Chapter 4005, and the revised law is
10 drafted accordingly.

11 SUBCHAPTER E. MISCELLANEOUS FEES

12 Revised Law

13 Sec. 4006.201. RENEWAL OF REGISTRATION BY NOTIFICATION. A
14 registration of securities by notification may be renewed as
15 provided by Section 4003.058, which includes the payment of the
16 renewal fee in the amount prescribed by that section. (New.)

17 Revisor's Note

18 Paragraph b, Subdivision (2), Subsection B,
19 Article 581-7, Vernon's Texas Civil Statutes, contains
20 provisions for the renewal of a registration of
21 securities by notification, including a provision
22 requiring the payment of a renewal fee. Those
23 provisions are revised as Section 4003.058 of this
24 title. For clarity and the convenience of the reader,
25 the revised law includes a reference to that renewal
26 fee and a cross-reference to Section 4003.058.

27 SUBCHAPTER F. DEPOSIT OF FEES

28 Revised Law

29 Sec. 4006.251. DEPOSIT OF FEES TO GENERAL REVENUE FUND. The
30 commissioner or board shall deposit money received from fees under
31 this title to the credit of the general revenue fund. (V.A.C.S.
32 Art. 581-36 (part).)

33 Source Law

34 Art. 581-36. Upon and after the effective date

1 of this Act all moneys received from fees, . . . under
2 this Act shall be paid by the Commissioner or Board
3 into the General Revenue Fund. . . .

4 Revisor's Note

5 Article 581-36, Vernon's Texas Civil Statutes,
6 states that "[u]pon and after the effective date of
7 this Act," money received from fees under The
8 Securities Act (Article 581-1 et seq., Vernon's Texas
9 Civil Statutes) is to be paid into the general revenue
10 fund. The revised law omits the quoted language as
11 unnecessary because Section 311.022, Government Code
12 (Code Construction Act), applicable to the revised
13 law, provides a presumption that all statutes have
14 prospective application unless expressly provided
15 otherwise.

16 Revised Law

17 Sec. 4006.252. DAILY DEPOSIT OF CERTAIN FEES. The
18 commissioner or board shall deposit daily all fees received under
19 Subchapter B to the credit of the general revenue fund. (V.A.C.S.
20 Art. 581-35, Subsec. B (part).)

21 Source Law

22 B. The Commissioner or Board . . . shall daily
23 pay all fees received into the State Treasury:
24

25 Revisor's Note

26 Subsection B, Article 581-35, Vernon's Texas
27 Civil Statutes, provides that the securities
28 commissioner or the State Securities Board shall
29 deposit daily all fees received under Subsection B
30 "into the State Treasury." The revised law substitutes
31 "to the credit of the general revenue fund" for the
32 quoted language because Section 404.094(b),
33 Government Code, applicable to the revised law,
34 provides that money required by law to be deposited in
35 the treasury is required to be deposited to the credit
36 of the general revenue fund unless the money is

1 expressly required to be deposited to another fund.
 2 Additionally, Article 581-36, Vernon's Texas Civil
 3 Statutes, revised in part in this chapter as Section
 4 4006.251, provides that money from fees under The
 5 Securities Act (Article 581-1 et seq., Vernon's Texas
 6 Civil Statutes), revised as this title, is to be
 7 deposited to the credit of the general revenue fund.

8 CHAPTER 4007. ENFORCEMENT

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30		SUBCHAPTER A. AUTHORITY TO ENFORCE TITLE	
31		<u>Revised Law</u>	
32	Sec. 4007.001.	ENFORCEMENT BY COMMISSIONER, ATTORNEY	
33		GENERAL, AND DISTRICT OR COUNTY ATTORNEY. (a) The administration	
34		of the provisions of this title is vested in the commissioner.	

1 (b) The commissioner and the attorney general shall:

2 (1) ensure that the provisions of this title are
3 obeyed; and

4 (2) conduct investigations and take measures to
5 prevent or detect a violation of this title.

6 (c) The commissioner shall at once submit any evidence of a
7 criminal violation of this title to the district or county attorney
8 of the appropriate county after the evidence comes to the
9 commissioner's knowledge.

10 (d) If the district or county attorney neglects or refuses
11 to prosecute the alleged criminal violation, the commissioner shall
12 submit the evidence of the alleged violation to the attorney
13 general. The attorney general may proceed with the criminal
14 prosecution of the alleged violation and has all the rights,
15 privileges, and powers conferred by law on a district or county
16 attorney, including the authority to appear before a grand jury and
17 to interrogate witnesses before a grand jury. (V.A.C.S. Art.
18 581-3.)

19 Source Law

20 Art. 581-3. The administration of the
21 provisions of this Act shall be vested in the
22 Securities Commissioner. It shall be the duty of the
23 Securities Commissioner and the Attorney General to
24 see that its provisions are at all times obeyed and to
25 take such measures and to make such investigations as
26 will prevent or detect the violation of any provision
27 thereof. The Commissioner shall at once lay before
28 the District or County Attorney of the proper county
29 any evidence which shall come to his knowledge of
30 criminality under this Act. In the event of the
31 neglect or refusal of such attorney to institute and
32 prosecute such violation, the Commissioner shall
33 submit such evidence to the Attorney General, who is
34 hereby authorized to proceed therein with all the
35 rights, privileges and powers conferred by law upon
36 district or county attorneys, including the power to
37 appear before grand juries and to interrogate
38 witnesses before such grand juries.

39 Revisor's Note

40 (1) Article 581-3, Vernon's Texas Civil
41 Statutes, requires the securities commissioner to
42 administer the provisions of "this Act," meaning The
43 Securities Act (Article 581-1 et seq., Vernon's Texas

1 Civil Statutes), and requires the securities
2 commissioner and the attorney general to investigate
3 and prevent the violation of any provision "thereof,"
4 meaning any provision of that act. The provisions of
5 The Securities Act are revised as this title.
6 Throughout this chapter, the revised law therefore
7 substitutes references to "this title" for references
8 to "this Act." The revised law in this section
9 substitutes "this title" for "thereof" for the same
10 reason.

11 (2) Article 581-3, Vernon's Texas Civil
12 Statutes, states that the securities commissioner and
13 the attorney general are required to ensure that the
14 provisions of The Securities Act (Article 581-1 et
15 seq., Vernon's Texas Civil Statutes), revised as this
16 title, are "at all times obeyed." The revised law
17 omits "at all times" as unnecessary because, without
18 an express limitation, the duty to ensure that the
19 provisions of The Securities Act are obeyed
20 necessarily requires the enforcement of and compliance
21 with this title at all times.

22 (3) Article 581-3, Vernon's Texas Civil
23 Statutes, refers to the neglect or refusal of a
24 district or county attorney to "institute and
25 prosecute" a criminal violation of The Securities Act
26 (Article 581-1 et seq., Vernon's Texas Civil
27 Statutes), revised as this title. The revised law
28 omits "institute" because, in context, "institute" is
29 included within the meaning of "prosecute."

30 Revised Law

31 Sec. 4007.002. MEANS OF ENFORCEMENT NOT EXCLUSIVE. The
32 commissioner may use any or all penalties, sanctions, remedies, or
33 relief that the commissioner considers necessary. (V.A.C.S. Art.
34 581-3-1.)

1 Source Law

2 Art. 581-3-1. The Commissioner may utilize any
3 or all penalties, sanctions, remedies, or relief as
4 the Commissioner deems necessary.

5 SUBCHAPTER B. INSPECTIONS AND INVESTIGATIONS

6 Revised Law

7 Sec. 4007.051. COMPLAINTS FILED WITH COMMISSIONER OR BOARD.

8 (a) The commissioner or the commissioner's designee shall maintain
9 a file on each written complaint filed with the commissioner or
10 board concerning a person registered under this title. The file
11 must include:

12 (1) the name of the person who filed the complaint;

13 (2) the date the complaint was received by the
14 commissioner or board;

15 (3) the subject matter of the complaint;

16 (4) the name of each person contacted in relation to
17 the complaint;

18 (5) a summary of the results of the review or
19 investigation of the complaint; and

20 (6) an explanation of the reason the file was closed,
21 if the commissioner closed the file without taking action other
22 than the investigation of the complaint.

23 (b) The commissioner or the commissioner's designee shall
24 provide to the person filing the complaint and to each person who is
25 a subject of the complaint a copy of the board's policies and
26 procedures relating to complaint investigation and resolution.

27 (c) The commissioner or the commissioner's designee, at
28 least quarterly until final disposition of the complaint, shall
29 notify the person filing the complaint and each person who is a
30 subject of the complaint of the status of the investigation, unless
31 the notice would jeopardize an undercover investigation. (V.A.C.S.
32 Art. 581-2-6, Subsecs. A (part), B, C.)

33 Source Law

34 Art. 581-2-6. A. The Commissioner or the
35 Commissioner's designee shall maintain a file on each
36 written complaint filed with the Commissioner or Board

1 concerning an . . . person registered under this Act.
2 The file must include:

- 3 (1) the name of the person who filed the
4 complaint;
5 (2) the date the complaint is received by
6 the Commissioner or Board;
7 (3) the subject matter of the complaint;
8 (4) the name of each person contacted in
9 relation to the complaint;
10 (5) a summary of the results of the review
11 or investigation of the complaint; and
12 (6) an explanation of the reason the file
13 was closed, if the Commissioner closed the file
14 without taking action other than to investigate the
15 complaint.

16 B. The Commissioner or the Commissioner's
17 designee shall provide to the person filing the
18 complaint and to each person who is a subject of the
19 complaint a copy of the Board's policies and procedures
20 relating to complaint investigation and resolution.

21 C. The Commissioner or the Commissioner's
22 designee, at least quarterly until final disposition
23 of the complaint, shall notify the person filing the
24 complaint and each person who is a subject of the
25 complaint of the status of the investigation unless
26 the notice would jeopardize an undercover
27 investigation.

28 Revised Law

29 Sec. 4007.052. INSPECTIONS. (a) The commissioner without
30 notice may inspect a registered dealer or registered investment
31 adviser as necessary to ensure compliance with this title and board
32 rules.

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

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

39 (1) provide to the commissioner or the commissioner's
40 authorized representative immediate and complete access to the
41 registered dealer's or registered investment adviser's office,
42 place of business, files, safe, and any other location at which
43 books and records pertinent to the inspection are located; and

44 (2) allow the commissioner or the commissioner's
45 authorized representative to make photostatic or electronic copies
46 of books or records subject to inspection.

47 (d) A registered dealer or registered investment adviser

1 may not charge a fee for copying information under this section.

2 (e) Information obtained under this section and any
3 intra-agency or interagency notes, memoranda, reports, or other
4 communications consisting of advice, analyses, opinions, or
5 recommendations that are made in connection with the inspection are
6 confidential. The commissioner may not disclose to the public or
7 release documents or other information made confidential by this
8 subsection except to the same extent provided for the release or
9 disclosure of confidential documents or other information made or
10 obtained in connection with an investigation under Section
11 4007.053. (V.A.C.S. Art. 581-13-1.)

12 Source Law

13 Art. 581-13-1. A. The Commissioner, without
14 notice, may inspect a registered dealer or registered
15 investment adviser as necessary to ensure compliance
16 with this Act and Board rules.

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

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

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

24 C. During the inspection, the dealer or
25 investment adviser shall:

26 (1) provide to the Commissioner or the
27 Commissioner's authorized representative immediate
28 and complete access to the person's office, place of
29 business, files, safe, and any other location in which
30 books and records pertinent to the inspection are
31 located; and

32 (2) allow the Commissioner or the
33 Commissioner's authorized representative to make
34 photostatic or electronic copies of books or records
35 subject to inspection.

36 D. A dealer or investment adviser may not charge
37 a fee for copying information under this section.

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

48 Revisor's Note

49 (1) Subsections C and D, Article 581-13-1,
50 Vernon's Texas Civil Statutes, refer to a "dealer or
51 investment adviser." Article 581-13-1 applies only to

1 the inspection of a "registered dealer or registered
2 investment adviser." For that reason, the revised law
3 substitutes references to "registered dealer" or
4 "registered investment adviser" for the references to
5 "dealer or investment adviser" in Subsections C and D,
6 Article 581-13-1.

7 (2) Subsection E, Article 581-13-1, Vernon's
8 Texas Civil Statutes, refers to an investigation under
9 "Section 28 of this Act," meaning Article 581-28,
10 Vernon's Texas Civil Statutes. The applicable
11 provision of Article 581-28 authorizing an
12 investigation under that article to enforce The
13 Securities Act (Art. 581-1 et seq., Vernon's Texas
14 Civil Statutes), revised as this title, is Subsection
15 A, revised in relevant part as Section 4007.053 of
16 this chapter. The revised law is drafted accordingly.

17 Revised Law

18 Sec. 4007.053. INVESTIGATIVE AUTHORITY. (a) The
19 commissioner shall conduct investigations as the commissioner
20 considers necessary to prevent or detect a violation of this title
21 or a board rule or order.

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

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

33 (c) During an investigation, the commissioner may cause the
34 deposition of witnesses residing inside or outside this state to be

1 taken in the manner prescribed by the laws of this state for taking
2 a deposition in a civil action. (V.A.C.S. Art. 581-28, Subsec. A
3 (part).)

4 Source Law

5 Art. 581-28. A. Investigations by
6 Commissioner. The Commissioner shall conduct
7 investigations as the Commissioner considers
8 necessary to prevent or detect the violation of this
9 Act or a Board rule or order. For this purpose, the
10 Commissioner may require, by subpoena or summons
11 issued by the Commissioner, the attendance and
12 testimony of witnesses and the production of all
13 records, whether maintained by electronic or other
14 means, relating to any matter which the Commissioner
15 has authority by this Act to consider or investigate,
16 and may sign subpoenas, administer oaths and
17 affirmations, examine witnesses and receive evidence;
18 provided, however, that

19 The Commissioner may in any investigation cause
20 the deposition of witnesses residing within or without
21 the state to be taken in the manner prescribed for
22 depositions in civil actions under the laws of Texas.
23 . . .

24 Revisor's Note

25 Subsection A, Article 581-28, Vernon's Texas
26 Civil Statutes, refers to "oaths and affirmations."
27 The revised law omits the reference to "affirmations"
28 because Section 311.005(1), Government Code (Code
29 Construction Act), applicable to the revised law,
30 states that an oath includes an affirmation.

31 Revised Law

32 Sec. 4007.054. SERVICE OF SUBPOENA, SUMMONS, OR OTHER
33 PROCESS. (a) The commissioner may serve a subpoena, summons, or
34 other process issued by the commissioner or have the subpoena,
35 summons, or other process served by an authorized agent of the
36 commissioner, a sheriff, or a constable.

37 (b) The sheriff's or constable's fee for serving the
38 subpoena is the same as the fee paid the sheriff or constable for
39 similar services. (V.A.C.S. Art. 581-28, Subsec. A (part).)

40 Source Law

41 A. . . .
42 The sheriff's or constable's fee for serving the
43 subpoena shall be the same as those paid the sheriff or
44 constable for similar services. . . .
45 Any subpoena, summons, or other process issued by

1 the Commissioner may be served, at the Commissioner's
2 discretion, by the Commissioner, the Commissioner's
3 authorized agent, a sheriff, or a constable.

4 . . .

5 Revised Law

6 Sec. 4007.055. ENFORCEMENT OF SUBPOENA; CONTEMPT. (a) If a
7 person disobeys a subpoena or if a witness appearing before the
8 commissioner refuses to give evidence, the commissioner may
9 petition the district court of a jurisdiction in which the person or
10 witness may be found, and the court on this petition may issue an
11 order requiring the person or witness to, as applicable, obey the
12 subpoena, testify, or produce a book, an account, a record, a paper,
13 and correspondence relating to the matter in question.

14 (b) The district court may punish as contempt the failure to
15 obey an order under Subsection (a). (V.A.C.S. Art. 581-28, Subsec.
16 A (part).)

17 Source Law

18 A. . . . In case of disobedience of any
19 subpoena, or of the contumacy of any witness appearing
20 before the Commissioner, the Commissioner may invoke
21 the aid of the District Court within whose
22 jurisdiction any witness may be found, and such court
23 may thereupon issue an order requiring the person
24 subpoenaed to obey the subpoena or give evidence, or
25 produce books, accounts, records, papers, and
26 correspondence touching the matter in question. Any
27 failure to obey such order of the court may be punished
28 by such court as contempt thereof.

29 . . .

30 Revised Law

31 Sec. 4007.056. CONFIDENTIALITY OF INVESTIGATIVE
32 INFORMATION. (a) All information received in connection with an
33 investigation under Section 4007.053 and all internal notes,
34 memoranda, reports, or communications made in connection with an
35 investigation under that section are confidential.

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

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

41 (2) at the commissioner's discretion, as part of an

1 administrative proceeding or a civil or criminal action to enforce
2 this title.

3 (c) The commissioner, at the commissioner's discretion, may
4 disclose confidential information in the commissioner's possession
5 to:

6 (1) a governmental or regulatory authority or any
7 association of governmental or regulatory authorities approved by
8 board rule; or

9 (2) any receiver appointed under Section 4007.151.

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

12 (e) This section may not be interpreted to prohibit or limit
13 the publication of rulings or decisions of the commissioner.
14 (V.A.C.S. Art. 581-28, Subsec. A (part).)

15 Source Law

16 A. . . . all information of every kind and nature
17 received in connection with an investigation and all
18 internal notes, memoranda, reports, or communications
19 made in connection with an investigation shall be
20 treated as confidential by the Commissioner and shall
21 not be disclosed to the public except under order of
22 court for good cause shown. Nothing in this section
23 shall be interpreted to prohibit or limit the
24 publication of rulings or decisions of the
25 Commissioner nor shall this limitation apply if
26 disclosure is made, in the discretion of the
27 Commissioner, as part of an administrative proceeding
28 or a civil or criminal action to enforce this Act.
29 . . .

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

38 Revisor's Note

39 (1) Subsection A, Article 581-28, Vernon's Texas
40 Civil Statutes, refers to "all information of every
41 kind and nature" received in connection with an
42 investigation. The revised law omits the reference to
43 "of every kind and nature" because, in context, "of
44 every kind and nature" is included within the meaning

1 of "all information."

2 (2) Subsection A, Article 581-28, Vernon's Texas
3 Civil Statutes, refers to information received and
4 certain notes, memoranda, reports, and communications
5 made in connection with "an investigation." The
6 immediately preceding sentence of Subsection A,
7 revised in Section 4007.053 of this chapter, requires
8 the securities commissioner to conduct investigations
9 for the purpose of preventing or detecting violations
10 with respect to The Securities Act. It is clear from
11 the context that "an investigation" refers to an
12 investigation conducted for the purpose provided by
13 the immediately preceding sentence of Subsection A,
14 and the revised law is drafted accordingly.

15 Revised Law

16 Sec. 4007.057. COMPENSATION OF WITNESSES. (a) A witness
17 required to attend a hearing before the commissioner shall receive
18 for each day's attendance a fee in an amount set by board rule.

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

21 (1) made in accordance with board rule; and

22 (2) included in, and paid in the same manner that is
23 provided for, the payment of other expenses incurred in the
24 administration and enforcement of this title. (V.A.C.S. Art.
25 581-28, Subsec. A (part).)

26 Source Law

27 A. . . .

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

36 . . .

37 Revised Law

38 Sec. 4007.058. IMPOSITION OF COSTS ON PARTIES. The

1 commissioner may impose on a party of record fees, expenses, or
2 costs incurred in connection with a hearing or may divide the fee,
3 expense, or cost among any or all parties of record as determined by
4 the commissioner. (V.A.C.S. Art. 581-28, Subsec. A (part).)

5 Source Law

6 A. . . .
7 . . . The fees, expenses and costs incurred at or
8 in connection with any hearing may be imposed by the
9 Commissioner upon any party to the record, or may be
10 divided between any and all parties to the record in
11 such proportions as the Commissioner may determine.
12 . . .

13 Revised Law

14 Sec. 4007.059. ASSISTANCE TO SECURITIES REGULATORS IN OTHER
15 JURISDICTIONS. (a) On request from a securities regulator of
16 another state or of a foreign jurisdiction, the commissioner may
17 provide assistance to the regulator in conducting an investigation
18 to determine whether a person has violated, is violating, or is
19 about to violate a law or rule of the other state or foreign
20 jurisdiction relating to a securities matter that the regulator is
21 authorized to administer or enforce.

22 (b) The commissioner may provide assistance under this
23 section through the use of the authority to investigate and any
24 other power conferred by this section or Section 4007.054,
25 4007.055, 4007.056, 4007.057, or 4007.058, as the commissioner
26 determines to be necessary and appropriate.

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

29 (1) the securities regulator is permitted and has
30 agreed to provide assistance within the regulator's jurisdiction to
31 the commissioner reciprocally and at the commissioner's request
32 concerning securities matters;

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

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

1 (4) board employees and board or commissioner
2 resources necessary to carry out the request for assistance are
3 available. (V.A.C.S. Art. 581-28, Subsec. C.)

4 Source Law

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

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

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

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

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

35 SUBCHAPTER C. ADMINISTRATIVE ACTIONS

36 Revised Law

37 Sec. 4007.101. CEASE AND DESIST ORDER: OFFER OR SALE OF
38 SECURITIES. (a) The commissioner may hold a hearing as provided by
39 this section if at any time it appears to the commissioner that the
40 sale, proposed sale, or method of sale of securities, regardless of
41 whether exempt:

42 (1) is a fraudulent practice;

43 (2) does not comply with this title;

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

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

48 (b) The commissioner may hold a hearing under this section

1 on a date set by the commissioner that is not later than the 30th day
2 after the date the issuer or registrant of the securities, the
3 person on whose behalf the securities are being or will be offered,
4 or any person that is acting as a dealer or agent in violation of
5 this title, as applicable:

6 (1) receives actual notice; or

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

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

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

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

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

21 (4) prohibiting the fraudulent conduct.

22 (d) After the issuance of a cease and desist order under
23 Subsection (c), a dealer or agent may not knowingly sell or offer
24 for sale any security named in the order. (V.A.C.S. Art. 581-23,
25 Subsec. A.)

26 Source Law

27 Art. 581-23. Anything in this Act to the
28 contrary notwithstanding,

29 A. If it appears to the commissioner at any time
30 that the sale or proposed sale or method of sale of any
31 securities, whether exempt or not, is a fraudulent
32 practice or would not be in compliance with this Act or
33 would tend to work a fraud on any purchaser thereof or
34 would not be fair, just or equitable to any purchaser
35 thereof, the commissioner may hold a hearing on a date
36 determined by the commissioner within 30 days after
37 the date of receipt of actual notice by, or notice by
38 registered or certified mail to the person's last known
39 address is given to, the issuer, the registrant, the
40 person on whose behalf such securities are being or are
41 to be offered, or any person acting as a dealer or

1 agent in violation of this Act. If the commissioner
2 shall determine at such hearing that such sale would
3 not be in compliance with the Act, is a fraudulent
4 practice, or would tend to work a fraud on any
5 purchaser thereof or would not be fair, just or
6 equitable to any purchaser thereof, the commissioner
7 may issue a written cease and desist order,
8 prohibiting or suspending the sale of such securities
9 or denying or revoking the registration of such
10 securities, prohibiting an unregistered person from
11 acting as a dealer or an agent, or prohibiting the
12 fraudulent conduct. No dealer or agent shall
13 thereafter knowingly sell or offer for sale any
14 security named in such cease and desist order.

15 Revisor's Note

16 Article 581-23, Vernon's Texas Civil Statutes,
17 which is a provision of The Securities Act (Article
18 581-1 et seq., Vernon's Texas Civil Statutes), revised
19 as this title, refers to "[a]nything in this Act to the
20 contrary notwithstanding." In addition to applying to
21 the other subsections of Article 581-23, the quoted
22 language applies to Subsection A of that article,
23 which is revised as this section. Subsection A,
24 Article 581-23, authorizes the securities
25 commissioner to issue a cease and desist order to
26 prohibit fraudulent conduct or practices in relation
27 to the sale or proposed sale of securities. The
28 revised law omits the quoted language as unnecessary
29 with respect to Subsection A, Article 581-23, because
30 The Securities Act does not contain any provisions
31 contrary to that subsection.

32 Revised Law

33 Sec. 4007.102. CEASE AND DESIST ORDER: INVESTMENT ADVISER
34 OR INVESTMENT ADVISER REPRESENTATIVE. (a) Notwithstanding any
35 provision of this title to the contrary, the commissioner may hold a
36 hearing as provided by this section if at any time it appears to the
37 commissioner that:

38 (1) an investment adviser or investment adviser
39 representative is engaging or is likely to engage in fraud or a
40 fraudulent practice with respect to rendering services as an
41 investment adviser or investment adviser representative; or

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

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

5 (1) receives actual notice; or

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

8 (c) After the hearing, the commissioner shall issue or
9 decline to issue a cease and desist order. An order issued under
10 this subsection must:

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

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

18 (V.A.C.S. Art. 581-23, Subsec. B.)

19 Source Law

20 Art. 581-23. Anything in this Act to the
21 contrary notwithstanding,

22 . . .
23 B. If it appears to the Commissioner at any time
24 that an investment adviser or investment adviser
25 representative is engaging or is likely to engage in
26 fraud or a fraudulent practice with respect to
27 rendering services as an investment adviser or
28 investment adviser representative or that a person is
29 acting as an investment adviser or investment adviser
30 representative in violation of this Act, the
31 Commissioner may hold a hearing not later than the 30th
32 day after the date on which the person receives actual
33 notice or is provided notice by registered or
34 certified mail, return receipt requested, to the
35 person's last known address. After the hearing, the
36 Commissioner shall issue or decline to issue a cease
37 and desist order. An order issued under this
38 subsection must:

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

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

1 Revised Law

2 Sec. 4007.103. CEASE PUBLICATION ORDER. (a)

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

8 (b) A person may not make an offer that is prohibited by an
9 order issued under Subsection (a). (V.A.C.S. Art. 581-23, Subsec.
10 C.)

11 Source Law

12 Art. 581-23. Anything in this Act to the
13 contrary notwithstanding,

14 . . .
15 C. If it appears to the Commissioner at any time
16 that an offer contains any statement that is
17 materially false or misleading or is otherwise likely
18 to deceive the public, the Commissioner may issue a
19 cease publication order. No person shall make an offer
20 prohibited by such cease publication order.

21 Revised Law

22 Sec. 4007.104. EMERGENCY CEASE AND DESIST ORDER. (a) On the
23 commissioner's determination that the conduct, act, or practice
24 threatens immediate and irreparable public harm, the commissioner
25 may issue an emergency cease and desist order to a person who the
26 commissioner reasonably believes:

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

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

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

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

35 (3) is engaging or is about to engage in an act or
36 practice that violates this title or a board rule.

37 (b) The emergency order must:

38 (1) be sent on issuance to each person affected by the

1 order by personal delivery or registered or certified mail, return
2 receipt requested, to the person's last known address;

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

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

7 (c) Unless a person against whom the emergency order is
8 directed requests a hearing in writing before the 31st day after the
9 date the order is served on the person, the emergency order is final
10 and nonappealable as to that person. A request for a hearing must:

11 (1) be in writing and directed to the commissioner;
12 and

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

15 (d) On receiving a request for a hearing, the commissioner
16 shall serve notice of the time and place of the hearing by personal
17 delivery or registered or certified mail, return receipt requested.
18 The hearing must be held not later than the 10th day after the date
19 the commissioner receives the request for a hearing unless the
20 parties agree to a later hearing date. At the hearing, the
21 commissioner has the burden of proof and must present evidence in
22 support of the emergency order.

23 (e) After the hearing, the commissioner shall affirm,
24 modify, or set aside, wholly or partly, the emergency order. An
25 order affirming or modifying the emergency order is immediately
26 final for purposes of enforcement and appeal.

27 (f) An emergency order continues in effect unless the order
28 is stayed by the commissioner. The commissioner may impose any
29 condition before granting a stay of the order. (V.A.C.S. Art.
30 581-23-2.)

31 Source Law

32 Art. 581-23-2. A. On the Commissioner's
33 determination that the conduct, act, or practice
34 threatens immediate and irreparable public harm, the
35 Commissioner may issue an emergency cease and desist
36 order to a person whom the Commissioner reasonably

1 believes:

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

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

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

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

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

14 B. The order must:

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

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

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

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

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

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

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

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

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

51 Revised Law

52 Sec. 4007.105. DENIAL, SUSPENSION, OR REVOCATION OF
53 REGISTRATION. (a) The commissioner may deny an application for
54 registration under this title, suspend or revoke a registration
55 issued under this title, place on probation a dealer, agent,
56 investment adviser, or investment adviser representative whose
57 registration has been suspended under this title, or reprimand a
58 person registered under this title if the person:

59 (1) has been convicted of a felony;

1 (2) has been convicted of a misdemeanor that directly
2 relates to the person's securities-related duties and
3 responsibilities;

4 (3) has engaged in:

5 (A) an inequitable practice in the sale of
6 securities or in rendering services as an investment adviser; or

7 (B) a fraudulent business practice;

8 (4) is an insolvent dealer or investment adviser;

9 (5) is a dealer and is selling or sold securities in
10 this state through an agent other than a registered agent;

11 (6) is an investment adviser and is engaging or
12 engaged in rendering services as an investment adviser in this
13 state through a representative who is not registered to perform
14 services for that investment adviser;

15 (7) is an agent and is selling or sold securities in
16 this state for a dealer, issuer, or controlling person with
17 knowledge that the dealer, issuer, or controlling person has not
18 complied with this title;

19 (8) is an investment adviser representative and is
20 rendering or rendered services as an investment adviser for an
21 investment adviser in this state whom the representative is not or
22 was not registered to represent;

23 (9) has:

24 (A) made a material misrepresentation to the
25 commissioner or board in connection with information considered
26 necessary by the commissioner or board to determine:

27 (i) a dealer's or investment adviser's
28 financial responsibility; or

29 (ii) a dealer's, agent's, investment
30 adviser's, or investment adviser representative's business repute
31 or qualifications; or

32 (B) refused to provide information described by
33 Paragraph (A) that the commissioner or board has requested;

34 (10) is registered as a dealer, agent, investment

1 adviser, or investment adviser representative and has not complied
2 with an applicable requirement under Section 4004.151(a);

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

5 (A) an order by the securities agency or
6 administrator of any state, the financial regulatory authority of a
7 foreign country, or the Securities and Exchange Commission, entered
8 after notice and opportunity for hearing, denying, suspending, or
9 revoking the person's license as a dealer, agent, investment
10 adviser, or investment adviser representative or the substantial
11 equivalent of those terms;

12 (B) an order suspending or expelling from
13 membership in or association with a member of a self-regulatory
14 organization;

15 (C) a United States Postal Service fraud order;

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

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

26 (12) is subject to any order, judgment, or decree
27 entered by a court that permanently restrains or enjoins the person
28 from engaging in or continuing any conduct, action, or practice in
29 connection with any aspect of the purchase or sale of securities or
30 the rendering of investment advice; or

31 (13) has violated:

32 (A) any provision of this title;

33 (B) a board rule;

34 (C) any order issued by the commissioner; or

1 (D) any undertaking or agreement with the
2 commissioner.

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

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

9 (d) This section does not affect the confidentiality of
10 investigative records maintained by the commissioner or board.
11 (V.A.C.S. Arts. 581-14, 581-25 (part).)

12 Source Law

13 Art. 581-14. A. The Commissioner may deny,
14 revoke, or suspend a registration issued under this
15 Act, place on probation a dealer, agent, investment
16 adviser, or investment adviser representative whose
17 registration has been suspended under this Act, or
18 reprimand a person registered under this Act if the
19 person:

20 (1) has been convicted of any felony;

21 (2) has been convicted of any misdemeanor
22 which directly relates to the person's
23 securities-related duties and responsibilities;

24 (3) has engaged in any inequitable
25 practice in the sale of securities or in rendering
26 services as an investment adviser, or in any
27 fraudulent business practice;

28 (4) is a dealer or investment adviser who
29 is insolvent;

30 (5) meets one of the following criteria:

31 (a) is a dealer who is selling or has
32 sold securities in this state through an agent other
33 than a registered agent;

34 (b) is an investment adviser who is
35 engaging or has engaged in rendering services as an
36 investment adviser in this state through a
37 representative who is not registered to perform
38 services for that investment adviser as required by
39 this Act;

40 (c) is an agent who is selling or has
41 sold securities in this state for a dealer, issuer or
42 controlling person with knowledge that such dealer,
43 issuer or controlling person has not complied with the
44 provisions of this Act; or

45 (d) is an investment adviser
46 representative who is rendering or has rendered
47 services as an investment adviser for an investment
48 adviser in this state for whom the representative is
49 not or was not registered to represent as required by
50 this Act;

51 (6) has violated any of the provisions of
52 this Act or a rule of the Board;

53 (7) has made any material
54 misrepresentation to the Commissioner or Board in
55 connection with any information deemed necessary by

1 the Commissioner or Board to determine a dealer's or
2 investment adviser's financial responsibility or a
3 dealer's, agent's, investment adviser's or investment
4 adviser representative's business repute or
5 qualifications, or has refused to furnish any such
6 information requested by the Commissioner or Board;

7 (8) became registered as a dealer, agent,
8 investment adviser, or investment adviser
9 representative after August 23, 1963, and has not
10 complied with a condition imposed by the Commissioner
11 under Section 13-D;

12 (9) is the subject of any of the following
13 orders that are currently effective and were issued
14 within the last five years:

15 (a) an order by the securities agency
16 or administrator of any state, by the financial
17 regulatory authority of a foreign country, or by the
18 Securities and Exchange Commission, entered after
19 notice and opportunity for hearing, denying,
20 suspending, or revoking the person's license as a
21 dealer, agent, investment adviser, or investment
22 adviser representative or the substantial equivalent
23 of those terms;

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

27 (c) a United States Postal Service
28 fraud order;

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

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

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

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

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

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

62 Art. 581-25. . . . All registrations and . . .
63 revoked shall at once be surrendered to the
64 Commissioner upon request.

1 Revisor's Note

2 (1) Paragraph (b), Subdivision (5), Subsection
3 A, Article 581-14, Vernon's Texas Civil Statutes,
4 refers to an investment adviser who renders services
5 as an investment adviser through a representative who
6 is not registered to perform services for that
7 investment adviser "as required by this Act," meaning
8 The Securities Act (V.A.C.S. Art. 581-1 et seq.),
9 revised as this title. The revised law omits the quoted
10 language as unnecessary because the provisions of The
11 Securities Act that require a representative of an
12 investment adviser to register under the act apply by
13 their own terms.

14 (2) Paragraph (d), Subdivision (5), Subsection
15 A, Article 581-14, Vernon's Texas Civil Statutes,
16 refers to an investment adviser representative who
17 renders services as an investment adviser for an
18 investment adviser whom the representative is not or
19 was not registered to represent "as required by this
20 Act." The revised law omits the quoted language as
21 unnecessary for the reason stated in Revisor's Note (1)
22 to this section.

23 (3) Subdivision (8), Subsection A, Article
24 581-14, Vernon's Texas Civil Statutes, refers to a
25 person registered as a dealer, agent, investment
26 adviser, or investment adviser representative "after
27 August 23, 1963" and to a condition of registration
28 imposed by the securities commissioner under "Section
29 13-D," meaning Subsection D, Article 581-13, Vernon's
30 Texas Civil Statutes. The revised law substitutes a
31 reference to Section 4004.151(a) of this title because
32 the relevant part of Subsection D, Article 581-13, is
33 revised as that subsection. In addition, the revised
34 law substitutes "an applicable requirement" for the

1 "condition [of registration] imposed" because the
2 examination requirement of Subsection D, Article
3 581-13, applies only to registrations issued after
4 August 23, 1963, the effective date of that
5 subsection, and the State Securities Board has the
6 authority under that provision to grant waivers of the
7 examination requirement. The revised law omits the
8 reference to "after August 23, 1963" with respect to
9 the effective date of a person's registration in
10 relation to the examination requirement of Subsection
11 D, Article 581-13, for the reason stated in the
12 Revisor's Note to Section 4004.151.

13 (4) Paragraph (e), Subdivision (9), Subsection
14 A, Article 581-14, Vernon's Texas Civil Statutes,
15 refers to the "Commodity Exchange Act." For the
16 convenience of the reader, the revised law includes a
17 reference to the United States Code citation for the
18 entire act.

19 (5) Subdivision (10), Subsection A, Article
20 581-14, Vernon's Texas Civil Statutes, refers to a
21 court "of competent jurisdiction." The revised law
22 omits the quoted language as unnecessary. The
23 determination of whether a particular court has
24 jurisdiction over a matter is made under other law, and
25 it is not necessary to refer to that determination in
26 this section.

27 (6) Subsection B, Article 581-14, Vernon's Texas
28 Civil Statutes, provides that if the securities
29 commissioner proposes to suspend or revoke a person's
30 registration, the person is entitled to a hearing
31 before the commissioner or a hearings officer as "now
32 or hereafter required by law." The revised law omits
33 the reference to "now or hereafter" as unnecessary
34 because, regardless of the quoted phrase, the law that

1 will apply regarding whether a hearing is before the
2 commissioner or a hearings officer is the law in effect
3 at the time the commissioner proposes to suspend or
4 revoke a person's registration.

5 (7) Subsection B, Article 581-14, Vernon's Texas
6 Civil Statutes, provides that "[p]roceedings for the
7 suspension or revocation of a registration are
8 governed by Chapter 2001, Government Code." Because
9 that proceeding is a "contested case," as defined by
10 Section 2001.003, Government Code, Chapter 2001
11 applies to the proceeding by its own terms. It is
12 unnecessary to repeat that requirement in this
13 section.

14 (8) Article 581-25, Vernon's Texas Civil
15 Statutes, provides that on the revocation of the
16 registration of a dealer or investment adviser, "[a]ll
17 registrations" must be surrendered to the securities
18 commissioner on request. The revised law substitutes
19 "registration certificates" for "registrations"
20 because the document that a dealer or investment
21 adviser receives under Section 4004.054 of this title
22 and is required to surrender on revocation is a
23 registration certificate.

24 Revised Law

25 Sec. 4007.106. ASSESSMENT OF ADMINISTRATIVE FINE. (a) In
26 addition to any other remedies, the commissioner, after giving
27 notice and opportunity for a hearing, may issue an order that
28 assesses an administrative fine against a person or company found
29 to have:

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

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

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

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

3 (3) engaged in an act or practice that violates this
4 title or a board rule or order; or

5 (4) with intent to deceive or defraud or with reckless
6 disregard for the truth or the law, materially aided any person in
7 engaging in an act or practice described by Subdivision (1), (2), or
8 (3).

9 (b) An administrative fine assessed under this section when
10 added to the amount of any civil penalty previously awarded under
11 Section 4007.154 must be in an amount that does not exceed:

12 (1) the greater of:

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

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

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

20 (c) For purposes of determining the amount of an
21 administrative fine assessed under this section, the commissioner
22 shall consider factors set out in guidelines established by the
23 board.

24 (d) For purposes of private civil litigation, the payment of
25 a fine assessed in an agreed order under this title does not
26 constitute an admission of any misconduct described in the order.

27 (e) A proceeding for the assessment of an administrative
28 fine must be commenced within five years after the violation
29 occurs. (V.A.C.S. Art. 581-23-1.)

30 Source Law

31 Art. 581-23-1.

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

37 (1) engaged in fraud or a fraudulent

1 practice in connection with:

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

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

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

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

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

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

21 (1) the greater of:

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

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

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

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

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

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

40 Revised Law

41 Sec. 4007.107. HEARINGS ON CERTAIN MATTERS. (a) A person
42 or company may request a hearing to dispute the commissioner's:

43 (1) failure or refusal to:

44 (A) register and issue a certificate of
45 registration for a dealer or investment adviser under Section
46 4004.054; or

47 (B) register and issue evidence of registration
48 for an agent or investment adviser representative under Section
49 4004.104;

50 (2) issuance of an order under Section 4007.101,
51 4007.102, 4007.103, or 4007.104; or

52 (3) taking of an action in any other particular matter
53 for which no other procedure is specified by this title.

1 (b) A hearing under Subsection (a) must be held before the
2 commissioner or a hearings officer as required by law.

3 (c) On complaint by a person aggrieved by the denial of a
4 permit qualifying securities for sale under Subchapter A, Chapter
5 4003, or by the failure or refusal to register securities under
6 Subchapter B or C, Chapter 4003, the board or a hearings officer, as
7 required by law, shall conduct a hearing.

8 (d) A hearing under this section is subject to Chapter 2001.
9 (V.A.C.S. Art. 581-24.)

10 Source Law

11 Art. 581-24. A. If any person or company should
12 take exception to the action of the Commissioner in
13 failing or refusing to register and issue certificate
14 for a dealer or investment adviser or evidence of
15 registration for an investment adviser representative
16 or agent under Section 15 or 18 of this Act, in issuing
17 an order under Section 23 or 23-2 of this Act, or in any
18 other particular where this Act specifies no other
19 procedure, the complaining party may request a hearing
20 before the Commissioner or before a hearings officer
21 as now or hereafter required by law.

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

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

30 Revisor's Note

31 (1) Subsection A, Article 581-24, Vernon's Texas
32 Civil Statutes, refers to the failure or refusal of the
33 securities commissioner to register and issue a
34 certificate for a dealer or investment adviser "under
35 Section 15 . . . of this Act," meaning Article 581-15,
36 Vernon's Texas Civil Statutes, or an evidence of
37 registration for an agent or investment adviser
38 representative under "Section . . . 18 of this Act,"
39 meaning Article 581-18, Vernon's Texas Civil Statutes.
40 The provisions of Article 581-15 relating to the
41 commissioner registering and issuing a certificate of
42 registration for a dealer or investment adviser are
43 revised in relevant part as Section 4004.054 of this

1 title, and the provisions of Article 581-18 relating
2 to the commissioner registering and issuing an
3 evidence of registration for an agent or investment
4 adviser representative are revised in relevant part as
5 Section 4004.104 of this title, and the revised law is
6 drafted accordingly.

7 (2) Subsections A and B, Article 581-24,
8 Vernon's Texas Civil Statutes, provide for a hearing as
9 "now or hereafter required by law." The revised law
10 omits the reference to "now or hereafter" for the
11 reason stated in Revisor's Note (6) to Section
12 4007.105.

13 (3) Subsection B, Article 581-24, Vernon's Texas
14 Civil Statutes, refers to the denial of a permit for
15 the sale of securities under Section 10 "of this
16 article," meaning Article 581, Vernon's Texas Civil
17 Statutes. The provisions of Section 10 of Article 581
18 relating to the denial of a permit for the sale of
19 securities are revised in Subchapter A, Chapter 4003,
20 of this title, and the revised law is drafted
21 accordingly.

22 (4) Subsection B, Article 581-24, Vernon's Texas
23 Civil Statutes, refers to a "permit for the sale of
24 securities" and to a failure or refusal to register
25 securities under Section 7 "of this article," meaning
26 Article 581, Vernon's Texas Civil Statutes. The
27 provisions of Section 7 of Article 581 relating to the
28 registration of securities are Subsections B and C of
29 that section, revised as Subchapters B and C, Chapter
30 4003, of this title, respectively, and the revised law
31 is drafted accordingly.

32 In addition, the revised law throughout this
33 chapter substitutes "permit qualifying securities for
34 sale" for "permit for the sale of securities,"

1 "permit," and other similar references for the reason
2 stated in Revisor's Note (1) to Section 4003.001.

3 SUBCHAPTER D. CIVIL PROCEEDINGS

4 Revised Law

5 Sec. 4007.151. RECEIVERSHIP. (a) This section applies
6 only to a person or company acting as a dealer, agent, investment
7 adviser, investment adviser representative, or issuer or as an
8 affiliate of a dealer, agent, investment adviser, investment
9 adviser representative, or issuer, regardless of whether the person
10 or company is required to be registered as provided in this title.

11 (b) The commissioner may request the attorney general to
12 bring an action as provided by this section for the appointment of a
13 receiver for a person or company to which this section applies or
14 the assets of the person or company if it appears to the
15 commissioner, on complaint or otherwise, that:

16 (1) the person or company has:

17 (A) engaged in an act, transaction, practice, or
18 course of business described as a fraudulent practice under Section
19 4007.152; and

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

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

30 (c) On the commissioner's request under Subsection (b), the
31 attorney general may bring an action against a person or company in
32 the name and on behalf of the state if it appears to the attorney
33 general that the facts described by that subsection exist with
34 respect to the person or company. The facts contained in the

1 petition for the appointment of a receiver must be verified by the
2 commissioner on information and belief.

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

12 (e) The attorney general may apply for and, on proper
13 showing, is entitled to have a subpoena issued by the court that
14 requires:

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

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

21 (f) The court may appoint a receiver for the person or
22 company or the person's or company's assets on the attorney
23 general's proper showing of the existence of the facts described by
24 Subsection (b) with respect to the person or company.

25 (g) If the court appoints a receiver without providing the
26 person or company with notice and an opportunity for hearing, the
27 person or company may file with the court a written application for
28 an order dissolving the receivership. If the application is filed
29 not later than the 30th day after the date the person or company is
30 served with the order appointing the receiver, the person or
31 company is entitled to a hearing on the application not later than
32 the 10th day after the date written notice is provided to the
33 attorney general.

34 (h) A person may not be appointed as a receiver under this

1 section unless the court finds that the person is qualified to
2 discharge the duties of receiver after:

- 3 (1) hearing the views of:
4 (A) the attorney general;
5 (B) the commissioner; and
6 (C) the defendant against whom the appointment of
7 a receiver is sought, if the court considers it practicable; and
8 (2) considering the probable nature and magnitude of
9 the receiver's duties in the particular case.

10 (i) The commissioner or attorney general may not be required
11 to give a bond for receivership in an action brought under this
12 section. The court shall require a person appointed as a receiver
13 to give a bond that is:

- 14 (1) in an amount found by the court to be sufficient
15 after considering the probable nature and magnitude of the
16 receiver's duties in the particular case; and
17 (2) conditioned on the faithful discharge of the
18 receiver's duties.

19 (j) The remedy provided by this section is in addition to
20 any other remedy made available to the commissioner or the attorney
21 general by statutory laws or case law of this state, including any
22 provision authorizing receiverships. (V.A.C.S. Art. 581-25-1.)

23 Source Law

24 Art. 581-25-1. A. Whenever it shall appear to
25 the commissioner, either upon complaint or otherwise,
26 that:

- 27 (1) any person or company acting as a
28 dealer, agent, investment adviser, investment adviser
29 representative, or issuer (as defined in Section 4 of
30 this Act), or an affiliate of a dealer, agent,
31 investment adviser, investment adviser
32 representative, or issuer, whether or not required to
33 be registered by the commissioner as in this Act
34 provided, shall have engaged in any act, transaction,
35 practice, or course of business declared by Section 32
36 of this Act to be a fraudulent practice;
37 (2) such person or company shall have
38 acted as a dealer, agent, investment adviser,
39 investment adviser representative, or issuer or an
40 affiliate of a dealer, agent, investment adviser,
41 investment adviser representative, or issuer in
42 connection with such fraudulent practice; and
43 (3) the appointment of a receiver for such
44 person or company, or the assets of such a person or

1 company is necessary in order to conserve and protect
2 the assets of such person or company for the benefit of
3 customers, security holders, and other actual and
4 potential claimants of such person or company the
5 commissioner may request the attorney general to bring
6 an action for the appointment of a receiver for such
7 person or company or the assets of such person or
8 company.

9 B. Upon request by the commissioner pursuant to
10 Subsection A of this Section 25-1, and if it appears to
11 the attorney general that the facts enumerated in
12 Paragraphs (1) through (3) of Subsection A of this
13 Section 25-1 exist with respect to any person or
14 company, the attorney general may bring an action in
15 the name and on behalf of the State of Texas for the
16 appointment of a receiver for such person or company.
17 The facts set forth in the petition for such relief
18 shall be verified by the commissioner upon information
19 and belief. Such action may be brought in a district
20 court of any county wherein the fraudulent practice
21 complained of has been committed in whole or part, or
22 of any county wherein any defendant with respect to
23 whom appointment of a receiver is sought has its
24 principal place of business, and such district court
25 shall have jurisdiction and venue of such action; this
26 provision shall be superior to any other provision of
27 law fixing jurisdiction or venue with regard to suits
28 for receivership. In any such action the attorney
29 general may apply for and on due showing be entitled to
30 have issued the court's subpoena requiring the
31 forthwith appearance of any defendant and his
32 employees, investment adviser representatives, or
33 agents and the production of documents, books, and
34 records as may appear necessary for any hearing, to
35 testify and give evidence concerning matters relevant
36 to the appointment of a receiver.

37 C. In any action brought by the attorney general
38 pursuant to Subsection B of this Section 25-1, the
39 court, upon a proper showing by the attorney general of
40 the existence of the facts enumerated in Paragraphs
41 (1) through (3) of Subsection A of this Section 25-1
42 with respect to any person or company, may appoint a
43 receiver for such person or company or the assets of
44 such person or company. If such receiver is appointed
45 without notice to and opportunity to be heard for such
46 person or company, such person or company shall be
47 entitled to apply in writing to the court for an order
48 dissolving the receivership, and, if such application
49 is made within 30 days after service upon such person
50 or company of the court's order making such
51 appointment, shall be entitled to a hearing thereon
52 upon 10 days written notice to the attorney general.

53 D. No person shall be appointed a receiver
54 pursuant to this Section 25-1 unless such person be
55 found by the court, after hearing the views of the
56 attorney general, the commissioner, and, if deemed by
57 the court to be practicable, the person or company
58 against whom such relief is sought, to be qualified to
59 discharge the duties of receiver giving due
60 consideration to the probable nature and magnitude of
61 the duties of receiver in the particular case. No bond
62 for receivership shall be required of the commissioner
63 or attorney general in any proceeding under this
64 Section 25-1, but the court shall require a bond of any
65 receiver appointed hereunder, conditioned upon
66 faithful discharge of the receiver's duties, in an
67 amount found by the court to be sufficient giving due
68 consideration to the probable nature and magnitude of

1 the duties of receiver in the particular case.

2 E. The remedy of receivership provided by this
3 Section 25-1 shall be in addition to any and all other
4 remedies afforded the commissioner or the attorney
5 general by other provisions of statutory or decisional
6 law of this state, including, without limitation of
7 the generality of the foregoing, any such provision
8 authorizing receiverships.

9 Revisor's Note

10 (1) Subdivision (1), Subsection A, Article
11 581-25-1, Vernon's Texas Civil Statutes, refers to a
12 dealer, agent, investment adviser, investment adviser
13 representative, or issuer "as defined in Section 4 of
14 this Act," meaning Article 581-4, Vernon's Texas Civil
15 Statutes. The revised law omits the quoted language as
16 unnecessary because the definitions of "dealer,"
17 "agent," "investment adviser," "investment adviser
18 representative," and "issuer" in Article 581-4,
19 revised as Sections 4001.056, 4001.052, 4001.059,
20 4001.060, and 4001.061 of this title, respectively,
21 apply by their own terms.

22 (2) Subdivision (1), Subsection A, Article
23 581-25-1, Vernon's Texas Civil Statutes, refers to a
24 fraudulent practice under "Section 32 of this Act,"
25 meaning Article 581-32, Vernon's Texas Civil Statutes.
26 The only provision of Article 581-32 that refers to a
27 fraudulent practice is Subsection A, revised as
28 Section 4007.152 of this chapter, and the revised law
29 is drafted accordingly.

30 (3) Subdivision (3), Subsection A, Article
31 581-25-1, Vernon's Texas Civil Statutes, refers to
32 "other actual and potential claimants." The revised
33 law omits "actual" as unnecessary in this context
34 because the term does not add to the clear meaning of
35 the law. Each claimant is an "actual" claimant.

36 (4) Subsection B, Article 581-25-1, Vernon's
37 Texas Civil Statutes, refers to a subpoena requiring
38 the "forthwith" appearance of certain persons. The

1 revised law substitutes "without delay" for
2 "forthwith" because, in this context, the terms are
3 synonymous and "without delay" is more consistent with
4 modern usage.

5 (5) Subsection E, Article 581-25-1, Vernon's
6 Texas Civil Statutes, refers to "any and all" other
7 remedies made available by law to the securities
8 commissioner or the attorney general. The revised law
9 omits the reference to "all" because, in context,
10 "all" is included within the meaning of "any."

11 (6) Subsection E, Article 581-25-1, Vernon's
12 Texas Civil Statutes, refers to "decisional law." The
13 revised law substitutes "case law" for "decisional
14 law" because, in context, the terms are synonymous and
15 "case law" is more commonly used.

16 (7) Subsection E, Article 581-25-1, Vernon's
17 Texas Civil Statutes, refers to statutory or case law
18 of this state, "including, without limitation of the
19 generality of the foregoing," any law authorizing
20 receiverships. The revised law omits "without
21 limitation of the generality of the foregoing" because
22 Section 311.005(13), Government Code (Code
23 Construction Act), applicable to the revised law,
24 provides that "includes" and "including" are terms of
25 enlargement and not limitation and do not create a
26 presumption that components not expressed are
27 excluded.

28 Revised Law

29 Sec. 4007.152. INJUNCTIVE RELIEF. (a) The commissioner
30 may request the attorney general to bring an action as provided by
31 this section against a person or company if it appears to the
32 commissioner, on complaint or otherwise, that the person or
33 company:

34 (1) has engaged, is engaging, or is about to engage in

1 fraud or a fraudulent practice in connection with the sale of a
2 security;

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

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

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

12 (b) On the commissioner's request under Subsection (a), the
13 attorney general, in addition to other remedies, may bring an
14 action in the name and on behalf of the state:

15 (1) against:

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

18 (B) any person who, with intent to deceive or
19 defraud or with reckless disregard for the truth or the law, has
20 materially aided, is materially aiding, or is about to materially
21 aid the person or company; and

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

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

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

32 (d) The attorney general may apply for and, on proper
33 showing, is entitled to have a subpoena issued by the court that
34 requires:

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

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

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

14 (f) The commissioner or attorney general shall not be
15 required to give a bond for injunction in an action brought under
16 this section. (V.A.C.S. Art. 581-32, Subsec. A.)

17 Source Law

18 Art. 581-32. A. Whenever it shall appear to the
19 Commissioner either upon complaint or otherwise, that
20 any person has engaged, is engaging, or is about to
21 engage in fraud or a fraudulent practice in connection
22 with the sale of a security, has engaged, is engaging,
23 or is about to engage in fraud or a fraudulent practice
24 in the rendering of services as an investment adviser
25 or investment adviser representative, has made an
26 offer containing a statement that is materially
27 misleading or is otherwise likely to deceive the
28 public, or has engaged, is engaging, or is about to
29 engage in an act or practice that violates this Act or
30 a Board rule or order, the Attorney General may, on
31 request by the Commissioner, and in addition to any
32 other remedies, bring action in the name and on behalf
33 of the State of Texas against such person or company
34 and any person who, with intent to deceive or defraud
35 or with reckless disregard for the truth or the law,
36 has materially aided, is materially aiding, or is
37 about to materially aid such person and any other
38 person or persons heretofore concerned in or in any way
39 participating in or about to participate in such acts
40 or practices, to enjoin such person or company and such
41 other person or persons from continuing such acts or
42 practices or doing any act or acts in furtherance
43 thereof. The Commissioner shall verify, on
44 information and belief, the facts contained in an
45 application for injunction under this section. In any
46 such court proceedings, the Attorney General may apply
47 for and on due showing be entitled to have issued the
48 court's subpoena requiring the forthwith appearance of
49 any defendant and the defendant's employees or agents
50 and the production of documents, books and records as

1 may appear necessary for the hearing of such petition,
2 to testify and give evidence concerning the acts or
3 conduct or things complained of in such application
4 for injunction. The District Court of any county,
5 wherein it is shown that the acts complained of have
6 been or are about to be committed, or a district court
7 in Travis County shall have jurisdiction of any action
8 brought under this section, and this provision shall
9 be superior to any provision fixing the jurisdiction
10 or venue with regard to suits for injunction. No bond
11 for injunction shall be required of the Commissioner
12 or Attorney General in any such proceeding.

13 Revisor's Note

14 (1) Subsection A, Article 581-32, Vernon's Texas
15 Civil Statutes, refers to any other "person or
16 persons" concerned with or participating in fraudulent
17 acts or practices. The revised law omits the reference
18 to "persons" because Section 311.012(b), Government
19 Code (Code Construction Act), applicable to the
20 revised law, provides that a reference to the singular
21 includes the plural and vice versa. Throughout this
22 chapter, references in which both the singular and
23 plural forms of the word are used are revised using
24 only one form of the term.

25 (2) Subsection A, Article 581-32, Vernon's Texas
26 Civil Statutes, refers to any other person or persons
27 "heretofore" concerned with respect to certain acts or
28 practices. The revised law omits "heretofore" as
29 unnecessary because, in context, the term does not add
30 to the clear meaning of the law.

31 (3) Subsection A, Article 581-32, Vernon's Texas
32 Civil Statutes, refers to a subpoena requiring the
33 "forthwith" appearance of certain persons and the
34 production of documents and other records. The
35 revised law substitutes "without delay" for
36 "forthwith" for the reason stated in Revisor's Note (4)
37 to Section 4007.151.

38 (4) Subsection A, Article 581-32, Vernon's Texas
39 Civil Statutes, provides that a district court located
40 in Travis County or any county in which the acts

1 complained of have been or are about to be committed
2 has "jurisdiction" of an action brought under
3 Subsection A, Article 581-32. The revised law
4 substitutes "jurisdiction and venue" for
5 "jurisdiction" for clarity and to more accurately
6 reflect the substance of the provision.

7 Revised Law

8 Sec. 4007.153. EQUITABLE RELIEF AND RESTITUTION. (a) On
9 the commissioner's request, the attorney general may, in addition
10 to other remedies, seek:

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

13 (2) the disgorgement of any economic benefit gained by
14 a defendant through an act or practice that violates this title or
15 for which this title provides the commissioner and attorney general
16 with a remedy.

17 (b) The attorney general may seek the remedies described by
18 Subsection (a) either in:

19 (1) an action under Section 4007.152; or

20 (2) a separate action brought in district court.

21 (c) The court may:

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

24 (2) order the defendant to deliver to each victim of an
25 act or practice that violates this title, or for which this title
26 provides the commissioner or the attorney general with a remedy,
27 the amount of money or the property the defendant obtained from the
28 victim, including any bonus, fee, commission, option, proceeds, or
29 profit from or loss avoided through the sale of the security or
30 through the rendering of services as an investment adviser or
31 investment adviser representative, or any other tangible benefit.

32 (V.A.C.S. Art. 581-32, Subsec. B.)

33 Source Law

34 B. In addition to any other remedies, the

1 Attorney General may, on the request of the
2 Commissioner, either in an action under Subsection A
3 of this section or in a separate action in District
4 Court, seek equitable relief, including restitution,
5 for a victim of fraudulent practices and may seek the
6 disgorgement of any economic benefit gained by a
7 defendant through an act or practice that violates
8 this Act or for which this Act provides the
9 Commissioner or the Attorney General with a remedy.
10 The court may grant any equitable relief that the court
11 considers appropriate and may order the defendant to
12 deliver to each victim of any act or practice that
13 violates this Act or for which this Act provides the
14 Commissioner or the Attorney General with a remedy the
15 amount of money or the property that the defendant
16 obtained from the victim, including any bonus, fee,
17 commission, option, proceeds, or profit from or loss
18 avoided through the sale of the security or through the
19 rendering of services as an investment adviser or
20 investment adviser representative, or any other
21 tangible benefit.

22 Revised Law

23 Sec. 4007.154. CIVIL PENALTY. (a) On the commissioner's
24 request, the attorney general may, in addition to other remedies,
25 seek a civil penalty to be paid to the state in an amount that, when
26 added to the amount of any administrative fine previously assessed
27 under Section 4007.106(b), does not exceed:

- 28 (1) the greater of:
29 (A) \$20,000 per violation; or
30 (B) the gross amount of any economic benefit
31 gained by the person or company as a result of the commission of the
32 act or practice; and

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

36 (b) The attorney general may seek a civil penalty under this
37 section either in:

- 38 (1) an action under Section 4007.152; or
39 (2) a separate action in district court. (V.A.C.S.
40 Art. 581-32, Subsec. C.)

41 Source Law

42 C. In addition to any other remedies, the
43 Attorney General may, on the request of the
44 Commissioner, either in an action under Subsection A
45 of this section or in a separate action in District
46 Court, seek a civil penalty to be paid to the State in
47 an amount, together with the amount of any

1 administrative fine already assessed under Subsection
2 B of Section 23-1, not to exceed:

3 (1) the greater of:

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

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

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

11 Revised Law

12 Sec. 4007.155. RECOVERY OF COSTS. In an action brought
13 under Section 4007.152, 4007.153, or 4007.154, the attorney general
14 may recover reasonable costs and expenses incurred by the attorney
15 general in bringing the action. (V.A.C.S. Art. 581-32, Subsec. D.)

16 Source Law

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

21 SUBCHAPTER E. CRIMINAL PROVISIONS

22 Revised Law

23 Sec. 4007.201. UNAUTHORIZED SALE OF SECURITIES; OFFENSE.

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

28 (1) the security has been registered under Subchapter
29 B or C, Chapter 4003; or

30 (2) a permit qualifying securities for sale has been
31 issued under Subchapter A, Chapter 4003, with respect to the
32 security.

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

38 (c) An offense under this section is a felony of the third
39 degree. (V.A.C.S. Art. 581-29 (part).)

1 Source Law

2 Art. 581-29. Any person who shall:

3 A. Sell, offer for sale or delivery, solicit
4 subscriptions or orders for, dispose of, invite offers
5 for, or who shall deal in any other manner in any
6 security or securities without being a registered
7 dealer or agent as in this Act provided shall be deemed
8 guilty of a felony of the third degree.

9 B. Sell, offer for sale or delivery, solicit
10 subscriptions to and orders for, dispose of, invite
11 orders for, or who shall deal in any other manner in
12 any security or securities issued after September 6,
13 1955, unless said security or securities have been
14 registered or granted a permit as provided in Section 7
15 of this Act, shall be deemed guilty of a felony of the
16 third degree.

17 . . .

18 Revisor's Note

19 (1) Subsection A, Article 581-29, Vernon's Texas
20 Civil Statutes, provides that a person commits an
21 offense if the person engages in certain conduct
22 unless the person is a "registered dealer or agent."
23 The revised law adds a reference to a "registered
24 agent" to clarify that an agent is required to be
25 registered under Subsection A, Article 581-12,
26 Vernon's Texas Civil Statutes, revised in relevant
27 part as Section 4004.101(a) of this title.

28 (2) Subsections A and B, Article 581-29,
29 Vernon's Texas Civil Statutes, provide that a person
30 who engages in certain prohibited conduct "shall be
31 deemed guilty" of a felony of the third degree.
32 Subsequent subsections of Article 581-29 contain
33 similar provisions. Throughout this subchapter, which
34 primarily consists of the offenses described in
35 Article 581-29, the revised law provides that a person
36 who engages in prohibited conduct "commits an offense"
37 to be consistent with the terminology used in the Penal
38 Code.

39 (3) Subsection B, Article 581-29, Vernon's Texas
40 Civil Statutes, refers to securities that have been
41 registered or issued a permit "as provided in Section 7

1 of this Act," meaning Article 581-7, Vernon's Texas
2 Civil Statutes. The provisions of Article 581-7
3 providing for the registration of securities are
4 Subsections B and C, revised as Subchapters B and C,
5 Chapter 4003, of this title, respectively. The
6 provision of Article 581-7 authorizing the issuance of
7 a permit qualifying securities for sale is Subsection
8 A, revised as Subchapter A, Chapter 4003, of this
9 title. The revised law is drafted accordingly.

10 Revised Law

11 Sec. 4007.202. UNAUTHORIZED RENDERING OF SERVICES AS
12 INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE; OFFENSE.

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

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

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

18 (b) An offense under this section is a felony of the third
19 degree. (V.A.C.S. Art. 581-29 (part).)

20 Source Law

21 Art. 581-29. Any person who shall:

22 . . .

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

27 . . .

28 Revised Law

29 Sec. 4007.203. FRAUDULENT CONDUCT; OFFENSE. (a) A person
30 commits an offense if:

31 (1) the person directly or indirectly:

32 (A) engages in any fraud or fraudulent practice;

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

35 (C) knowingly makes an untrue statement of a
36 material fact or omits to state a material fact necessary in order
37 to make the statements made, in light of the circumstances under

1 which they are made, not misleading; or

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

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

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

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

14 (b) An offense under this section is:

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

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

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

22 (c) An indictment for an offense under this section may be
23 brought only before the fifth anniversary of the date the offense
24 was committed. (V.A.C.S. Art. 581-29 (part); Art. 581-29-1.)

25 Source Law

26 Art. 581-29. Any person who shall:

27 . . .
28 C. In connection with the sale, offering for
29 sale or delivery of, the purchase, offer to purchase,
30 invitation of offers to purchase, invitations of
31 offers to sell, or dealing in any other manner in any
32 security or securities, whether or not the transaction
33 or security is exempt under Section 5 or 6 of this Act,
34 or in connection with the rendering of services as an
35 investment adviser or an investment adviser
36 representative, directly or indirectly:

37 (1) engage in any fraud or fraudulent
38 practice;

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

41 (3) knowingly make any untrue statement of
42 a material fact or omit to state a material fact

1 necessary in order to make the statements made, in the
2 light of the circumstances under which they are made,
3 not misleading; or

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

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

10 (b) guilty of a felony of the second
11 degree, if the amount involved in the offense is
12 \$10,000 or more but less than \$100,000; or

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

15
16 Art. 581-29-1. An indictment for an offense
17 under Subsection C of Section 29 may be brought only
18 before the fifth anniversary of the day on which the
19 offense is committed.

20 Revisor's Note

21 Subsection C, Article 581-29, Vernon's Texas
22 Civil Statutes, refers to a transaction or security
23 that is exempt "under Section 5 or 6 of this Act,"
24 meaning Article 581-5 or 581-6, Vernon's Texas Civil
25 Statutes. The relevant provisions of Articles 581-5
26 and 581-6 pertaining to exempt transactions and
27 securities are revised in Chapter 4005 of this title,
28 and the revised law is drafted accordingly.

29 Revised Law

30 Sec. 4007.204. MATERIALLY FALSE STATEMENT IN DOCUMENT OR
31 PROCEEDING; OFFENSE. (a) A person commits an offense if the person
32 knowingly makes or causes to be made any statement in a document
33 filed with the commissioner or in a proceeding under this title that
34 is, at the time and in light of the circumstances under which the
35 statement is made, false or misleading in any material respect.

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

39 (c) An offense under this section is a felony of the third
40 degree. (V.A.C.S. Art. 581-29 (part).)

41 Source Law

42 Art. 581-29. Any person who shall:

43 . . .
44 E. Knowingly make or cause to be made, in any
45 document filed with the commissioner or in any

1 proceeding under this Act, whether or not such
2 document or proceeding relates to a transaction or
3 security exempt under the provisions of Sections 5 or 6
4 of this Act, any statement which is, at the time and in
5 the light of the circumstances under which it is made,
6 false or misleading in any material respect shall be
7 deemed guilty of a felony of the third degree.
8 . . .

9 Revisor's Note

10 Subsection E, Article 581-29, Vernon's Texas
11 Civil Statutes, refers to a transaction or security
12 that is exempt "under Sections 5 or 6 of this Act,"
13 meaning Article 581-5 or 581-6, Vernon's Texas Civil
14 Statutes. The revised law substitutes "Chapter 4005"
15 for the quoted language for the reason stated in the
16 revisor's note to Section 4007.203.

17 Revised Law

18 Sec. 4007.205. FALSE STATEMENT OR REPRESENTATION
19 CONCERNING REGISTRATION; OFFENSE. (a) A person commits an offense
20 if the person knowingly makes a false statement or representation
21 concerning a registration made or an exemption claimed under this
22 title.

23 (b) An offense under this section is a state jail felony.
24 (V.A.C.S. Art. 581-29 (part).)

25 Source Law

26 Art. 581-29. Any person who shall:
27 . . .
28 F. Knowingly make any false statement or
29 representation concerning any registration made or
30 exemption claimed under the provisions of this Act
31 shall be deemed guilty of a state jail felony.
32 . . .

33 Revised Law

34 Sec. 4007.206. VIOLATION OF CEASE AND DESIST ORDER;
35 OFFENSE. (a) A person commits an offense if the person knowingly
36 violates a cease and desist order issued by the commissioner under
37 Section 4007.101, 4007.102, or 4007.104.

38 (b) An offense under this section is a felony of the third
39 degree. (V.A.C.S. Art. 581-29 (part).)

40 Source Law

41 Art. 581-29. Any person who shall:

1 . . .
2 D. Knowingly violate a cease and desist order
3 issued by the commissioner under the authority of
4 Section 23A, 23B, or 23-2 of this Act shall be deemed
5 guilty of a felony of the third degree.
6 . . .

7 Revised Law

8 Sec. 4007.207. NONCOMPLIANT OFFER OR OFFER PROHIBITED BY
9 CEASE PUBLICATION ORDER; OFFENSE. (a) A person commits an offense
10 if the person:

11 (1) makes an offer of a security in this state that
12 does not comply with the requirements governing offers specified in
13 Subchapter E, Chapter 4003; or

14 (2) knowingly makes an offer of a security in this
15 state that is prohibited by a cease publication order issued by the
16 commissioner under Section 4007.103.

17 (b) An offense under this section is a state jail felony.
18 (V.A.C.S. Art. 581-29 (part).)

19 Source Law

20 Art. 581-29. Any person who shall:

21 . . .
22 G. Make an offer of any security within this
23 State that is not in compliance with the requirements
24 governing offers set forth in Section 22 of this Act
25 shall be deemed guilty of a state jail felony.

26 H. Knowingly make an offer of any security
27 within this State prohibited by a cease publication
28 order issued by the Commissioner under Section 23C of
29 this Act shall be deemed guilty of a state jail felony.
30 . . .

31 Revisor's Note

32 Subsection G, Article 581-29, Vernon's Texas
33 Civil Statutes, refers to the requirements governing
34 offers specified in "Section 22 of this Act," meaning
35 Article 581-22, Vernon's Texas Civil Statutes. The
36 revised law substitutes a reference to Subchapter E,
37 Chapter 4003, of this title because Article 581-22 is
38 revised as that subchapter.

39 Revised Law

40 Sec. 4007.208. AGGREGATION OF AMOUNTS. When amounts are
41 obtained in violation of this title pursuant to one scheme or
42 continuing course of conduct, whether from the same or several

1 sources, the conduct may be considered as one offense and the
2 amounts aggregated in determining the grade of the offense.
3 (V.A.C.S. Art. 581-29-2.)

4 Source Law

5 Art. 581-29-2. When amounts are obtained in
6 violation of this Act under one scheme or continuing
7 course of conduct, whether from the same or several
8 sources, the conduct may be considered as one offense
9 and the amounts aggregated in determining the grade of
10 the offense.

11 Revised Law

12 Sec. 4007.209. LIABILITY OF CORPORATION. (a) In this
13 section:

14 (1) "Association" and "corporation" have the meanings
15 assigned by Section 1.07, Penal Code.

16 (2) "High managerial agent" has the meaning assigned
17 by Section 7.21, Penal Code.

18 (b) If conduct constituting an offense under this
19 subchapter is performed by an agent acting on behalf of a
20 corporation or association and within the scope of the agent's
21 office or employment, the corporation or association is criminally
22 responsible for the offense only if the commission of the offense
23 was authorized, requested, commanded, performed, or recklessly
24 tolerated by:

25 (1) a majority of the governing board acting on behalf
26 of the corporation or association; or

27 (2) a high managerial agent acting on behalf of the
28 corporation or association and within the scope of the high
29 managerial agent's office or employment.

30 (c) It is an affirmative defense to prosecution of a
31 corporation or association under Subsection (b) that the high
32 managerial agent having supervisory responsibility over the
33 subject matter of the offense employed due diligence to prevent the
34 commission of the offense. (V.A.C.S. Art. 581-29-3.)

35 Source Law

36 Art. 581-29-3. A. In this section:
37 (1) "Association" and "corporation" have

1 the meanings assigned by Section 1.07, Penal Code.

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

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

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

14 (2) a high managerial agent acting in
15 behalf of the corporation or association and within
16 the scope of the high managerial agent's office or
17 employment.

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

24 Revisor's Note
25 (End of Subchapter)

26 Subsection J, Article 581-29, Vernon's Texas
27 Civil Statutes, provides that a conviction of an
28 offense under Article 581-29 may be enhanced as
29 provided by Section 12.42, Penal Code. The revised law
30 omits this provision as unnecessary because under
31 Section 1.03(b), Penal Code, which provides that
32 certain provisions of the Penal Code apply to offenses
33 defined by other laws, Section 12.42 of that code
34 already applies to an offense committed under Article
35 581-29, the relevant part of which is revised in
36 Subchapter E of this chapter. The omitted law reads:

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

40 Revisor's Note
41 (End of Chapter)

42 Article 581-27, Vernon's Texas Civil Statutes,
43 provides that judicial review of a decision of the
44 securities commissioner or State Securities Board is
45 under the substantial evidence rule. The revised law
46 omits this provision as unnecessary because the
47 standard of review for a contested case involving a

1 state agency is provided under Section 2001.174,
2 Government Code, which is applicable to the revised
3 law. The omitted law reads:

4 Art. 581-27. Judicial review of a
5 decision of the Commissioner or Board is
6 under the substantial evidence rule.

7 CHAPTER 4008. PRIVATE RIGHTS OF ACTION

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9 CHAPTER 4008. PRIVATE RIGHTS OF ACTION

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Revised Law

12 Sec. 4008.001. UNENFORCEABILITY OF ILLEGAL CONTRACTS. A
13 person may not base a suit on a contract if the person:

14 (1) made or engaged in the performance of the contract
15 in violation of this title or a rule, order, or requirement under
16 this title; or

17 (2) acquired any purported right under the contract
18 with knowledge of the facts by reason of which the contract's making
19 or performance was in violation of this title or a rule, order, or
20 requirement under this title. (V.A.C.S. Art. 581-33, Subsec. K.)

21 Source Law

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

30 Revisor's Note

31 (1) Subsection K, Article 581-33, Vernon's Texas
32 Civil Statutes, refers to "this Act," which is The
33 Securities Act (Article 581-1 et seq., Vernon's Texas
34 Civil Statutes). The provisions of The Securities Act
35 are revised as this title. The revised law throughout
36 this chapter therefore substitutes references to "this
37 title" for references to "this Act."

1 (2) Subsection K, Article 581-33, Vernon's Texas
2 Civil Statutes, refers to a rule, order, or
3 requirement "hereunder," meaning under The Securities
4 Act (Article 581-1 et seq., Vernon's Texas Civil
5 Statutes). The revised law substitutes a reference to
6 "under this title" for the reference to "hereunder"
7 for the reason stated in Revisor's Note (1) of this
8 section.

9 (3) Subsection K, Article 581-33, Vernon's Texas
10 Civil Statutes, refers to a person who has acquired any
11 purported right under a contract "with knowledge of
12 the facts by reason of which [the contract's] making or
13 performance was in violation," referring to the
14 previous reference to the making or performance of a
15 contract "in violation of any provision of this Act or
16 any rule or order or requirement hereunder." For
17 clarity, the revised law restates the description of
18 the provisions referenced by Subsection K.

19 Revised Law

20 Sec. 4008.002. CERTAIN WAIVERS VOID. A condition,
21 stipulation, or provision is void if it binds a buyer or seller of a
22 security or a purchaser of services rendered by an investment
23 adviser or investment adviser representative to waive compliance
24 with this title or a rule, order, or requirement under this title.
25 (V.A.C.S. Art. 581-33, Subsec. L.)

26 Source Law

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

33 Revised Law

34 Sec. 4008.003. ACTION FOR COLLECTION OF COMMISSION OR
35 COMPENSATION. (a) This section does not apply to a person or
36 company that rendered services in connection with a transaction

1 that is exempt under Subchapter A, Chapter 4005, or under a rule
2 adopted by the board under Section 4005.024 if the person or company
3 was not required to be registered by the terms of the exemption.

4 (b) A person or company may not bring or maintain any action
5 in a court of this state for collection of a commission or
6 compensation for services rendered in the sale or purchase of
7 securities unless the person or company alleges and proves that:

8 (1) the person or company was:

9 (A) registered under this title; or

10 (B) exempt from registration under rules adopted
11 under Section 4004.001; and

12 (2) the securities sold were registered under this
13 title at the time the alleged cause of action arose. (V.A.C.S. Art.
14 581-34.)

15 Source Law

16 Art. 581-34. No person or company shall bring or
17 maintain any action in the courts of this state for
18 collection of a commission or compensation for
19 services rendered in the sale or purchase of
20 securities, as that term is defined in this Act,
21 without alleging and proving that such person or
22 company was duly registered under the provisions of
23 this Act (or duly exempt from such registration
24 pursuant to rules adopted under Section 12C of this
25 Act) and the securities so sold were duly registered
26 under the provisions of this Act at the time the
27 alleged cause of action arose; provided, however, that
28 this section shall not apply to any company or person
29 that rendered services in connection with any
30 transaction exempted by Section 5 of this Act or by any
31 rule promulgated by the Board pursuant to Subsection T
32 of Section 5 of this Act if the company or person was
33 not required to be registered by the terms of the
34 exemption.

35 Revisor's Note

36 (1) Article 581-34, Vernon's Texas Civil
37 Statutes, refers to securities, "as that term is
38 defined in this Act," meaning The Securities Act
39 (Article 581-1 et seq., Vernon's Texas Civil
40 Statutes). The revised law omits the quoted language
41 as unnecessary because the definition of "securities"
42 in that act is revised as Section 4001.068 of this
43 title and applies by its own terms.

1 (2) Article 581-34, Vernon's Texas Civil
2 Statutes, refers to a person or company who has been
3 "duly" registered or is "duly" exempt from
4 registration under The Securities Act (Article 581-1
5 et seq., Vernon's Texas Civil Statutes). Article
6 581-34 also refers to securities "duly" registered
7 under that act. The revised law omits "duly" with
8 respect to the registration of a person, company, or
9 security as unnecessary because a person, company, or
10 security that is not properly registered is not
11 considered to be registered. The revised law omits
12 "duly" with respect to an exemption as unnecessary
13 because in context only a properly adopted exemption
14 would apply to the person or company.

15 (3) Article 581-34, Vernon's Texas Civil
16 Statutes, refers to rules adopted under "Section 12C
17 of this Act," meaning Subsection C, Article 581-12,
18 Vernon's Texas Civil Statutes. Subsection C of Article
19 581-12 is revised in Section 4004.001 of this title,
20 and the revised law is drafted accordingly.

21 (4) Article 581-34, Vernon's Texas Civil
22 Statutes, provides for an exception to the
23 applicability of that provision for services rendered
24 in connection with a transaction that is exempted by
25 "Section 5 of this Act," meaning Article 581-5,
26 Vernon's Texas Civil Statutes, or by a rule adopted
27 under "Subsection T of Section 5 of this Act," meaning
28 Subsection T of Article 581-5, Vernon's Texas Civil
29 Statutes. The relevant provisions of Article 581-5
30 pertaining to exempt transactions are revised in
31 Subchapter A, Chapter 4005, of this title, and
32 Subsection T of Article 581-5 is revised in Section
33 4005.024 of this title. The revised law is drafted
34 accordingly.

1 Revised Law

2 Sec. 4008.004. STAY OF RECOGNITION OR ENFORCEMENT OF
3 FOREIGN-COUNTRY JUDGMENT. (a) Before a court's recognition or
4 enforcement of a foreign-country judgment under Chapter 36A, Civil
5 Practice and Remedies Code, or otherwise, a party against whom
6 recognition or enforcement of the foreign-country judgment is
7 sought is entitled to de novo review by a court in this state to
8 determine whether a party, or the party's successors, assigns,
9 agents, or representatives seeking recognition or enforcement of
10 the foreign-country judgment have violated this title or Chapter
11 17, Business & Commerce Code.

12 (b) A party seeking de novo review under this section must
13 file with the court a verified pleading asserting a violation of
14 this title or Chapter 17, Business & Commerce Code, not later than
15 the 30th day after the date of service of the notice of filing of the
16 foreign-country judgment with the court for recognition or
17 enforcement.

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

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

26 (e) This section applies to a foreign-country judgment
27 involving a contract or agreement for a sale, offer for sale, or
28 sell as defined by this title, or investment, that imposes an
29 obligation of indemnification or liquidated damages on a resident
30 of this state. (V.A.C.S. Art. 581-33-2.)

31 Source Law

32 Art. 581-33-2. (a) Prior to a court's
33 recognition or enforcement of a foreign country
34 judgment under Chapter 36, Civil Practice and Remedies
35 Code, or otherwise, a party against whom recognition
36 or enforcement of a foreign country judgment is sought

1 is entitled to de novo review by a court in this state
2 to determine whether a party, its successors, assigns,
3 agents, or representatives seeking recognition or
4 enforcement of a foreign country judgment has violated
5 this Act or Chapter 17, Business & Commerce Code.

6 (b) A party seeking de novo review under this
7 section must file with the court a verified pleading
8 asserting a violation of this Act or Chapter 17,
9 Business & Commerce Code, not later than the 30th day
10 after the date of service of the notice of filing of a
11 foreign country judgment with the court for
12 recognition or enforcement.

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

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

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

29 Revisor's Note

30 Subsection (a), Article 581-33-2, Vernon's Texas
31 Civil Statutes, refers to the enforcement of a foreign
32 country judgment under "Chapter 36, Civil Practice and
33 Remedies Code." The revised law substitutes a
34 reference to Chapter 36A, Civil Practice and Remedies
35 Code, for the quoted language because Chapter 390
36 (S.B. 944), Acts of the 85th Legislature, Regular
37 Session, 2017, repealed Chapter 36, Civil Practice and
38 Remedies Code, the uniform act of 1962, and enacted
39 Chapter 36A of that code, known as the Uniform
40 Foreign-Country Money Judgments Recognition Act, to
41 address the enforcement of judgments of other
42 countries. The revised law also substitutes
43 "foreign-country judgment" for "foreign country
44 judgment" because that is the defined term applicable
45 throughout Chapter 36A.

46 Revised Law

47 Sec. 4008.005. SURVIVABILITY OF ACTION. A cause of action
48 under this title survives the death of a person who might have been

1 a plaintiff or defendant. (V.A.C.S. Art. 581-33, Subsec. G.)

2 Source Law

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

6 Revised Law

7 Sec. 4008.006. SAVING OF EXISTING RIGHTS AND REMEDIES. The
8 rights and remedies provided by this title are in addition to any
9 other rights, including exemplary damages, or remedies that exist.
10 (V.A.C.S. Art. 581-33, Subsec. M.)

11 Source Law

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

16 Revisor's Note

17 (1) Subsection M, Article 581-33, Vernon's Texas
18 Civil Statutes, refers to "exemplary or punitive
19 damages." The revised law omits the reference to
20 "punitive damages" as unnecessary because the terms
21 are synonymous and "exemplary damages" is more
22 commonly used.

23 (2) Subsection M, Article 581-33, Vernon's Texas
24 Civil Statutes, refers to rights or remedies that
25 exist "at law or in equity." The revised law omits the
26 quoted language because, in context, "at law or in
27 equity" is included within the meaning of "any other
28 rights . . . or remedies that [may] exist."

29 SUBCHAPTER B. CIVIL LIABILITY FOR ISSUANCE, SALE, OR PURCHASE OF
30 SECURITIES

31 Revised Law

32 Sec. 4008.051. SELLER LIABILITY: REGISTRATION AND RELATED
33 VIOLATIONS. (a) A person who offers or sells a security in
34 violation of the following is liable to a person who buys the
35 security from the seller:

36 (1) Section 4003.001(a), 4003.002, 4003.003, or

1 4003.004; Subchapter B, Chapter 4003, other than Section
2 4003.054(b)(1); Subchapter C, Chapter 4003, other than Section
3 4003.103(b); Section 4004.001, 4004.051, 4004.052, 4004.101(a), or
4 4004.102(a); or Section 4007.103;

5 (2) Subchapter G, Chapter 4003, other than Section
6 4003.304, or a requirement of the commissioner under Subchapter G,
7 Chapter 4003, other than Section 4003.304; or

8 (3) an order under Section 4007.101 or 4007.104.

9 (b) The buyer of the security may sue for:

10 (1) rescission; or

11 (2) damages if the buyer no longer owns the security.

12 (V.A.C.S. Art. 581-33, Subsec. A, Subdiv. (1).)

13 Source Law

14 Art. 581-33. A. Liability of Sellers. (1)
15 Registration and Related Violations. A person who
16 offers or sells a security in violation of Section 7, 9
17 (or a requirement of the Commissioner thereunder), 12,
18 23C, or an order under 23A or 23-2 of this Act is liable
19 to the person buying the security from him, who may sue
20 either at law or in equity for rescission or for
21 damages if the buyer no longer owns the security.

22 Revisor's Note

23 (1) Subdivision (1), Subsection A, Article
24 581-33, Vernon's Texas Civil Statutes, refers to a
25 person who offers or sells a security in violation of
26 Article 581-7, 581-9, 581-12, or 581-23C or an order
27 under Article 581-23A or 581-23-2, Vernon's Texas
28 Civil Statutes. The revised law substitutes
29 references to various sections of Chapters 4003, 4004,
30 and 4007 of this title because the relevant provisions
31 of those articles are revised as those sections.

32 (2) Subdivision (1), Subsection A, Article
33 581-33, Vernon's Texas Civil Statutes, provides that a
34 person who offers or sells a security in violation of
35 certain provisions of this title is liable to the
36 person who buys the security from "him." The revised
37 law substitutes "the seller" for the quoted language

1 because the seller is the person from whom the security
2 is bought.

3 (3) Subdivision (1), Subsection A, Article
4 581-33, Vernon's Texas Civil Statutes, refers to a
5 right to sue "either at law or in equity" for specified
6 remedies. Throughout this chapter, the revised law
7 omits as unnecessary the phrase "either at law or in
8 equity" as it relates to the bringing of a suit for
9 specified remedies. A suit can only be brought at law
10 or in equity, the federal courts and the courts of this
11 state administer both legal and equitable remedies,
12 and the right to sue for a specified remedy makes a
13 reference to its legal or equitable nature
14 unnecessary.

15 Revised Law

16 Sec. 4008.052. SELLER LIABILITY: UNTRUTH OR OMISSION. (a)
17 Except as provided by Subsection (c), a person who offers or sells a
18 security and from whom another person buys the security is liable to
19 the buyer of the security, regardless of whether the security or
20 transaction is exempt under Chapter 4005, if the person offers or
21 sells the security by means of an untrue statement of a material
22 fact or an omission to state a material fact necessary in order to
23 make the statements made, in light of the circumstances under which
24 they are made, not misleading.

25 (b) The buyer may sue for:

26 (1) rescission; or

27 (2) damages if the buyer no longer owns the security.

28 (c) Except as provided by Subsection (d), a person offering
29 or selling a security is not liable under Subsection (a) if the
30 person sustains the burden of proof that either:

31 (1) the buyer knew of the untruth or omission; or

32 (2) the offeror or seller did not know, and in the
33 exercise of reasonable care could not have known, of the untruth or
34 omission.

1 (d) The issuer of the security, other than a government
2 issuer identified in Section 4005.017, is not entitled to the
3 defense in Subsection (c)(2) regarding an untruth or omission:

4 (1) in a prospectus required in connection with an
5 application or registration statement under Subchapter A, B, or C,
6 Chapter 4003; or

7 (2) in a writing prepared and delivered by the issuer
8 in the sale of the security. (V.A.C.S. Art. 581-33, Subsec. A,
9 Subdiv. (2).)

10 Source Law

11 (2) Untruth or Omission. A person who
12 offers or sells a security (whether or not the security
13 or transaction is exempt under Section 5 or 6 of this
14 Act) by means of an untrue statement of a material fact
15 or an omission to state a material fact necessary in
16 order to make the statements made, in the light of the
17 circumstances under which they are made, not
18 misleading, is liable to the person buying the
19 security from him, who may sue either at law or in
20 equity for rescission, or for damages if the buyer no
21 longer owns the security. However, a person is not
22 liable if he sustains the burden of proof that either
23 (a) the buyer knew of the untruth or omission or (b) he
24 (the offeror or seller) did not know, and in the
25 exercise of reasonable care could not have known, of
26 the untruth or omission. The issuer of the security
27 (other than a government issuer identified in Section
28 5M) is not entitled to the defense in clause (b) with
29 respect to an untruth or omission (i) in a prospectus
30 required in connection with a registration statement
31 under Section 7A, 7B, or 7C, or (ii) in a writing
32 prepared and delivered by the issuer in the sale of a
33 security.

34 Revisor's Note

35 (1) Subdivision (2), Subsection A, Article
36 581-33, Vernon's Texas Civil Statutes, refers to a
37 security or transaction exempt "under Section 5 or 6 of
38 this Act," meaning Article 581-5 or 581-6, Vernon's
39 Texas Civil Statutes. The relevant provisions of
40 Articles 581-5 and 581-6 pertaining to exempt
41 transactions and securities are revised in Chapter
42 4005 of this title, and the revised law is drafted
43 accordingly.

44 (2) Subdivision (2), Subsection A, Article
45 581-33, Vernon's Texas Civil Statutes, provides that a

1 certain defense to a criminal offense is only
2 available to a government issuer "identified in
3 Section 5M," meaning Subsection M, Article 581-5,
4 Vernon's Texas Civil Statutes. Subsection M, Article
5 581-5 is revised in Section 4005.017 of this title, and
6 the revised law is drafted accordingly.

7 (3) Subdivision (2), Subsection A, Article
8 581-33, Vernon's Texas Civil Statutes, provides that a
9 certain issuer of a security is not entitled to certain
10 defenses regarding an untruth or omission in a
11 prospectus required in connection with "a registration
12 statement under Section 7A, 7B, or 7C," meaning
13 Subsection A, B, or C of Article 581-7, Vernon's Texas
14 Civil Statutes. The revised law substitutes "an
15 application or registration statement" for "a
16 registration statement" because under Subsection A,
17 Article 581-7, revised as Subchapter A, Chapter 4003,
18 of this title, an issuer of the securities or a
19 registered dealer files an application for a permit
20 qualifying securities for sale, not a registration
21 statement. The revised law also substitutes
22 references to Subchapters B and C, Chapter 4003, of
23 this title because Subsections B and C of Article 581-7
24 are revised as those subchapters.

25 Revised Law

26 Sec. 4008.053. BUYER LIABILITY. (a) Except as provided by
27 Subsection (c), a person who offers to buy or buys a security and to
28 whom another person sells the security is liable to the seller,
29 regardless of whether the security or transaction is exempt under
30 Chapter 4005, if the person offers to buy or buys the security by
31 means of an untrue statement of a material fact or an omission to
32 state a material fact necessary in order to make the statements
33 made, in light of the circumstances under which they are made, not
34 misleading.

1 (b) The seller may sue for:

2 (1) rescission; or

3 (2) damages if the buyer no longer owns the security.

4 (c) A person who offers to buy or buys a security is not
5 liable under Subsection (a) if the offeror or buyer sustains the
6 burden of proof that either:

7 (1) the seller knew of the untruth or omission; or

8 (2) the offeror or buyer did not know, and in the
9 exercise of reasonable care could not have known, of the untruth or
10 omission. (V.A.C.S. Art. 581-33, Subsec. B.)

11 Source Law

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

28 Revisor's Note

29 Subsection B, Article 581-33, Vernon's Texas
30 Civil Statutes, refers to a security or transaction
31 exempt "under Section 5 or 6 of this Act," meaning
32 Article 581-5 or 581-6, Vernon's Texas Civil Statutes.
33 The revised law substitutes "Chapter 4005" for the
34 quoted language for the reason stated in Revisor's Note
35 (1) to Section 4008.052.

36 Revised Law

37 Sec. 4008.054. NONSELLING ISSUER LIABILITY. (a) This
38 section applies only to an issuer that registers under Subchapter
39 A, B, or C, Chapter 4003, or under Section 6, Securities Act of 1933
40 (15 U.S.C. Section 77f), the issuer's outstanding securities for
41 offer and sale by or for the owner of the securities.

1 (b) Except as provided by Subsection (d), the issuer is
2 liable to a person buying the registered security if the prospectus
3 required in connection with the registration contains, as of its
4 effective date, an untrue statement of a material fact or an
5 omission to state a material fact necessary in order to make the
6 statements made, in light of the circumstances under which they are
7 made, not misleading.

8 (c) The buyer of the registered security may sue for:

9 (1) rescission; or

10 (2) damages if the buyer no longer owns the security.

11 (d) The issuer is not liable under Subsection (b) if the
12 issuer sustains the burden of proof that the buyer knew of the
13 untruth or omission. (V.A.C.S. Art. 581-33, Subsec. C.)

14 Source Law

15 C. Liability of Nonselling Issuers Which
16 Register. (1) This Section 33C applies only to an
17 issuer which registers under Section 7A, 7B, or 7C of
18 this Act, or under Section 6 of the U.S. Securities Act
19 of 1933, its outstanding securities for offer and sale
20 by or for the owner of the securities.

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

33 Revisor's Note

34 (1) Subdivision (1), Subsection C, Article
35 581-33, Vernon's Texas Civil Statutes, refers to an
36 issuer that registers under Article 581-7A, 581-7B, or
37 581-7C, Vernon's Texas Civil Statutes. The revised law
38 substitutes references to Subchapters A, B, and C,
39 Chapter 4003, of this title because Articles 581-7A,
40 581-7B, and 581-7C are revised as those subchapters.

41 (2) Subdivision (1), Subsection C, Article
42 581-33, Vernon's Texas Civil Statutes, refers to

1 "Section 6 of the U.S. Securities Act of 1933." The
2 revised law substitutes "Section 6, Securities Act of
3 1933 (15 U.S.C. Section 77f)" for the quoted language
4 for the following reasons. The revised law
5 substitutes "Securities Act of 1933" for "U.S.
6 Securities Act of 1933" because 15 U.S.C. Section 77a
7 provides that the proper citation for the act is
8 "Securities Act of 1933." For the convenience of the
9 reader, the revised law also includes a reference to
10 the United States Code citation for that section.

11 Revised Law

12 Sec. 4008.055. CONTROLLING PERSON OR AIDER LIABILITY. (a)
13 Except as provided by Subsection (b), a person who directly or
14 indirectly controls a seller, buyer, or issuer of a security is
15 liable under Section 4008.051, 4008.052, 4008.053, or 4008.054
16 jointly and severally with the seller, buyer, or issuer and to the
17 same extent as the seller, buyer, or issuer.

18 (b) The controlling person is not liable under Subsection
19 (a) if the controlling person sustains the burden of proof that the
20 controlling person did not know, and in the exercise of reasonable
21 care could not have known, of the existence of the facts by reason
22 of which the liability is alleged to exist.

23 (c) A person who directly or indirectly with intent to
24 deceive or defraud or with reckless disregard for the truth or the
25 law materially aids a seller, buyer, or issuer of a security is
26 liable under Section 4008.051, 4008.052, 4008.053, or 4008.054
27 jointly and severally with the seller, buyer, or issuer and to the
28 same extent as the seller, buyer, or issuer.

29 (d) There is contribution under this section as in cases of
30 contract among the several persons who are liable. (V.A.C.S. Art.
31 581-33, Subsec. F.)

32 Source Law

33 F. Liability of Control Persons and Aiders. (1)
34 A person who directly or indirectly controls a seller,
35 buyer, or issuer of a security is liable under Section

1 33A, 33B, or 33C jointly and severally with the seller,
2 buyer, or issuer, and to the same extent as if he were
3 the seller, buyer, or issuer, unless the controlling
4 person sustains the burden of proof that he did not
5 know, and in the exercise of reasonable care could not
6 have known, of the existence of the facts by reason of
7 which the liability is alleged to exist.

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

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

17 Revised Law

18 Sec. 4008.056. RESCISSION. (a) On rescission under this
19 subchapter, a buyer of a security shall, on tender of the security
20 or a security of the same class and series, recover the
21 consideration the buyer paid for the security plus interest on the
22 consideration at the legal rate from the date the buyer made the
23 payment, less the amount of any income the buyer received on the
24 security.

25 (b) On rescission under this subchapter, a seller of a
26 security shall recover the security or a security of the same class
27 and series, on tender of the consideration the seller received for
28 the security plus interest on the consideration at the legal rate
29 from the date the seller received the payment, less the amount of
30 any income the buyer received on the security.

31 (c) For a buyer suing under Section 4008.054, the
32 consideration the buyer paid for the security is deemed to be the
33 lesser of:

34 (1) the price the buyer paid; or

35 (2) the price at which the security was offered to the
36 public.

37 (d) A tender specified in this section may be made at any
38 time before a judgment is entered. (V.A.C.S. Art. 581-33, Subsec.
39 D, Subdivs. (1), (2), (5), Subsec. E.)

40 Source Law

41 D. Rescission and Damages. For this Section 33:

42 (1) On rescission, a buyer shall recover
43 (a) the consideration he paid for the security plus

1 interest thereon at the legal rate from the date of
2 payment by him, less (b) the amount of any income he
3 received on the security, upon tender of the security
4 (or a security of the same class and series).

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

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

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

19 Revisor's Note

20 (1) Subsection D, Article 581-33, Vernon's Texas
21 Civil Statutes, refers to "this Section 33," meaning
22 Article 581-33, Vernon's Texas Civil Statutes. The
23 relevant provisions of Article 581-33 are revised as
24 this subchapter. For that reason, the revised law
25 throughout this subchapter substitutes references to
26 "this subchapter" for references to "Section 33."

27 (2) Subsection E, Article 581-33, Vernon's Texas
28 Civil Statutes, refers to a tender specified in
29 "Section 33D," meaning Subsection D, Article 581-33,
30 Vernon's Texas Civil Statutes. The relevant
31 provisions of Subsection D are revised as this
32 section. For that reason, the revised law substitutes
33 a reference to "this section" for the reference to
34 "Section 33D."

35 Revised Law

36 Sec. 4008.057. DAMAGES. (a) In damages under this
37 subchapter, a buyer of a security shall recover the consideration
38 the buyer paid for the security plus interest on the consideration
39 at the legal rate from the date the buyer made the payment, less the
40 greater of:

41 (1) the value of the security at the time the buyer
42 disposed of the security plus the amount of any income the buyer

1 received on the security; or

2 (2) the actual consideration received for the security
3 at the time the buyer disposed of the security plus the amount of
4 any income the buyer received on the security.

5 (b) In damages under this subchapter, a seller of a security
6 shall recover the value of the security at the time of sale plus the
7 amount of any income the buyer received on the security, less the
8 consideration paid to the seller for the security plus interest on
9 the consideration at the legal rate from the date of payment to the
10 seller.

11 (c) For a buyer suing under Section 4008.054, the
12 consideration the buyer paid for the security is deemed to be the
13 lesser of:

14 (1) the price the buyer paid; or

15 (2) the price at which the security was offered to the
16 public. (V.A.C.S. Art. 581-33, Subsec. D, Subdivs. (3), (4), (5).)

17 Source Law

18 D. For this Section 33:

19
20 (3) In damages, a buyer shall recover (a)
21 the consideration the buyer paid for the security plus
22 interest thereon at the legal rate from the date of
23 payment by the buyer, less (b) the greater of:

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

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

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

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

41 Revised Law

42 Sec. 4008.058. REQUIREMENTS OF RESCISSION OFFER TO BUYERS.

43 (a) A rescission offer is sufficient for purposes of Section
44 4008.062(a) or (b) only if the offer meets the requirements of this
45 section.

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

7 (c) The offeror shall:

8 (1) deposit funds in escrow in a state or national bank
9 doing business in this state, or in another bank approved by the
10 commissioner; or

11 (2) receive an unqualified commitment from a bank
12 described by Subdivision (1) to provide funds sufficient to pay the
13 amount offered.

14 (d) The amount of the offer to a buyer who still owns the
15 security must be the amount, excluding costs and attorney's fees,
16 the buyer would recover on rescission under Section 4008.056(a).

17 (e) The amount of the offer to a buyer who no longer owns the
18 security must be the amount, excluding costs and attorney's fees,
19 the buyer would recover in damages under Section 4008.057(a).

20 (f) The offer must state:

21 (1) the amount of the offer, as determined under
22 Subsection (d) or (e), which must be given:

23 (A) to the extent practicable, in terms of a
24 specified number of dollars and a specified rate of interest for a
25 period starting at a specified date; and

26 (B) to the extent necessary, in terms of
27 specified elements, such as the value of the security when the
28 offeree disposed of the security, that are known to the offeree but
29 not to the offeror, subject to the provision of reasonable evidence
30 by the offeree;

31 (2) the name and address of the bank at which the
32 amount of the offer will be paid;

33 (3) that the offeree will receive the amount of the
34 offer within a specified number of days that is not more than 30

1 days after the date the bank receives, in form reasonably
2 acceptable to the offeror and in compliance with the instructions
3 in the offer:

4 (A) the security, if the offeree still owns the
5 security, or evidence of the fact and date of disposition if the
6 offeree no longer owns the security; and

7 (B) evidence, if necessary, of elements
8 described by Subdivision (1)(B);

9 (4) in a conspicuous manner that the offeree may not
10 sue on the offeree's purchase under this subchapter unless:

11 (A) the offeree accepts the offer but does not
12 receive the amount of the offer, in which case the offeree may sue
13 within the time allowed by Section 4008.062(a)(1), (b)(1), or
14 (b)(2), as applicable; or

15 (B) the offeree rejects the offer in writing
16 within 30 days of the date the offeree receives the offer and
17 expressly reserves in the rejection the right to sue, in which case
18 the offeree may sue not later than one year after the date of the
19 rejection;

20 (5) in reasonable detail, the nature of the violation
21 of this title that occurred or may have occurred; and

22 (6) any other information the offeror wants to
23 include. (V.A.C.S. Art. 581-33, Subsec. I.)

24 Source Law

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

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

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

41 (3) The amount of the offer to a buyer who
42 still owns the security shall be the amount (excluding
43 costs and attorney's fees) he would recover on

1 rescission under Section 33D(1).

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

6 (5) The offer shall state:

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

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

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

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

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

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

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

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

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

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

44 Revised Law

45 Sec. 4008.059. REQUIREMENTS OF RESCISSION OFFER TO SELLERS.

46 (a) A rescission offer is sufficient for purposes of Section
47 4008.062(c) only if the offer meets the requirements of this
48 section.

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

55 (c) The offeror shall deposit the securities in escrow in a

1 state or national bank doing business in this state, or in another
2 bank approved by the commissioner.

3 (d) The terms of the offer must be the same, excluding costs
4 and attorney's fees, as the seller would recover on rescission
5 under Section 4008.056(b).

6 (e) The offer must state:

7 (1) the terms of the offer, as determined under
8 Subsection (d), which must be given:

9 (A) to the extent practicable, in terms of a
10 specified number and kind of securities and a specified rate of
11 interest for a period starting at a specified date; and

12 (B) to the extent necessary, in terms of
13 specified elements that are known to the offeree but not to the
14 offeror, subject to the provision of reasonable evidence by the
15 offeree;

16 (2) the name and address of the bank at which the terms
17 of the offer will be carried out;

18 (3) that the offeree will receive the securities
19 within a specified number of days that is not more than 30 days
20 after the date the bank receives, in form reasonably acceptable to
21 the offeror and in compliance with the instructions in the offer:

22 (A) the amount required by the terms of the
23 offer; and

24 (B) evidence, if necessary, of elements
25 described by Subdivision (1)(B);

26 (4) in a conspicuous manner that the offeree may not
27 sue on the offeree's sale under this subchapter unless:

28 (A) the offeree accepts the offer but does not
29 receive the securities, in which case the offeree may sue within the
30 time allowed by Section 4008.062(c)(1) or (2), as applicable; or

31 (B) the offeree rejects the offer in writing
32 within 30 days of the date the offeree receives the offer and
33 expressly reserves in the rejection the right to sue, in which case
34 the offeree may sue not later than one year after the date of the

1 rejection;

2 (5) in reasonable detail, the nature of the violation
3 of this title that occurred or may have occurred; and

4 (6) any other information the offeror wants to
5 include. (V.A.C.S. Art. 581-33, Subsec. J.)

6 Source Law

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

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

17 (2) The offeror shall deposit the
18 securities in escrow in a state or national bank doing
19 business in Texas (or in another bank approved by the
20 commissioner).

21 (3) The terms of the offer shall be the
22 same (excluding costs and attorney's fees) as the
23 seller would recover on rescission under Section
24 33D(2).

25 (4) The offer shall state:

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

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

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

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

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

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

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

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

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

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

1 Revised Law

2 Sec. 4008.060. COSTS; ATTORNEY'S FEES. (a) On rescission
3 or as a part of damages under this subchapter, a buyer or a seller of
4 a security shall also recover costs.

5 (b) On rescission or as a part of damages under this
6 subchapter, a buyer or a seller of a security may also recover
7 reasonable attorney's fees if the court finds that the recovery is
8 equitable under the circumstances. (V.A.C.S. Art. 581-33, Subsec.
9 D, Subdivs. (6), (7).)

10 Source Law

11 D. For this Section 33:

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

14 (7) On rescission or as a part of damages,
15 a buyer or a seller may also recover reasonable
16 attorney's fees if the court finds that the recovery
17 would be equitable in the circumstances.
18

19 Revised Law

20 Sec. 4008.061. LIMITATION OF LIABILITY IN SMALL BUSINESS
21 ISSUANCES. (a) In this section, "small business issuer" means an
22 issuer that, at the time of an offer to which this section applies:

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

25 (2) does not have a class of equity securities
26 registered, or required to be registered, with the Securities and
27 Exchange Commission under Section 12, Securities Exchange Act of
28 1934 (15 U.S.C. Section 781).

29 (b) This section applies only to:

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

33 (2) a person who has been engaged to provide services
34 relating to an offer of securities described by Subdivision (1),
35 including an attorney, an accountant, a consultant, or the firm of
36 the attorney, accountant, or consultant.

37 (c) In an action or series of actions under this subchapter

1 relating to an offer of securities to which this section applies,
2 the maximum amount that may be recovered against a person to whom
3 this section applies is three times the fee paid by the small
4 business issuer or other seller to the person for the services
5 related to the offer of securities, unless the trier of fact finds
6 the person engaged in intentional wrongdoing in providing the
7 services.

8 (d) A small business issuer making an offer of securities
9 shall:

10 (1) provide to the prospective buyer a written
11 disclosure of the limitation of liability created by this section;
12 and

13 (2) receive a signed acknowledgment that the
14 disclosure was provided. (V.A.C.S. Art. 581-33, Subsec. N.)

15 Source Law

16 N. Limitation of Liability in Small Business
17 Issuances. (1) For purposes of this Section 33N,
18 unless the context otherwise requires, "small business
19 issuer" means an issuer of securities that, at the time
20 of an offer to which this Section 33N applies:

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

23 (b) does not have a class of equity
24 securities registered, or required to be registered,
25 with the Securities and Exchange Commission under
26 Section 12 of the Securities Exchange Act of 1934, as
27 amended (15 U.S.C. Section 781).

28 (2) This Section 33N applies only to:

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

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

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

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

1 was provided.

2 Revisor's Note

3 (1) Subdivision (1), Subsection N, Article
4 581-33, Vernon's Texas Civil Statutes, states that the
5 defined term has the meaning given "unless the context
6 otherwise requires." The revised law omits the quoted
7 language because the defined term is used consistently
8 in the revision in the context to which the definition
9 applies.

10 (2) Subdivision (1), Subsection N, Article
11 581-33, Vernon's Texas Civil Statutes, refers to an
12 "issuer of securities." The revised law omits "of
13 securities" as unnecessary because the concept is
14 included in the definition of "issuer" under
15 Subsection G, Article 581-4, Vernon's Texas Civil
16 Statutes, revised as Section 4001.061 of this title.

17 (3) Subdivision (1), Subsection N, Article
18 581-33, Vernon's Texas Civil Statutes, refers to
19 Section 12 of the Securities Exchange Act of 1934, as
20 amended (15 U.S.C. Section 781). The revised law omits
21 "as amended" because, under Section 311.027,
22 Government Code (Code Construction Act), applicable to
23 the revised law, a reference to a statute applies to
24 all reenactments, revisions, or amendments of that
25 statute, unless expressly provided otherwise.

26 (4) Subdivision (3), Subsection N, Article
27 581-33, Vernon's Texas Civil Statutes, refers to a "fee
28 paid by the issuer." The revised law substitutes
29 "small business issuer" for "issuer" because in this
30 context the terms are synonymous and "small business
31 issuer" is the defined term under this section.

32 Revised Law

33 Sec. 4008.062. STATUTE OF LIMITATIONS. (a) A person may
34 not sue under Section 4008.051 or 4008.055 to the extent that

1 section relates to Section 4008.051:

2 (1) more than three years after the date of the sale;

3 (2) if the person received a rescission offer meeting
4 the requirements of Section 4008.058 before suit, unless the
5 person:

6 (A) rejected the offer in writing within 30 days
7 of the date the person received the offer; and

8 (B) expressly reserved in the rejection the right
9 to sue; or

10 (3) more than one year after the date the person so
11 rejected a rescission offer meeting the requirements of Section
12 4008.058.

13 (b) A person may not sue under Section 4008.052, 4008.054,
14 or 4008.055 to the extent that section relates to Section 4008.052
15 or 4008.054:

16 (1) more than three years after the date of discovery
17 of the untruth or omission, or after the date discovery should have
18 been made by the exercise of reasonable diligence;

19 (2) more than five years after the date of the sale;

20 (3) if the person received a rescission offer meeting
21 the requirements of Section 4008.058 before suit, unless the
22 person:

23 (A) rejected the offer in writing within 30 days
24 of the date the person received the offer; and

25 (B) expressly reserved in the rejection the right
26 to sue; or

27 (4) more than one year after the date the person so
28 rejected a rescission offer meeting the requirements of Section
29 4008.058.

30 (c) A person may not sue under Section 4008.053 or 4008.055
31 to the extent that section relates to Section 4008.053:

32 (1) more than three years after the date of discovery
33 of the untruth or omission, or after the date discovery should have
34 been made by the exercise of reasonable diligence;

1 (2) more than five years after the date of the
2 purchase;

3 (3) if the person received a rescission offer meeting
4 the requirements of Section 4008.059 before suit, unless the
5 person:

6 (A) rejected the offer in writing within 30 days
7 of the date the person received the offer; and

8 (B) expressly reserved in the rejection the right
9 to sue; or

10 (4) more than one year after the date the person so
11 rejected a rescission offer meeting the requirements of Section
12 4008.059. (V.A.C.S. Art. 581-33, Subsec. H.)

13 Source Law

14 H. Statute of Limitations. (1) No person may
15 sue under Section 33A(1) or 33F so far as it relates to
16 Section 33A(1):

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

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

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

27 (2) No person may sue under Section
28 33A(2), 33C, or 33F so far as it relates to 33A(2) or
29 33C:

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

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

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

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

44 (3) No person may sue under Section 33B or
45 33F so far as it relates to Section 33B:

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

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

52 (c) if he received a rescission offer
53 (meeting the requirements of Section 33J) before suit
54 unless he (i) rejected the offer in writing within 30

1 days of its receipt, and (ii) expressly reserved in the
2 rejection his right to sue; or
3 (d) more than one year after he so
4 rejected a rescission offer meeting the requirements
5 of Section 33J.

6 SUBCHAPTER C. CIVIL LIABILITY OF INVESTMENT ADVISERS AND
7 INVESTMENT ADVISER REPRESENTATIVES

8 Revised Law

9 Sec. 4008.101. INVESTMENT ADVISER OR INVESTMENT ADVISER
10 REPRESENTATIVE LIABILITY. (a) An investment adviser or investment
11 adviser representative who renders services as an investment
12 adviser in violation of Section 4004.052 or an order under Section
13 4007.102 or 4007.104 is liable to the purchaser, who may sue for
14 damages in the amount of any consideration paid for the services.

15 (b) Except as provided by Subsection (c), an investment
16 adviser or investment adviser representative who commits fraud or
17 engages in a fraudulent practice in rendering services as an
18 investment adviser is liable to the purchaser, who may sue for
19 damages.

20 (c) An investment adviser or investment adviser
21 representative who in rendering services as an investment adviser
22 makes an untrue statement of a material fact or omits to state a
23 material fact necessary in order to make the statement made, in
24 light of the circumstances under which the statement is made, not
25 misleading is not liable under Subsection (b) if the adviser or
26 representative proves:

- 27 (1) the purchaser knew of the truth or omission; or
28 (2) the adviser or representative did not know, and in
29 the exercise of reasonable care could not have known, of the untruth
30 or omission. (V.A.C.S. Art. 581-33-1, Subsecs. A, C.)

31 Source Law

32 Art. 581-33-1. A. Liability of Investment
33 Advisers and Investment Adviser Representatives. (1)
34 An investment adviser or investment adviser
35 representative who renders services as an investment
36 adviser in violation of Section 12 or an order under
37 Section 23B or 23-2 of this Act is liable to the
38 purchaser, who may sue at law or in equity, for damages
39 in the amount of any consideration paid for the
40 services.

41 (2) Except as provided by Subsection C of

1 this section, an investment adviser or investment
2 adviser representative who commits fraud or engages in
3 a fraudulent practice in rendering services as an
4 investment adviser is liable to the purchaser, who may
5 sue at law or in equity, for damages.

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

15 (1) the purchaser knew of the truth or
16 omission; or

17 (2) the adviser or representative did not
18 know, and in the exercise of reasonable care could not
19 have known, of the untruth or omission.

20 Revisor's Note

21 (1) Subsection A, Article 581-33-1, Vernon's
22 Texas Civil Statutes, establishes civil liability for
23 an investment adviser or investment adviser
24 representative who renders services as an investment
25 adviser in violation of "Section 12 . . . of this Act,"
26 meaning Article 581-12, Vernon's Texas Civil Statutes,
27 or "an order under Section 23B or 23-2 of this Act,"
28 meaning Articles 581-23B and 581-23-2, Vernon's Texas
29 Civil Statutes. While Article 581-12 is revised as
30 Sections 4004.001, 4004.051, 4004.052, 4004.101(a),
31 and 4004.102(a) of this title, it is clear from the
32 context of Article 581-33-1 that the relevant portion
33 of Article 581-12 is revised as Section 4004.052 of
34 this title. Article 581-23B is revised as Section
35 4007.102 of this title, and Article 581-23-2 is
36 revised as Section 4007.104 of this title. The revised
37 law is drafted accordingly.

38 (2) Subsection C, Article 581-33-1, Vernon's
39 Texas Civil Statutes, provides a limited exception to
40 liability for an investment adviser or an investment
41 adviser representative who makes a "false statement"
42 of a material fact. The revised law substitutes
43 "untrue statement" for "false statement" for purposes

1 of consistency with Subdivision (2), Subsection C,
2 Article 581-33-1, revised as part of this section,
3 which refers to the "untruth" of the material fact, and
4 for consistency with the terminology in various
5 provisions of Article 581-33, Vernon's Texas Civil
6 Statutes, that relate to untrue statements of material
7 fact and are revised as Sections 4008.052, 4008.053,
8 4008.054, 4008.058, and 4008.059 of this chapter.

9 Revised Law

10 Sec. 4008.102. CONTROLLING PERSON OR AIDER LIABILITY. (a)
11 Except as provided by Subsection (b), a person who directly or
12 indirectly controls an investment adviser is jointly and severally
13 liable with the investment adviser under this subchapter and to the
14 same extent as the investment adviser.

15 (b) The controlling person is not liable under Subsection
16 (a) if the controlling person sustains the burden of proof that the
17 controlling person did not know, and in the exercise of reasonable
18 care could not have known, of the existence of the facts by reason
19 of which liability is alleged to exist.

20 (c) A person who directly or indirectly with intent to
21 deceive or defraud or with reckless disregard for the truth or the
22 law materially aids an investment adviser in conduct for which a
23 cause of action is authorized by this subchapter is jointly and
24 severally liable with the investment adviser in an action to
25 recover damages under this subchapter. (V.A.C.S. Art. 581-33-1,
26 Subsec. E.)

27 Source Law

28 E. Liability of Control Persons and Assistants.

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

38 (2) A person who directly or indirectly
39 with intent to deceive or defraud or with reckless
40 disregard for the truth or the law materially aids an

1 investment adviser in conduct for which a cause of
2 action is authorized by this section is jointly and
3 severally liable with the investment adviser in an
4 action to recover damages under this section.

5 Revisor's Note

6 (1) Subdivisions (1) and (2), Subsection E,
7 Article 581-33-1, Vernon's Texas Civil Statutes, refer
8 to "this section," meaning Article 581-33-1, Vernon's
9 Texas Civil Statutes. All of the provisions of Article
10 581-33-1 are revised as this subchapter. For that
11 reason, the revised law throughout this subchapter
12 substitutes references to "this subchapter" for
13 references to "this section."

14 (2) Subsection E, Article 581-33-1, Vernon's
15 Texas Civil Statutes, describes the liability of a
16 controlling person, and Subdivision (1), Subsection E,
17 creates an exception if the "person did not know" of
18 certain facts. Because it is clear from the context
19 that the person referred to is a "controlling person,"
20 the revised law substitutes "controlling person" for
21 "person" for clarity and consistency in the
22 terminology within the section.

23 Revised Law

24 Sec. 4008.103. DAMAGES. In damages under Section
25 4008.101(b), the purchaser is entitled to recover:

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

29 (2) any loss incurred by the purchaser in acting on the
30 services provided by the investment adviser or investment adviser
31 representative;

32 (3) interest at the legal rate for judgments accruing
33 from the date the purchaser paid the consideration; and

34 (4) to the extent the court considers equitable, court
35 costs and reasonable attorney's fees. (V.A.C.S. Art. 581-33-1,
36 Subsec. B.)

1 Source Law

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

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

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

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

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

15 Revisor's Note

16 Subsection B, Article 581-33-1, Vernon's Texas
17 Civil Statutes, describes the damages a purchaser is
18 entitled to recover, and Subdivision (2), Subsection
19 B, refers to any loss incurred "by the person."
20 Because it is clear from the context that the person
21 referred to is the purchaser, the revised law
22 substitutes "purchaser" for "person" for clarity and
23 consistency in the terminology within the section.

24 Revised Law

25 Sec. 4008.104. STATUTE OF LIMITATIONS. (a) A person may
26 not sue under Section 4008.101(a) more than three years after the
27 date the violation occurs.

28 (b) A person may not sue under Section 4008.101(b) more
29 than:

30 (1) five years after the date the violation occurs; or

31 (2) three years after the date the person knew or
32 should have known, by the exercise of reasonable diligence, of the
33 occurrence of the violation. (V.A.C.S. Art. 581-33-1, Subsec. D.)

34 Source Law

35 D. Statute of Limitations. (1) A person may not
36 sue under Subsection A(1) of this section more than
37 three years after the violation occurred.

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

1 Revised Law

2 Sec. 4008.105. REMEDY NOT EXCLUSIVE. A remedy provided by
3 this subchapter is not exclusive of any other applicable remedy
4 provided by law. (V.A.C.S. Art. 581-33-1, Subsec. F.)

5 Source Law

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