



Mississippi Securities Act

Title 75 Chapter 71

**Delbert Hosemann
Secretary of State**

Mississippi Securities Act

Title 75 Chapter 71

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ARTICLE 1. GENERAL PROVISIONS

§ 75-71-101. Short title.

This chapter may be cited as the "Mississippi Securities Act."

Sources: Laws, 1981, ch. 521, § 416, eff from and after July 1, 1981.

§ 75-71-103. Construction of chapter.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of this chapter with the related federal regulation.

Sources: Laws, 1981, ch. 521, § 415, eff from and after July 1, 1981.

§ 75-71-105. Definitions.

For the purposes of this chapter the following words shall have the following meanings unless the context shall prescribe otherwise:

(a) "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 (1) an issuer in: (A) effecting transactions in a security exempted by clause (1), (2), (3), (10) or (11) of Section 75-71-201; (B) effecting transactions exempted by Section 75-71-203; (C) effecting transactions in a covered security as described in Sections 18(b)(3) and 18(b)(4)(D) of the Securities Act of 1933; or (D) 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; or (2) a broker-dealer in effecting transactions in this state limited to those transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934. 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.

(b) "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" 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,

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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 (15) offers to sell or buy into the State of Mississippi in any manner to persons other than those specified in clause (A) of this subsection, whether or not the offeror or any of the offerees is then present in this state.

(c) "Federal covered adviser" means a person who is (1) registered under Section 203 of the Investment Advisers Act of 1940; or (2) is excluded from the definition of "investment adviser" under Section 202(a)(11) of the Investment Advisers Act of 1940.

(d) "Federal covered security" means any security that is a covered security under Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated thereunder.

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

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

(g) "Investment adviser" means 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. "Investment adviser" does not include (1) an investment adviser representative; (2) a bank, savings institution or trust company; (3) a lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of his profession; (4) a broker-dealer or his agent 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; (5) a publisher of any bona fide newspaper, news magazine or business or financial publication of general, regular and paid circulation; (6) a person whose advice, analyses or reports relate only to securities exempted by Section 75-71-201(1); (7) a person who is a federal covered adviser; (8) a person who has no place of business in this state if (A) his only clients in this state are other investment advisers, federal covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, employee benefit plans with assets of not less than One Million Dollars (\$1,000,000.00), governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other financial institutions or institutional buyers as are designated by rule or order of the Secretary of State, or (B) during the preceding twelve-month period he has had not more than five (5) clients, other than those specified in clause (A) of this subsection, who are residents of this state; or (8) such other persons not within the intent of this subsection as the Secretary of State may by rule or order designate.

(h) "Investment adviser representative" means any partner, officer, director of (or a person occupying a similar status or performing similar functions) or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered under this chapter, or who has a place of business located in this state and is employed by

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or associated with a federal covered adviser; and who does any of the following: (1) makes any recommendations or otherwise renders advice regarding securities, (2) manages accounts or portfolios of clients, (3) determines which recommendation or advice regarding securities should be given, (4) solicits, offers or negotiates for the sale of or sells investment advisory services, or (5) supervises employees who perform any of the foregoing.

(i) "Issuer" means any person who issues or proposes to issue any security, except that (1) 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; and (2) with respect to certificates of interest or participation in oil, gas or mining titles or leases or in payments out of production under such titles or leases, there is not considered to be any "issuer." With respect to a fractional or pooled interest in a viatical settlement investment contract, "issuer" means the person who creates, for the purpose of sale, the fractional or pooled interest. The issuer of a viatical settlement investment contract that is not fractionalized or pooled means the person effecting the transactions with the investors in such contracts.

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

(k) "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.

(l) (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,

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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; (C) any act incident to a class vote by stockholders, pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation; or (D) 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.

(m) "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 before or after the effective date of this chapter.

(n) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; interest in a limited partnership; viatical settlement investment contract or a fractionalized or pooled interest therein; or, 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. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money, or both, either in a lump sum or periodically for life or some other specified period.

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

(p) "Viatical settlement investment contract" means any agreement, regardless of title or caption, for the purchase, sale, assignment, transfer, devise or bequest of any portion of the death benefit or ownership of a life insurance policy or certificate for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Viatical settlement investment contract" does not include:

(i) The assignment, transfer, sale, devise or bequest of a death benefit, life insurance policy or certificate of insurance by the viator to the viatical settlement provider under Sections 83-7-201 through 83-7-223;

(ii) The assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union or other licensed lending institution as collateral for a loan; or

(iii) The exercise of accelerated benefits under the terms of a life insurance policy issued in accordance with the insurance laws of this state.

Sources: Laws, 1981, ch. 521, § 401; Laws, 1982, ch. 377, § 1; Laws, 1987, ch. 477, § 1; Laws, 1990, ch. 352, § 1; Laws, 1997, ch. 480, § 1; Laws, 2000, ch. 323, § 12, eff from and after July 1, 2000.

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§ 75-71-107. Administration of chapter.

- (a) The administration of this chapter shall be vested in the Secretary of State of Mississippi.
- (b) The Secretary of State shall have the authority to administer oaths in, and to prescribe forms for, all matters arising under this chapter. The Secretary of State shall cooperate with the administrators of the securities laws of other states and of the United States.
- (c) The Secretary of State shall have the authority to employ, and fix the salary of, such examiners, clerical help and other employees as the administration of this chapter may require.
- (d) The Secretary of State and any person employed by him shall be paid, in addition to his regular compensation, the transportation fare, traveling expenses, board, lodging and other expenses necessary, and actually incurred by each of them, in the performance of their official duties under this chapter. The Secretary of State shall have authority to pay the traveling expenses and all other expense necessary and actually incurred by the Secretary of State or his representative, or both, while attending the annual convention of the North American Securities Administrators, or the convention of the southern group of such association. The above expenses and compensation shall be paid from any funds appropriated for the support and operation of the office of the Secretary of State.
- (e) The Secretary of State is hereby authorized and empowered to make, amend and rescind rules and regulations from time to time, as he may deem necessary and proper for the administration and enforcement of the provisions of this chapter, not contrary to the provisions of law.
- (f) It is unlawful for the Secretary of State or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the Secretary of State and which is not made public. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the Secretary of State or any of his officers or employees.
- (g) The Secretary of State may designate filing depositories for all records required to be filed and maintained under this chapter. Such records may be maintained in original form or by means of microfilm, microfiche, microphotographic reproduction, photographic reproduction, word processing, computerization or other acceptable reproductive methods.

Source: Mississippi Code/TITLE 75 REGULATION OF TRADE, COMMERCE AND INVESTMENTS/CHAPTER 71 UNIFORM SECURITIES LAW/ARTICLE 1. GENERAL PROVISIONS/§ 75-71-109. Rules, forms, orders and hearings.

§ 75-71-109. Rules, forms, orders and hearings.

- (a) The Secretary of State may from time to time make, amend and rescind such rules, forms and orders as are necessary to carry out the provisions of this chapter, including rules and forms governing

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registration statements, fees, applications and reports, and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purpose of rules and forms, the Secretary of State may classify securities, persons and matters within his jurisdiction, and prescribe different requirements for different classes. The Secretary of State may by rule adopt exemptions from the registration requirements of Sections 75-71-301 and 75-71-401 where such exemptions are consistent with the public interest and with the purpose fairly intended by the policy and provisions of this chapter.

(b) No rule, form or order may be made, amended or rescinded unless the Secretary of State finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter. In prescribing rules and forms the Secretary of State may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this chapter to achieve maximum uniformity in the form and content of registration statements, applications and reports wherever practicable.

(c) The Secretary of State may by rule or order prescribe (1) the form and content of financial statements required under this chapter, (2) the circumstances under which consolidated financial statements shall be filed, and (3) whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting practices.

(d) All rules and forms of the Secretary of State shall be published.

(e) No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form or order of the Secretary of State, notwithstanding that the rule, form or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(f) Every hearing in an administrative proceeding shall be public unless the Secretary of State in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.

Sources: Laws, 1981, ch. 521, § 412; Laws, 1987, ch. 477, § 2; Laws, 1997, ch. 480, § 2, eff from and after passage (approved March 27, 1997).

§ 75-71-111. Administrative files and opinions.

(a) A document is filed when it is received by the Secretary of State.

(b) The Secretary of State shall keep a register of all applications for registration and registration statements which are or have ever been effective under this chapter and all denial, suspension or revocation orders which have been entered under this chapter. The register shall be open for public inspection.

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(c) The information contained in or filed with any registration statement, application or report may be made available to the public under such rules as the Secretary of State prescribes. Information in the possession of, filed with, or obtained by the Secretary of State in connection with any investigation or examination under this chapter shall be confidential and exempt from the requirements of the Mississippi Public Records Act of 1983. No such information may be disclosed by the Secretary of State or any of his officers or employees unless necessary or appropriate in connection with a particular investigation or proceeding under this chapter or for any law enforcement purpose.

(d) Upon request and at such reasonable charges as he prescribes, the Secretary of State shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(e) The Secretary of State in his discretion may honor requests from interested persons for interpretative opinions, or may issue determinations that the Secretary of State will not institute enforcement proceedings against certain specified persons for engaging in certain specified activities when the determination is consistent with the purposes fairly intended by the policy and provisions of this chapter. The Secretary of State may charge a fee for interpretative opinions and no-action determinations.

Sources: Laws, 1981, ch. 521, § 413; Laws, 1987, ch. 477, § 3; Laws, 1995, ch. 309, § 2, eff from and after passage (approved March 8, 1995).

§ 75-71-113. Filing of sales and advertising literature.

The Secretary of State, by rule or order, may require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, unless the security or transaction is exempted under Article 3 of this chapter or Section 37-155-115, or is a federal covered security.

Sources: Laws, 1981, ch. 521, § 403; Laws, 1997, ch. 480, § 3; Laws, 2000, ch. 473, § 19, eff from and after July 1, 2000.

§ 75-71-115. Misleading filings.

It is unlawful for any person to make or cause to be made, in any document filed with the secretary of state or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

Sources: Laws, 1981, ch. 521, § 404, eff from and after July 1, 1981.

§ 75-71-117. Unlawful representations concerning registration or exemption.

(a) Neither (1) the fact that an application for registration under Article 5 of this chapter or a registration statement under Article 7 of this chapter has been filed nor (2) the fact that a person or security is

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effectively registered constitutes a finding by the secretary of state that any document filed under this chapter is true, complete and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the secretary of state has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security or transaction.

(b) It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection (a) of this section.

Sources: Laws, 1981, ch. 521, § 405, eff from and after July 1, 1981.

§ 75-71-119. Acts in this state making chapter applicable.

(a) Sections 75-71-117, 75-71-301(a), 75-71-401, 75-71-408, 75-71-501 and 75-71-717 through 75-71-731 apply to persons who sell or offer to sell when (1) an offer to sell is made in this state, or (2) an offer to buy is made and accepted in this state.

(b) Sections 75-71-117, 75-71-301(a) and 75-71-501 apply to persons who buy or offer to buy when (1) an offer to buy is made in this state, or (2) an offer to sell is made and accepted in this state.

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer (1) originates from this state, or (2) is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance (1) is communicated to the offeror in this state and (2) has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state, and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).

(e) An offer to sell or to buy is not made in this state when (1) the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds (2/3) of its circulation outside this state during the past twelve (12) months, or (2) a radio or television program originating outside this state is received in this state.

(f) Sections 75-71-117 and 75-71-303, as well as Section 75-71-503, so far as investment advisers and investment adviser representatives are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

Sources: Laws, 1981, ch. 521, § 414; Laws, 1990, ch. 352, § 2; Laws, 1997, ch. 480, § 4, eff from and after July 1, 1997.

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§ 75-71-121. Effect of chapter on pending proceedings or existing rights of action.

Prior law exclusively governs all suits, actions, prosecutions or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before July 1, 1981, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought within any period of limitation which applied when the cause of action accrued and in any event within two (2) years after July 1, 1981.

Sources: Laws, 1981, ch. 521, § 418, eff from and after July 1, 1981.

§ 75-71-123. Effect of chapter on registrations under prior law.

All effective registrations under prior law, all administrative orders relating to such registrations, and all conditions imposed upon such registrations remain in effect so long as they would have remained in effect if this chapter had not been passed. They are considered to have been filed, entered or imposed under this chapter, but are governed by prior law.

Sources: Laws, 1981, ch. 521, § 418, eff from and after July 1, 1981.

§ 75-71-125. Effect of chapter on offerings or sales begun under prior exemptions.

Prior law applies in respect of any offer or sale made within one (1) year after July 1, 1981 pursuant to an offering begun in good faith before July 1, 1981 on the basis of an exemption available under prior law.

Sources: Laws, 1981, ch. 521, § 418, eff from and after July 1, 1981.

§ 75-71-127. Effect of chapter on proceedings for judicial review of administrative orders.

Judicial review of all administrative orders as to which review proceedings have not been instituted by July 1, 1981 are governed by article 11 of this chapter, except that no review proceeding may be instituted unless the petition is filed within any period of limitation which applied to a review proceeding when the order was entered and in any event within sixty (60) days after July 1, 1981.

Sources: Laws, 1981, ch. 521, § 418, eff from and after July 1, 1981.

ARTICLE 3. EXEMPT SECURITIES AND TRANSACTIONS

§ 75-71-201. Exempt securities.

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The following securities are exempted from Sections 75-71-113 and 75-71-401:

- (1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any public body corporate and politic created or organized pursuant to the laws of the State of Mississippi; or any certificate of deposit for any of the foregoing;
- (2) Any security issued or guaranteed by any foreign government with which the United States currently maintains diplomatic relations, unless the secretary of state orders otherwise, if the security is recognized as a valid obligation by the issuer or guarantor;
- (3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state;
- (4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;
- (5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this state;
- (6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;
- (7) Any security issued or guaranteed by any railroad, other common carrier, public utility or holding company which is (A) subject to the jurisdiction of the interstate commerce commission; (B) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act; (C) regulated in respect of its rates and charges by a governmental authority of the United States or any state; or (D) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada or any Canadian province;
- (8) Any security listed or approved for listing upon notice of issuance on any national securities exchange registered under the Securities Exchange Act of 1934; any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;
- (9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes, or as a chamber of commerce or trade or professional association;
- (10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine (9)

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months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

(11) Any investment contract issued in connection with an employees' stock purchase, savings, pension, profit-sharing or similar benefit plan;

(12) All securities of cooperatives organized under the laws of Mississippi and operating wholly within the borders of this state and when all its stockholders are bona fide legal residents of Mississippi, and having no nonresident promoter interested therein; provided, however, the restriction and "its stockholders are bona fide legal residents of Mississippi" shall not apply where a cooperative holds a letter of determination issued by the internal revenue service finding the cooperative qualified under section 521 of the Internal Revenue Code.

(13) The sale of any oil, gas and 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.

Sources: Laws, 1981, ch. 521, § 402; Laws, 1982, ch. 377, § 2, eff from and after passage (approved March 22, 1982).

§ 75-71-203. Exempt transactions.

The following transactions are exempted from Sections 75-71-113 and 75-71-401:

(1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not.

(2) Any nonissuer distribution of an outstanding security if (A) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen (18) months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or (B) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three (3) preceding fiscal years, or during the existence of the issuer and any predecessors if less than three (3) years, in the payment of principal, interest or dividends on the security.

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the Secretary of State may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period.

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

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(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator.

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter.

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(9) The sale of its securities by an issuer during a period of twelve (12) consecutive months ending with the date of the sale in question to not more than ten (10) persons in this state if (A) the seller reasonably believes that all the buyers are purchasing for investment purposes only; (B) no commission or remuneration is paid or given directly or indirectly for soliciting any prospective buyer; and (C) no public advertising or solicitation is used in any such solicitation or sale.

Such offers or sales of securities shall be made only by duly elected and acting officers of the issuer, or by the general partner of a limited partnership, or a broker-dealer and his agents registered pursuant to this chapter.

The Secretary of State may by rule or order withdraw or further condition this exemption or waive one or more of the conditions herein.

(10) Any offer or sale of a preorganization certificate or subscription if (A) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (B) the number of subscribers does not exceed thirty-five (35), and (C) no payment is made by any subscriber.

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance, if (A) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (B) the issuer first files a notice specifying the terms of the offer and the Secretary of State does not by order disallow the exemption within the next ten (10) full business days.

(12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either law.

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(13) Any other transaction which the Secretary of State by rule or order exempts from the registration requirements of this chapter upon finding that (A) such registration is neither necessary in the public interest nor for the protection of investors; or (B) such exemption shall further the objectives of compatibility with federal exemptions and uniformity among the states.

Sources: Laws, 1981, ch. 521, § 402; Laws, 1985, ch. 381, § 10; Laws, 1987, ch. 477, § 4; Laws, 2001, ch. 437, § 1, eff from and after July 1, 2001.

§ 75-71-204. State exemption from federal Philanthropy Protection Act provisions.

This section shall exempt the State of Mississippi from the provisions of the Philanthropy Protection Act of 1995, Public Law 104-62, pursuant to Section 6(c) of that act.

Sources: Laws, 1998, ch. 401, § 1, eff from and after passage (approved March 17, 1998).

§ 75-71-205. Denial or revocation of specific exemptions; notice; hearings; summary orders.

The secretary of state may by order deny or revoke any exemption specified in clause (9) or (11) of Section 75-71-201 or in Section 75-71-203 with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the secretary of state may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the secretary of state shall promptly notify all interested parties that it has been entered and of the reason therefor and that within fifteen (15) days of the receipt of a written request, the matter will be set down for hearing. If no hearing is requested and none is ordered by the secretary of state, the order will remain in effect until it is modified or vacated by the secretary of state. If a hearing is requested or ordered, the secretary of state, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this section may operate retroactively. No person may be considered to have violated Section 75-71-113 or 75-71-401 by reason of any offer or sale effected after the entry of an order under this section if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

Sources: Laws, 1981, ch. 521, § 402, eff from and after July 1, 1981.

§ 75-71-207. Burden of proving exemption or exception.

In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

Sources: Laws, 1981, ch. 521, § 402, eff from and after July 1, 1981.

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ARTICLE 5. REGISTRATION OF BROKER-DEALERS, AGENTS AND INVESTMENT ADVISERS

§ 75-71-301. Registration of broker-dealers and agents required; notice of employment or termination of agent.

Except as provided for in Section 75-71-109(a), it is unlawful for any person to transact business in this state as a broker-dealer or agent unless he is registered under this chapter.

Except as provided for in Section 75-71-109(a), it is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered under this chapter or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the Secretary of State.

Sources: Laws, 1981, ch. 521, § 201; Laws, 1987, ch. 477, § 5, eff from and after July 1, 1987.

§ 75-71-303. Registration of investment advisers and investment adviser representatives; notice of employment or termination of investment adviser representatives.

(a) It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless (1) he is so registered under this chapter; or (2) he is registered as a broker-dealer or an agent of a broker-dealer.

(b) It is unlawful for any: (1) person required to be registered as an investment adviser under this chapter to employ an investment adviser representative unless the investment adviser representative is registered under this chapter, provided that the registration of an investment adviser representative is not effective during any period when he is not employed by an investment adviser registered under this chapter; or (2) federal covered adviser to employ, supervise or associate with an investment adviser representative having a place of business located in this state, unless such investment adviser representative is registered under this chapter or is exempt from registration. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser, in the case of subsection (b)(1) of this section, or the investment adviser representative in the case of subsection (b)(2) of this section, shall promptly notify the Secretary of State.

Sources: Laws, 1981, ch. 521, § 201; Laws, 1987, ch. 477, § 6; Laws, 1990, ch. 352, § 3; Laws, 1997, ch. 480, § 5, eff from and after passage (approved March 27, 1997).

§ 75-71-305. Expiration of registration or notice filing.

Every registration or notice filing shall expire on the thirty-first day of December in every year unless renewed.

Sources: Laws, 1981, ch. 521, § 201; Laws, 1987, ch. 477, § 7; Laws, 1997, ch. 480, § 6, eff from and after passage (approved March 27, 1997).

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§ 75-71-307. Application for registration.

A broker-dealer, agent, investment adviser or investment adviser representative may obtain an initial or renewal registration by filing with the Secretary of State or his designee an application, together with a consent to service of process pursuant to Section 75-71-701. The application shall contain whatever information the Secretary of State by rule requires concerning such matters as (1) the applicant's form and place of organization; (2) the applicant's proposed method of doing business; (3) the qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; (4) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and (5) the applicant's financial condition and history.

Except with respect to advisers whose only clients are those described in Section 75-71-105(g)(8) of this chapter, it is unlawful for any federal covered adviser to conduct advisory business in this state unless, prior to acting as a federal covered adviser in this state, such person files such documents as have been filed with the United States Securities and Exchange Commission with the Secretary of State, as the Secretary of State may by rule or otherwise require, and a fee and consent to service of process, as the Secretary of State, by rule or otherwise, may require. Notwithstanding the foregoing, until October 10, 1999, the Secretary of State may require the registration of a federal covered adviser if the adviser fails to promptly pay the fee required by this chapter or rule promulgated under this chapter.

Sources: Laws, 1981, ch. 521, § 202; Laws, 1987, ch. 477, § 8; Laws, 1990, ch. 352, § 4; Laws, 1997, ch. 480, § 7, eff from and after passage (approved March 27, 1997).

§ 75-71-309. Effective date of registration.

If no denial order is in effect and no proceeding is pending under Sections 75-71-321 through 75-71-331, registration becomes effective at noon of the thirtieth day after an application is filed. The secretary of state may, by rule or order, specify an earlier effective date, and the secretary of state may, by order, defer the effective date until noon of the thirtieth day after the filing of any amendment.

Sources: Laws, 1981, ch. 521, § 202, eff from and after July 1, 1981.

§ 75-71-311. Registration of broker-dealer constitutes registration of agent; registration of investment adviser constitutes registration of investment adviser representative.

Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer or director, or a person occupying a similar status or performing similar functions. Registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, officer or director, or a person occupying a similar status or performing similar functions.

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§ 75-71-313. Registration fees.

- (a) Every applicant for initial or renewal registration shall pay a registration fee as required by the Secretary of State in the case of a broker-dealer or agent.
- (b) Every applicant for initial or renewal registration as an investment adviser or as an investment adviser representative who is subject to registration under this article shall pay a registration fee as required by the Secretary of State.
- (c) Every person acting as a federal covered adviser in this state shall pay an initial and renewal notice filing fee as required by the Secretary of State.

Sources: Laws, 1981, ch. 521, § 202; Laws, 1985, ch. 381, § 11; Laws, 1987, ch. 477, § 9; Laws, 1990, ch. 352, § 6; Laws, 1997, ch. 480, § 8, eff from and after passage (approved March 27, 1997).

§ 75-71-315. Registration of successors to broker-dealers or investment advisers.

A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

Sources: Laws, 1981, ch. 521, § 202, eff from and after July 1, 1981.

§ 75-71-317. Minimum capital rules.

The Secretary of State may by rule or otherwise require a minimum capital for registered broker-dealers, subject to the limitations of Section 15 of the Securities and Exchange Act of 1934, and establish minimum financial requirements for investment advisers, subject to the limitations of Section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.

Sources: Laws, 1981, ch. 521, § 202; Laws, 1997, ch. 480, § 9, eff from and after passage (approved March 27, 1997).

§ 75-71-319. Requirement to post bonds; terms and conditions.

- (1) The Secretary of State may by rule or otherwise require registered broker-dealers, agents and investment advisers to post bonds, in amounts as he may prescribe, subject to the limitations of Section 15 of the Securities Exchange Act of 1934 (for broker-dealers) and Section 222 of the Investment Advisers Act of 1940 (for investment advisers), and may determine their condition.

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(2) Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within two (2) years after the sale or other act upon which it is based, except that if the person entitled to bring such suit shall die before the expiration of the time herein limited therefor, such suit may be commenced by the executor or administrator of the deceased person after the expiration of such time but within one (1) year after the death of such person.

Sources: Laws, 1981, ch. 521, § 202; Laws, 1987, ch. 477, § 10; Laws, 1997, ch. 480, § 10, eff from and after passage (approved March 27, 1997).

§ 75-71-321. Denial, suspension or revocation of registration; grounds therefor.

(a) The Secretary of State may by order deny, suspend or revoke any registration if the Secretary of State finds (1) that the order is in the public interest and (2) that the applicant or registrant or in the case of a broker-dealer or investment adviser, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(A) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) Has willfully violated or willfully failed to comply with any provision of this chapter or any rule or order under this chapter;

(C) Has been convicted, within the past ten (10) years, of any misdemeanor involving a security or any aspect of the securities business, or any felony;

(D) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(E) Is the subject of an order of the Secretary of State denying, suspending or revoking registration as a broker-dealer, agent, investment adviser or investment adviser representative;

(F) Has engaged in dishonest or unethical practices in the securities business;

(G) Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature;

(H) Is not qualified on the basis of such factors such as training, experience and knowledge of the securities business.

(b) The Secretary of State may by order deny, suspend or revoke any registration if the Secretary of State finds (1) that the order is in the public interest and (2) that the applicant or registrant:

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(A) Has failed reasonably to supervise his agents if he is a broker-dealer or his investment adviser representatives if he is an investment adviser; or

(B) Has failed to pay the proper filing fee.

Sources: Laws, 1981, ch. 521, § 204; Laws, 1990, ch. 352, § 7; Laws, 2001, ch. 437, § 2, eff from and after July 1, 2001.

§ 75-71-323. Additional provisions governing denial, suspension or revocation of registration for lack of qualifications.

The following provisions govern the application of Section 75-71-321(a)(2)(H):

(1) The Secretary of State may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both.

(2) The Secretary of State shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer, and that an investment adviser representative who will work under the supervision of a registered investment adviser need not have the same qualifications as an investment adviser.

(3) The Secretary of State may by rule provide for an examination which may be written or oral or both, to be taken by any class of or all applicants.

(4) The Secretary of State shall not consider that an investment adviser is qualified solely on the basis of experience and practice as a broker-dealer or agent. When he finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser, he may by order condition the applicant's registration as a broker-dealer upon his not transacting business in this state as an investment adviser.

Sources: Laws, 1981, ch. 521, § 204; Laws, 1987, ch. 477, § 11; Laws, 1990, ch. 352, § 8, eff from and after passage (approved March 12, 1990).

§ 75-71-325. Summary postponement or suspension of registration; notice; hearing.

The Secretary of State may by order summarily postpone or suspend registration pending final determination of any proceeding under Sections 75-71-321 through 75-71-331. Upon entry of the order, the Secretary of State shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or an investment adviser representative, that it has been entered and the reasons therefor and that fifteen (15) days after receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the Secretary of State, the order will remain in effect

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until it is modified or vacated by the Secretary of State. If a hearing is requested or ordered, the Secretary of State, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

Sources: Laws, 1981, ch. 521, § 204; Laws, 1990, ch. 352, § 9, eff from and after passage (approved March 12, 1990).

§ 75-71-327. Cancellation of registration or application.

If the Secretary of State finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the Secretary of State may by order cancel the registration or application.

Sources: Laws, 1981, ch. 521, § 204; Laws, 1990, ch. 352, § 10, eff from and after passage (approved March 12, 1990).

§ 75-71-329. Withdrawal from registration; effect on revocation or suspension proceedings.

Withdrawal from registration as a broker-dealer, agent, investment adviser or investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the Secretary of State may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty (30) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Secretary of State by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Secretary of State may, nevertheless, institute a revocation or suspension proceeding under Section 75-71-321(a)(2)(B) within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

Sources: Laws, 1981, ch. 521, § 204; Laws, 1990, ch. 352, § 11, eff from and after passage (approved March 12, 1990).

§ 75-71-331. Notice, hearing and written findings and conclusions required; exception.

No order may be entered under any part of Sections 75-71-321 through 75-71-331 except the first sentence of Section 75-71-325 without: (1) appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative), (2) opportunity for hearing, and (3) written findings of fact and conclusions of law.

Sources: Laws, 1981, ch. 521, § 204; Laws, 1990, ch. 352, § 12, eff from and after passage (approved March 12, 1990).

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§ 75-71-333. Post-registration requirements.

- (a) Books and accounts. Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and other records as the Secretary of State prescribes by rule or otherwise, not to exceed the limitations provided in Section 15 of the Securities Exchange Act of 1934 (in the case of a broker-dealer) and Section 222 of the Investment Advisers Act of 1940 (in the case of an investment adviser). All records so required, with respect to a registered investment adviser, shall be preserved for such period as the Secretary of State prescribes by rule or otherwise.
- (b) Financial Reports. Every registered broker-dealer and investment adviser shall file such financial reports as the Secretary of State prescribes by rule or otherwise, not to exceed the limitations provided in Section 15 of the Securities Exchange Act of 1934 (in the case of a broker-dealer) and Section 222 of the Investment Advisers Act of 1940 (in the case of an investment adviser).
- (c) Corrections. If the information contained in any document filed with the Secretary of State is or becomes inaccurate or incomplete in any material respect, the registrant or federal covered adviser shall promptly file a correcting amendment if the document is filed with respect to a registrant or when such amendment is required to be filed with the United States Securities and Exchange Commission if the document is filed with respect to a federal covered adviser, unless notification of the correction has been given under Section 75-71-301.
- (d) Inspection Power. All of the records referred to in subsection (a) of this section are subject at any time to such reasonable periodic, special or other examinations by representatives of the Secretary of State, within or without the State of Mississippi, as the Secretary of State deems necessary or appropriate in the public interest or for the protection of investors.

Sources: Laws, 1981, ch. 521, § 203; Laws, 1997, ch. 480, § 11, eff from and after passage (approved March 27, 1997).

ARTICLE 7. REGISTRATION OF SECURITIES

§ 75-71-401. Registration or exemption required.

Except as provided for in Section 75-71-109(a), it is unlawful for any person to offer or sell any security in the State of Mississippi unless: (1) it is registered under this chapter or Section 37-155-115; (2) the security or transaction is exempted under Article 3 of this chapter, or (3) it is a federal covered security.

Sources: Laws, 1981, ch. 521, § 301; Laws, 1987, ch. 477, § 12; Laws, 1997, ch. 480, § 12; Laws, 2000, ch. 473, § 20, eff from and after July 1, 2000.

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§ 75-71-403. Registration by coordination.

(a) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Section 75-71-411 and the consent to service of process required by Section 75-71-701:

(1) One (1) copy of the latest form of prospectus filed under the Securities Act of 1933;

(2) If the secretary of state by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) If the secretary of state requests, any other information or copies of any documents filed under the Securities Act of 1933; and

(4) An undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the securities and exchange commission, whichever first occurs.

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied: (1) no stop order is in effect and no proceeding is pending under Sections 75-71-425 through 75-71-431; (2) the registration statement has been on file with the secretary of state for at least ten (10) days; and (3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two (2) full business days or such shorter period as the secretary of state permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the secretary of state by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the secretary of state may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if the secretary of state promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order is void as of the time of its entry. The secretary of state may by rule or otherwise waive either or both of the

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conditions specified in clauses (2) and (3) of this subsection. If the federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the secretary of state of the date when the federal registration statement is expected to become effective, the secretary of state shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under Sections 75-71-425 through 75-71-431; but this advice by the secretary of state does not preclude the institution of such a proceeding at any time.

Sources: Laws, 1981, ch. 521, § 302, eff from and after July 1, 1981.

§ 75-71-405. Registration by qualification.

- (a) Any security may be registered by qualification.
- (b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Section 75-71-411 and the consent to service of process required by Section 75-71-701
 - (1) With respect to the issuer and any significant subsidiary: its name, address and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.
 - (2) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address and principal occupation for the past five (5) years; the amount of securities of the issuer held by him as of a specified date within thirty (30) days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three (3) years or proposed to be effected;
 - (3) With respect to persons covered by clause (2) of this subsection: the remuneration paid during the past twelve (12) months and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries and affiliates) to all those persons in the aggregate;
 - (4) With respect to any person owning of record, or beneficially if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer: the information specified in clause (2) of this subsection other than his occupation;

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(5) With respect to every promoter if the issuer was organized within the past three (3) years: the information specified in clause (2) of this subsection, any amount paid to him within that period or intended to be paid to him, and the consideration for any such payment;

(6) With respect to any person on whose behalf any part of the offering is to be made in a non-issuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three (3) years or proposed to be effected; and a statement of his reasons for making the offering;

(7) The capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two (2) years or is obligated to issue any of its securities;

(8) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, contracts or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(9) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition);

(10) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by

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every person required to be named in clause (2), (4), (5), (6) or (8) of this subsection and by any person who holds or will hold ten percent (10%) or more in the aggregate of any such options;

(11) The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two (2) years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(12) A copy of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature intended as of the effective date to be used in connection with the offering;

(13) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

(14) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state whether the security when sold will be legally issued, fully paid and nonassessable and, if a debt security, a binding obligation of the issuer;

(15) The written consent of any accountant, engineer, appraiser or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement;

(16) A balance sheet of the issuer as of a date within four (4) months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three (3) fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessors' existence, if less than three (3) years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

(17) Such additional information as the secretary of state requires by rule or order.

(c) A registration statement under this section becomes effective when the secretary of state so orders.

(d) With regard to registration by qualification under this section, a prospectus containing any part of the information designated by the secretary of state and specified in subsection (b) of this section shall be sent or given to each purchaser before a sale is made by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is

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offering part of an unsold allotment or subscription taken by him as a participant in the distribution.

Sources: Laws, 1981, ch. 521, § 303, eff from and after July 1, 1981.

§ 75-71-407. Persons entitled to file registration statements.

A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer.

Sources: Laws, 1981, ch. 521, § 304, eff from and after July 1, 1981.

§ 75-71-408. Filing of federal covered securities.

(1) The Secretary of State, by rule or otherwise, may require the filing of any or all of the following documents with respect to a covered security under Section 18(b)(2) of the Securities Act of 1933:

(a) Prior to the initial offer of such federal covered security in this state, all documents that are part of a federal registration statement filed with the United States Securities and Exchange Commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and with the filing fee calculated in the manner provided in Section 75-71-409.

(b) After the initial offer of such federal covered security in this state, all documents that are part of an amendment to a federal registration statement filed with the United States Securities and Exchange Commission under the Securities Act of 1933, which shall be filed concurrently with the Secretary of State.

(c) An annual or periodic report of the value of such federal covered securities offered or sold in this state, together with the report fee set forth in Section 75-71-421 and a filing fee calculated in the manner provided in Section 75-71-409.

(2) With respect to any security that is a covered security under Section 18(b)(4)(D) of the Securities Act of 1933, the Secretary of State, by rule or otherwise, may require the issuer to file a notice on SEC Form D and a consent to service of process signed by the issuer no later than fifteen (15) days after the first sale of such covered security in this state, together with a filing fee to be set by rule.

(3) The Secretary of State, by rule or otherwise, may require the filing of any document filed with the United States Securities and Exchange Commission under the Securities Act of 1933, with respect to a covered security under Section 18(b)(3) or (4) of the Securities Act of 1933, together with a filing fee to be set by rule.

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(4) The Secretary of State may issue an order suspending the offer and sale of a covered security, except a covered security under Section 18(b)(1) of the Securities Act of 1933, if he finds that: (1) the order is in the public interest and (2) there is a failure to comply with any condition established under this section.

(5) The Secretary of State, by rule or otherwise, may waive any or all of the provisions of this section, except for fees.

(6) Notwithstanding the foregoing, until October 10, 1999, the Secretary of State may require the registration of any federal covered security if the issuer fails to promptly pay the fees required by this chapter or rule promulgated under this chapter.

Sources: Laws, 1997, ch. 480, § 13, eff from and after passage (approved March 27, 1997).

§ 75-71-409. Filing fees.

At the time the registration of a securities offering or notification of a securities offering pursuant to Section 75-71-408(a) is filed, every person filing such registration or notification shall pay a filing fee of one-tenth of one percent (1/10 of 1%) of the dollar amount to be registered, with the minimum fee to be One Hundred Fifty Dollars (\$150.00) and the maximum fee to be One Thousand Dollars (\$1,000.00).

When a registration is withdrawn before the effective date or a preeffective stop order is entered under Sections 75-71-425 through 75-71-431, the Secretary of State shall retain the greater of One Hundred Fifty Dollars (\$150.00) or forty percent (40%) of the fee.

The Secretary of State may by rule or otherwise set a fee for changing the name of an issuer or offering filed with his office.

Sources: Laws, 1981, ch. 521, § 304; Laws, 1985, ch. 381, § 12; Laws, 1990, ch. 352, § 14; Laws, 1997, ch. 480, § 14, eff from and after passage (approved March 27, 1997).

§ 75-71-411. Information required in all registration statements.

Every registration statement shall specify (1) the amount of securities to be offered in this state; (2) the states in which a registration statement or similar documents in connection with the offering has been or is to be filed; and (3) any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities in each state, or by any court, or by the securities and exchange commission.

Sources: Laws, 1981, ch. 521, § 304, eff from and after July 1, 1981.

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§ 75-71-413. Permitting omission of information or document from registration statement.

The secretary of state may by rule or otherwise permit the omission of any item of information or document from any registration statement.

Sources: Laws, 1981, ch. 521, § 304, eff from and after July 1, 1981.

§ 75-71-415. Certain information not to be required in non-issuer distributions.

In the case of a non-issuer distribution, information may not be required under Section 75-71-405 or 75-71-421 unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

Sources: Laws, 1981, ch. 521, § 304, eff from and after July 1, 1981.

§ 75-71-417. Conditions impossible on registrations by qualification or coordination.

(a) The secretary of state may by rule or order require as a condition of registration by qualification or coordination (1) that any security issued within the past three (3) years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (2) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The secretary of state may by rule or order determine the conditions of any escrow or impounding required hereunder, but he may not reject a depository solely because of location in another state.

(b) The secretary of state may by rule or order require as a condition of registration that any security registered by qualification or coordination be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the secretary of state or preserved for any period up to three (3) years specified in the rule or order.

Sources: Laws, 1981, ch. 521, § 304, eff from and after July 1, 1981.

§ 75-71-419. Duration of registration statements; outstanding securities of same class; withdrawals.

Every registration statement is effective for one (1) year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, except during the time a stop order is in effect under Sections 75-71-425 through 75-71-431. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any non-issuer transaction so long as the registration statement is effective. A registration statement may not be withdrawn for

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one (1) year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the secretary of state.

Sources: Laws, 1981, ch. 521, § 304, eff from and after July 1, 1981.

§ 75-71-421. Reports may be required while registration statement is effective; filing fee.

So long as a registration statement is effective or an offering of federal covered securities pursuant to Section 75-71-408(a) continues, the Secretary of State may by rule or order require the person who filed the registration statement or notice, as the case may be, to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement or notice, as the case may be, and to disclose the progress of the offering. The Secretary of State may by rule assess a fee not to exceed Fifty Dollars (\$50.00) to be paid when the required report is filed.

Sources: Laws, 1981, ch. 521, § 304; Laws, 1990, ch. 352, § 15; Laws, 1997, ch. 480, § 15, eff from and after passage (approved March 27, 1997).

§ 75-71-423. Amendment to registration statement to increase amount of offering of certain securities; effective date; fee.

A registration statement relating to a security issued by a face amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940, may be amended after its effective date so as to increase the securities specified as proposed to be offered. Such an amendment becomes effective when the secretary of state so orders. Every person filing such an amendment shall pay a filing fee, calculated in the manner specified in Section 75-71-409, with respect to the additional securities proposed to be offered.

Sources: Laws, 1981, ch. 521, § 304, eff from and after July 1, 1981.

§ 75-71-425. Denial, suspension or revocation of effectiveness of registration statement; stop order; grounds therefor.

The secretary of state may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds (1) that the order is in the public interest and (2) that:

(A) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under Section 75-71-423 as of its effective date, or any report under Section 75-71-421 is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) Any provision of this chapter or any rule, order or condition lawfully imposed under this chapter has been wilfully violated, in connection with the offering, by (i) the person filing the registration statement,

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or (ii) the issuer, any partner, officer or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (iii) any underwriter;

(C) The security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but (i) the secretary of state shall not institute a proceeding against an effective registration statement under this clause more than one (1) year from the date of the order or injunction relied on, and (ii) he shall not enter an order under this clause on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

(D) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(E) The offering has worked or tended to work a fraud upon purchasers or would so operate;

(F) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

(G) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by Section 75-71-403(b)(4); or

(H) The applicant or registrant has failed to pay the proper filing fee; but the secretary of state may enter only a denial order under this clause and he shall vacate any such order when the deficiency has been corrected.

Sources: Laws, 1981, ch. 521, § 305, eff from and after July 1, 1981.

§ 75-71-427. Summary temporary postponement or suspension of effectiveness of registration statement; notice; hearing.

The secretary of state may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under Sections 75-71-425 through 75-71-431. Upon the entry of the order, the secretary of state shall promptly notify each person specified in Section 75-71-429 that it has been entered and of the reasons therefor and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the secretary of state, the order will remain in effect until it is modified or vacated by the secretary of state. If a hearing is requested or ordered, the secretary of state, after notice of and opportunity for hearing to each person specified in Section 75-71-429, may modify or vacate the order or extend it until final determination.

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§ 75-71-429. Notice, hearing and written findings and conclusions required for stop order; exception.

No stop order shall be entered under any part of Sections 75-71-425 through 75-71-431 except as provided in Section 75-71-427 without the following: (1) an appropriate prior notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered, (2) an opportunity for hearing, and (3) written findings of fact and conclusions of law.

Sources: Laws, 1981, ch. 521, § 305, eff from and after July 1, 1981.

§ 75-71-431. Vacation or modification of stop order.

The secretary of state may vacate or modify a stop order if he finds that the conditions which prompted entry have changed or that it is otherwise in the public interest to do so.

Sources: Laws, 1981, ch. 521, § 305, eff from and after July 1, 1981.

ARTICLE 9. FRAUDULENT AND OTHER PROHIBITED PRACTICES

§ 75-71-501. Fraud or deceit in connection with offers, sales or purchases.

It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly,

- (1) To employ any device, scheme or artifice to defraud;
- (2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (3) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

Sources: Laws, 1981, ch. 521, § 101; Laws, 1987, ch. 477, § 13, eff from and after July 1, 1987.

§ 75-71-503. Prohibited practices concerning fraud, deceit, lack of disclosure; requirements as to investment advisory contracts; custody of securities or funds by investment adviser.

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(a) It is unlawful for any person who receives, directly or indirectly, any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale:

(1) To employ any device, scheme, or artifice to defraud the other person;

(2) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or

(3) To act as principal for his own account, knowingly to sell any security from a client, or act as broker for a person other than such client knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the execution of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. The prohibitions of this subparagraph shall not apply to any transaction with a customer of a broker-dealer if such broker-dealer is not acting as an investment adviser in relation to such transactions.

(b) In the solicitation of advisory clients, it is unlawful for any person to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(c) Except as may be permitted by rule or order of the Secretary of State, it is unlawful for any investment adviser to enter into, extend or renew any investment advisory contract unless it provides in writing:

(1) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(2) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(3) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(d) Subparagraph (c)(1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as a definite date. "Assignment," as used in subparagraph (c)(2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; provided, however, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest business. The Secretary of State may by rule adopt exemptions from subparagraphs (c)(1), (2) and (3) where such exemptions are consistent with

the public interest and within the purposes fairly intended by the policy and provisions of this chapter.

(e) It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if

(1) The Secretary of State by rule prohibits custody; or

(2) In the absence of rule, the investment adviser fails to notify the Secretary of State that he has or may have custody.

(f) The Secretary of State may by rule or order adopt exemptions from subparagraph (a)(3) and subparagraphs (c)(1), (c)(2) and (c)(3) where such exemptions are consistent with the public interest and within the purposes fairly intended by the policy and provisions of this chapter.

Sources: Laws, 1981, ch. 521, § 102; Laws, 1987, ch. 477, § 14, eff from and after July 1, 1987.

ARTICLE 11. JUDICIAL REVIEW OF ORDERS

§ 75-71-601. Petition for judicial review of order; venue; scope of review.

Any person aggrieved by a final order of the secretary of state may obtain a review of the order in the chancery court of the first judicial district of Hinds County, Mississippi, by filing in court, within sixty (60) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the secretary of state and thereupon the secretary of state shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part. The findings of the secretary of state as to the facts, if supported by competent material and substantial evidence, are conclusive.

Sources: Laws, 1981, ch. 521, § 411, eff from and after July 1, 1981.

§ 75-71-603. Adduction of additional evidence; hearing before secretary of state; modification of original findings and order.

If either party applies to the court for leave to adduce additional material evidence, and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the Secretary of State, the court may order the additional evidence to be taken before the secretary of state and to be adduced upon the hearing in such manner and upon such conditions as the court considers proper. The secretary of state may modify his findings and order by reason of the additional evidence and shall file in court the additional evidence together with any modified or new findings or order.

Sources: Laws, 1981, ch. 521, § 411, eff from and after July 1, 1981.

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§ 75-71-605. Court order necessary to stay administrative order under review.

The commencement of proceedings under Section 75-71-601 does not, unless specifically ordered by the court, operate as a stay of the secretary of state's order.

Sources: Laws, 1981, ch. 521, § 411, eff from and after July 1, 1981.

ARTICLE 13. ENFORCEMENT, REMEDIES, LIABILITIES AND PENALTIES

§ 75-71-701. Appointment of secretary of state as agent for service of civil process; manner of service; notice to defendant; affidavit of compliance.

Every applicant for registration under this chapter and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the Secretary of State, in such form as he by rule prescribes, an irrevocable consent appointing the Secretary of State or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the Secretary of State, but it is not effective unless (1) the plaintiff, who may be the Secretary of State in a suit, action or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the Secretary of State, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

Sources: Laws, 1981, ch. 521, § 414; Laws, 1997, ch. 480, § 16, eff from and after passage (approved March 27, 1997).

§ 75-71-703. Violation of chapter equivalent to appointment of secretary of state as agent for service of civil process; manner of service; notice to defendant; affidavit of compliance.

When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, and he has not filed a consent to service of process under Section 75-71-701 and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the secretary of state or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the secretary of state, and it is not effective unless (1) the plaintiff,

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who may be the secretary of state in a suit, action or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

Sources: Laws, 1981, ch. 521, § 414, eff from and after July 1, 1981.

§ 75-71-705. Continuance to allow opportunity to defend when service of process is on secretary of state as agent.

When process is served under Section 75-71-701 or 75-71-703, the court, or the secretary of state in a proceeding before him, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

Sources: Laws, 1981, ch. 521, § 414, eff from and after July 1, 1981.

§ 75-71-707. Investigations by secretary of state.

The secretary of state in his discretion (1) may make such public or private investigations within or outside of this state as he deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder, (2) may require or permit any person to file a statement in writing, under oath or otherwise as the secretary of state determines, as to all the facts and circumstances concerning the matter to be investigated, and (3) may publish information concerning any violation of this chapter or any rule or order hereunder.

Sources: Laws, 1981, ch. 521, § 407, eff from and after July 1, 1981.

§ 75-71-709. Powers of secretary of state as to witnesses and evidence.

For the purpose of any investigation or proceeding under this chapter, the secretary of state or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the secretary of state deems relevant or material to the inquiry.

Sources: Laws, 1981, ch. 521, § 407, eff from and after July 1, 1981.

§ 75-71-711. Application to court for order compelling obedience of witness.

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In case of contumacy by, or refusal to obey a subpoena issued to, any person, the chancery court of the first judicial district of Hinds County, Mississippi, upon application by the secretary of state, may issue to the person an order requiring him to appear before the secretary of state, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

Sources: Laws, 1981, ch. 521, § 407, eff from and after July 1, 1981.

§ 75-71-713. Immunity of witness compelled to give evidence.

No person is excused from attending and testifying or from producing any document or record before the secretary of state, or in obedience to the subpoena of the secretary of state or any officer designated by him, or in any proceeding instituted by the secretary of state, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

Sources: Laws, 1981, ch. 521, § 407, eff from and after July 1, 1981.

§ 75-71-715. Secretary of State may issue cease and desist order, impose administrative penalty, or sue for injunction, restraining order or mandamus; orders of rescission, restitution or disgorgement; civil penalty.

Whenever it appears to the Secretary of State that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, he may, in his discretion, seek any or all of the following remedies:

- (1) Issue a cease and desist order, with or without a prior hearing against the person or persons engaged in the prohibited activities, directing them to cease and desist from further illegal activity;
- (2) (a) Issue an order in the case of an issuer of registered securities, broker-dealer, investment advisor, agent, investment adviser representative, or other person who violated this chapter, imposing an administrative penalty up to a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each offense and each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings; to be paid to the Secretary of State and requiring reimbursement to the Secretary of State for all costs and expenses incurred in the investigation of the violation(s) and in the institution of administrative proceedings, if any, as a result thereof;

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(b) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under subparagraph (2)(a) of this section, the Secretary of State shall consider, among other factors, the frequency, persistence, and willfulness of the conduct constituting a violation of this chapter or a rule promulgated thereunder or an order of the Secretary of State, the number of persons adversely affected by the conduct, and the resources of the person committing the violation; or

(3) Bring an action in chancery court to enjoin the acts or practices to enforce compliance with this chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing by the Secretary of State the court may enter an order of rescission, restitution or disgorgement directed to any person who has engaged in any act constituting a violation of any provision of this chapter or any rule or order hereunder or the court may impose a civil penalty up to a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each offense and each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings. The court may not require the Secretary of State to post a bond.

Sources: Laws, 1981, ch. 521, § 408; Laws, 1987, ch. 477, § 15; Laws, 1989, ch. 435, § 1; Laws, 1990, ch. 352, § 13, eff from and after passage (approved March 12, 1990).

§ 75-71-717. Liability to buyers for illegal or fraudulent sales or offers.

(a) Any person who (1) offers or sells a security in violation of Section 75-71-117(a), 75-71-301 or 75-71-401, or of any rule or order under Section 75-71-113 which requires the affirmative approval of sales literature before it is used, or of any condition imposed under Section 75-71-405(d) or 75-71-417, or (2) offers or sells a security by the use of any written or oral communication which contains any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the buyer not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at eight percent (8%) per year from the date of payment, costs and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at eight percent (8%) per year from the date of disposition.

(b) No buyer may sue under this section if, before suit is commenced, the buyer has received a written offer stating the respect in which liability under this section may have arisen and fairly advising the buyer of his rights; offering to repurchase the security for cash payable on delivery of the security equal to the consideration paid, together with interest at six percent (6%) from the date of payment, less the amount of any income received on the security or, if the buyer no longer owns the security, offering to pay the buyer upon acceptance of the offer an amount in cash equal to the damages computed in

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accordance with subsection (a); and stating that the offer may be accepted by the buyer at any time within thirty (30) days of its receipt; and the buyer has failed to accept such offer in writing within the specified period.

Sources: Laws, 1981, ch. 521, § 410; Laws, 1987, ch. 477, § 16, eff from and after July 1, 1987.

§ 75-71-719. Persons jointly and severally liable with seller; contribution.

Every person who directly or indirectly controls a seller liable under Section 75-71-717, every partner, officer or director of such a seller, every person occupying a similar status or performing similar functions, every employee of such a seller who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller, unless the nonseller who is so liable sustains the burden of proof that he did not know, and in exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

Sources: Laws, 1981, ch. 521, § 410, eff from and after July 1, 1981.

§ 75-71-721. Time for making tender.

Any tender specified in Sections 75-71-717 through 75-71-731 may be made at any time before entry of judgment.

Sources: Laws, 1981, ch. 521, § 410, eff from and after July 1, 1981.

§ 75-71-723. Survival of causes of action.

Every cause of action under this chapter survives the death of any person who might have been a plaintiff or defendant.

Sources: Laws, 1981, ch. 521, § 410, eff from and after July 1, 1981.

§ 75-71-725. Limitation of actions.

No action shall be maintained to enforce any liability created under Section 75-71-717(a)(2) unless brought within two (2) years after the discovery of the untrue statement or omission, or after such discovery should have been made by the exercise of reasonable diligence, or, if the action is to enforce a liability created under Section 75-71-717(a)(1) unless brought within two (2) years after the violation upon which it is based.

Sources: Laws, 1981, ch. 521, § 410, eff from and after July 1, 1981.

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§ 75-71-727. Person violating chapter may not sue on illegal contract.

No person who has made or engaged in the performance of any contract in violation of any provision of this chapter or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

Sources: Laws, 1981, ch. 521, § 410, eff from and after July 1, 1981.

§ 75-71-729. Waiver of compliance with chapter is void.

Any condition, stipulation or provision binding any person acquiring any security to waive compliance with any provision of this chapter or any rule or order hereunder is void.

Sources: Laws, 1981, ch. 521, § 410, eff from and after July 1, 1981.

§ 75-71-731. Rights and remedies of chapter are additional.

The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist at law or in equity.

Sources: Laws, 1981, ch. 521, § 410, eff from and after July 1, 1981.

§ 75-71-733. Power to punish crimes not limited by chapter.

Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

Sources: Laws, 1981, ch. 521, § 409, eff from and after July 1, 1981.

§ 75-71-735. Penalties for violation of chapter; limitation.

Any person who wilfully violates any provision of this chapter, except Section 75-71-115, or who wilfully violates any rule or order under this chapter, or who wilfully violates Section 75-71-115 knowing the statement made to be false or misleading in any material respect, shall upon conviction be fined not more than twenty-five thousand dollars (\$25,000.00) or imprisoned not more than five (5) years, or both; but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five (5) years after the alleged violation.

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