

ARTICLE 2

EXEMPTIONS FROM REGISTRATION OF SECURITIES.

§ 75-71-201. Exempt securities.

The following securities are exempt from the requirements of Sections 75-71- 301 through 75-71-306 and 75-71-504:

- (1) A security, including a revenue obligation or a separate security as defined in Rule 131 (17 CFR 230.131) adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States; a state; a political subdivision of a state; a public authority, agency, or instrumentality of one or more states; a political subdivision of one or more states; or a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing;
- (2) A security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor;
- (3) A security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:
 - (A) An international banking institution;
 - (B) A banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or

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will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of Public Law 87-722 (12 USC Section 92a); or

- (C) Any other depository institution, unless by rule or order the administrator proceeds under Section 75-71-204;
- (4) A security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this state;
- (5) A security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is:
 - (A) Regulated in respect to its rates and charges by the United States or a state;
 - (B) Regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory; or
 - (C) A public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that act;
- (6) A federal covered security specified in Section 18(b)(1) of the Securities Act of 1933 (15 USC Section 77r(b)(1)) or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this chapter; a put or a call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under Section 9(b) of the Securities Exchange Act of 1934 (15 USC Section 78i(b));
- (7) A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the Investment Company Act of 1940 (15 USC Section 80a-3(c)(10)(B)); except that with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a rule may be adopted under this chapter limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to (B) the scope of the exemption and the grounds for denial or

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suspension, and requiring an issuer:

- (A) To file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the administrator does not disallow the exemption within the period established by the rule;
 - (B) To file a request for exemption authorization for which a rule under this chapter may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with Section 75-71-611, and grounds for denial or suspension of the exemption; or
 - (C) To register under Section 75-71-304;
- (8) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative;
 - (9) An equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under Section 18(b)(1) of the Securities Act of 1933 (15 USC Section 77r(b)(1)); and
 - (10) Any oil, gas or mineral lease, working interest, mineral interest or mineral estate, royalty interest or royalty estate, overriding royalty, or an oil payment or net profit interest, regardless of how said interests may be created, provided any vested estate in any working interest shall not be less than one-two-hundredth (1/200) of the whole working interest, and any mineral lease and royalty sales made in exchange for labor, material and machinery used in drilling an oil or gas well.

§ 75-71-202. Exempt transactions.

The following transactions are exempt from the requirements of Sections 75-71- 301 through 75-71-306 and 75-71-504. The transactions listed below are self-actuating, are not conditioned by rule and require no pre-approval of the administrator, unless otherwise indicated below:

- (1) An isolated nonissuer transaction, whether effected by or through a broker-dealer or not;
- (2) A nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days, if, at the date of the transaction:
 - (A) The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has

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no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

- (B) The security is sold at a price reasonably related to its current market price;
- (C) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;
- (D) A nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this chapter or a record filed with the Securities and Exchange Commission that is publicly available contains:
 - (i) A description of the business and operations of the issuer;
 - (ii) The names of the issuer's executive officers and the names of the issuer's directors, if any;
 - (iii) An audited balance sheet of the issuer as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and
 - (iv) An audited income statement for each of the issuer's two (2) immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and
- (E) Any one (1) of the following requirements is met:
 - (i) The issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System;
 - (ii) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;
 - (iii) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three (3) years; or
 - (iv) The issuer of the security has total assets of at least Two Million Dollars (\$2,000,000.00) based on an audited balance sheet as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization;

- (3) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;
- (4) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 USC 78m or 78o(d));
- (5) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security that:
 - (A) Is rated at the time of the transaction by a nationally recognized statistical rating organization in one (1) of its four (4) highest rating categories; or
 - (B) Has a fixed maturity or a fixed interest or dividend, if:
 - (i) A default has not occurred during the current fiscal year or within the three (3) previous fiscal years or during the existence of the issuer and any predecessor if less than three (3) fiscal years, in the payment of principal, interest, or dividends on the security; and
 - (ii) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve (12) months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;
- (6) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase;
- (7) A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;
- (8) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of One Hundred Million Dollars (\$100,000,000.00) acting in the exercise of discretionary authority in a signed record for the account of others;
- (9) The following transaction requires approval of the administrator: a transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator after a hearing;
- (10) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

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- (11) A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:
- (A) The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;
 - (B) A general solicitation or general advertisement of the transaction is not made; and
 - (C) A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this chapter as a broker-dealer or as an agent;
- (12) A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
- (13) A sale or offer to sell to:
- (A) An institutional investor;
 - (B) A federal covered investment adviser; or
 - (C) Any other person exempted by rule adopted or order issued under this chapter;
- (14) A sale or offer to sell securities by or on behalf of an issuer, if the transaction is part of a single issue in which:
- (A) Not more than ten (10) purchasers are present in this state during any twelve (12) consecutive months, other than those designated in paragraph (13);
 - (B) A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;
 - (C) A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this chapter or an agent registered under this chapter for soliciting a prospective purchaser in this state; and
 - (D) The issuer reasonably believes that all the purchasers in this state, other than those designated in paragraph (13), are purchasing for investment;
- (15) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state;

- (16) An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:
- (A) A registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 CFR 230.165); and
 - (B) A stop order of which the offeror is aware has not been issued against the offeror by the administrator or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;
- (17) An offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:
- (A) A registration statement has been filed under this chapter, but is not effective;
 - (B) A solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the administrator under this chapter; and
 - (C) A stop order of which the offeror is aware has not been issued by the administrator under this chapter and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;
- (18) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties;
- (19) A rescission offer, sale, or purchase under Section 75-71-510;
- (20) An offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter;
- (21) Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:
- (A) Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;
 - (B) Family members who acquire such securities from those persons through gifts or domestic relations orders;

- (C) Former employees, directors, general partners, trustees, if the issuer is a business trust, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and
 - (D) Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent (50%) of their annual income from those organizations;
- (22) A transaction involving:
- (A) A stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;
 - (B) An 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; or
 - (C) The solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 CFR 230.162); or
- (23) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty (180) days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with Section 75-71-604, the administrator, by rule adopted or order issued under this chapter, may revoke the designation of a securities exchange under this paragraph, if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

§ 75-71-203. Additional exemptions and waivers.

A rule adopted or order issued under this chapter may exempt a security, transaction, or offer; a rule under this chapter may exempt a class of securities, transactions, or offers from any or all of the requirements of Sections 75-71-301 through 75-71-306 and 75-71-504; and an order under this chapter may waive, in whole

or in part, any or all of the conditions for an exemption or offer under Sections 75-71-201 and 75-71-202.

§ 75-71-204. Denial, suspension, revocation, condition, or limitation of exemptions.

- (a) **Enforcement related powers.** Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this chapter may deny, suspend application of, condition, limit, or revoke an exemption created under Section 75-71-201(3)(C), Section 75-71-201(7) or Section 75-71-201 (8) or Section 75-71-202 or an exemption or waiver created under Section 75-71-203 with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in Section 75-71-306 or Section 75-71-604 and only prospectively.
- (b) **Knowledge of order required.** A person does not violate Section 75-71-301, Sections 75-71-303 through 75-71-306, Section 75-71-504, or Section 75-71-510 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.