

GOVERNMENT CODE
TITLE 12. SECURITIES ACT
CHAPTER 4003. SECURITIES

SUBCHAPTER A. PERMIT QUALIFYING SECURITIES FOR SALE

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

(b) This section does not apply to:

(1) securities that have been registered by notification under Subchapter B or by coordination under Subchapter C; or

(2) transactions or securities that are exempt under Chapter 4005.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

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

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

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

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

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

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

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

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

(6) a statement showing:

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

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

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

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

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

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

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

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

(7) a copy of:

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

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

(C) any prospectus or advertisement or other description of security prepared by or for the company for

distribution or publication; and

(8) the statement of financial condition and income statement described by Section [4003.003](#).

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

(1) verified under oath by an executive officer or partner of the issuer or registered dealer filing the application; and

(2) attested by the secretary or partner of the issuer or registered dealer filing the application.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

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

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

(1) be detailed;

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

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

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

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

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

- (A) the assets' actual cost in money;
- (B) the assets' present market value; or
- (C) some other value of the assets;

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

(8) state whether the value listed in the statement is greater or less than the assets':

- (A) actual cost value in money; and
- (B) present market value.

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

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

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

- (1) the terms of the agreement; and
- (2) the amount and character of the assets subject to the agreement.

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

- (1) be detailed;
- (2) be prepared in accordance with generally accepted auditing standards and procedures and generally accepted accounting principles; and

- (3) cover the lesser of:
 - (A) the preceding three years of the issuer's operations; or

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

(g) If the issuer has not been operating but is taking over a concern of any kind that was previously operating, the income

statement required in an application under this subchapter must:

- (1) show the operations of the concern taken over for the three years preceding the taking over of the concern; and
- (2) clearly reflect the amount of net income or net loss incurred during each year shown.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

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

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

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

- (A) contain the information required by Section [4003.003](#); and

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

- (b) Instead of being audited and certified, the financial statements described by Section [4003.003](#) of a small business issuer, as defined by board rule, that meets all other requirements the board by rule or order prescribes, conditionally or unconditionally, may be reviewed by an independent certified public accountant in accordance with the Statements on Standards for Accounting and Review Services promulgated by the American Institute of Certified Public Accountants.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.005. PERMIT FEE. The commissioner shall charge the fees provided by Chapter [4006](#) for the issuance of a permit qualifying securities for sale.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

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

(b) After the examination, the commissioner shall:

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

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

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

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

(2) deny the application for a permit and notify the applicant in writing of the commissioner's decision if the commissioner determines that the applicant's proposed plan of business appears to be unfair, unjust, or inequitable.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

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

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

(2) state in bold type that the issuance of the permit is permissive only and does not constitute a recommendation or endorsement of the securities permitted to be issued.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.008. TERM OF PERMIT. A permit qualifying securities for sale that is issued under this subchapter is valid for one year.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

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

(b) The renewal application must:

(1) state:

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

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

(C) the total number of shares outstanding;

(2) contain a detailed balance sheet;

(3) contain an operating statement; and

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

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

(d) If issued, a renewal permit:

(1) is valid for one year; and

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

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.010. USE OF PERMIT FOR CERTAIN PURPOSES PROHIBITED. A dealer, issuer, or agent may not use a permit qualifying securities for sale in connection with a sale or effort to sell a security.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER B. REGISTRATION BY NOTIFICATION

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

(1) has been in continuous operation for at least three years; and

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

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

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

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

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

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

(2) permits the inclusion of that corporation's earnings applicable to the payment of dividends on the stock owned in the earnings of the issuer of the securities being registered by

notification.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

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

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

- (1) be in the form the commissioner prescribes;
- (2) be signed by the applicant filing the statement;

and

(3) contain the following information:

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

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

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

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

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

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

- (i) a certified income statement;
- (ii) a certified balance sheet; and
- (iii) a certified statement of stockholders' equity;

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

(H) a filing of a consent to service of process

conforming to the requirements of Section [4001.102](#), if the issuer:

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

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

(d) Filing a registration statement that complies with this section constitutes the registration of the securities by notification, subject to Section [4003.055](#).

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

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

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

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

(A) contain the information required by Section [4003.052](#); and

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

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.054. REGISTRATION PROCEDURES. (a) The commissioner shall complete the procedures specified by this section to register securities entitled to registration by notification.

(b) The commissioner shall:

(1) examine the registration statement filed under Section 4003.052 and the accompanying papers to determine their sufficiency under the requirements of this subchapter; and

(2) record the registration by notification of the securities described on receipt of:

(A) the registration statement;

(B) any prospectus;

(C) payment of the filing fee and registration fee; and

(D) a consent to service of process, if required.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

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

(b) The commissioner may waive or reduce the five-day waiting period if the commissioner determines that the public will not be injured by the waiver or reduction of the waiting period.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.056. EFFECT OF REGISTRATION BY NOTIFICATION. On registration of securities by notification, the securities may be sold in this state by a registered dealer or a registered agent.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.057. TERM OF REGISTRATION. A registration of securities by notification is effective for one year.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.058. RENEWAL OF REGISTRATION. A registration of securities by notification may be renewed for additional periods of

one year if:

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

(2) a new filing is made under this subchapter together with the payment of the renewal fee of \$10.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

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

(b) The provisions of Section [4007.107](#) relating to hearings apply to an order entered under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER C. REGISTRATION BY COORDINATION

Sec. 4003.101. ELIGIBILITY FOR REGISTRATION BY COORDINATION. A security may be registered by coordination if a registration statement has been filed under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) in connection with the same offering.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

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

(1) the following information:

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

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

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

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

(3) a copy of:

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

(B) any agreements with or among underwriters; and

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

(4) a specimen or copy of the security;

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

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

(7) a consent to service of process conforming to the requirements of Section [4001.102](#) if:

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

(B) the issuer is not a resident of this state or incorporated or formed under the laws of this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

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

(b) The commissioner shall examine a registration statement filed under Section [4003.102](#) and the accompanying documents on receipt.

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

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

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

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

(d) If the commissioner enters an order denying the registration of securities under this subchapter, the commissioner shall notify the registrant immediately.

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

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

(2) the registration statement has been on file with the commissioner for at least 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 full business days or a shorter period as the commissioner expressly permits and the offering is made within those limitations.

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

(g) The registrant shall promptly:

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

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

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

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

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

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

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

(k) If the registrant advises the commissioner of the date the federal registration statement is expected to become effective, the commissioner shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether the commissioner then contemplates the issuance of an order denying registration. This advice by the commissioner does not preclude the issuance of the

order at any time.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

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

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

(c) The registration by coordination of securities of a unit investment trust, as defined by the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), is effective until the first anniversary of the date of effectiveness granted by the Securities and Exchange Commission.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

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

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

(c) The same standards of fairness, justice, and equity prescribed by this subchapter for original approval of a registration apply to the renewal of the registration.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01,

eff. January 1, 2022.

SUBCHAPTER D. PROHIBITED SALES

Sec. 4003.151. CERTAIN SALES PROHIBITED. If the sale of a security entitles the purchaser or subsequent holder to exchange that security for another, or to purchase another security, the sale of, including an exchange for, the other security may not be made unless the sale is authorized under this title, if not exempt under this title, or by another provision of law.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER E. REGULATION OF OFFERS

Sec. 4003.201. DEFINITION. In this subchapter, "broadcast offer" means an offer disseminated by radio, television, recorded telephone presentation, or other mass media.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.202. APPLICABILITY. This subchapter does not apply to transactions or securities exempt under Chapter [4005](#).

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

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

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

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

(3) either:

(A) the security is registered under Subchapter B

or C or the commissioner has issued a permit qualifying securities for sale for the security under Subchapter A; or

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

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

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

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

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

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

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

(6) payment is not accepted from the offeree and no contract of sale is made before registration of the security is effective under Subchapter B or C or a permit is issued under Subchapter A.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

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

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

(1) the person making the offer is a registered dealer

or registered agent of a registered dealer;

(2) either:

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

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

(3) the person making or distributing the offer:

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

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

(4) payment is not accepted from the offeree and no contract of sale is made before registration of the security is effective under Subchapter B or C or a permit is issued under Subchapter A.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.205. DEALER NAMED IN OFFER. A dealer whose name is included in a written, printed, or broadcast offer along with the name of a registered dealer is not deemed, on that fact alone, to have made an offer in this state to sell a security.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

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

(b) An offer to sell a security that does not comply with Section [4003.203](#) or [4003.204](#) violates this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER F. CROWDFUNDING

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

(1) a Type A corporation authorized under Chapter 504, Local Government Code;

(2) a Type B corporation authorized under Chapter 505, Local Government Code;

(3) a nonprofit organization authorized by an agency or authority of the federal government to distribute housing and community development block grants;

(4) a municipal corporation;

(5) the Texas Veterans Commission; or

(6) a nonprofit community development financial institution certified by the Community Development Financial Institutions Fund.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

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

(b) The rules must:

(1) allow an authorized small business development entity to list on the entity's web portal offerings of securities by issuers in which the entity is financially interested;

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

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

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

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER G. PROTECTION FOR PURCHASERS OF SECURITIES

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

- (1) all or part of the proposed securities; or
- (2) subject to Subsection (b), all or part of the money and other funds received from the sale of those securities.

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

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

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

(e) If a proposed or existing company that deposits funds in a trust account as provided by this section does not sell the minimum amount of capital necessary under the escrow agreement within two years, the commissioner may authorize the bank or trust company at which the funds are deposited to return to the subscribers the portion of the funds that were deposited or escrowed under the escrow agreement. The bank or trust company shall return the funds to the subscribers on receipt of

authorization from the commissioner under this subsection. If the bank or trust company holds securities under the escrow agreement, the bank or trust company may return the securities to the corporation only after the bank or trust company receives from the issuer evidence of cancellation thereof.

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

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

(2) the amount of money paid by each.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

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

(b) The commissioner may reduce the percentage listed in Subsection (a) to a percentage that in the commissioner's opinion is fair, just, and equitable under the facts of the particular case. Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.303. PROSPECTUS REQUIRED FOR CERTAIN OFFERS. (a) Except as provided by Subsection (b), the commissioner shall require that, in connection with a permit qualifying securities for sale, all offers for the sale of the securities be made through a prospectus that:

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

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

(b) The prospectus requirements of this section are satisfied if the applicant files a prospectus or offering circular

with the commissioner that is also filed with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) or the regulations under that law.

(c) Failure to comply with the prospectus requirements of this section violates this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.304. INVESTOR EDUCATION. (a) The commissioner, with board approval, shall develop and implement investor education initiatives to inform the public about the basics of investing in securities. The initiatives must place a special emphasis on the prevention and detection of securities fraud. Materials developed for and distributed as part of the initiatives must be published in both English and Spanish.

(b) In developing and implementing the initiatives, the commissioner shall use the commissioner's best efforts to collaborate with public or nonprofit entities with an interest in investor education.

(c) For use in providing investor education initiatives and subject to Chapter [575](#), the commissioner may accept grants and donations from:

(1) a person who is not affiliated with the securities industry; or

(2) a nonprofit association, regardless of whether the entity is affiliated with the securities industry.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.