

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1464

BY: RICE

AS INTRODUCED

AN ACT RELATING TO SECURITIES; AMENDING 71 O.S. 1981, SECTION 2, AS LAST AMENDED BY SECTION 2, CHAPTER 108, O.S.L. 1988 (71 O.S. SUPP. 1990, SECTION 2), WHICH RELATES TO DEFINITIONS USED IN THE OKLAHOMA SECURITIES ACT; MODIFYING DEFINITION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 71 O.S. 1981, Section 2, as last amended by Section 2, Chapter 108, O.S.L. 1988 (71 O.S. Supp. 1990, Section 2), is amended to read as follows:

Section 2. When used in this act, unless the context otherwise requires:

(a) "Commission" means the Oklahoma Securities Commission.

(b) "Department" means the Department of Securities.

(c) "Administrator" means the Securities Administrator appointed by the Oklahoma Securities Commission.

(d) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include

an individual who represents an issuer in (1) effecting transactions in a security exempted by paragraph (1), (2), (3), (4), (5), (6), (7), (9), or (10) of Section 401(a) of this title, (2) effecting transactions exempted by Section 401(b) of this title, or (3) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition.

(e) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" includes any person engaged in the business of representing issuers in effecting or attempting to effect transactions in securities or in arranging or attempting to arrange placement of securities and who renders advice with respect to the structure, timing, terms and other similar matters concerning such issues. "Broker-dealer" does not include (1) an agent, (2) an issuer, (3) a bank, savings institution, or trust company, or (4) a person who has no place of business in this state if (A) he effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of twelve (12) consecutive months he does not direct more than fifteen offers to sell or buy into this state in any manner to persons other than those specified in subparagraph (A) of this

paragraph, whether or not the offeror or any of the offerees is then present in this state.

(f) "Commodity" means, except as otherwise specified by the Administrator by rule, regulation or order, any agricultural, grain or livestock product or by-product, any metal or mineral, any gem or gemstone (whether characterized as precious, semi-precious or otherwise), any fuel (whether liquid, gaseous or otherwise), any foreign currency, and all other goods, articles, products or items of any kind; provided that the term commodity shall not include (1) a numismatic coin whose fair market value is at least fifteen percent (15%) higher than the value of the metal it contains, (2) real property or any timber, agricultural or livestock product grown or raised on real property and offered or sold by the owner or lessee of such real property or (3) any work of art offered or sold by art dealers, at public auction or offered or sold through a private sale by the owner thereof.

(g) "Fraud," "deceit," and "defraud" are not limited to common-law deceit.

(h) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(i) "Investment adviser" means (1) any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities; or (2) any person using the designation "financial planner" or who otherwise holds himself out as providing investment advisory services for compensation whether or not as a part of other financially related services. "Investment adviser" does not include (1) a bank, savings institution, or trust company; (2) a lawyer, accountant, engineer, or teacher whose performance of

these services is solely incidental to the practice of his profession; a professional geologist, professional engineer or professional geophysicist and professional petroleum landman who is engaged in the business of exploring for and/or producing oil and gas or other valuable minerals as an ongoing business when giving advice, analyses, interpretations or reports that relate to securities covered by Section 2(r)(18) of this title; (3) a broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them; (4) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication of general, regular, and paid circulation; (5) an investment adviser representative; or (6) such other persons not within the intent of this paragraph as the Administrator may by rule or order designate.

(j) "Investment adviser representative" means any partner, officer, director of, or a person occupying a similar status or performing similar functions for, an investment adviser, or other person employed by, representing, or associated with an investment adviser who (1) makes any recommendation or otherwise renders advice regarding securities; (2) manages accounts or portfolios of clients; (3) determines or has final authority as to which recommendations or advice regarding securities should be given; (4) issues or promulgates analyses or reports concerning securities; (5) solicits, offers or negotiates for the sale of or sells investment advisory services; or (6) supervises employees who perform any of the acts described in this subsection.

(k) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons

performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(l) "Multilevel distribution company" means any person, firm, corporation or other business entity which sells, distributes or supplies for a valuable consideration, goods or services through independent agents, contractors or distributors, at different levels wherein such participants may recruit other participants, and wherein commissions, cross-commissions, bonuses, refunds, discounts, dividends or other considerations in the program are, or may be, paid at two or more levels as a result of the sale of such goods or services or the recruitment, actions or performances of additional participants.

(m) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(n) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(o) "Principal" means any person associated with an applicant for registration as a broker-dealer who is actively engaged in the management of the applicant's securities business, including supervision, solicitation, conduct of business or training of persons associated with an applicant for any of these functions. Such persons shall include, but are not limited to the following:

- (1) Sole proprietors;
- (2) Officers;
- (3) Partners;
- (4) Managers of offices of supervisory jurisdiction;

(5) Directors of corporations; or

(6) Any person occupying a similar status, position, or performing similar functions, or any person directly or indirectly controlling the registrant.

(p) (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(4) A purported gift of assessable stock is considered to involve an offer and sale.

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(6) The terms defined in this subsection do not include (A) any bona fide pledge or loan; (B) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; or (C) any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.

(q) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" mean the federal statutes of those names as amended heretofore or hereafter.

(r) "Security" means any:

(1) note;

(2) stock;

(3) treasury stock;

(4) bond;

(5) debenture;

(6) evidence of indebtedness;

(7) certificate of interest or participation in any profit-sharing agreement;

(8) collateral-trust certificate;

(9) preorganization certificate or subscription;

(10) transferable share;

(11) investment contract;

(12) voting-trust certificate;

(13) certificate of deposit for a security;

(14) contract offered or sold to the public by a multilevel distribution company wherein the initial consideration or subsequent consideration shall substantially exceed the fair retail value of the goods or services received by the purchaser under the contract. Provided, however, the Administrator may by rule or order exclude any contract from the above definition if such contract is not within the comprehensive purposes of this title and its regulation is not necessary or appropriate in the public interest or for the protection of investors;

(15) contract or option on a contract for the future delivery of any commodity offered or sold to the public and not regulated by the Commodity Futures Trading Commission, provided that such contract or option shall not be subject to the provisions of Section 301 of this

title, if sold or purchased on the floor of a bona fide exchange or board of trade and offered and sold to the public by a broker-dealer or agent registered pursuant to this title;

(16) investment of money or money's worth including goods furnished and/or services performed in the risk capital of a venture with the expectation of some benefit to the investor where the investor has no direct control over the investment or policy decision of the venture;

(17) in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing; or

(18) interest in oil, gas, or mineral leases, except that transactions involving leases or interest therein, between parties, each of whom is engaged in the business of exploring for or producing oil and gas or other valuable minerals as an ongoing business, and the execution of oil and gas leases by land, mineral, and royalty owners in favor of a party or parties engaged in the business of exploring for or producing oil and gas or other valuable minerals shall be deemed not to involve a security.

(s) "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

(t) "State" means any state, territory, or possession of the United States, the District of Columbia and Puerto Rico.

(u) "Underwriter" means any person who has purchased from an issuer or from any other person with a view to, or offers or sells for an issuer or for any other person in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or



has a participation in the direct or indirect underwriting of any such undertaking. "Underwriter" does not include a person whose interest is limited to a commission from an underwriter or broker-dealer not in excess of the usual and customary distributor's or seller's commission.

SECTION 2. This act shall become effective September 1, 1991.

43-1-5677

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